2018 IL App (1st) 160467-U

No. 1-16-0467

Order filed July 26, 2018

Fourth Division

IN THE

APPELLATE COURT OF ILLINOIS

FIRST DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County.
	)	
v.	)	No. 14 CR 17875
	)	
JEWELL CROSBY,	)	Honorable
	)	Mary Margaret Brosnahan,
Defendant-Appellant.	)	Judge, presiding.

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

ORDER

¶ 1 *Held*: The evidence presented at trial was sufficient to sustain defendant's conviction for aggravated discharge of a firearm, and the trial court did not abuse its discretion in admitting out-of-court statements showing the course of a police investigation.

¶ 2 Following a bench trial, defendant Jewell Crosby was convicted of aggravated discharge of a firearm and sentenced to six years in prison. On appeal, defendant challenges the sufficiency of the evidence, contending that the State failed to prove beyond a reasonable doubt both that he was the person who discharged a firearm, and that he discharged a firearm "in the direction of"

the two complainants. Defendant further contends that the trial court erred in repeatedly admitting hearsay testimony from a responding police officer. For the reasons that follow, we affirm.

¶ 3 Following his arrest, defendant was charged with two counts of aggravated discharge of a firearm. One count charged defendant with discharging a firearm in the direction of Marcus Wilson, and the other charged him with discharging a firearm in the direction of Byron Montgomery.

¶ 4 At trial, Marcus Wilson testified that around 6:45 p.m. on September 26, 2014, he and Byron Montgomery drove to the area of North Springfield Avenue and West Ferdinand Street to meet up with some friends. Wilson was familiar with the neighborhood because he had gone to high school nearby. As Wilson drove, he noticed defendant sitting on the front steps of a house at 441 North Springfield Avenue, wearing a blue flannel jacket. Wilson identified defendant in court, and explained that he had seen defendant in the neighborhood before. He did not know defendant's name, had never talked with him, and had never had any problems with him.

¶ 5 Wilson, who was looking for a parking spot, drove past defendant, turned around at a dead end, drove back the way he came, and found a spot right in front of the house at 441 North Springfield Avenue. When Wilson parked, defendant was no longer on the steps. According to Wilson, it was light outside and it was not raining.

¶ 6 Wilson and Montgomery got out of the car and spent about 20 minutes talking to other people who were outside across the street. They had returned to Wilson's car and were just about to get in it when Wilson finally spotted the friend he was looking for at the end of the block. Suddenly, Wilson saw the blinds go up in the house's attic window. When asked whether he saw

anyone at the window, Wilson answered, "Yeah. I saw the guy with the flannel. I saw the flannel jacket. *** The blue one. The same one that he had on when he was sitting on the [front steps of the house]."

¶ 7 Just as Montgomery came around to the street side of the car, Wilson heard a gunshot. He and Montgomery ducked down beside the car. Wilson looked up through the car's back window, which was not tinted, and saw the flash of a second gunshot in the attic window. After the second shot, Wilson ducked back down and heard five or six more shots. When asked whether he saw the face of the person at the window, he stated, "Really, I couldn't tell because I wasn't really trying to look at that if somebody is shooting so I just took cover." After the shooting stopped, Wilson, Montgomery, and the other people who had been in the street ran off, and Wilson called 911.

¶ 8 Moments later, Wilson stopped a passing police car, told the officers what happened, and directed them to the house at 441 North Springfield Avenue. The officers told Wilson and Montgomery to stay where they were while they checked the house. A short time later, the officers called Wilson and Montgomery to the house. There, Wilson saw the police bringing defendant out of the house in handcuffs. Defendant was not wearing the blue flannel jacket. However, the police later showed Wilson that jacket at the police station.

¶ 9 Wilson testified that after the shooting, he noticed some damage to the trunk of his car. He described the damage as "like a ricochet, where it didn't go through like it just hit and skid off," and agreed it was "like a dent." Wilson stated that the damage was not there prior to the shooting, and noted that he had recently had the car painted.

