2017 IL App (1st) 151782-U

FOURTH DIVISION
December 7, 2017

No. 1-15-1782

IN THE APPELLATE COURT
OF ILLINOIS
FIRST JUDICIAL DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County.
	)	
v.	)	No. 13 CR 17533
	)	
TYGEE HILL,	)	Honorable
	)	Mary Brosnahan,
Defendant-Appellant.	)	Judge Presiding.

PRESIDING JUSTICE BURKE delivered the judgment of the court.
Justices McBride and Gordon concurred in the judgment.

ORDER

Held: We affirm defendant's conviction as there was sufficient evidence that he possessed the handgun and the trial court did not abuse its discretion in quashing defendant's subpoena for police misconduct records.

¶ 1 Defendant Tygee Hills appeals his bench-trial conviction of armed habitual criminal. Defendant argues that there was insufficient evidence to establish beyond a reasonable doubt that he possessed a firearm. He also contends that the trial court abused its discretion in quashing his subpoena for records of prior allegations of police misconduct and he urges this court to overturn

the long-standing legal standard for admissibility of police misconduct records. For the following reasons, we affirm defendant's conviction.

¶ 2 I. BACKGROUND

¶ 3 Defendant was charged with armed habitual criminal, unlawful use or possession of a weapon by a felon, and two counts of aggravated unlawful use of a weapon (AUUW). The indictments against defendant alleged that on August 9, 2013, he unlawfully possessed a firearm after being previously convicted of two weapons-related offenses.

¶ 4 Prior to trial, defendant's counsel subpoenaed records from the Independent Police Review Authority (IPRA) for the four officers involved in defendant's case. Defense counsel sought complaints or investigations regarding falsifying testimony or planting evidence. He proffered that on the date of the incident, defendant never had a weapon and never threw a weapon, in contradiction to anticipated police testimony. The trial court conducted an *in camera* review of the records. It ultimately ruled that the records were not discoverable or admissible as the allegations were remote, dissimilar, or unfounded/not sustained, or a combination of those factors.

¶ 5 At defendant's bench trial, Chicago police officer Matthew Bouch testified that, as a member of the gang enforcement unit, he was sent to Rockwell Park on August 9, 2013, at approximately 10:15 p.m., upon receiving information "that there [were] two male blacks at that address in the park with handguns." He was accompanied by eight to ten officers. Bouch was dressed in plain clothes and traveled in an unmarked police vehicle. He believed the other officers were also in plain clothes and unmarked vehicles. Bouch wore a visible bulletproof vest, his gun, badge, handcuffs, radio, and his flashlight. The back of his vest said "police."

¶ 6 The park was gated with a playlot inside and a grassy area behind the playlot. It was approximately 150 feet deep and 70 to 100 feet wide. It was surrounded by a three-foot high wrought iron fence in the front and 10-foot high wrought iron fence around the rest of the park. There was only one entrance to the park, which was in the front. Bouch estimated there were 20 to 30 people at the location and 5 to 10 people actually inside the park. Bouch testified that the park was lit by streetlights on Adams and the alley and Western Avenue and a nearby building, and the park "was pretty well lit."

¶ 7 Bouch testified that he and his partner officer Patrick Kelly approached on foot and when Bouch was almost to the entrance, he observed "a male black looking in my direction and then flee back into the park." He identified defendant at trial as the person he saw fleeing. There were a few people in between Bouch and defendant initially. He did not observe anyone else run away. Bouch testified that he announced his office and stated, "Chicago police, stop," but defendant did not comply. Bouch gave chase and was 10 to 15 feet behind defendant.

¶ 8 Bouch observed defendant run through the park towards the northeast and "while running reach to his rear pants pocket—his right rear pants pocket with his right hand, remove a silver handgun, and then eventually throw that handgun to the ground." Bouch was 10 to 15 feet from defendant when defendant removed the weapon. Defendant jumped over a retaining wall by the playground equipment and then dropped the gun on a grassy area. There was no one in between Bouch and defendant at that time and he never lost sight of the gun. When he saw defendant remove the shiny silver gun, Bouch removed his own weapon. He also issued verbal commands to stop. Defendant ran in a northwest direction after dropping the gun.

