

ILLINOIS OFFICIAL REPORTS
Appellate Court

People v. Shores, 2012 IL App (5th) 100196

Appellate Court Caption THE PEOPLE OF THE STATE OF ILLINOIS, Plaintiff-Appellee, v. MICHAEL SHORES, Defendant-Appellant.

District & No. Fifth District
Docket No. 5-10-0196

Filed September 4, 2012

Held On appeal from defendant's conviction for possession of anhydrous ammonia in an unauthorized container, a propane tank, defendant was not denied effective assistance of counsel as a result of his attorney's failure to adequately cross-examine a meth response team member about the testing of a soda bottle with pH paper, since defendant's conviction was based on his possession of the propane tank and its contents.

(Note: This syllabus constitutes no part of the opinion of the court but has been prepared by the Reporter of Decisions for the convenience of the reader.)

Decision Under Review Appeal from the Circuit Court of Massac County, No. 09-CF-150; the Hon. Joseph Jackson, Judge, presiding.

Judgment Affirmed; motion denied.

Counsel on Appeal Michael J. Pelletier, Johannah B. Weber, and Larry R. Wells, all of the State Appellate Defender's Office, of Springfield, for appellant.

Patrick Windhorst, State's Attorney, of Metropolis (Patrick Delfino, Stephen E. Norris, and Kelly M. Stacey, all of State's Attorneys Appellate Prosecutor's Office, of counsel), for the People.

Panel JUSTICE STEWART delivered the judgment of the court, with opinion. Justices Welch and Goldenhersh concurred in the judgment and opinion.

OPINION

¶ 1 After a stipulated bench trial, the defendant, Michael Shores, was convicted of possession of anhydrous ammonia in an unauthorized container in violation of section 25(c)(1) of the Methamphetamine Control and Community Protection Act (720 ILCS 646/25(c)(1) (West 2008)). After the defendant was arrested, but before he was charged with any crime, the State Police destroyed the anhydrous ammonia and the unauthorized container along with other items recovered from his truck. The defendant filed a motion *in limine* to exclude evidence of the destroyed items because his attorney was not afforded an opportunity to inspect the items or have them independently tested. The circuit court denied his motion. On appeal, the defendant argues that he was denied his right to effective assistance of counsel as a result of his attorney's failure to adequately cross-examine a member of the State Police meth response team during the hearing on his motion *in limine*. In addition, the defendant argues that he was denied his right to due process and equal protection when the circuit court prevented him from having copies of the discovery materials that were in his attorney's custody. We affirm.

BACKGROUND

¶ 2 During the late-night hours of November 22, 2009, Officer Bill Bullock of the Massac County sheriff's department inspected a group of anhydrous ammonia tanks that were located just off Highway 45 in Massac County. Officer Bullock periodically conducted inspections of these tanks while on duty because the tanks were often tampered with. During his first inspection that evening, the tanks appeared normal, and nothing appeared unusual. A couple of hours later, however, at approximately 1:20 a.m. on November 23, 2009, Officer Bullock conducted another inspection of the tanks, and he noticed that a cover cap on one of the tanks was off and that there was anhydrous vapor coming from the tank. The cover cap had been in place during Bullock's previous inspection. Officer Bullock exited his vehicle to get a closer look and noticed an anhydrous smell and a muddy footprint on top of the tank's tire. The footprint was not there when the officer conducted his earlier inspection of the tanks.

¶ 4 While Officer Bullock walked around and inspected the tanks, he heard a vehicle pull up and stop on a gravel road just south of the tanks. He then heard the sounds made by someone crossing through weeds and moving toward the tanks. Bullock called Officer Penrod on his cellular telephone and advised him of his situation. Officer Penrod responded that he was en route. When Officer Penrod arrived at the scene, he saw a truck backing down a gravel road with its lights off and coming in his direction. When the truck got close, he activated his overhead lights and conducted a traffic stop. Officer Bullock responded to the location of the traffic stop, which was about one-half of a mile from the anhydrous tanks.