¶ 10 On cross-examination, Wilson explained that when he saw the blinds of the attic window open, he saw a "dark" black man wearing the same flannel he had seen defendant wearing earlier. When asked whether he saw "that person's" face, he answered, "I ain't going to say one hundred percent," and, "When someone is shooting, I am not going to try to look for their face." Wilson also clarified that when he heard the first gunshot, he was standing closer to his car's trunk than the driver's side door, and that when he ducked down, he was by the trunk and back wheel.

¶ 11 Byron Montgomery testified that about 6:50 p.m. on the date in question, he and Wilson went to the area of 441 North Springfield Avenue to meet up with a friend and get drinks for Wilson's birthday. As they passed the house at that address, Montgomery noticed defendant, whom he identified in court, sitting on the porch stairs, wearing a flannel jacket. Montgomery had grown up in the area, had seen defendant around the neighborhood before, and had never had any problems with him. Wilson drove to the end of the street, made a U-turn, and eventually parked in front of the house where he observed defendant. However, defendant was no longer on the steps. Montgomery stated that it was daylight and "nice" out, rather than raining.

¶ 12 Montgomery and Wilson got out of the car, walked across the street, and talked with some friends who were outside. After 10 or 15 minutes, Wilson gave up on the friend he was planning to meet for drinks, so he and Montgomery headed back to the car. As they were "fittin' to get in," Wilson spotted the friend, so they shut the car doors and Montgomery walked around the back of the car to join Wilson on the street side of the car, near the trunk.

¶ 13 At this point, Montgomery heard six or seven gunshots. He stated, "I dove to the ground and I looked up to see the defendant shooting out the window." Montgomery explained that he

was referring to the "top" window of the house, and that he was lying on the ground, looking up from behind the car's back bumper, with nothing blocking his view. Montgomery stated, "It's his arms out the window. He was firing the gun and I had seen the little flashes come from the gun[.]" He further noted that when he looked up to the window and saw defendant, defendant was wearing a flannel jacket. There was nothing obstructing defendant's face.

¶ 14 When the shots stopped, Montgomery got up and ran. Wilson, who ran with him, called the police. Shortly thereafter, Wilson flagged down a passing police car, and Montgomery directed the officers to the house. At some point, the police asked Montgomery to come back to the area of the house. There, he saw the police escorting defendant out of the house in handcuffs. Defendant was not wearing the flannel jacket, but an officer brought the jacket out. According to Montgomery, it was the same flannel jacket defendant had been wearing when he was sitting on the steps and the same jacket Montgomery observed "from the window *** when he was shooting."

¶ 15 After the shooting, Montgomery noticed some damage to Wilson's car. Specifically, he saw damage "at the back of the car that was struck." When asked to clarify whether a bullet went into the car or "something different," he answered, "Like it grazed it."

¶ 16 On cross-examination, Montgomery explained that when he was on his stomach on the ground, looking up at the house, his head was past the back bumper. When asked whether he saw a man with a gun, he answered, "Yes. I see him fire out the window." Montgomery clarified that he did not see the gun, but did see sparks coming from the window. He then answered the following questions:

"Q. Now this person that's outside of this window, what part of the body do you see?

A. His arm and the flannel jacket.

Q. Arm and flannel jacket?

A. Yeah.

Q. Now based on what you are seeing at your vantage point, you are seeing flashing going on, are you able to see the person's face while the shooting is happened [*sic*]?

A. Yes. He was hanging out the window.

Q. So your testimony is the person shooting at you was hanging out the window?

A. Arms.

Q. Arm is out the window?

A. Yes."

¶ 17 Chicago police officer Daniel Frausto testified that about 6:50 p.m. on the date in question, he and his partners responded to a call of shots fired near the intersection of West Ferdinand Street and North Springfield Avenue. As the officers approached the intersection in their car, Wilson and Montgomery flagged them down. After talking with Wilson and Montgomery, the officers proceeded to the house at 411 North Springfield Avenue. There, defendant's mother answered the door. When Frausto informed her of the situation, she indicated there was a person upstairs and gave verbal consent for the police to search the attic apartment, which was accessible via interior stairs.