¶ 9 Bouch testified that he immediately recovered the gun as officer Kelly continued the pursuit. He briefly lost sight of defendant as he picked up the gun. Bouch placed the gun in his

pocket and continued to pursue defendant. Defendant was stopped 30 to 40 feet from where the gun was recovered and Bouch observed officer Kelly placing defendant under arrest. Bouch testified that the weapon was a nickel-plated 9-millimeter Luger revolver containing five live rounds. He took the gun back to the 11th District precinct and gave it to Chicago police detective Brian Cygnar, who inventoried it.

¶ 10 Detective Cygnar similarly testified that he and other team members were directed to the park that night based on information that there were two subjects with weapons in the park. He wore plain clothes, a vest, and a gun belt with a badge on it, and he was in an unmarked police vehicle. He was behind Bouch and Kelly as they approached the front of the park and defendant took off running through the park. No one else ran besides defendant. Cygnar testified that he saw defendant pitch the gun with his right hand onto the grass in the park; defendant was by the northeast side and had just crossed over a retaining wall and into a grassy area when he dropped the gun. Cygnar was near the entrance of the park approximately 50 to 60 feet away. Cygnar was watching the other people in the area because the dispatch had indicated there were two people with guns. Cygnar confirmed that at the police station, Bouch gave him the silver handgun with five live rounds, which Cygnar inventoried. Bouch had unloaded the weapon when he gave it to him.

¶ 11 The State submitted into evidence a certified copy of a conviction in a prior case (under an alias name) no. 98-CR-7733, a certified copy of a conviction in case no. 02-CR-16043, and evidence that defendant did not have FOID card on the date of the incident.

¶ 12 Dorian Hill, defendant's brother, testified on his behalf that he was with defendant at the park when the police arrived around 10 p.m. Dorian was playing cards near the front entrance and defendant was 10 feet behind him. He testified that there were about 100 people at the park.

He did not observe a weapon on defendant. He testified that four or five officers in plain clothes arrived with assault rifles and ordered everyone to put their hands in the air. Dorian put his hands up. About ten seconds later, he turned around and saw that the police had defendant on the ground near a generator in the back of the park by the northwest corner. Officers were searching the northeast side of the park. He heard officers state that they had recovered a gun.

¶ 13 Diane Stewart was also at the park that night. She knew defendant because they grew up together. She estimated there were 50 to 70 people there. She was at the front of the park when the police arrived and defendant was in the middle of the park. Stewart testified that the police "jumped [*sic*] out the cars, and had guns in everybody [*sic*] faces." She testified that the officers instructed them "to get against the fence, go out and get against the fence." She did not see defendant at the time. As she was leaving the park to go against the fence, she saw the police running towards the back stating, "There he goes." She did not see who they were speaking about. She did not see defendant arrested because she went to the bathroom. She did not notice any weapons or bulges on defendant before police arrived. She observed officers searching the northeast area of the park.

¶ 14 The trial court found defendant guilty of all three counts. It subsequently denied defendant's posttrial motion for a new trial. The trial court merged the unlawful use of a weapon by a felon and AUUW convictions into his armed habitual criminal conviction and sentenced him to seven years' imprisonment.

¶ 15 II. ANALYSIS

¶ 16 A. Sufficiency of the Evidence

¶ 17 On appeal, defendant first contends that insufficient evidence supported his armed habitual criminal conviction.

¶ 18 "[T]he State carries the burden of proving beyond a reasonable doubt each element of an offense." *People v. Siguenza-Brito*, 235 Ill. 2d 213, 224-25 (2009) (citing *Jackson v. Virginia*, 443 U.S. 307, 315-16 (1979)). "Where a criminal conviction is challenged based on insufficient evidence, a reviewing court, considering all of the evidence in the light most favorable to the prosecution, must determine whether any rational trier of fact could have found beyond a reasonable doubt the essential elements of the crime." *Id.* (citing *Jackson*, 443 U.S. 318-19). "A criminal conviction will not be set aside unless the evidence is so improbable or unsatisfactory as to create a reasonable doubt of the defendant's guilt." *Id.* at 225.