¶ 5 The truck Officer Penrod stopped was driven by the defendant and contained two passengers. Penrod approached the driver's side of the truck, and Bullock approached the passenger side. As he approached the truck, Bullock noticed a propane tank in the truck bed. Propane tanks were commonly used by suspects Bullock had arrested in the past for stealing anhydrous ammonia. Bullock opened the passenger door and asked one of the passengers to step out of the truck. On the other side of the truck, Officer Penrod asked the defendant to step out of the truck.

¶ 6 When the passenger exited the vehicle, Officer Bullock noticed that there was a purple duffel bag on the floorboard that had been between the passenger's feet. Bullock advised both passengers that someone had just tampered with anhydrous ammonia tanks and that they were going to be detained pending further investigation. Bullock opened the purple duffel bag and observed a garden hose with a cap fastened to its end. He knew from past arrests that similar items were commonly used to steal anhydrous ammonia. The officers advised the defendant and the passengers that they were under arrest for theft of anhydrous ammonia. The State subsequently charged the defendant with unlawful possession of anhydrous ammonia, unlawful possession of methamphetamine-manufacturing materials, unlawful possession of anhydrous ammonia in an unauthorized container, and unlawful methamphetamine conspiracy.

¶ 7 Prior to his trial, the defendant filed a motion *in limine* seeking to bar the State from presenting any evidence concerning certain items that the officers took from his truck, including (1) a black propane cylinder with an altered valve, (2) the purple duffel bag that contained two ski masks, tools, inner tube, a piece of garden hose with a plastic pipe attached, a piece of garden hose with a plastic fitting attached, and tape, (3) a 20-ounce Mountain Dew bottle containing a clear liquid, (4) an orange juice bottle containing a clear liquid that vaporized when opened, (5) an empty, clear, plastic bottle, and (6) an empty white propane tank with a loose valve. The defendant's motion *in limine* alleged that the listed items were destroyed the day after he was arrested and before he was charged with any crimes, thereby preventing defense counsel from examining the items or submitting them to testing.

¶ 8 On March 4, 2010, the circuit court conducted a hearing on the defendant's motion *in limine*. At the hearing, the State called Officer Ted Holder as a witness to testify about the destruction of the evidence found in the defendant's truck. Officer Holder testified that when he came to work in the morning on November 23, 2009, Officer Bullock advised him that they had arrested three people the previous night for possession of anhydrous ammonia. Officer Holder then called the State Police meth team and asked them to send someone down

to test the items that were recovered from the defendant's truck. He explained that the Massac County sheriff's department could not keep or transport any hazardous material, including anhydrous ammonia and ether, and that they did not have any equipment on site to test the confiscated items. Therefore, anytime they have an incident involving anhydrous ammonia or methamphetamine, they call the State Police meth team in case there is cleanup involved.

¶ 9 Officer David Bartoni, a sergeant with the Illinois State Police, testified that he was a member of the meth response team and had received training in handling chemicals that are involved in the manufacture of methamphetamine, including the storage and transport of hazardous materials. He explained that the State Police's policy with respect to meth-related items is to transport the hazardous materials to the State Police headquarters in Du Quoin, where they are stored in a special container until a hazardous materials contractor removes the materials for permanent disposal.

¶ 10 According to Officer Bartoni, the policy exists because certain items, including anhydrous ammonia, cannot be safely stored in an evidence vault. With respect to anhydrous ammonia, he testified that it is an inhalation hazard, is caustic, and boils at 27 degrees below zero. If it is stored in a nonapproved container, it can cause the container to fail and explode. He explained that it is also against State Police policy to store ether in any container in an evidence vault. It has to be destroyed in the same manner.

