

NOTICE

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FILED

November 13, 2017
Carla Bender
4th District Appellate
Court, IL

2017 IL App (4th) 150722-U

NO. 4-15-0722

IN THE APPELLATE COURT
OF ILLINOIS

FOURTH DISTRICT

PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from
Plaintiff-Appellee,)	Circuit Court of
v.)	Vermilion County
RICKY COLE, JR.,)	No. 11CF635
Defendant-Appellant.)	
)	Honorable
)	Nancy S. Fahey,
)	Judge Presiding.

PRESIDING JUSTICE TURNER delivered the judgment of the court.
Justices Harris and Knecht concurred in the judgment.

ORDER

- ¶ 1 *Held:* (1) The trial court did not abuse its discretion in denying the sanctions requested by defendant for the State's discovery violation.
- (2) The trial court did not abuse its discretion by barring defendant from questioning the police officers about whether defendant's statement to the police was recorded.
- (3) The trial court did not violate defendant's rights to confront witnesses against him, present a defense, or receive a fair trial.
- ¶ 2 In March 2015, after a jury trial, defendant Ricky Cole, Jr., was convicted of burglary. The trial court sentenced defendant to 12 years in prison. Defendant appeals, arguing the trial court abused its discretion by failing to sanction the State because the State did not provide defendant with a copy of his recorded statement to the police before the statement was recorded over by the police. Defendant also argues the court abused its discretion by barring him from questioning the police officers about the electronic recording. Finally, defendant contends

the trial court denied his constitutional rights to confront his accusers, present a defense, and have a fair trial. We affirm.

¶ 3

I. BACKGROUND

¶ 4 In October 2011, the State charged defendant by information with burglary (720 ILCS 5/19-1(a) (West 2010)) and armed robbery (720 ILCS 5/18-2(a)(1) (West 2010)). The burglary count alleged defendant knowingly and without authority entered Ted's Home Beverage (Ted's) in Hoopston, Illinois, with the intent to commit a theft.

¶ 5 In November 2011, both the State and defendant filed pretrial discovery motions. Defendant asked for "[a]ll written or recorded statements and the substance of any oral statements made by the accused or by a co-defendant, and a list of witnesses to the making and acknowledgment of such statements."

¶ 6 In April 2012, defendant was released on bond, and the trial court severed the two charges. The burglary charge is at issue in this appeal. Defendant failed to appear for his scheduled jury trial in October 2012. An arrest warrant was issued for defendant's failure to appear. In November 2014, defendant was arrested and taken back into custody.

¶ 7 On March 4, 2015, defendant filed a motion for sanctions to exclude police officers from testifying about a statement defendant made to the police. At issue was defendant's statement identifying himself to police as an individual in a surveillance video from Ted's the day before the robbery but denying he was the identically dressed individual on a surveillance video from Ted's during the break-in.

¶ 8 In the motion for sanctions, defendant alleged he requested any recordings in his November 2011 discovery request. The defense was not notified defendant's statement to the police had been electronically recorded until February 2015. However, by then, the recording

had been destroyed. Ron Cade, a Hoopeston police investigator, told a defense investigator the recording would have been recorded over after nine months if not requested for court. Defendant argued in the motion:

“7. Our Supreme Court has stated that ‘[w]here evidence is requested by the defense in a discovery motion, the State is on notice that the evidence must be preserved, and the defense is not required to make an independent showing that the evidence has exculpatory value in order to establish a due process violation.’ *People v. Newberry*, 166 Ill. 2d 310, 317 (Ill. 1995).

8. Where evidence has been destroyed following a defense request under Rule 412, ‘no showing of bad faith by the State is required in order for the trial court to act. The correct sanction is a decision appropriately left to the discretion of the trial court, and its judgment is entitled to great weight.’ *Id.* at 317-18.”

Defense counsel requested the following sanctions against the State pursuant to Illinois Supreme Court Rule 415 (eff. Oct. 1, 1971): (1) exclude the police officers from testifying regarding defendant’s recorded statement to the police; or (2)(a) provide a jury instruction regarding the destroyed recording of defendant’s statement; (b) allow defense counsel to question the Hoopeston police officers about the destruction of the electronic recording; (c) allow defense counsel to include in her closing argument information regarding the missing electronic recording; and (d) other relief the court deems just.