¶ 18 Frausto went upstairs, where he found defendant and no one else. He also found shell casings on the windowsill and the floor near the window. Frausto walked defendant out of the house, at which time Wilson and Montgomery identified him as the person "who stood at the window and shot towards their direction and struck their car." Frausto placed defendant under arrest, gave him *Miranda* warnings, and called for a transport vehicle to take defendant to the police station. Frausto also called in a request for an evidence technician. However, since no one was injured during the incident and the evidence technicians were "extremely busy," none responded.

¶ 19 After a sergeant arrived on the scene, Frausto obtained written consent to search the attic apartment from defendant's mother. During the ensuing search, he recovered two shell casings from the windowsill, four casings from the apartment's living room, and one shell casing from the house's front steps, directly under the window. Frausto also recovered a flannel jacket "from the home." Outside, Frausto examined Wilson's car and noticed "what appeared to me to be bullet holes" on the rear right side of the car. Later, at the police station, Wilson and Montgomery identified the recovered flannel jacket as the one they had seen defendant wearing. Frausto inventoried the jacket and the shell casings.

¶ 20 On cross-examination, Frausto stated that when he led defendant down the stairs and out of the house, defendant was not in handcuffs. He acknowledged that he did not find a gun in the attic apartment. He also clarified that the damage he observed on Wilson's car was a dent, not a hole, and stated that no bullets or shell casings were recovered from the area near the car. Frausto could not recall whether, in addition to the interior staircase, there was a separate entrance to the

attic. Finally, Frausto testified that no photos were taken of Wilson's car or of the inside of the apartment.

¶ 21 The parties stipulated that if called as a witness, a forensic scientist who was an expert in firearms analysis would have testified that the seven recovered cartridge cases were all fired from the same weapon. The parties further stipulated that if called as a witness, a forensic scientist who was an expert in the field of trace evidence analysis would have testified that the recovered flannel jacket "may not have contacted a primer gunshot residue, related item, or may not have been in the environment of a discharged firearm. However, if the jacket was, then the particles were not deposited, were removed by activity, or were not detected by the procedure."

¶ 22 Defendant moved for a directed finding, arguing that there was no evidence of a gun being fired at Wilson or Montgomery. The trial court denied the motion.

¶ 23 Following closing arguments, the trial court found defendant guilty of both counts of aggravated discharge of a firearm. Defendant filed a motion for a new trial, arguing, among other things, that the State failed to prove both that he was the shooter and that a firearm was discharged "in the direction of" Wilson and Montgomery. Defendant also argued that the trial court erred in allowing Officer Frausto to testify as to what Wilson, Montgomery, and defendant's mother told him. The trial court denied the motion, and subsequently sentenced defendant to two concurrent terms of six years' imprisonment. Defendant's motion to reconsider sentence was denied. Defendant appealed.

¶ 24 On appeal, defendant's first contention is that the State failed to prove beyond a reasonable doubt that he was the person who discharged the firearm. He asserts that the State's case was "remarkable to begin with for postulating a potentially murderous attack with

absolutely no motivation, provocation or explanation of any kind." Defendant further argues that Wilson never saw the shooter's face, that Montgomery saw it only very briefly while ducking for cover behind Wilson's car, that no gun was recovered, that no gunshot residue was found on the flannel jacket, that no one testified with certainty as to whether there was an outside exit from the attic apartment, and that despite other people being present on the street during the shooting, no other eyewitnesses were called to testify. Defendant concludes from these circumstances that while the State's evidence justified a suspicion that he was the shooter, it did not prove his identity beyond a reasonable doubt.

¶ 25 When reviewing the sufficiency of the evidence, the relevant inquiry is whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. *Jackson v. Virginia*, 443 U.S. 307, 318-19 (1979). The credibility of the witnesses, the weight to be given their testimony, and the resolution of any conflicts in the evidence are within the province of the trier of fact, and a reviewing court will not substitute its judgment for that of the trier of fact on these matters. *People v. Brooks*, 187 Ill. 2d 91, 131 (1999). The testimony of a single witness, if positive and credible, is sufficient to convict. *People v. Siguenza-Brito*, 235 Ill. 2d 213, 228 (2009). Reversal is justified only where the evidence is "so unsatisfactory, improbable or implausible" that it raises a reasonable doubt as to the defendant's guilt. *People v. Slim*, 127 Ill. 2d 302, 307 (1989).