¶ 11 Officer Bartoni testified that on November 23, 2009, he received a telephone call from Officer Holder requesting assistance with the items that were seized from the defendant's truck. Bartoni took custody of the black propane tank recovered from the defendant's truck. He testified that the valve on the tank had turned to a bluish color. Bartoni explained that the bluish color was caused by a reaction to anhydrous ammonia. Bartoni tested the tank with a "Drager test." The Drager test involves testing tubes that change color according to the parts per million of anhydrous ammonia that it detects. He held the testing tube near the valve opening, and the test "maxed out" with the first pump. He testified that the test showed well over "100 parts per million."

¶ 12 Officer Bartoni testified that it would have been hazardous to store the black tank because it was designed to hold propane, and the tank's valve was not designed to withstand either the pressure or the caustic values of anhydrous ammonia. He testified that as the tank got warmer, more pressure would build up, and eventually the tank would fail. If the tank failed, there would have been an explosion, an inhalation hazard from the anhydrous ammonia, and possible burns if the anhydrous ammonia touched a person's skin. He testified that it was "absolutely not" something that could be stored by the State Police or by a local sheriff's department.

¶ 13 With respect to the 20-ounce Mountain Dew bottle containing a clear liquid, Bartoni testified that he tested it with "pH paper and the Drager pump." He testified that "it did have a positive indication for ether" and "had a level 5 pH, which is basically neutral, which ether would test neutral as far as the acidic level." He testified that the Mountain Dew bottle and its contents had to be destroyed because it was against State Police policy to store ether in any container, "even in its original starter fluid container." He testified that it was extremely

flammable and its vapors were extremely explosive.

¶ 14 He testified that the orange juice bottle containing a clear liquid had a “level 2 pH,” which meant that it had an acid base. He testified that it had to be destroyed because it was against State Police policy to store any acids. He explained that if the seal on the container was not tight, vapors from the acid could vent out and contaminate other evidence nearby, the evidence vault itself, or anyone handling the evidence.

¶ 15 With respect to the pH paper, he testified as follows:

“We have pH paper. And it’s got color charts on it, and the container has color charts that you compare it to. And it will show you, you know, 0 through I think maybe 20, 18, and, you know, it shows you—you introduce the pH paper to the item, and then you compare it on the chart. And it tells you what it is, like I said, 0 through 20, or 18 or whatever it is.”

¶ 16 Officer Bartoni’s tests of the white propane tank did not reveal any indication of meth-related contents, and he did not test the purple duffel bag or its contents. However, all of the items, including the purple duffel bag, its contents, and the propane tank, were packaged and transported to the hazardous material container in Du Quoin for disposal. The officer testified that the duffel bag, its contents, and the white propane tank were destroyed because of the possibility of cross-contamination from the ether, acid, or anhydrous ammonia. He testified, “I didn’t feel it was safe to attempt to store those and take the risk of contaminating either the evidence vault, evidence custodian, or anyone that might come in contact with them *** even in the presentation to *** court proceedings.”

¶ 17 Officer Holder was present when Officer Bartoni tested the items. He took photographs of all of the items before they were destroyed.

¶ 18 At the conclusion of the hearing, the circuit court denied the defendant’s motion *in limine*, finding that the State proved that the materials were dangerous and needed to be destroyed. The court stated: “I don’t think anybody would want their family members basically to be required to store anhydrous ammonia in improper containers. I believe that’s why they’ve made the law to make it a felony to have anhydrous in improper containers.”

¶ 19 In addition to his motion *in limine*, the defendant’s counsel also made an oral request that while in jail the defendant be allowed to have copies of discovery material relevant to his case. The circuit court denied that request.

¶ 20 On March 18, 2010, the parties appeared in court, and the defendant agreed to a stipulated bench trial on count III, possession of anhydrous ammonia in an illegal container, and the State agreed to dismiss the remaining charges. The circuit court found the defendant guilty of possession of anhydrous ammonia in an illegal container and subsequently sentenced the defendant to four years of imprisonment in the Illinois Department of Corrections. The defendant appeals his conviction.