¶ 9 On March 5, 2015, the morning of defendant’s trial, the trial court heard arguments on defendant’s motion for sanctions. Defense counsel argued a lot of the evidence in this case arises from a statement defendant allegedly made in an interview with Hoopeston police

officers. The discovery provided by the State included a summary of defendant's alleged statement, but nothing indicated an audio or videotaped record of a statement had been made.

¶ 10 The State noted it charged defendant on October 24, 2011. The discovery it received from the Hoopeston police department did not include a video of any statement by defendant or a rights waiver form. The assistant state's attorney noted he first learned the statement had been recorded while speaking with the Hoopeston police officers while preparing for trial. The police officers brought up the fact the statement had been recorded. The assistant State's Attorney stated he was surprised by this revelation because "no one knew about it." The State noted the discovery in this case, going back to 2011, included a detailed summary of defendant's statement to Officers Ron Cade and Darin Tate.

¶ 11 The State argued it did not see how sanctions would be appropriate because no discovery violation occurred. According to the State, it only learned of the recording on March 2, 2015, and informed defense counsel the next morning. The State argued, "I don't see how there is a discovery violation if it's something that the State didn't even know about until Monday." The State argued questions about the destroyed video are irrelevant except to make the State and police officers look bad.

¶ 12 In response, defense counsel noted the defense did request any electronic recordings early on in the case. However, she was not going to accuse the officers of destroying evidence. Defense counsel indicated she wanted to do basic cross-examination, asking the officers whether defendant's statement was recorded and what happened to the recording. The trial court asked defense counsel what purpose was served asking the police officers whether defendant's statement was recorded and what happened to the tape other than "to plant a seed of doubt?" According to defense counsel, she believed this information was relevant for the jury to

know but did not explain why. Defense counsel again noted she was not going to argue the State destroyed anything. However, she stated asking these questions was part of her job exercising defendant's right to confront witnesses against him. Counsel also told the court:

“[I]f it had never been brought to the attention of the Court that this even happened, my question would have been to the officers, ‘Was there a video and audio recorded statement?’ And at that point I’m assuming the officers would be like, ‘Yes, there was.’ And at that point maybe we would have all been surprised. But the question still would have been asked and I would have normally asked it.”

¶ 13 The trial court denied defendant's motion for sanctions. According to the court's reasoning, once the State found out defendant's statement had been recorded, the State inquired about the recording and was informed the recording had been destroyed in the normal course of business. The court noted, “Neither side knew it existed. It was not destroyed to hide anything or done purposefully.” The court stated this was not a case where (1) actual evidence needed to convict defendant was destroyed, (2) the State failed to provide the substance of the statement to the defense, or (3) the State violated a specific court order to provide the recording to defendant. According to the court, the State provided the substance of defendant's statement to the defense pursuant to its discovery request, so the defense was not surprised by the substance of the statement. The court also denied defendant's request to provide the jury with the instructions attached to defendant's motion for sanctions. Finally, the court denied defendant's requests to question the police officers about the recording and to argue about the destroyed recording during closing arguments.

¶ 14 At defendant's trial, Investigator Ron Cade of the Hoopston police department testified he investigated a break-in at Ted's on October 22, 2011. The business's surveillance

footage showed an individual in the store after-hours taking cigarettes from the counter. Cade's investigation led him to look for defendant at 818 East Young Street where Angela Torres, along with her children, brother, father, and father's wife lived. Defendant and Angela were present in the back yard. Defendant initially identified himself as "Johnny" to Cade. Angela identified defendant as Ricky Cole. Cade detained defendant and put him in a squad car. Defendant was taken to the Hoopston police department.

¶ 15 Angela Torres and her father gave the police consent to search the premises. Cade testified they were looking for clothing like the suspect in the break-in at Ted's was wearing, specifically tan work boots, dark multi-colored checkered pants (possibly pajama pants, sweat pants, or some combination of the two), what appeared to be a University of Illinois sweatshirt that was gray with an orange logo, and Newport cigarettes. The police found two cartons of Newport menthol cigarettes (the same kind taken from Ted's) and the sweatshirt in a camper on the property. They found the boots and pants in a bedroom in the residence. Cade testified the sweatshirt, boots, and pants matched what the suspect on the videos was wearing.

