

Appellate Practice Corner

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“Ask Permission, Not Forgiveness”: The Appellate Court’s Message to Trial Counsel in *Harrell v. City of Chicago*

A recent decision from the Illinois Appellate Court, First District, underscores the severe consequences that can follow from disregarding pretrial court orders, regardless of whether counsel believes those orders are wrong. In *Harrell v. City of Chicago*, 2025 IL App (1st) 240119, the appellate court affirmed the trial court’s decision to vacate a \$10.2 million jury verdict in a police chase case, based on counsel’s repeated violations of *in limine* rulings and improper closing argument. The opinion is a cautionary reminder that pretrial rulings bind the parties throughout trial and must be followed unless modified by the court.

The underlying case stemmed from a tragic police pursuit on Chicago’s South Side. Officers heard gunshots several blocks away and soon saw a white Kia Sorrento speeding out of an alley near the source of the shots. *Harrell*, 2025 IL App (1st) 240119, ¶ 5. Believing the Kia might be connected to the shooting, officers initiated a traffic stop, approached the vehicle with guns drawn, and removed a rear-seat passenger. *Id.* ¶¶ 5, 13. At that point, the driver suddenly accelerated, fleeing the stop. Two Chicago Police Department (CPD) officers pursued the Kia for roughly six blocks, reaching speeds of up to 60 mph, without activating their siren. *Id.* ¶¶ 5, 13. During the chase, the Kia ran a stop sign and collided at high speed with a vehicle driven by Stacy Harrel, with her daughter Kimberlyn as a passenger. *Id.* ¶¶ 5-6. Stacy was killed and Kimberlyn suffered serious injuries. *Id.* ¶ 6. A firearm was later found inside the Kia, but the driver and front-seat passenger fled the scene and were never located. *Id.* ¶¶ 5, 13.

Plaintiffs brought a wrongful death and personal injury action against the City of Chicago, alleging that the CPD officers’ conduct was willful and wanton and directly caused the collision. *Harrell*, 2025 IL App (1st) 240119, ¶ 7. They asserted that the officers: (i) stopped the Kia without any basis to suspect its involvement in the shooting; (ii) failed to properly secure the vehicle once stopped; and (iii) violated CPD policy in multiple respects, including by pursuing a fleeing vehicle at high speeds without activating a siren. *Id.* ¶ 14. At trial, plaintiffs presented testimony from plaintiffs and their family members, the five CPD officers involved, and plaintiffs’ police-practices expert. *Id.* ¶ 12. Defendants called no witnesses. *Id.* The jury returned a verdict of \$10.2 million for plaintiffs. *Id.* ¶ 16.

Before trial, the court entered two key *in limine* orders. First, it barred any evidence or argument suggesting that CPD’s post-accident investigation was inadequate or negligent, finding such matters irrelevant as to whether the officers acted willfully and wantonly in initiating the stop and engaging in the pursuit. *Id.* ¶¶ 9, 44. Second, the court barred plaintiffs’ expert from opining that the officers lacked probable cause to stop the Kia, explaining that this is a question of law for the court, not subject for expert testimony. *Harrell*, 2025 IL App (1st) 240119, ¶ 59.

After the verdict, defendants moved for a new trial, arguing that plaintiffs’ counsel repeatedly violated both rulings and compounded the prejudice through improper burden-shifting arguments in closing. *Id.* ¶ 16. The trial court agreed, finding that plaintiffs’ counsel had “continuously and blatantly disregarded” the court’s pretrial orders, and granted a new trial. *Id.* Plaintiffs sought and obtained interlocutory review under Supreme Court Rule 306.

Violations of *In Limine* Rulings

The appellate court began by emphasizing that not every violation of a motion *in limine* entitles a party to a new trial. *Id.* ¶ 42. A new trial is warranted “only where the order is specific, the violation is clear, and the violation deprived [a party] of a fair trial.” *Id.* (citing *Bakes v. St. Alexius Med. Ctr.*, 2011 IL App (1st) 101646, ¶ 40). Here, the court found that standard satisfied.

The court first addressed plaintiffs’ questioning of police officers about the shooting incident and the officers’ failure to investigate the alley before initiating the stop and chase. *Harrell*, 2025 IL App (1st) 240119, ¶ 46. Although the court acknowledged that this line of questioning was “no clear violation” of the pretrial order—since the order barred only evidence relating to the *post-crash* investigation—the trial judge had nonetheless ruled during trial that the topic was irrelevant and off limits. *Id.* ¶¶ 47-50.