¶ 26 The State bears the burden of proving the identity of the person who committed the crime. *Id.* An identification is insufficient to support a conviction if it is vague or doubtful. *Id.* Identification of a defendant by a single witness is sufficient to sustain a conviction where the

witness viewed the defendant under circumstances that permitted a positive identification. *Id.* The resolution of a question of mistaken identity depends upon the credibility of the witnesses and the weight of the evidence. *People v. Bowel*, 111 Ill. 2d 58, 65 (1986).

¶ 27 Here, both Wilson and Montgomery knew defendant from the neighborhood. As they drove past the house at 411 North Springfield Avenue, they both saw him sitting on the front steps wearing a flannel jacket. About 20 minutes later, as they stood on the street right in front of the house, they both saw a person appear at the house's attic window and start shooting. Both men identified defendant as the shooter. Montgomery testified that saw the shooter's face, as well as the flannel jacket, which he said was the same one defendant had been wearing when he was sitting on the front steps. Wilson did not see the shooter's face, but did see a dark-skinned black man wearing the same flannel he had seen defendant wearing when he was sitting on the house's front steps. Shortly thereafter, the police found defendant in the attic by himself, and recovered seven cartridge cases from the area, all of which were fired from the same weapon.

¶ 28 Viewing this evidence in the light most favorable to the prosecution, which we must, we find that it was sufficient to establish defendant's identity as the shooter and sustain his conviction. While the absence of a gun in the attic, the lack of gunshot residue on the recovered flannel, and the hypothetical existence of an outside entrance to the attic leave open a possibility that another dark-skinned black man wearing a matching flannel jacket could have been in the attic with defendant, committed the shooting, and then fled, "the trier of fact is not required to disregard inferences which flow normally from the evidence and to search out all possible explanations consistent with innocence and raise them to a level of reasonable doubt." *People v. Hall*, 194 Ill. 2d 305, 332 (2000). Moreover, the State was not required to prove motive (*People*

v. Agnew-Downs, 404 Ill. App. 3d 218, 228 (2010)), nor to call the other people present on the street at the time of the shooting as witnesses (*Slim*, 127 Ill. 2d at 307 (the credible identification testimony of a single witness is sufficient to sustain a conviction)). Here, the evidence of defendant's identity as the shooter was not "so unsatisfactory, improbable or implausible" to raise a reasonable doubt as to defendant's guilt. *Slim*, 127 Ill. 2d at 307. Accordingly, defendant's challenge to the sufficiency of the identity evidence fails.

¶ 29 Next, defendant contends that the evidence was insufficient to prove that he discharged a firearm "in the direction of" Wilson or Montgomery, as required by the statute defining the offense of aggravated discharge of a firearm. Defendant acknowledges that both men saw flashes of gunshots coming from the attic window, but notes that neither testified as to having seen the gun pointed in his direction or as to having seen or heard bullets passing nearby or striking anywhere. He further observes that the police made no effort to search the street for bullets or for bullet holes, and asserts that Wilson's, Montgomery's, and Frausto's testimony that a dent on the trunk of Wilson's car was caused by a bullet was "nothing but conjecture," as none of the three witnesses was shown to have any expertise or experience in recognizing or identifying bullet marks. Defendant argues that at most, the State's evidence would have supported a finding that he committed a lesser offense, such as reckless discharge of a firearm, rather than aggravated discharge of a firearm.