¶ 19 Although defendant does not dispute the evidence regarding his two prior felony convictions, he contends there was insufficient evidence that he possessed a firearm on August 9, 2013.

¶ 20 Considering the trial evidence, we find there was sufficient evidence such that "any rational trier of fact could have found beyond a reasonable doubt the essential elements of the crime." *Siguenza-Brito*, 235 Ill. 2d at 225. The State's evidence proved that defendant possessed the loaded firearm on the date in question. The testimony of Bouch and Cygnar established that they, along with other officers, responded to a call of two armed men at the park. Defendant looked at Bouch and then turned and fled as the officers approached on foot, despite Bouch identifying his office and ordering defendant to stop. Although they were in plain clothes, they had gun belts and bulletproof vests. Defendant was the only person to flee. Bouch stayed within 10 to 15 feet of defendant during the chase, never lost sight of him, and observed defendant retrieve the silver handgun from his right rear pocket as he ran and throw it to the ground. Bouch immediately retrieved the weapon, which was loaded, while officer Kelly continued the pursuit and arrested defendant shortly thereafter. Cygnar's testimony corroborated Bouch's testimony as

he also observed defendant flee as the officers approached and also saw defendant throw the gun. Although the park itself did not have lighting, it was lit by surrounding streetlights and a nearby building, and the officers indicated that the lighting conditions were sufficient to enable them to observe the various features of the park, the people gathered there, and specifically defendant and the shiny handgun.

¶ 21 Defendant argues that the officers' testimony regarding the basis of their stop of defendant was incredible. However, in analyzing defendant's challenges, we are mindful that "in a bench trial, it is for the trial judge, sitting as the trier of fact, to determine the credibility of witnesses, to weigh evidence and draw reasonable inferences therefrom, and to resolve any conflicts in the evidence." *Siguenza-Brito*, 235 Ill. 2d at 228. "A reviewing court will not reverse a conviction simply because the evidence is contradictory ([citation]) or because the defendant claims that a witness was not credible." *Id.* Essentially, defendant asks this court to re-weigh the evidence anew on appeal and second-guess the trial court's credibility determinations. The trial court specifically found the State's witnesses were "clear, credible, and unimpeached on any significant point." The officers' presented clear, consistent testimony regarding the dispatch they received summoning them to the park, the general number and location of the people in the park, defendant's actions in fleeing upon approach of the officers, the trajectory of his run through the park, and the specific location and manner in which defendant removed and dropped the firearm as he ran. It is well established that evidence of flight may give rise to a reasonable inference of consciousness of guilt and thus constitutes circumstantial evidence of a defendant's guilt. *People v. James*, 2017 IL App (1st) 143036, ¶ 49. The trial court considered the testimony of defendant's witnesses, but ultimately found that they did not observe the scene the entire time and Stewart did not see the police arrest defendant. The trial court was in the best position to

judge the credibility of the witnesses who testified before it. *People v. McDonald*, 168 Ill. 2d 420, 447 (1995). Moreover, "[d]iscrepancies or conflicts in the testimony generally affect only the weight to be given the testimony and the trier of fact is free to accept or reject a witness' testimony." *People v. Baldwin*, 185 Ill. App. 3d 1079, 1083 (1989).

¶ 22 Defendant's assertion that there was an insufficient basis to justify a stop is inapposite. There was no brief investigatory stop scenario presented in this case. Thus, a *Terry*[1] stop is not at issue. As well, defendant did not advance such a claim below. *People v. Enoch*, 122 Ill.2d 176, 186 (1988) (to preserve an issue for review, the defendant must both object at trial and raise the issue in a written motion for a new trial). In any event, considering the dispatch received by the officers, defendant's flight from them upon approach, and the officers' observations of defendant retrieving the firearm and dropping it, there was probable cause for defendant's arrest. *People v. Hopkins*, 235 Ill. 2d 453, 472 (2009) (probable cause exists where the totality of the circumstances "are sufficient to justify a belief by a reasonably cautious person that the defendant is or has been involved in a crime.")

