

NOTICE
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2016 IL App (5th) 140026-U

NO. 5-14-0026

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

NOTICE
This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellee,)	Marion County.
)	
v.)	No. 13-CF-295
)	
JOSEPH W. LILLY,)	Honorable
)	Michael D. McHaney,
Defendant-Appellant.)	Judge, presiding.

JUSTICE STEWART delivered the judgment of the court.
Justices Chapman and Cates concurred in the judgment.

ORDER

¶ 1 *Held:* The circuit court did not abuse its discretion by allowing testimony of police officers’ injuries that were sustained as a result of exposure to chemical fumes present at a suspected methamphetamine laboratory. The testimony was relevant to establish that an active process of methamphetamine manufacturing was occurring in order to support the prosecution’s charge of manufacturing methamphetamine rather than possession of a controlled substance.

¶ 2 A jury found the defendant guilty of participation in manufacturing methamphetamine in violation of section 15(a)(2)(B) of the Methamphetamine Control and Community Protection Act (720 ILCS 646/15(a)(2)(B) (West 2012)). The circuit court sentenced the defendant to 30 years’ imprisonment. The defendant now appeals,

arguing that the circuit court abused its discretion in the admission of evidence. Specifically, the defendant argues that the circuit court abused its discretion when it denied his motion *in limine* to exclude evidence of injuries sustained by police officers during the course of his arrest. We affirm.

¶ 3 BACKGROUND

¶ 4 The defendant's argument raises the issues of the evidentiary value of the police officers' injuries and whether the probative value of evidence of those injuries outweighed its potential prejudice. Our background discussion focuses on the facts relevant to those issues.

¶ 5 At approximately 8:45 p.m. on August 15, 2013, Centralia Police Officer Todd Hempen and his partner, Officer Curt Griffith, went to a trailer at 1411 Hester Street in Centralia to execute an outstanding warrant for the defendant. The officers reported smelling a chemical odor from the residence, as well as seeing lights on inside. Officer Hempen went to the front of the trailer and knocked on the door, at which point he noticed white gas escaping from the trailer around the edges of the door. At that point, Officer Hempen removed himself from the cloud and called for backup, suspecting a methamphetamine laboratory. Shortly thereafter, Lieutenant Greg Dodson and Officer Robert Dillon arrived on the scene.

¶ 6 After a short period of time, a man named Marshall Garrison opened the door of the trailer and exited. The white smoke continued to radiate from the open door, and Garrison was arrested. A short time after that, the defendant emerged from the trailer. The officers called the Centralia Fire Department to the scene. In the meantime, Officer

Dodson donned a gas mask and cleared the premises to make sure that no other people were inside the building. After clearing the structure, Officer Dodson contacted Trooper Brant Blackburn of the Illinois State Police Meth Response Team.

¶ 7 When the fire department arrived, firefighters broke windows out of the trailer and installed a fan to ventilate the residence. The fan was set up in such a manner that it removed the vapor from the trailer, and it accidentally blew vapor directly onto Officer Dillon, who was standing a short distance away speaking to the defendant.

¶ 8 Officer Dodson testified that the officers on scene began to notify him of burning skin and eyes, and other forms of severe irritation. The fire department then set up an on-site decontamination unit to clean the officers and contain their uniforms and duty gear. Several officers were then sent to the hospital for emergency care. Officer Dillon testified that he was unable to work for two weeks after the incident due to breathing problems and that he continues to suffer from a consistent cough that can be violent at times, and lasts several minutes to several hours.

¶ 9 Officer Dillon further testified that the defendant told him that there was a “shake and bake” methamphetamine laboratory in the trailer, inside of a bag in the bathtub and that the defendant took ownership and responsibility for the laboratory.