¶ 30 To sustain defendant's convictions for aggravated discharge of a firearm, as charged in the two counts in the instant case, the State was required to prove that defendant knowingly or intentionally discharged a firearm "in the direction of" Wilson and Montgomery. 720 ILCS 5/24-1.2(a)(2) (West 2014). Here, there is no dispute that when the shooting started, Wilson and

Montgomery ducked down by the trunk or back bumper on the driver's side of Wilson's car. There is also no dispute that after the shooting, Wilson, Montgomery, and Officer Frausto all observed damage to Wilson's car. On direct examination, Frausto described the damage as "bullet holes" on the rear passenger side. On cross-examination, he clarified that the damage was not bullet holes, but rather, a dent. Montgomery saw damage "at the back of the car that was struck," which he described looking like a bullet "grazed it." Wilson observed a dent on his trunk, "like a ricochet, where it didn't go through like it just hit and skid off." When asked whether the damage was present prior to the shooting, Wilson answered, "No. I had recently got the car painted."

¶ 31 In our view, this evidence, considered in the light most favorable to the prosecution, is sufficient to sustain the finding that defendant discharged a firearm "in the direction of" Wilson and Montgomery. The State presented evidence that the car's trunk was undamaged before the shooting, that Wilson and Montgomery were ducked down behind the trunk of the car during the shooting, and that after the shooting, the trunk was damaged in a way the witnesses described as a bullet dent, bullet grazing, or bullet ricochet. From this evidence, a rational trier of fact could conclude that defendant fired in the direction of Wilson and Montgomery, rather than aimlessly. That none of the witnesses was an expert in identifying bullet marks does not change our conclusion. See *People v. Jackson*, 2017 IL App (1st) 142879, ¶ 48, (lay witnesses can testify based on a rational perception of what they observed if it is helpful for the determination of a fact in issue) (citing Ill. R. Evid. 701(a), (b) (eff. Jan. 1, 2011)); *People v. Ortiz*, 96 Ill. App. 3d 497, 504 (1981) (detective who was not qualified as an expert witness was nevertheless qualified to testify that holes in a wall, ceiling, and curtain appeared to be bullet holes).

¶ 32 In finding defendant guilty, the trial court specifically stated that the State proved beyond a reasonable doubt that defendant fired in the direction of Wilson and Montgomery, "based on the proximity of both of these individuals standing right next to the car, which is parked right in front of this house, which is parked right under this window, that the gun was being fired out of, and the fact that there's damage to the car, which is right next to where the people were." We decline to disturb the trial court's assessment of the evidence and the reasonable inferences it drew therefrom. *Siguenza-Brito*, 235 Ill. at 228. Accordingly, we conclude that the evidence was not so unsatisfactory as to raise a reasonable doubt of defendant's guilt.

¶ 33 Defendant's final contention on appeal is that the trial court erred in repeatedly admitting, over objection, testimony from Officer Frausto regarding statements that had been made to him by Wilson, Montgomery, and defendant's mother. Defendant argues that Frausto's testimony was hearsay and was not rendered proper or admissible by the "police procedure" exception. He asserts that the State went beyond what might have been permitted under the exception, that the trial court misunderstood the limits applicable to the exception, and that the erroneously admitted testimony was "seriously prejudicial." In particular, defendant argues that where there was no admissible testimony by any witness that he fired shots in the direction of Montgomery or Wilson, Frausto's improper hearsay testimony that the two men told him defendant had been "shooting at their direction" and "shot towards their direction" prejudiced him.

¶ 34 The testimony, objections, and rulings on objections to which defendant takes issue in his brief are as follows:

> "Q. When you were flagged down, did you get out of the car and have a conversation with these individuals?

A. I did.

Q. And did your partners also get out of the car?

A. Yes.

Q. And after you had this conversation with these - - with Mr. Montgomery and Mr. Wilson, what is the next thing that you and your partners did?

A. I relocated to 441 North Springfield which is the location that they identified.

[DEFENSE COUNSEL]: Objection, Judge, to what they identified.

THE COURT: Overruled. I'll only take it to inform his course of conduct and not for the truth of the matter asserted.

Q. What was the address of the location you went to?

A. 441 North Springfield.

Q. And why did you go to that specific location?

A. That is where the victims had informed me that the defendant Crosby was standing in the window shooting at their direction.

