

NOTICE

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... ed or corrected prior to the
... filing of a Petition for
Rehearing of the disposition of
the same.

No.

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,)
)
Plaintiff-Appellee,)
)
v.)
)
JOHN)
)
Defendant-Appellant.)

) Appeal from the
) Circuit Court of
) Cook County.
)
) No.
)
) Honorable
) Joseph M. Claps,
) Judge Presiding.

O R D E R

Following a jury trial, defendant John was convicted of aggravated unlawful use of a weapon and sentenced to 14 months probation. On appeal, defendant contends: (1) the trial court erred by allowing the State to ask questions during cross-examination designed solely to depict defendant as a person of bad moral character; (2) the State made improper remarks during rebuttal argument; and (3) the State violated Brady v. Maryland, 373 U.S. 83, 10 L. Ed. 215, 83 S. Ct. 1194 (1963), by failing to disclose the identity of a key witness, the female passenger in

defendant's car at the time of his arrest. For the reasons that follow, we reverse defendant's conviction and remand the case for a new trial.

At trial, Chicago police officer Dan O'Brien testified at 10:30 p.m. on June 26, 2003, he and his partner, Officer Hoeller, stopped defendant after defendant failed to stop at a stop sign. While Officer O'Brien was walking towards defendant's car, he noticed defendant slowly crouch over and place his arms between his legs. Officer O'Brien could not see defendant's hands. Officer O'Brien walked over to defendant, shined his flashlight inside the car, and asked to see defendant's driver's license and insurance. At that point, Officer O'Brien saw what he believed to be the butt of a small handgun underneath the driver's seat. Officer O'Brien asked defendant to exit the car and told his partner to check under the driver's seat. Officer Hoeller then asked a female passenger to step out of defendant's car and went to the driver's side to search under the seat, where he recovered a gun. Defendant had a firearm owner's identification card when he was stopped.

After defendant was arrested and then read his Miranda rights at the police station, Officer O'Brien asked him why he had the gun. Defendant responded "I'm coming to the Westside [sic] of Chicago, it's for protection." Officer O'Brien denied

questioning defendant for 45 minutes before recovering the gun from the car. Officer O'Brien also denied seeing a black zipper "fannie pack" underneath the driver's seat of defendant's car. Officer O'Brien did not prepare a written statement for defendant to sign or ask defendant to write down his statement.

Chicago police officer Joel Hoeller testified that after he went to the driver's side of the car and shined his flashlight on the floor, he saw a reflection of a metal strip and a wooden handle that looked like the butt of a gun. Officer Hoeller then stuck his head into the car and saw a small revolver directly in the middle and under the driver's seat. Officer Hoeller reached in, grabbed the revolver, and saw that it was loaded. Defendant was then arrested. The revolver was out in the open and not in any type of case or container. Officer Hoeller did not find a black zippered case under the driver's seat. Officer Hoeller denied he was the officer that walked up to the car on the driver's side. He also denied he verbally assaulted the female passenger in defendant's car immediately before talking to defendant.

Defendant testified he was going to see a friend and his two goddaughters when he became lost somewhere in the area of 4631 West Polk while driving his wife's car. As he was heading eastbound on Polk, a police car came alongside of him and told

him to pull over. After defendant pulled over, Officer Hoeller approached his car on the driver's side, saw defendant's passenger, and just "blew up." Officer Hoeller did not have a flashlight with him when he approached the car. Defendant was taken out of the car and questioned by Officer Hoeller. Officer Hoeller then began to search the car. After searching for five minutes, Officer Hoeller came back to defendant and questioned him again. At that point, defendant remembered he had a black case with a gun inside in the car and told Officer Hoeller where the case was located. Defendant then saw Officer Hoeller search the car and exit while holding the gun. Defendant never saw Officer Hoeller with the black case.

Defendant explained that when he goes "metal detecting," he takes a .22 caliber revolver for protection because he goes to very desolate areas where packs of dogs and rapid racoons roam. Defendant kept the revolver zippered in the pocket of a black case he referred to as his "treasure detecting case." When defendant was stopped by the police, the black case was "jammed in the back of the driver's seat." The case was wedged in tight and was not within his reach while he was driving.