¶ 16 Cade testified they later went back to talk to Larry Swim, one of Ted's owners, because the same person on the video from the break-in was in the store the night before wearing the same clothes. Swim provided the investigators with a security tape from the night before.

¶ 17 Cade and Investigator Darin Tate spoke with Angela Torres at the police department before speaking with defendant there. The police showed her the videos and still images taken from the videos. She identified defendant, who was her boyfriend, as the person on the videos.

¶ 18 Cade and Tate then spoke with defendant, who denied having any knowledge about the break-in. The officers then showed defendant stills from the surveillance video from

Ted's the day before the break-in. Defendant identified himself as the individual with the boots, sweatpants, and pajama bottoms in the pictures. Defendant said the other person was Michael Burke. However, when shown the stills from the surveillance tape during the break-in, defendant denied the suspect wearing identical clothing was him.

¶ 19 During defense counsel's cross-examination of Cade, defense counsel told the trial court at a sidebar she wanted to make a continuing objection to not being allowed to ask the State's witnesses about the electronic recording. In her offer of proof, defense counsel noted "I would ask [Cade] about the video-audio and questions and answers that Investigator Blaine had in his report that has been offered—that was also showed to the Court this morning by the State." The court ruled it was standing on its previous ruling.

¶ 20 Investigator Tate testified he was involved in investigating the break-in. He was present with Cade when defendant was located with Angela Torres and Jose Torres at 818 Young Street in Hoopston. He also testified Angela Torres identified defendant as the suspect in the videos. Defendant told the investigators he was the individual in the gray sweatshirt with the University of Illinois logo in the video from the night before the break-in.

¶ 21 Angela Torres testified defendant lived with her at her residence on 818 East Young Street in Hoopston on October 22, 2011. They had lived together for about one or two months. He was her boyfriend. She stated she did not help the police find the cigarettes in the camper because she did not know anything about them. However, when the officers described the clothing they were looking for at the residence, she recognized the described clothing and took the officers to matching clothes in the bedroom she and defendant shared. She said defendant wore the described clothes almost every day. She testified defendant was in the video

taken at Ted's Homebrew on October 21, 2011, wearing a gray University of Illinois sweatshirt. She also identified defendant in a picture from the break-in.

¶ 22 The jury found defendant guilty of burglary. On July 22, 2015, the trial court sentenced defendant to 12 years in prison with 3 years of mandatory supervised release (MSR). On July 23, 2015, the defendant filed a motion to reconsider sentence. On August 20, 2015, the trial court denied the motion to reconsider sentence.

¶ 23 II. ANALYSIS

¶ 24 The issues raised in this appeal revolve around the trial court's rulings made during a hearing on defendant's motion for sanctions. Defendant filed his motion for sanctions because the State failed to provide the defense with an electronic recording of a statement defendant provided to the police. Illinois Supreme Court Rule 415(g)(i) provides as follows:

“If at any time during the course of the proceedings it is brought to the attention of the court that a party has failed to comply with an applicable discovery rule or an order issued pursuant thereto, the court may order such party to permit the discovery of material and information not previously disclosed, grant a continuance, exclude such evidence, or enter such other order as it deems just under the circumstances.”

Because the electronic recording was no longer available, defense counsel did not ask for the court to order it be provided to defendant. Defendant also did not ask for a continuance. Instead, defendant asked the trial court to bar the State from introducing any evidence about defendant's statement. This was relief specifically allowed for by Rule 415 if the court deemed it appropriate. In the alternative, assuming the court did not bar the State from introducing evidence of defendant's statement to the police, defense counsel asked to be allowed to (1) question the

police officers about the electronic recording, (2) make arguments about the recording during closing argument, and (3) give the jury instructions about the lost evidence.

¶ 25 The trial court denied defendant's request to bar the State from introducing evidence regarding defendant's statement to the police and ruled defendant could not question the police officers about the recording or make any argument about the missing evidence during closing argument. Finally, the court denied defendant's request for jury instructions on destroyed or lost evidence and failure to offer evidence within the State's control.