¶ 21 ANALYSIS

¶ 22 The first argument the defendant raises is that he was denied his constitutional right to effective assistance of counsel. Specifically, the defendant takes issue with his trial counsel’s

performance during the hearing on his motion *in limine*. The defendant's argument focuses on Officer Bartoni's testimony concerning the pH scale and his pH testing of the clear liquids in the Mountain Dew bottle and in the orange juice bottle. The defendant maintains that Bartoni's testimony concerning the pH scale and pH testing was faulty and that his trial counsel was ineffective for not adequately cross-examining the officer concerning testimony about the pH scale and test results.

¶ 23 In Illinois, claims of ineffective assistance of counsel are analyzed under the two-part test set out by the United States Supreme Court in *Strickland v. Washington*, 466 U.S. 668 (1984). *People v. Albanese*, 104 Ill. 2d 504, 526-27, 473 N.E.2d 1246, 1255-56 (1984).

¶ 24 Under the two-pronged test, a defendant must show that his counsel's performance was deficient and that the deficient performance substantially prejudiced his defense. *Strickland*, 466 U.S. 668. The court does not need to determine whether counsel's performance was deficient prior to examining whether the defense was substantially prejudiced. *Strickland*, 466 U.S. at 697. In the present case, the defendant has not established that his defense and his right to a fair trial were prejudiced by his counsel's alleged failure to properly cross-examine Officer Bartoni concerning the pH scale and his pH test results.

¶ 25 While the defendant was charged with various offenses stemming from the items recovered from inside his truck, the only charge that the defendant was convicted of was unlawful possession of anhydrous ammonia in an unauthorized container in violation of section 25(c)(1) of the Methamphetamine Control and Community Protection Act (720 ILCS 646/25(c)(1) (West 2008)). That provision states, "It is unlawful to knowingly possess, procure, transport, store, or deliver anhydrous ammonia in an unauthorized container." 720 ILCS 646/25(c)(1) (West 2008).

¶ 26 At the hearing on the defendant's motion *in limine*, Officer Bartoni testified that he used the pH test paper only on the Mountain Dew bottle containing clear liquid and on the orange juice container containing a clear liquid. His tests results determined that the Mountain Dew bottle contained ether and that the orange juice bottle contained an acid-based liquid. The defendant maintains that his attorney was ineffective because he failed to sufficiently cross-examine the officer concerning his testimony about the pH scale and the test results. Officer Bartoni testified that the pH scale ranged from "0 through 20, or 18 or whatever it is." With respect to the clear liquid in the Mountain Dew bottle, Officer Bartoni testified that "it did have a positive indication for ether" and "had a level 5 pH, which is basically neutral, which ether would test neutral as far as the acidic level." The officer testified that the clear liquid in the orange juice container had a "level 2 pH," which he said indicated that it had an acid base.

¶ 27 In support of his ineffective-assistance-of-counsel claim, the defendant maintains that the pH scale actually ranges from 0 to 14, not 0 to 18 or 20 as Officer Bartoni indicated. In addition, the defendant argues that a pH of 2 is not dangerous, but has the acidic level of lemon juice. According to the defendant, if his attorney had properly cross-examined Officer Bartoni, he would have shown to the circuit court that the officer's testimony concerning the pH scale was scientifically flawed, and the outcome of the hearing would have been different. In support of his argument, the defendant seeks to supplement the record with

various scientific articles pertaining to the pH scale. We ordered the motion to be taken with the case.

¶ 28 The problem with the defendant's argument is that he was not convicted of a crime stemming from any item of evidence that was tested with pH paper or testimony concerning the pH scale. The defendant's conviction did not hinge on and was not related to his possession of ether or an acid-base liquid. Instead, the defendant's conviction stemmed from the testing Bartoni conducted of the contents of the black propane tank which constituted the anhydrous ammonia contained in the unauthorized container. Bartoni did not use pH paper or the pH scale to test the contents of this propane tank.