¶ 23 Citing statistics that the Chicago police have disproportionately targeted African Americans in Chicago, defendant contends that this means his flight from police did not give rise to a reasonable suspicion of his involvement in criminal activity. The reports and studies conducted by organizations and task forces which are cited by defendant were not introduced at trial, are not part of the lower court record, and he did not raise this argument or his related argument regarding the reasonable suspicion supporting the officers' pursuit and arrest in the lower court during pretrial, trial, or posttrial proceedings. *Enoch*, 122 Ill. 2d at 186. Again, the issue raised on appeal is the sufficiency of the evidence supporting defendant's conviction.

[1] *Terry v. Ohio*, 392 U.S. 1 (1968).

Further, we do not find the cases cited by defendant to be applicable to the circumstances here, as they dealt with admission of expert testimony regarding the reliability of eyewitness identification, where the issue was raised and litigated in the trial court (*People v. Tisdel*, 338 Ill. App. 3d 465 (2003)), and a constitutional challenge to the legislature's classification of cocaine as a Schedule II narcotic drug (*People v. McCarty*, 86 Ill. 2d 247 (1981)).

¶ 24 The existence of a federal investigation into the Chicago Police Department practices and statistics indicating that the police disproportionately target African Americans do not establish that, in the present case, the State's evidence against defendant was "so improbable or unsatisfactory as to create a reasonable doubt of the defendant's guilt." *Siguenza-Brito*, 235 Ill. 2d at 225. As stated, we must view the evidence in the light most favorable to the prosecution. *Id.* at 224-25. Here, we find that there was sufficient evidence that defendant possessed a gun under the facts of this case. Defendant's references to outside sources does not vitiate the officers' observations that defendant immediately fled upon seeing the officers, he was the only person to flee, he fled despite the officers' announcement of their office and instructions to stop, and they saw him reach into his pocket and discard the handgun.

¶ 25 Defendant's second point of contention is that the officers' testimony constituted "dropsy" testimony fabricated to curry favor with the State or avoid constitutional exclusion of the gun evidence. Defendant cites foreign case law, a legal article about Chicago's legal system, and a newspaper article in asserting that "dropsy" testimony is common in many jurisdictions and that prosecutors often know about fabricated evidence. Having thus impugned the entire Chicago police force, defendant concludes that Chicago police officers often lie and plant evidence, and, consequently, Bouch and Cygnar similarly presented false "dropsy" testimony in this case.

¶ 26 This argument wholly ignores the standard of review this court must follow in examining defendant's challenge to the sufficiency of the evidence. Namely, we defer to the trier of fact's assessment of the witnesses credibility, as it is the trier of fact who had the opportunity to hear the live testimony and observe the witnesses' behavior. *Siguenza-Brito*, 235 Ill. 2d at 228. As noted, we also view the evidence in the light most favorable to the prosecution. *Id.* at 224-25. As the State points out, this is not a "dropsy" case in the sense that the police were attempting to compensate for an illegal search or seizure in order to avoid exclusion of evidence by falsely testifying that defendant dropped the handgun in plain view. *People v. Ash*, 346 Ill. App. 3d 809, 816 (2004). Defendant presented no testimony or evidence at trial to contradict Bouch's and Cygnar's testimony that they observed defendant drop the handgun in plain view and continue running. Neither of defendant's witnesses saw what happened as the officers pursued defendant. Defendant's blanket allegation that police officers frequently fabricate "dropsy" testimony certainly does not show that the evidence in this case was "so improbable or unsatisfactory as to create a reasonable doubt of the defendant's guilt." *Siguenza-Brito*, 235 Ill. 2d at 225. See *People v. Henderson*, 33 Ill. 2d 225, 229 (1965) ("Far from being contrary to human experience, cases which have come to this court show it to be a common behavior pattern for individuals having narcotics on their person to attempt to dispose of them when suddenly confronted by authorities.").