¶ 26 A. Defendant's Statement to the Police

¶ 27 Defendant does not argue the State's failure to provide the defense with a copy of the electronic recording of defendant's statement to police constitutes a due process violation. Instead, he approaches this as a simple discovery issue. The purpose of discovery is to avoid a party being prejudiced by the introduction of unknown evidence and allow the party an opportunity to investigate. *People v. Rubino*, 305 Ill. App. 3d 85, 87, 711 N.E.2d 445, 447 (1999).

¶ 28 A court's determination whether a discovery violation occurred and, if so, the appropriate sanction to be imposed are generally entitled to great weight. *People v. Hall*, 235 Ill. App. 3d 418, 425, 601 N.E.2d 883, 889 (1992). The purpose of sanctions for a discovery violation is not to punish the offending party. Instead, sanctions are intended to further the goals of discovery and compel compliance. *Rubino*, 305 Ill. App. 3d at 87, 711 N.E.2d at 447. When a trial court is considering whether to exclude evidence as a sanction against a party, the court should consider how close the evidence is in the case. *People v. Hood*, 229 Ill. App. 3d 202, 216, 593 N.E.2d 805, 815 (1992). "The closer the evidence, the stronger is the case for excluding the statement or declaring a mistrial." *Hood*, 229 Ill. App. 3d at 216, 593 N.E.2d at 815.

¶ 29 We apply an abuse of discretion standard of review when reviewing a trial court's decision whether to impose sanctions for a discovery violation. *People v. Stolberg*, 2014 IL App (2d) 130963, ¶ 31, 18 N.E.3d 927. The trial court abuses its discretion if a discovery violation occurred, defendant is prejudiced by the violation, and the court fails to eliminate the prejudice. *Hood*, 229 Ill. App. 3d at 216, 593 N.E.2d at 815.

¶ 30 The trial court never clearly stated whether it found a discovery violation occurred in this case. However, considering the court made rulings on the requested sanctions, the court must have concluded a discovery violation did occur, and our review of the record supports such a conclusion. Regardless, defendant has failed to establish he was prejudiced by the violation in this case. As a result, we do not find the trial court abused its discretion in denying defendant's request for sanctions.

¶ 31 Notwithstanding the destroyed recording, defendant and his attorney were aware defendant made a statement to the police and the substance of his statement. Defendant never claimed his statement was involuntary, resulted from coercion, never was made, or was not accurately restated by the police in their summary of his statement. Those are issues where the actual recording could have been valuable. Defendant also did not argue the police or the State engaged in any intentional wrongdoing or allowed the recording to be recorded over to hide evidence of any wrongdoing by the police.

¶ 32 Further, the State's case against defendant was overwhelming even without his statement to the police. Angela Torres, defendant's girlfriend at the time of the burglary, testified she identified defendant to the police as the individual in the surveillance video burglarizing Ted's and the surveillance video at Ted's the day before. Defendant was living with her at the time of the burglary. The police found clothing inside her home matching the clothing worn by

the individual on the surveillance video during the break-in at Ted's. The police also found two cartons of Newport cigarettes, the brand of cigarettes stolen from Ted's, in a camper on Torres's property along with a sweatshirt like the one worn by the suspect in the video.

¶ 33 While the recording should have been turned over to the defense before it was recorded over, defendant cannot establish he was prejudiced as a result of not having the recording. Defendant also cannot establish he was prejudiced by the court's decision not to grant defendant's other requested sanctions against the State, including defense counsel's ability to argue about the recording during his closing argument or provide the jury with instructions about the recording. As a result, the trial court did not abuse its discretion by not imposing any sanctions on the State.

¶ 34 B. Effect of Evidentiary Ruling on Defendant's Constitutional Rights

¶ 35 We next look at defendant's argument the trial court erred by barring him from introducing evidence regarding the lost electronic recording. We have already decided the court did not abuse its discretion by denying defendant's request for a sanction against the State allowing defendant to question the police officers about the electronic recording. However, both the trial court and the parties also treated the court's decision at the pretrial hearing as a pretrial evidentiary ruling denying defendant's ability to introduce any evidence about the recording. Without the jury hearing evidence regarding the recording, defense counsel could not make arguments about the recording during her closing argument or instruct the jury with regard to the missing recording.