Defendant denied bending forward or concealing anything when stopped. Defendant also denied the revolver was under his feet. When defendant was first pulled over, he did not realize his

metal detecting case and the revolver were in his wife's car. When asked if the weapon was ever uncased and accessible to him, defendant responded no and noted it is always zipped in the carrying case in the back of the driver's seat. Defendant denied telling the officers he was carrying the weapon to the west side of Chicago for protection.

On cross-examination, defendant admitted the gun recovered by the officers was loaded. Defendant also admitted it was possible he had failed to stop at a stop sign prior to being pulled over. Defendant was then questioned regarding the woman passenger in his vehicle. Defendant testified he picked up the woman around seven blocks away from where he was pulled over. Defendant did not know her. When asked whether he picked her up on a street corner, defendant responded yes. Defendant admitted the woman was not his godchild or his wife, and admitted his wife was out of town that day.

The State further cross-examined defendant regarding why he was in Chicago:

"Q. Mr. your testimony today is that on that night June 26th 2003 you were going to visit the god -- your godchildren's father, correct?

A. Correct.

Q. Mr. you remember testifying in this

courtroom on November 18th 2003 in front of the
Honorable Diane Gordon Cannon?

A. Yes, I do.

Q. And you testified concerning this case, correct

A. Yes, I did.

Q. --concerning what happened that night on June
26th 2003?

A. Yes

Q. During the hearing that day --

A. Uh-huh.

Q. --you were asked this question; you gave this
answer. 'Question: Did he [the police officer] have
any communication with you at that point? Answer: He
asked me what I was doing here.'

A. The officer?

Q. Yes. Was that the question you were asked?

A. Yes.

Q. During the course of that hearing you were
asked this question and you gave this answer?

'Question: And did you tell him? Answer: Yes, I did.'
is [sic] that the question you were asked and the

answer you gave?

A. If it's there I did.

Q. Is that a yes?

A. Yes.

Q. And were you asked this question, did you give this answer? 'Question: What did you tell him?

Answer: I was looking for a woman."

MR. GOLDBERG [defense counsel]: Objection.

THE COURT: Objection is overruled.

THE WITNESS: Well, when I saw that girl, that woman.

MR. LISUZZO [Assistant State's Attorney]: That's not what I asked you, sir? Was that the question you asked and was that the answer that you gave "I was looking for a woman?" Is that a yes?

A. Yes.

MR. GOLDBERG: Not impeaching, objection, your Honor.

THE COURT: Overruled. Objection is overruled."

At the conclusion of trial, the jury found defendant guilty of aggravated unlawful use of a weapon. Defendant was sentenced to 14 months probation.

On appeal, defendant contends the trial court erred by

allowing the State to ask questions during his cross-examination designed solely to depict him to the jury as a person of bad moral character. We agree.

When reviewing a defendant's allegation of improper questioning during cross-examination, we will not interfere with a trial court's ruling absent a clear abuse of discretion resulting in prejudice to the defendant. People v. Baugh, No. 1-03-2551, slip op. at 25 (June 24, 2005); People v. Armstead, 322 Ill. App. 3d 1, 13 (2001). The scope of cross-examination should be limited to the subject matter raised on direct examination and to matters affecting the witness' credibility. People v. Blue, 205 Ill. 2d 1, 22 (2001); People v. Baugh, slip op. at 25. While it is generally permissible to cross-examine witnesses in order to discredit what they said on direct examination, impeachment is not allowed on matters irrelevant to a material issue of the case. People v. Harris, 182 Ill. 2d 114, 138 (1998). Evidence that has no tendency to prove the issue being tried and serves only to cause the jury to believe that the defendant is a bad person is improper impeachment. People v. Barnes, 182 Ill. App. 3d 75, 83 (1989). A new trial may be granted to a defendant where irrelevant matters have been injected into his case, resulting in denial of a fair trial. Barnes, 182 Ill. App. 3d at 83.