¶ 29 Officer Bartoni testified that he tested the contents of the black tank using the "Drager test," which involved a testing tube that changed color according to the parts per million of anhydrous ammonia that the tube detected. The officer testified that he held the tester tube near the tank's valve opening, and the test "maxed out" with the first pump and showed well over "100 parts per million." With respect to the need to immediately destroy the propane tank, the officer testified that the tank posed a serious hazard to anyone handling it because the tank was not designed to withstand the pressures created by anhydrous ammonia. In addition, he explained that anhydrous ammonia is a caustic substance that caused corrosion of the tank's valve. The bluish color of the tank valve was evidence of anhydrous ammonia corroding the valve. If the valve or the tank were to fail, the tank would explode. Aside from the obvious dangers of an exploding tank, the officer also noted that anhydrous ammonia poses an inhalation risk as well as the potential for skin burns for anyone who comes in contact with the substance.

¶ 30 He testified that anhydrous ammonia is extremely dangerous when it is stored in a nonapproved container and that it is against State Police policy to store such a container in an evidence vault. He emphasized that anhydrous ammonia in an unauthorized tank was "absolutely not" something that could be stored by the State Police or by a local sheriff's department.

¶ 31 While the defendant argues that his attorney was ineffective in cross-examining Officer Bartoni, all of the defendant's contentions concern the officer's testimony relevant to the pH scale. None of the defendant's contentions concern the officer's testimony about the Drager test, the Drager test results, or the officer's understanding and implementation of the Drager test. The defendant does not challenge the dangerous nature of anhydrous ammonia stored in an unauthorized tank, the State Police's policy of destroying unauthorized tanks containing anhydrous ammonia, or whether Officer Bartoni correctly followed the State Police's policy in destroying the black tank. Accordingly, none of the defendant's contentions on appeal establish any arguable basis for the circuit court to grant the motion *in limine* with respect to evidence concerning the black tank, the Drager test results of the contents of the tank, or the officer's testimony that the tank was improper for storage of anhydrous ammonia. The defendant does not suggest any line of questioning that his attorney overlooked with respect to the black propane tank.

¶ 32 The defendant was convicted only of unlawful possession of anhydrous ammonia in an unauthorized container, and he does not present any arguments directed at the admission of

evidence concerning the unauthorized container or its contents. Therefore, he cannot establish the prejudice prong of the *Strickland* standard, as he presented no basis for excluding the evidence of the anhydrous ammonia in an unlawful container. At best, the defendant established a potential basis for excluding evidence of the container allegedly containing ether and the container allegedly containing an acid base. Because evidence of the black tank was properly admitted, the exclusion of evidence of the Mountain Dew bottle and the orange juice container would not create a reasonable probability that the defendant would have been acquitted of unlawful possession of anhydrous ammonia in an unauthorized container.

¶ 33 The defendant also argues that his attorney was ineffective with respect to Officer Bartoni's testimony concerning the destruction of the purple duffel bag and its contents. The defendant maintains that evidence was unnecessarily destroyed because the arresting officers placed material they found separately into the purple duffel bag, thereby causing the separately found material to become contaminated. However, Officer Bartoni testified that he did not test the duffel bag or its contents. The contamination that the officer was concerned about stemmed from the items' close proximity to the anhydrous ammonia contained in the unauthorized tank. Placing items in the duffel bag did not create the risk that the officer was concerned about.

¶ 34 Furthermore, the evidence at the hearing on the motion *in limine* identified the items in the purple duffel bag as two ski masks, tools, inner tube, a piece of garden hose with a plastic pipe attached, a piece of garden hose with a plastic fitting attached, and tape. The defendant does not demonstrate how the result of his stipulated bench trial would have been different had the evidence of these items been excluded. Therefore, the defendant again fails to establish any prejudice stemming from his asserted claims of deficient representation. None of the items that were inside the duffel bag related to the defendant's conviction of unlawful possession of anhydrous ammonia in an unauthorized container.

¶ 35 For these reasons, the defendant's assertion of ineffective assistance of counsel is not persuasive, and we deny the defendant's motion to supplement the record.