[DEFENSE COUNSEL]: Objection, Judge, again.

THE COURT: Overruled. Again, I'm not taking any of this for the truth of the matter asserted but just to explain his course of conduct and why he relocated to 441 North Springfield, that particular apartment or window.

Q. During your conversation with Mr. Montgomery and Mr. Wilson, did you get any sort of description of a possible individual that - - at that location of 441 North Springfield?

A. Yes.

Q. What was that description?

A. A male black wearing a red shirt and a flannel.

[DEFENSE COUNSEL]: Just for the record, Judge, I'll object to that. I know it goes to course of conduct.

THE COURT: Right. Again, all of the officer's testimony as it relates to anything told to him by Mr. Montgomery and Mr. Wilson is not going to be hearsay because I'm not considering it for the truth of the matter asserted but explains why the officer did what he did next with the defendant.

So I'll note your continuing objection to this.

Go right ahead, State.

[DEFENSE COUNSEL]: Yes.

Q. When you went to the location at 441 North Springfield, is that a house or an apartment?

A. It's a house.

Q. And when you arrived at that location, did you arrive with your partners?

A. I did.

Q. Were the victims in this case still in the general vicinity of that area?

A. Yes.

Q. And what did you - - what's the next thing you did when you arrived at the house?

A. I obviously knocked on the door. I was met by Crosby's mother. I informed her of the situation at hand and asked her if someone was in the second floor or the attic area.

Q. And at this point did you learn whether or not an individual was up on the second floor of the attic area?

[DEFENSE COUNSEL]: As well, Judge, objection to this as hearsay.

[ASSISTANT STATE'S ATTORNEY]: Your Honor, I would say it's not hearsay. It's a question of whether or not he learned if someone was upstairs.

THE COURT: I'm going to overrule the objection. I take it it's going to explain why he went up to the second floor, so we'll see where it goes.

[DEFENSE COUNSEL]: Sure.

THE COURT: Go ahead.

Q. Did you learn whether or not there was another individual possibly upstairs in that house?

A. Yes.

***

Q. Once you saw the defendant up there [in the attic], what, if anything, did you do with the defendant?

A. I walked down with him. I came out of the residence. The defendant - - I'm sorry. The victims in this case identified Mr. Crosby as the person who stood at the window and shot towards their direction and struck their car.

[DEFENSE COUNSEL]: Once again, Judge, objection.

THE COURT: Overruled.

***

Q. What else did you recover?

A. A flannel jacket.

Q. Why did you recover that jacket?

A. Because both defendants described Mr. Crosby as - -

THE COURT: You mean both witnesses?

A. I'm sorry, yes. Both witnesses described Mr. Crosby as a male black wearing a red shirt and a flannel.

[DEFENSE COUNSEL]: Just objection for the record, Judge.

THE COURT: Pardon me, sir?

[DEFENSE COUNSEL]: Objection for the record as to hearsay.

THE COURT: Okay, it will be noted. Overruled.

***

Q. Once you got back to the station did you have Mr. Montgomery do anything with respect to the jacket that you recovered from the defendant's home?

A. Yes.

Q. What did you do?

A. I had him identify the jacket.

Q. And did he identify it?

A. Yes, he did.

Q. And did he identify it as the one - - what did he identify that jacket as?

A. As the jacket that - - the flannel jacket which he described that Mr. Crosby was wearing.

THE COURT: And this is Mr. Montgomery we're talking about right now?

[ASSISTANT STATE'S ATTORNEY]: Yes.

[DEFENSE COUNSEL]: And Judge, I'll object as to the witness identifying what the flannel shirt was as hearsay. I believe personal property - - there can be an ID that's out of court that's subject to the hearsay rule but not individual pieces of property. That's the basis of my objection.

THE COURT: Okay, I'm going to overrule it. You can proceed.

[DEFENSE COUNSEL]: Thank you, Judge.

Q. Officer, with respect - - did you also have Mr. Wilson do anything with the jacket you recovered from the defendant's attic area?