In Barnes, the defendant was convicted of unlawful use of a weapon by a felon. The case against him depended solely on the weight the jury accorded the witnesses' testimony regarding whether the defendant, rather than another person, possessed the gun. In reversing the defendant's conviction, the court concluded the State's cross-examination of the defendant concerning his possession of \$4,229 in small bills at the time of his arrest was irrelevant to the crime charged and was presented by the State for the sole purpose of unfairly damaging the defendant's credibility by depicting him as a person involved in an illegal enterprise. Barnes, 182 Ill. App. 3d at 80.

The State did something else in Barnes that is reminiscent of the prosecutor's cross-examination in this case. Barnes had testified he was not married, but had two children. On cross-examination:

"[PROSECUTOR]: Now this lady that came in here and testified for you, that is your girlfriend, is that correct?

[DEFENDANT]: Yes.

Q. But she is not the mother of your son or your daughter?

A. No, she is not.

Q. What is the name of the mother of your daughter?

A. Dolores.

Q. What is the name of the mother of your son?

A. Cathy.

Q. Two different woman again?

A. Yes.

Q. You are not married to any of these women?

A. No, I am not. (Emphasis added.)"

The court said: "Such examination was not only irrelevant to the crime for which he was charged, but it is well settled that a defendant may not be cross-examined concerning personal vices or bad experiences." Barnes, 182 Ill. App. 3d at 84.

Here, defendant admitted a loaded .22 caliber revolver was recovered from his wife's car when he was stopped by police. Therefore, the central issue before the jury was the credibility of the witnesses as to whether the gun was cased and not immediately accessible, as defendant testified, or uncased and immediately accessible, as Officers O'Brien and Hoeller testified. The jury was instructed that the State had to prove the gun was uncase.

Evidence establishing defendant went to the west side of Chicago to "look for a woman" while his wife was out of town bore

no relevance to the weapon charge, and could only have suggested to the jury that defendant picked up a prostitute prior to being stopped. The State's extensive questioning, which spanned more than seven pages in the trial transcript, allowed irrelevant evidence to become a central issue in the jury's assessment of defendant's credibility. As in Barnes, the State's only apparent purpose in presenting the irrelevant evidence was to unfairly damage defendant's credibility by depicting him as a bad person to the jury, which denied him a fair trial. See Barnes, 182 Ill. App. 3d at 83.

Even if we were to assume the State's questioning could be viewed as relevant to defendant's credibility, the issue of why defendant was on the west side of Chicago was collateral to any material issue in the case. "It is well accepted that a cross-examiner may not impeach the witness on a collateral matter." People v. Sandoval, 135 Ill. 2d 159, 194 (1990).

The State contends that even if defendant was improperly cross-examined, the error was harmless. See People v. Milbratz, 323 Ill. App. 3d 206, 212 (2001) ("Improper cross-examination is not reversible error if it can be considered harmless"). In this case, the crucial factor in determining defendant's guilt or innocence was the credibility of the witnesses as to whether the gun was cased or uncased. Because the State's questions elicited

irrelevant and prejudicial testimony that attacked defendant's character in this jury trial, we cannot say the improper cross-examination was harmless error. Since irrelevant matters of character were injected into defendant's trial by the State, resulting in the denial of a fair trial, reversing defendant's conviction and remanding the case for a new trial is warranted. See Barnes, 182 Ill. App. 3d at 83

Because we are reversing defendant's conviction, we need not consider defendant's remaining two contentions. However, we note that during the State's rebuttal argument, the prosecutor made the following comments:

"You saw the guys in court today, the two police officers that are on the street every day putting their lives on the line. They are are [sic] the ones that are running toward the danger when everyone else is running away. They were credible in this case. They're going to risk their careers, their pensions, and prosecution for perjury for [defendant]? No, they're not."

In light of sufficient evidence to support a guilty verdict, we remand this case for a new trial. We remind the State "[i]t is well established that a prosecutor may not argue that a witness is more credible because of his status as a police

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officer." See People v. Fields, 258 Ill. App. 3d 912, 921
(1994).

Reversed and remanded.

Wolfson, J., with Garcia, P.J., and South, J., concurring.