¶ 27 Defendant lastly contends that Bouch mishandled the gun, depriving defendant of the opportunity to test for his fingerprints or other forensic evidence linking him to the gun. Defendant did not challenge the admissibility of the handgun, its chain of custody, the police's procedures in handling the gun, or a failure to test the gun for forensic evidence, at trial or during any stage of the lower court proceedings. He has therefore forfeited this issue on appeal. See

People v. Enoch, 122 Ill. 2d 176, 186 (1988) (to preserve an issue for review, the defendant must both object at trial and raise the issue in a written motion for a new trial). Under plain error review of this forfeited claim, defendant must show there was a clear or obvious error and the evidence was so closely balanced that the error would change the outcome, or that the clear error was so serious that it affected the fairness of his trial. *People v. Barnes*, 2017 IL App (1st) 143902, ¶ 58.

¶ 28 In any event, whether the proper procedures and chain of custody were followed with the handgun evidence is a separate question from whether there was sufficient evidence to sustain defendant's convictions. "The purpose of establishing a chain of custody is to connect the object to the defendant and the crime and to negate the possibility of tampering or substitution." *People v. Hutchison*, 2013 IL App (1st) 102332, ¶ 28. To establish a sufficient chain of custody, " 'the State need only show that it took reasonably protective measures after the substance was seized, and that it was probable the evidence was not changed in any important respect or substituted. Unless defendant provides actual evidence of tampering or substitution, the State need only establish the stated probability, and any deficiencies go to the weight and not the admissibility of the evidence.'" *Id.* (quoting *People v. Lach*, 302 Ill. App. 3d 587, 594 (1998)).

¶ 29 Here, the State's evidence was sufficient to enable a rational trier of fact to find beyond a reasonable doubt that defendant possessed the handgun in question. Bouch observed defendant remove the gun from his pocket and throw it on the ground. Bouch immediately retrieved the gun after defendant dropped it and he retained possession of it until he gave it to Cygnar at the police station, who inventoried the gun and bullets. The State was required to prove the elements of the crime beyond a reasonable doubt, but this does not necessarily mean it was required to show that defendant's fingerprints were on the gun. Defendant offered no evidence of actual

tampering, altering, or substitution, or any reason to believe that it was not his gun or he was not the individual who dropped it. Defendant's contentions go to the weight of the evidence, not its admissibility, and he was free to argue at trial regarding proper police procedures and the lack of forensic evidence linking him to the gun.

¶ 30 B. IPRA Evidence

¶ 31 In his second and final claim on appeal, defendant asserts that the trial court abused its discretion in quashing the defense's subpoena for the IPRA records of four officers involved in defendant's case. He further contends that this court should modify the standard applicable to admissibility of prior allegations or police misconduct, arguing that few allegations of misconduct are actually investigated or sustained by the IPRA. He advocates a more lenient standard which would no longer consider whether the charge was sustained, expand the timeframe to 10 years, and allow any allegations that incriminate the honesty or integrity of the officer.

¶ 32 "When confidential records are sought in discovery, the trial court should review the records *in camera* and use its discretion to disclose only material information." *People v. Porter-Boens*, 2013 IL App (1st) 111074, ¶ 7 (citing *People v. Bean*, 137 Ill. 2d 65, 99 (1990)). "Any 'immaterial' record should remain undisclosed." *Id.* (citing *Bean*, 137 Ill. 2d at 102). " 'The trial court has broad discretion in ruling on issues of relevance and materiality and its determination will not be disturbed absent an abuse of discretion.' " *Id.* ¶ 9 (quoting *People v. Williams*, 267 Ill. App. 3d 82, 87 (1994)). A trial court's evidentiary rulings are similarly reviewed for an abuse of discretion (*People v. Short*, 2014 IL App (1st) 121262, ¶ 102), as are claims that a trial court erroneously limited discovery (*Porter-Boens*, 2013 IL App (1st) 111074, ¶ 9 (citing *People v. Sutherland*, 223 Ill. 2d 187, 280 (2006)). "An abuse of discretion occurs where the trial court's

ruling is arbitrary, fanciful, unreasonable, or where no reasonable person would take the view adopted by the trial court." (Internal quotation marks omitted.) *People v. Jackson,* 2014 IL App (1st) 123258, ¶ 39.