¶ 10 Trooper Blackburn testified about his training and experience with the manufacture of methamphetamine, and the court certified him as an expert witness on the manufacturing process. When Trooper Blackburn arrived on the scene, he donned a chemical suit and respirator and entered the trailer to investigate. Upon entering the bathroom, Trooper Blackburn found what he believed to be the byproducts of

methamphetamine production. He testified that he found a sealed Wal-Mart bag in the bathtub which contained a one-liter bottle and which Trooper Blackburn identified as consistent with a one-pot “shake and bake” style of methamphetamine production. Trooper Blackburn discussed the one-pot method of manufacturing methamphetamine, which involves putting all the relevant chemicals for methamphetamine production into one container instead of several.

¶ 11 The Wal-Mart bag in the bathtub was next to a substance that Trooper Blackburn suspected was used to generate hydrochloride gas (HCL generator). Trooper Blackburn testified that the HCL generator is essential to the methamphetamine manufacturing process and produces a very strong acid gas that is extremely dangerous to humans. His field tests of the substance confirmed that it was an HCL generator. He further testified that the HCL generator was still producing gas at the time of his investigation.

¶ 12 Inside the Wal-Mart bag, Trooper Blackburn also found a coffee filter containing a white sludge that appeared to be the byproduct of methamphetamine production. He also found a glass containing liquid on the sink in the bathroom. After conducting several field tests of the liquid and the sludge from the Wal-Mart bag, Trooper Blackburn concluded that the trailer had been used for methamphetamine production. Laboratory analysis of the liquid and the sludge conducted at the Illinois State Police Crime Laboratory confirmed the presence of methamphetamine in both substances. In the bedroom, Trooper Blackburn found a duffle bag containing numerous tools commonly used in the manufacture of methamphetamine.

¶ 13 During pretrial proceedings, defense counsel filed a motion *in limine* to exclude evidence of the injuries that the officers sustained as a result of exposure to the chemical fumes emanating from the trailer. Counsel argued that the injuries were not relevant to the elements of the crime of participation in methamphetamine manufacturing. Further, defense counsel argued that evidence of the injuries the officers sustained had a potential for creating prejudice against the defendant that far outweighed any probative value the evidence may have. The State argued that the evidence was necessary to prove that the manufacture of methamphetamine was occurring at the time the officers were present. The court agreed with the State and denied the motion.

¶ 14 The defendant appealed, asserting that the circuit court abused its discretion when it denied his motion *in limine* to exclude evidence of the police officers' injuries.

¶ 15 ANALYSIS

¶ 16 The defendant argues that the lower court abused its discretion in denying his motion *in limine* to exclude evidence of police officers' injuries, which were sustained during his capture and arrest. The injuries were sustained indirectly as a result of fumes alleged to have emanated from an active methamphetamine laboratory, and the defendant argues that the evidence of the officers' injuries is more prejudicial than probative. He argues that testimony regarding the police officers' injuries served only to arouse sympathy in the jury while having no bearing on the elements of the crime committed. Therefore, he argues, the probative value of the evidence of the officers' injuries is outweighed by its potential prejudice. He concludes that the circuit court abused its discretion in allowing the testimony.

¶ 17 The parties both correctly identify the standard of review for evidentiary rulings as review for abuse of discretion. The Illinois Supreme Court has held that “[t]he admissibility of evidence at trial is a matter within the sound discretion of the trial court, and that court’s decision may not be overturned on appeal absent a clear abuse of discretion.” *People v. Illgen*, 145 Ill. 2d 353, 364 (1991). This court has previously noted that “[w]e review a trial court’s denial of a motion *in limine* under an abuse-of-discretion standard.” *Ford v. Grizzle*, 398 Ill. App. 3d 639, 646 (2010). “An appellate court may find an abuse of discretion only where no reasonable person would take the view adopted by the trial court.” *Id.* “[U]nder an abuse of discretion standard [the appellate court] will not reverse unless the trial court’s decision is arbitrary, fanciful or unreasonable.” (Internal quotation marks omitted.) *People v. Braddy*, 2015 IL App (5th) 130354, ¶ 27.