¶ 36 Defendant argues his constitutional rights to confront witnesses against him, present a defense, and have a fair trial were violated because the trial court barred his trial counsel from (1) asking the police officers any questions about the missing evidence, (2) making

arguments about the missing evidence during closing, and (3) providing the jury with instructions about lost or missing evidence.

¶ 37 As stated earlier, based on the record, the trial court intended, and the State and defendant interpreted, the court's ruling on the motion for sanctions to be an evidentiary ruling, something akin to a ruling on a motion *in limine*. The court had other motions *in limine* before it at the same pretrial hearing. Defendant did not make a procedural objection to the trial court going beyond denying his request for sanctions. As a result, defendant forfeited any objection to the procedural nature and timing of the trial court's decision to bar defendant from questioning the police officers about the electronic recording.

¶ 38 Defendant's argument he was denied certain constitutional rights is based on the result of the trial court's order, not the procedural manner in which it was made. At the hearing on the motion for sanctions, defense counsel argued she should be able to confront the police officers with questions about whether defendant's statement was recorded, regardless of any discovery violation. Further, during the trial, while Investigator Cade was on the witness stand, defense counsel asked for a sidebar outside the presence of the jury and made the following statement and offer of proof to the court.

“Your Honor, I thought this might be the appropriate time to have a sidebar and just make a record of my continuing objection to not being able to ask about the video-audio and just make an offer of proof that if I were to question the officer, I would ask him about the video and audio and questions and answers that Investigator Blaine had in his report that has already been offered—that was also showed to the Court this morning by the State. I would just make that offer now, if that's fine with Your Honor.”

The trial court noted it stood on its previous ruling.

¶ 39

1. *Right to Confront Witnesses*

¶ 40

According to defendant, the trial court's ruling barring defendant from questioning the police officers about the electronic recording violated his constitutional right to confront the State's witnesses. We note the Supreme Court has held the confrontation clause does not prevent “a trial judge from imposing any limits on defense counsel’s inquiry into the potential bias of a prosecution witness.” *Delaware v. Van Arsdall*, 475 U.S. 673, 679 (1986). In fact, according to the Court, “trial judges retain wide latitude insofar as the Confrontation Clause is concerned to impose reasonable limits on such cross-examination based on concerns about, among other things, harassment, prejudice, confusion of the issues, the witness’ safety, or interrogation that is repetitive or only marginally relevant.” *Van Arsdall*, 475 U.S. at 679. Even if a court errs in limiting cross-examination, the error is subject to harmless error analysis. *Van Arsdall*, 475 U.S. at 684.

¶ 41

We will only disturb a trial court’s ruling limiting cross-examination if the court abused its discretion resulting in manifest prejudice to the defendant. *People v. Kirchner*, 194 Ill. 2d 502, 536, 743 N.E.2d 94, 112 (2000). “An abuse of discretion occurs where the trial court’s decision is arbitrary, fanciful or unreasonable [citation] or where no reasonable person would agree with the position adopted by the trial court.” *People v. Becker*, 239 Ill. 2d 215, 234, 940 N.E.2d 1131, 1142 (2010).

¶ 42

Defendant argues he should have been permitted to “expose facts from which the jury could draw inferences relating to the reliability of the police officers’ testimony.” According to defendant:

“[T]he State’s key witnesses were the police officers who testified that [defendant] allegedly identified himself on one of the surveillance videos. [Citation.] Evidence of Cole’s alleged admission was crucial to the State’s case-in-chief. [Citation.] The believability of the State’s key witnesses is paramount to the jury’s determination of guilt or innocence. [Citation.] The trial court’s decision to bar the defense from the ability to cross-examine the police relative to the destroyed video was an abuse of discretion.”

We hold the trial court did not abuse its discretion in denying defendant’s ability to question the police officers about the electronic recording.

