No. 3-10-0438

Order filed June 28, 2011

IN THE

APPELLATE COURT OF ILLINOIS

THIRD DISTRICT

A.D., 2011

DONALD SMITH,	)	Appeal from the Circuit Court
	)	of the 12th Judicial Circuit
Plaintiff-Appellant,	)	Will County, Illinois,
	)	
v.	)	
	)	No. 06 L 817
CYNTHIA GALANOS, WILLIAM	)	
GALANOS, DAVID SCHULZ and	)	
KENT POWER & COMPANY, INC.,	)	The Honorable
	)	James Garrison,
Defendants-Appellees.	)	Judge, Presiding.

JUSTICE McDADE delivered the judgment of the court.
Presiding Justice Carter concurred in the judgment.
Justice Schmidt specially concurred.

ORDER

Held: Where documents have not been admitted into evidence, the trial court is without discretion to provide them to the jury during deliberations.

Plaintiff, Donald Smith, appeals from a jury verdict in favor of defendants, Cynthia Galanos, William Galanos, David Schulz and Kent Power Co., Inc., in her negligence action

following a multi-vehicle accident on Interstate 80. We affirm.

FACTS

Plaintiff's complaint alleged that defendants negligently operated their respective vehicles in snowy weather conditions and caused an accident in which plaintiff sustained personal injuries. Defendants denied plaintiff's allegations.

Prior to trial, plaintiff filed a motion *in limine* seeking to bar "any testimony, comment or suggestion whether traffic citations were issued." Upon hearing argument, the trial court granted plaintiff's motion. Thus, no party presented evidence or testimony regarding the issuance of traffic citations at trial.

At the conclusion of the evidence, the trial court instructed the jury "to resolve this case by determining the facts based on the evidence." During deliberations, the jury requested that it be allowed to view the police report, which was taken at the scene of the accident. While both parties acknowledged that Illinois law bars admission of police reports, a dispute arose as to how exactly the trial court should phrase its denial of the jury's request. Plaintiff proposed the following response: "The police report is inadmissible and therefore irrelevant for your consideration. Do not speculate." Defendants argued, however, that the court should merely reply with the "standard response" that the jury has all the evidence and should continue to deliberate.

Ultimately, the court instructed the jury: "You have all the evidence you are going to receive. Please continue." Shortly thereafter, the jury returned a verdict against plaintiff and in favor of defendants. The court subsequently entered judgment on the verdict.

After filing his notice of appeal, plaintiff filed a post-trial motion requesting a new trial.

In his motion, plaintiff argued solely that the court's response to the jury suggested the existence of evidence that the jury would not receive. Plaintiff attached an affidavit of the jury foreperson in support of this claim. According to the affidavit, evidence of the police report "may have been helpful to the jury *** as some members of the jury wanted to *** see who received traffic citations." Upon hearing argument, the court denied plaintiff's motion. The court's written order provides, in pertinent part:

> "Based on the nature of the question, the Court finds its response appropriate. Here, the plaintiff does not demonstrate that the Court's handling the jury request somehow prejudiced his case. The Court notes that even giving the Plaintiff's suggested instruction as to the police report, the outcome would not have changed. In short, regardless of the instruction given to the jury in response to their request for a traffic report, the report was inadmissible and would not have been given to them.
>
> The Court finds that its decision on how to respond to the jury question was correct and proper and that Plaintiff's suggested response was not.
>
> * * *
>
> *** Since the document requested by the jury was prohibited from introduction at trial, this Court fails to see the logic in Plaintiff's argument that they [sic] should have been specifically told it was inadmissible evidence."

ANALYSIS

The sole issue before us is whether the trial court's response to the jury's request to see the police report constitutes reversible error. Because the supreme court has repeatedly held that a trial court is without discretion to provide the jury documents that have not been admitted into evidence, we find the trial court's reply to the jury was entirely proper.

At the outset, we note that police reports are generally inadmissible hearsay. *People v. Shinohara*, 375 Ill. App. 3d 85, 113 (2007). Both parties acknowledge this fact. Turning to the specific question of whether the trial court's response to the jury was appropriate, we find the supreme court's decision in *People v. Williams*, 60 Ill. 2d 1 (1975) instructive.

In *Williams*, the jury sent the trial court a note asking that it be allowed to view a police report, which similar to the instant case, was never admitted into evidence. The trial court responded with a note stating: "You must reach your verdict on the evidence which has been presented to you." *Williams*, 60 Ill. 2d at 13.

On review, the supreme court held that the trial court's response was appropriate in light of the fact that the court had no discretion to provide the report since it was never admitted into evidence. *Williams*, 60 Ill. 2d at 13. Specifically, the court held that the trial court could not have abused or failed to exercise discretion which it did not even possess. *Williams*, 60 Ill. 2d at 13. Thus, the court found that the trial court's reply to the jury was entirely proper. *Williams*, 60 Ill. 2d at 13. The supreme court subsequently reaffirmed this reasoning in *People v. Williams*, 173 Ill. 2d 48, 87 (1996) and *People v. Johnson*, 146 Ill. 2d 109, 151 (1991).

As shown above, the supreme court has unequivocally held that where documents have not been admitted into evidence, the trial court is without discretion to provide them to the jury

during deliberations. This precedent has been adopted by several appellate courts. See *People v. Nugen*, 399 Ill. App. 3d 575, 584 (2010) (finding the trial court did not abuse its discretion when it denied the jury's request to see a police report and instructed the jury to continue deliberations because the report was not admitted into evidence); *People v. Ramos,* 318 Ill. App. 3d 181, 191 (2000) (upholding the trial court's response to the jury that it has received all of the evidence and exhibits which were admitted and therefore must continue to deliberate); *People v. Beasley*, 307 Ill. App. 3d 200, 205 (1999) (affirming the trial court's response to the jury that it is not entitled to view the police report that was never admitted into evidence and instead, continue to deliberate on the evidence before it).

We adhere to the well-established precedent that a trial court is without discretion to provide the jury documents that have not been admitted into evidence. Plaintiff fails to cite any authority or evidence in support of his argument that the jury would have returned a verdict for him had the jury been told that police reports are not admissible evidence. While plaintiff directs our attention to the affidavit of the jury foreperson, which provides that the police report "may have been helpful," the affidavit cannot be used to impeach the jury's verdict because the trial court was without discretion to allow the jury to view the police report. Moreover, we note that it was plaintiff himself who sought, by way of a motion in limine, to ensure that the more specific information sought by the jury – whether citations were issued and, if so, to whom – was barred from admission into evidence. In light of these facts, we find the trial court's reply to the jury was entirely proper.

For the foregoing reasons, we affirm the judgment of the trial court.

Affirmed.

JUSTICE SCHMIDT, specially concurring:

I concur in the judgment.