¶ 18 Rule 401 of the Illinois Rules of Evidence states that “ ‘[r]elevant evidence’ means evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence.” Ill. R. Evid. 401 (eff. Jan. 1, 2011). Also, Rule 403 states that, “[a]lthough relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice *** or [it is a] needless presentation of cumulative evidence.” Ill. R. Evid. 403 (eff. Jan. 1, 2011).

¶ 19 In the case at hand, the police officers’ injuries have the probative value of establishing the nature of the defendant’s activity as well as corroborating the officers’ testimony that active manufacture of methamphetamine was occurring when they arrived.

The State charged the defendant with the crime of *manufacturing* methamphetamine. The second element of the offense charged is that the defendant participated in methamphetamine manufacturing. 720 ILCS 646/15(a)(1) (West 2012). Manufacturing is an active process. Trooper Blackburn testified about the use of the HCL generator in the manufacture of methamphetamine. He explained that one of the side effects of the use of HCL is an airborne gas that is acid and is extremely dangerous to humans. He found a substance inside the trailer that tested positive as an HCL generator and that was still producing vapor when he discovered it. The effects that the gas inside the trailer had on the officers who responded to the scene were relevant in establishing that the active, ongoing manufacture of methamphetamine was occurring inside the trailer at the time the defendant exited the trailer. This evidence was also relevant to corroborate Officer Dillon's testimony that the defendant admitted to being responsible for a "shake and bake" methamphetamine laboratory that was inside the trailer. Therefore, we find that evidence of the officers' injuries was relevant to prove an element of the charged crime and to corroborate the testimony of the officers involved. Evidence of the officers' injuries makes the crime of methamphetamine manufacturing more probable and, therefore, it is admissible pursuant to Rule 401 of the Illinois Rules of Evidence.

¶ 20 We find further relevance when considering the nature of the manufacturing process. Trooper Blackburn testified to the method used by the defendant and stated that the residual materials left behind after methamphetamine production could remain in the same semi-liquid state from 30 minutes to an hour. Trooper Blackburn found a liquid inside the bathroom that tested positive for methamphetamine. Therefore, the officers'

injuries were relevant to show that the methamphetamine present inside the trailer was being manufactured inside the trailer rather than having been made somewhere else and then transported to the trailer. The injuries show that a direct and immediate byproduct of methamphetamine manufacturing (dangerous gas) was present inside the trailer, which in turn shows that the manufacture of methamphetamine was occurring at the residence when the officers arrived. The charge that the State brought was the manufacture—not the possession—of methamphetamine.

¶ 21 The defendant argues that, even if relevant, the prejudicial effect of the evidence outweighs its probative value. Specifically, he complains that the State presented multiple witnesses who testified about the side effects they experienced from their exposure to the gas from the trailer. We agree with the trial court that evidence of the officers' injuries was relevant to the offense charged and more probative than prejudicial. The evidence of the injuries was not more prejudicial than probative when considering the necessity of the evidence to support the charge, as well as the nature of the crime itself. Based on the record before us, we cannot conclude that the testimony was a “needless presentation of cumulative evidence.” Ill. R. Evid. 403 (eff. Jan. 1, 2011). Each officer's testimony corroborated the presence of a dangerous gas inside the trailer, which in turn was probative on the issue of whether the defendant was actively involved in the manufacture of methamphetamine when the officers arrived.

¶ 22 Finally, the circuit court has great latitude in its ability to grant or deny motions to exclude evidence, as noted by the Illinois Supreme Court in *Illgen*, 145 Ill. 2d at 364. Barring a circuit court decision that is *clear* abuse this court will not overturn a trial

court's discretionary ruling. In the case at hand, we do not find the trial court's decision to be "arbitrary, fanciful, or unreasonable," and we do not see any clear abuse of discretion. Further, we will only overturn the discretionary ruling of the trial court where "no reasonable person would take the view" of the trial court. *Grizzle*, 398 Ill. App. 3d at 646. We do not find that the trial court made a decision that defies reason. As such, we affirm.

¶ 23

CONCLUSION

¶ 24 For the foregoing reasons, we affirm the defendant's conviction and sentence.

¶ 25 Affirmed.