¶ 43 This is not a situation where defendant alleged the police officers did anything improper when he made the recorded statement in question. For example, he does not argue his statement was involuntary or resulted from coercion. Further, defendant does not contend the police or the State allowed the video to be recorded over to hide some sort of wrongdoing. Although defense counsel stated she was not going to argue the State destroyed the evidence, we see no other reason to question the officers about the recording and inevitably what happened to the recording other than to make the jury think the police intentionally destroyed the tape to hide some wrongdoing which produced defendant’s statement or that defendant never made the statement at all.

¶ 44 Further, even if we agreed the trial court abused its discretion, we would find the error harmless. Our supreme court recently stated confrontation clause violations are subject to harmless error analysis. *In re Brandon P.*, 2014 IL 116653, 10 N.E.3d 910 (2014).

“The test is whether it appears beyond a reasonable doubt that the error at issue did not contribute to the verdict obtained at trial. [Citation.] When determining

whether an error is harmless, a reviewing court may, ‘(1) focus on the error to determine whether it might have contributed to the conviction; (2) examine the other properly admitted evidence to determine whether it overwhelmingly supports the conviction; or (3) determine whether the improperly admitted evidence is merely cumulative or duplicates properly admitted evidence.’ ” *Brandon P.*, 2014 IL 116653, ¶ 50, 10 N.E.3d 910, quoting *In re Rolandis G.*, 232 Ill. 2d 13, 43, 902 N.E.2d 600, 617 (2008).

Even if defendant was allowed to discredit the police officers regarding defendant’s statement, the State’s case against defendant would have still been overwhelming for the reasons noted in our discussion explaining why the trial court’s refusal to sanction the State was not an abuse of discretion.

¶ 45 *2. Right to Present a Defense*

¶ 46 Defendant next argues he was denied his constitutional right to present a defense. Defendant cites the Supreme Court’s decision in *Chambers v. Mississippi*, 410 U.S. 284, 302, (1973), for the proposition “[f]ew rights are more fundamental than that of an accused to present witnesses in his own defense.” The right to present the defendant’s version of events is analogous to a defendant’s right to confront his accusers and is a fundamental element of due process of law. *Washington v. Texas*, 388 U.S. 14, 19 (1967). However, defendant was not denied his right to call witnesses on his behalf or to testify himself.

¶ 47 Defendant's attempts to compare this case to either *Chambers* or *Washington* are misplaced. This situation is very different from those cases.

¶ 48 In *Chambers*, the defendant was charged with murdering a police officer. *Chambers*, 410 U.S. at 285. The defendant wanted to develop two grounds of defense: (1) he did

not shoot the officer, and (2) another man, Gable McDonald, was the shooter. The defendant wanted to introduce evidence McDonald admitted shooting the officer on four separate occasions. He was stopped from introducing this evidence by a strict application of Mississippi's rules of evidence. *Chambers*, 410 U.S. at 289.

¶ 49 In *Washington*, the defendant, who was charged with murder, was also denied the right to call a witness who would have testified the witness and not defendant was the shooter because of two state statutes that provided "persons charged or convicted as coparticipants in the same crime could not testify for one another." *Washington*, 388 U.S. at 16-17.

¶ 50 According to defendant, in both *Chambers* and *Washington*, the defendants were stopped from presenting their version of what happened to the jury. In *People v. Manion*, 67 Ill. 2d 564, 577, 367 N.E.2d 1313, 1319 (1977), our supreme court noted in both *Chambers* and *Washington* "a crucial part of the defendant's case was excluded, so that the accused had an insufficient opportunity to respond to the State's accusations." However, the trial court in this case did not deny defendant the right to respond to the State's accusations. The trial court just did not allow defendant to question the police officers about the electronic recording when defendant was not asserting (1) he did not make the statement to the police, (2) the police did anything wrong during their interview with defendant, or (3) the police recorded over the video to hide evidence from defendant. Defendant was free to call witnesses or testify himself in response to the State's accusations.