¶ 33 In *Porter-Boens*, this court extensively reviewed Illinois Supreme Court and Illinois Appellate Court case law regarding admission of prior allegations of officer misconduct, which it summarized as follows:

> " Prior allegations of misconduct by a police officer may be admissible to prove intent, plan, motive, or a course of conduct of the officer (*People v. Cannon,* 293 Ill. App. 3d 634, 640 (1997) (citing *Wilson v. City of Chicago,* 6 F.3d 1233, 1238 (7th Cir.1993))), or to impeach an officer as a witness based on bias, interest, or motive to testify falsely (*People v. Nelson,* 235 Ill. 2d 386, 421 (2009)). To be admissible, the allegations of prior misconduct may not be general in nature or remote in time. *Cannon*, 293 Ill. App. 3d at 641. Further, 'evidence used to impeach must raise an inference that the witness has something to gain or lose by his testimony; the evidence must not be remote or uncertain.' *Nelson,* 235 Ill. 2d at 421." *Porter-Boens*, 2013 IL App (1st) 111074, ¶ 11.

¶ 34 Citing our supreme court precedent in *Nelson*, 235 Ill. 2d 386, *People v. Patterson*, 192 Ill. 2d 93 (2000), and *People v. Coleman*, 206 Ill. 2d 261 (2002), the *Porter-Boens* court concluded that:

> "when determining whether evidence of prior allegations of misconduct is admissible, the question of relevancy is a determination to be made by the trial court after a consideration of the temporal proximity of the past misconduct,

> whether there is a repetition of similar misconduct, and the similarity of the past misconduct to the conduct at issue in the case before the court. (Citation.) The trial court may properly exclude evidence of prior allegations of misconduct involving different officers if the prior allegation is factually dissimilar to the officer's conduct in the pending case, and if the officer did not receive discipline from his department." *Porter-Boens*, 2013 IL App (1st) 111074, ¶ 17.

¶ 35 In light of the foregoing, we decline defendant's invitation to modify the standard for admission of prior allegations of police misconduct, as set forth by our supreme court. Defendant relies on law review articles and cases from foreign jurisdictions, but the fact remains that this court "is bound by the principle of *stare decisis,* and therefore we must adhere to the decisions of the Illinois Supreme Court." *In re A.M.*, 358 Ill. App. 3d 247, 251-52 (2005). "Under the doctrine of *stare decisis,* when our supreme court has declared law on any point, only it can modify or overrule its previous opinion and lower courts are bound by such decision." *People v. Ladd*, 294 Ill. App. 3d 928, 937 (1998).

¶ 36 Defendant concedes that the trial court applied the correct legal standard in determining whether to quash defendant's subpoena, even as he argues for a different standard. Prior to rendering its ruling in the present case, the trial court reviewed the records *in camera* and then recited on the record the correct applicable legal standard. The trial court then made specific findings regarding each officer's records based on this standard.

¶ 37 With respect to Bouch, the trial court found that two incidents from 2005 and 2006 were unfounded, too remote, and "not even remotely similar to the case at bar." It considered two

allegations from 2010, but found they were not sustained and were unfounded and were not similar to the case at bar.

¶ 38 Regarding officer Mireya Mitchell Lipsey, the trial court indicated it reviewed seven files. Reports from 2002, 2003, and 2005 were unfounded. A second case from 2005 was not sustained. One file from 2006 was unfounded and not sustained. The trial court found they were all too remote, and even if they fell within the three-year time limit, none of them contained similar allegations to the case at bar or resulted in discipline. The trial court held that two incidents from 2012 fell within the timeframe, but they were closed as the affiants would not cooperate and they were irrelevant to the present case.