A. Yes.

Q. And what did you have Mr. Wilson do with the jacket?

A. He also identified the jacket as the jacket that Mr. Crosby was wearing when he shot out of the attic window.

[DEFENSE COUNSEL]: Same objection, Judge.

THE COURT: Okay."

¶ 35 In support of his assertion that the trial court misunderstood the limits applicable to the "police investigation" rule, defendant quotes the following comments made by the court when it denied his posttrial motion:

> "With respect to the motion for new trial, I have reviewed it, and dealing with what you have alleged in No. 7C, which had to do with the testimony of Officer Frausto, I believe that I related at several points during the course of the trial that I was not taking any of that testimony for the truth of the matter asserted but merely to explain the officer's course of conduct. Such testimony is not hearsay unless it is being offered for the truth of the matter asserted.
>
> Certainly the court is able to put that aside and only take it to explain why Officer Frausto did what he did next. Were this to be a jury, I probably would have limited that testimony more carefully because I don't have the faith in a jury that I have in myself which is to disregard the truth of the matter asserted, elements of it."

¶ 36 An out-of-court statement offered to prove the truth of the matter asserted is hearsay. *People v. Smith*, 141 Ill. 2d 40, 76-77 (1990). Conversely, an out-of-court statement offered for a reason other than for the truth of the matter asserted is generally admissible because it is not hearsay. *People v. Dunmore*, 389 Ill. App. 3d 1095, 1106 (2009). For example, such a statement is not hearsay if it is offered to prove its effect on the listener's state of mind or to show why the listener subsequently acted as he or she did. *Id.* As relevant in the instant case, if a statement is

offered to explain the actions or steps that a police officer took during the course of an investigation, then the statement is not hearsay. *People v. Jura*, 352 Ill. App. 3d 1080, 1086 (2004). A trial court's ruling on the admissibility of evidence will not be reversed unless there has been an abuse of discretion. *Id.* at 1085.

¶ 37 Here, during the above-quoted exchanges, Officer Frausto volunteered information given to him by others about the location of the shooting, the direction of the shooting, defendant's physical description, and defendant's presence in the house's attic apartment. Each time Frausto related these statements made by other people, defense counsel objected, and the trial court repeatedly stated it was only considering the testimony to explain the officers' course of conduct, rather than for the truth of the matter asserted. In closing arguments, the State's only mention of the out-of-court statements was the prosecutor's remark that it would have been nice if a gun had been recovered, but when Frausto asked defendant's mother if he could search the home, she "said that the defendant stays upstairs, and that's the area in which they searched." Later, when ruling on defendant's posttrial motion, the trial court reiterated that with regard to Frausto's testimony, it had disregarded the truth of the matter asserted in the out-of-court statements, and considered the testimony only "to explain why Officer Frausto did what he did next." Thus, the record demonstrates that this is not a case like *Jura*, 352 Ill. App. 3d at 1088-89, upon which defendant relies, where the defendant was tried by a jury, the State repeatedly elicited hearsay through the testimony of three witnesses, and the State relied upon the hearsay in opening and closing arguments. There, the record demonstrated the hearsay was used as substantive evidence to prove the defendant guilty. *Id.* at 1089. Here, the record does not support such a conclusion.

¶ 38 We agree with the trial court that Frausto's testimony was not elicited to place substantive information about the shooting into evidence, but rather, to help explain why Frausto and the other responding officers took the actions they did. See *Hammonds*, 409 Ill. App. 3d at 856. The testimony defense counsel objected to explained why the officers went to the house, why they were looking for a man in the attic, why they went upstairs, why they arrested defendant, and why they recovered a flannel jacket from the house. The out-of-court statements had the nonhearsay purpose of establishing their effect on the listener, rather than being admitted for the truth of the matter asserted. See *id*. As such, we cannot find that the trial court abused its discretion and defendant's argument fails.

¶ 39 For the reasons explained above, we affirm the judgment of the circuit court. Additionally, having examined the briefs and record, this Court has determined that this case sets forth no novel legal issue or complicated factual matter indicating that oral argument would further our consideration.

¶ 40 Affirmed.