¶ 36 The final argument that the defendant raises on appeal is that he was denied due process when he was not allowed to have copies of the discovery materials that were in his attorney's custody. At a pretrial hearing, the defendant's attorney raised an objection to "the fact that [the defendant was] not allowed to have his police reports and discovery in the county jail where he can adequately assist in the preparation of his defense." The defense attorney stated, however, that the defendant had access to the discovery material in his presence.

¶ 37 Illinois Supreme Court Rule 415(c) provides as follows:

"Any materials furnished to an attorney pursuant to these rules shall remain in his exclusive custody and be used only for the purposes of conducting his side of the case, and shall be subject to such other terms and conditions as the court may provide." Ill. S. Ct. R. 415(c) (eff. Oct. 1, 1971).

¶ 38 The committee comments for Rule 415(c) state:

"If the materials to be provided were to become, in effect, matters of public availability once they had been turned over to counsel for the limited purposes which pretrial

disclosures are designed to serve, the administration of criminal justice would likely be prejudiced. Accordingly, this paragraph establishes a mandatory requirement in every case that the material which an attorney receives shall remain in his exclusive custody. While he will undoubtedly have to show it to, or at least discuss it with, others, he is not permitted to furnish them with copies or let them take it from his office.” Ill. S. Ct. R. 415, Committee Comments.

¶ 39 The defendant argues that by preventing him from having copies of discovery materials, the trial court denied him due process and his right to confront witnesses and assist in his own defense. We disagree.

¶ 40 In *People v. Savage*, 361 Ill. App. 3d 750, 838 N.E.2d 247 (2005), the defendant argued that enforcement of Rule 415(c) violated his equal protection rights because, under the rule, *pro se* defendants can possess pretrial discovery materials. In that case, the defendant was incarcerated while awaiting trial. During that time, correctional officers conducted searches of inmate cells and confiscated police reports and pretrial discovery found in the possession of inmates. *Id.* at 753, 838 N.E.2d at 250. The searches of the cells were prompted by incidents of witness intimidation that the State’s Attorney suspected were based upon information contained in police reports in the possession of jail inmates. *Id.* at 753, 838 N.E.2d at 251. The State’s Attorney cited Rule 415(c) to justify the search and seizure.

¶ 41 In analyzing the defendant’s argument, the *Savage* court stated that a defendant does not have a constitutional right to read discovery materials. *Id.* at 757, 838 N.E.2d at 254 (citing *People v. Davison*, 292 Ill. App. 3d 981, 988-89, 686 N.E.2d 1231, 1236 (1997)). The *Savage* court agreed with the State’s Attorney’s interpretation that Rule 415(c) prohibited defendants from having their own copies of discovery materials and held that Rule 415(c) “is rationally related to its stated purpose of preventing public dissemination of pretrial discovery.” *Id.* at 760, 838 N.E.2d at 256.

¶ 42 Likewise, in the present case, the circuit court’s enforcement of Rule 415(c) did not offend the defendant’s due process or equal protection rights. The express language of Rule 415(c) prohibits defense counsel from furnishing copies of discovery materials to defendants because the attorney must keep the discovery material “in his exclusive custody.” As noted above, the supreme court’s stated purpose in implementing Rule 415(c) is to prevent public dissemination of pretrial discovery which, the supreme court found, could prejudice the administration of criminal justice. The defendant has failed to establish that Rule 415(c) is not rationally related to its stated purpose. Regulation of counsel’s use of discovery material is “an effective way to reach Rule 415(c)’s stated goal of protecting discovery materials from public availability.” *Id.* In addition, the rule does not violate the equal protection clause when *pro se* defendants are considered because “*pro se* defendants have a need to possess the State’s pretrial-discovery answers” and “are subject to the same requirements as counsel for individuals who are not *pro se*.” *Id.* at 760-61, 838 N.E.2d at 256; see also *United States v. Shrake*, 515 F.3d 743, 745 (7th Cir. 2008) (federal statute limiting pretrial discovery in criminal proceeding was constitutional as defendants are not constitutionally entitled to discovery and defendant failed to show that material was not “reasonably available” to his expert).