¶ 39 As to officer Cesar Kuri, the trial court reviewed six IPRA files. It found that one complaint from 2006 was exonerated, one from 2007 was not sustained, and both were too remote and involved allegations "not even remotely similar to this case." There were three from 2010, but one lacked an affidavit and had no witness cooperation, another was unfounded and not sustained, and the third was not sustained. The trial court ruled that although all three were within a recent timeframe, the facts did not "even closely touch upon the allegations made in this case." There was one file from 2013 containing two allegations which were not sustained, and although there was an administrative incident allegation that was sustained in 2013, "it was not factually similar whatsoever."

¶ 40 With respect to Kelly, the trial court held that one file from 2006 and one file from 2009 were unfounded, not sustained, were too remote, and the allegations were not similar to the current case. Another file from 2010 was almost within the three-year time limit, but it was not sustained. There were two files from 2011, one of which was not sustained and one of which was

exonerated. In sum, the court noted that all of the files which fell within the timeframe were not "even remotely close to what was advanced by counsel with respect to Tygee Hill."

¶ 41 Based on the foregoing, we find that the trial court did not abuse its discretion in quashing defendant's subpoena for the IPRA records. This incident occurred on August 9, 2013, and we cannot say that the trial court abused its discretion in using an approximately three-year time limit in reviewing prior allegations. *Porter-Boens*, 2013 IL App (1st) 111074, ¶ 19. Our supreme court "has specifically 'declined to find evidence of prior police brutality to be relevant when *** the allegation *** occurred three years before the case at bar.' " *Id.* (quoting *Patterson*, 192 Ill. 2d at 115). Although the supreme court held that a series of incidents over a period of several years may be relevant to showing pattern and practice of abuse, this is irrelevant and inapplicable to the facts of defendant's case or to the IPRA records presented. *Patterson*, 192 Ill. 2d at 140. Thus, the trial court did not abuse its discretion in excluding allegations that fell outside this timeframe. We further observe that if an allegation occurred close to the three-year mark, the trial court did not automatically exclude it, but considered the factual circumstances involved and the ultimate resolution, before excluding an allegation.

¶ 42 Moreover, the trial court also excluded allegations on the basis that they were ultimately not sustained or unfounded. We find that the trial court did not abuse its discretion in excluding allegations on this basis. "Mere allegations of misconduct, without evidence the officer was disciplined, are not admissible as impeachment." *Porter-Boens*, 2013 IL App (1st) 111074, ¶ 20.

¶ 43 In addition to excluding allegations on the basis of remoteness and/or a finding of not sustained/unfounded, the trial court further held that the allegations it reviewed were not factually similar to the present case. We have conducted our own review of the IPRA records and reviewed the factual circumstances involved in the allegations. We agree with the trial court

that the allegations against the four officers did not involve conduct factually similar to defendant's allegations, *i.e.*, falsifying testimony or planting evidence. As such, we find that the trial court acted appropriately in excluding the allegations. *Id.* ¶¶ 20-21; *Coleman,* 206 Ill. 2d at 279. We note that, of the one sustained allegation against Kuri, it involved an administrative incident and was not remotely factually similar to defendant's allegations.

¶ 44 We find that the trial court applied the appropriate standard and review procedure in determining whether to exclude the records of prior allegations of misconduct. Further, applying the same standard to our own review of the records, we find that the trial court did not abuse its discretion in holding that the prior allegations of misconduct were not discoverable. *Porter-Boens,* 2013 IL App (1st) 111074, ¶ 9. All of the allegations except for one were either not sustained or unfounded, and most fell outside a roughly three-year time limit. Regardless, the allegations did not involve factual circumstances similar to the events in this case or defendant's allegations. Accordingly, the trial court properly quashed the subpoena.

¶ 45 III. CONCLUSION

¶ 46 For the above reasons, we affirm defendant's conviction of armed habitual offender.

¶ 47 Affirmed.