¶ 51 *3. Right to a Fair Trial*

¶ 52 Defendant also argues he was denied his right to a fair trial. According to defendant's brief, the trial court had concerns the defense wanted to introduce evidence to dissuade the jury from finding defendant guilty beyond a reasonable doubt. Defendant bases this

claim on a statement the trial court made at the pretrial hearing while the parties were discussing whether the defense could question the police officers about the recording. Referring to defendant's ability to ask these questions of the police officers, the trial court stated, "What's the purpose of the question if not to plant a seed of doubt? That is the purpose of the question, [defense counsel], isn't it?"

¶ 53 Defendant contends the trial court's question could have been worded as follows, "What's the purpose of the cross-examination if not to confront the credibility of the defendant's accusers?" Defendant argues the trial court's statement implicitly shows the court believed planting a seed of doubt or attacking the credibility of defendant's accusers was outside the bounds of acceptable defense strategy. According to defendant:

"[N]ot only is this behavior permitted or in-bounds for defense attorneys, they have an affirmative duty and sworn obligation in our adversarial system to be adversarial in precisely this way. That means confronting the credibility or believability of a defendant's accusers, which in many cases, as was the case here, happens to be the police. Here, defense counsel reminded the trial court, in her more fleshed-out response, of these constitutional rights and obligations when she stated: 'I think I am allowed *** through the Supreme Court rule and the confrontation clause, to ask questions and I think that my job is to ask questions.' [Citation.] Exactly right. It was allowable for defense counsel to ask about the missing video that the police had destroyed, and more importantly, there was a duty to do so."

According to defendant, by denying his ability to elicit any evidence whether the statement had been recorded and then recorded over and to attack the officer's credibility regarding this recording, the trial court denied defendant a fair trial.

¶ 54 We first address the court's statement, "What's the purpose of the question if not to plant a seed of doubt? That is the purpose of the question, [defense counsel], isn't it?" When read in isolation, this statement makes the trial court appear not to understand one of the purposes of cross-examination. However, when the statement is considered in context, the court's statement is understandable.

¶ 55 The trial court was stating the only purpose of a question about the recording was to plant a seed of doubt the police had purposefully destroyed the evidence to hide some sort of wrongdoing. This was an accurate assessment by the court, considering defendant never argued he did not make the statement in question, the police officers did anything improper in getting the statement from him, or that the tape was destroyed for the purpose of hiding something from the defense. In no way was defendant denied a fair trial by the court not allowing these questions.

¶ 56 Had the defense contended defendant's statement was coerced or involuntary, the statement was never made, or the police officer's version of defendant's statement was inaccurate, our decision might be different. However, if those were the facts in this case, the trial court likely would have allowed the defense to question the police officers about the recording and the fact it was no longer available because the content of the defendant's statement would have been in dispute. The content of defendant's statement here was not in dispute.

¶ 57 According to defense counsel, she believed whether the statement was recorded was relevant for the jury to know, but she did not explain why. Defense counsel again noted she

was not going to argue the State destroyed anything. However, counsel argued asking these questions was part of her job confronting the witnesses against defendant. Counsel also told the court:

“[I]f it had never been brought to the attention of the Court that this even happened, my question would have been to the officers, ‘Was there a video and audio recorded statement?’ And at that point I’m assuming the officers would be like, ‘Yes, there was.’ And at that point maybe we would have all been surprised. But the question still would have been asked and I would have normally asked it.”

While this might be true, defendant chose to bring this to the court's attention prior to trial.

¶ 58 We have already ruled the trial court did not abuse its discretion in denying this request as a sanction against the State. Further, as previously noted, defendant did not make any kind of procedural objection to the court barring its right to ask questions of the police officers when the State had not requested that relief. Defendant forfeited any argument he may have had with regard to the timing of the court's evidentiary ruling.

¶ 59 Based on the record in this case, defendant received a fair trial. The questions defendant sought to ask did not seek any relevant information challenging the State's case against him or providing a defense on his behalf.

¶ 60 III. CONCLUSION

¶ 61 For the reasons stated above, we affirm defendant's conviction as the trial court did not abuse its discretion in denying defendant's requested sanctions or barring defendant from questioning the police officers about the electronic recording. Further, defendant was not denied his rights to confront his accusers, present a defense, and receive a fair trial. As part of our

judgment, we award the State its \$50 statutory assessment against defendant as costs of this appeal.

¶ 62 Affirmed.