¶ 43 We also note that the defense attorney in the present case told the circuit court that the defendant had access to the discovery material in his presence. On appeal, the defendant has not identified any particular item that he was unable to adequately review in his attorney's presence or explain how his defense would have differed if he had had personal copies of all of the discovery materials. The defendant does not establish that he was denied an ample opportunity for inspecting, viewing, and examining the discovery materials in the presence of his attorney.

¶ 44 Although we affirm the circuit court's ruling, we share the *Savage* court's concern about defense counsel's need to share discovery materials with the defendant in order to prepare an adequate defense. *Savage*, 361 Ill. App. 3d at 761, 838 N.E.2d at 256-57. Rule 415(c) was apparently modeled after discovery standard 4.3 of the second edition of the ABA Standards for Criminal Justice. ABA Standards for Criminal Justice, Discovery Standard § 4.3 (2d ed. 1980). However, in the third edition of the ABA Minimum Standards for Criminal Justice, the drafters "eliminated the requirement that materials obtained during discovery remain in the 'exclusive custody' of the attorney because the restriction unduly hampers the attorney's ability to prepare his or her case, which may require providing discovery materials to investigators, experts, consultants, or others in addition to the attorney himself or herself." ABA Standards for Criminal Justice Discovery and Trial by Jury Standard 11-6.4, Commentary (3d ed. 1996). In the third edition, discovery standard 11-6.4 provides as follows: "Any materials furnished to an attorney pursuant to these standards should be used only for the purposes of preparation and trial of the case, and should be subject to such other terms and conditions as the court may provide." ABA Standards for Criminal Justice Discovery and Trial by Jury Standard 11-6.4 (3d ed. 1996).

¶ 45 Other states, like Illinois, continue to require discovery material to remain in the "exclusive possession" of the defendant's attorney. See, e.g., Ark. R. Crim. P. 19.3; Vt. R. Crim. P. 16.2(c). Some states, however, have used other, less burdensome means to protect information contained in criminal discovery materials and have given defense attorneys more flexibility in providing copies of discovery to their clients for purposes of preparing for trial. See Colo. R. Crim. P. 16(III)(c); Wash. Super. Ct. Crim. R. 4.7(h)(3).

¶ 46 Washington amended its discovery rule in 1986 to eliminate the exclusive-possession requirement because it was "cumbersome and, probably, ineffectual." Wash. Super. Ct. Crim. R. 4.7, Comment-1986. In explaining the revision to the rule, the 1986 comment further states: "The defense is burdened with controlling access to the information, yet the defendant is able to read all the reports. In addition, the subcommittee believed there were other avenues within the rule for protecting information much more effectively than imposing an exclusive custody requirement on the defense lawyer. For example, the prosecution may always seek a protective order under CrR 4.7(h)(4) if nondisclosure to a defendant is considered necessary." *Id.* Washington's rules permit a defense attorney "to provide a copy of the materials to the defendant after making appropriate redactions which are approved by the prosecuting authority or order of the court." Wash. Super. Ct. Crim. R. 4.7(h)(3).

¶ 47 In the present case, the circuit court was obligated to enforce Illinois Supreme Court Rule 415(c) as it is written. While we feel that Rule 415(c) is unduly burdensome on defense counsel's duty to prepare an adequate defense and that there are better alternatives for

protecting the information contained in criminal discovery materials, as the *Savage* court noted, “changes in supreme court rules are subject to a committee review and supreme court passage, not to this court.” *Savage*, 361 Ill. App. 3d at 761, 838 N.E.2d at 257. Accordingly, we must affirm the circuit court’s ruling.

¶ 48

CONCLUSION

¶ 49

For the foregoing reasons, we affirm the defendant’s conviction and sentence. The defendant’s motion to supplement the record is denied.

¶ 50

Affirmed; motion denied.