The appellate court stressed that “after the trial court had ruled that topic off-limits, right or wrong, based on relevance,” plaintiffs’ counsel “was dutybound to respect the trial court’s ruling,” yet they persisted in the prohibited questioning. *Id.* ¶ 52. More significant, the appellate court held, were plaintiffs’ questions about the post-crash investigation, which the *in limine* order expressly prohibited. *Id.* ¶¶ 54-57. Despite that clear ruling, plaintiffs questioned officers about the recovery of the gun found inside the Kia, including whether it was associated with any passenger. *Id.* ¶ 54. Counsel then questioned the expert about whether the gun belonged to anyone in the vehicle, whether fingerprints were found, whether the gun had been used in a crime that night, and whether it had been discharged. *Id.* ¶ 55. None of this information had any bearing on what officers knew at the time of the stop or pursuit, and all of it fell squarely within the prohibited category. These, the court held, were “flagrant violations of the pretrial order barring evidence of post-accident investigation.” *Harrell*, 2025 IL App (1st) 240119, ¶ 57.

Plaintiffs also repeatedly violated the order barring expert testimony on legal questions. *Id.* ¶¶ 59-69. During direct examination of their police-practices expert, counsel asked whether there was “any reasonable basis to believe the Kia was involved with any shooting” and what his “opinions” were on the legality of the stop. *Id.* ¶¶ 63-64. The expert responded that the officers “did not have reasonable suspicion to pull that vehicle over.” *Id.* ¶ 63. Counsel pressed further, asking whether there was “any support for probable cause,” prompting yet another prohibited legal opinion that the officers lacked reasonable suspicion. *Id.* ¶ 64. Although objections were sustained, the jury had already heard the impermissible testimony.

Plaintiffs argued on appeal that officers had “opened the door” by mentioning reasonable suspicion during their testimony. *Id.* ¶ 70. The appellate court firmly rejected that position, holding that counsel cannot simply assume a witness has opened the door to otherwise inadmissible testimony:

There may be times when asking for forgiveness, not permission, is the better approach, but not when arguably violating a judge’s pretrial order.

Harrell, 2025 IL App (1st) 240119, ¶ 78.

If counsel believes testimony has opened the door, the proper course is to stop and raise the issue with the court—not to proceed unilaterally. The court emphasized that *in limine* rulings bind the parties throughout trial unless the judge modifies them, and counsel’s belief that the jury already heard similar information does not excuse further violations. *Id.*



Improper Closing Argument

The appellate court also found substantial prejudice from plaintiffs’ closing argument, in which counsel repeatedly criticized the City for failing to call witnesses or an expert to rebut plaintiffs’ police-practices expert. *Id.* ¶¶ 82-88. Counsel told the jury: “You’ll notice in this case that the City called no witnesses,” and “No witness came in and said that the policy was properly executed or didn’t apply in this case. You know why? Because the City couldn’t find one.” Counsel also argued, “If there was someone on the City side who was going to come in,” suggesting that defendants had a duty to present contrary testimony. *Id.* ¶ 83.

The appellate court held that these arguments improperly shifted the burden of proof. *Id.* ¶ 88. While plaintiffs may permissibly note that their expert’s testimony was un rebutted, they may not fault the defense for failing to call witnesses. *Id.* ¶ 85. As the court noted, “the plaintiff always has the burden of proof in a civil action,” and suggesting that defendants failed to do their job crosses the line. *Harrell*, 2025 IL App (1st) 240119, ¶ 86. The court summarized that “counsel’s arguments in closing, at times, clearly crossed the line from arguing that their evidence was un rebutted to shifting the burden onto defendants,” and also noted that counsel continued pressing the argument even after objections were sustained, in “open defiance of the trial court’s rulings.” *Id.* ¶ 88.

Considering the cumulative effect of the *in limine* violations and improper burden-shifting arguments, the appellate court held that “the trial court did not clearly abuse its discretion in determining that the combination of improper testimony and closing argument denied defendants a fair trial.” *Id.* ¶¶ 90-92.

Practice Pointers

Harrell offers several concrete practice lessons. Counsel must treat *in limine* rulings as binding throughout trial—even if they believe the rulings are incorrect—unless and until the court revisits them. Counsel may not unilaterally conclude that a witness has “opened the door” to prohibited testimony; any such issue must be raised with the judge. While it is permissible to emphasize that one’s own evidence is un rebutted, it is impermissible to fault defense for failing to call witnesses, as doing so improperly shifts the burden of proof. Finally, continuing to pursue prohibited lines of questioning or argument after the court sustains objections is particularly prejudicial and can result in reversal—even of a multimillion-dollar verdict.

About the Author

Irina Dmitrieva is a partner with *HeplerBroom, LLC*. She focuses her practice on appellate litigation and critical trial motions. Irina has represented both government entities and private clients in federal and state appellate courts, including the Illinois Supreme Court, Illinois Appellate Court, and the U.S. Court of Appeals for the Seventh Circuit. Prior to joining HeplerBroom LLC, she handled all appeals on behalf of the Chicago Transit Authority.

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