

2011 IL App (1st) 091505-U
No. 1-09-1505

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FIRST DIVISION
August 8, 2011

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. 08 MC1 95803
)	
PERCY BELL MOORE,)	Honorable
)	Thomas More Donnelly,
Defendant-Appellant.)	Judge Presiding.

JUSTICE LAMPKIN delivered the judgment of the court.
Presiding Justice Hall and Justice Rochford concurred in the judgment.

O R D E R

HELD: Defendant was not prejudiced by the State's improper reference in closing argument to a statement by defendant that had been excluded from evidence for not having been disclosed in discovery, where defendant's objections were sustained and a limiting instruction given to the jury, and where the properly-admitted evidence against defendant was overwhelming.

¶ 1 Following a jury trial, defendant Percy Bell Moore was convicted of criminal trespass to real property and sentenced to two years' probation. On appeal, defendant contends that he was deprived of a fair trial when the prosecutor referred in closing argument to an inculpatory statement by defendant that the court had excluded from evidence.

¶ 2 Defendant was charged with criminal trespass to real property for remaining on land on February 7, 2008, specifically the studios and offices of WLS television at 190 North State Street in Chicago (the Station), after an agent of WLS gave him notice to depart the premises.

¶ 3 Before trial, the State filed a motion *in limine* to introduce other-crimes evidence: defendant's eight prior arrests for trespass at the Station between October 2004 and October 2007. However, none of the arrests had resulted in a conviction, and the court denied the motion.

¶ 4 During opening statements, the assistant State's Attorney (ASA) was describing the alleged offense when she stated that defendant "insisted that he be arrested. He insisted that the police come down and take him away. He was not going to leave." Defendant objected on the ground that no such statement by defendant was disclosed in discovery. The court granted the objection based on non-disclosure but denied defendant's motion for a mistrial.

¶ 5 Kelly Craig testified that she was a receptionist at the Station and was working at the front desk in the lobby of the Station on the afternoon of February 7, 2008. Defendant entered the lobby and told Craig that he wanted to be arrested. Defendant's objection to this latter testimony was sustained. Craig called the attention of a nearby Station security guard and told him that defendant had been to the Station previously that day and had been arrested. The guard told defendant to leave, but he did not, and told the guard that he wanted to be arrested. Defendant's objection to the latter testimony was sustained. Craig called the police, who came to the Station and arrested defendant. To the best of Craig's knowledge, defendant is not employed by WLS. On cross-examination, Craig stated that there is a sign in the lobby of the Station stating that no person may enter the Station without a WLS employee identification or pass.

¶ 6 Erica Bautista testified that she was the security director at the Station and was there on February 7 when she saw defendant in the lobby of the Station. Defendant "came into our building and wanted to be arrested." A defense objection to this testimony was overruled. Bautista was certain that defendant was not an employee of WLS, as she knew every person in the Station.

¶ 7 Defendant moved for mistrial, arguing that both witnesses had referred to statements by defendant that violated his right against self-incrimination and that Craig had referred

to defendant's earlier trespasses. The court noted that the statements were excluded, and the objections sustained, for non-disclosure rather than as self-incrimination. The court found that the reference to defendant being at the Station previously did not rise to a violation of the order *in limine*. As to defendant's statements, the court noted that it sustained defense objections and was going to give the jury a limiting instruction. The court denied the motion for mistrial and then instructed the jury to disregard all statements allegedly made by defendant.

¶ 8 Police officer Thaddeus Martyka testified that he went to the Station in response to a telephone report of a trespasser being held there. Upon arriving, Officer Martyka saw defendant in the lobby of the Station in the custody of Station security.

¶ 9 Defendant made a motion for a directed verdict, noting that Craig did not testify that she told defendant to leave. When the State noted Craig's testimony that the guard told defendant to leave, the defendant argued that it was inadmissible hearsay. The court denied the motion, finding the guard's statement to be a command admissible into evidence not for its truth -- a command is not an assertion that some fact is true -- but for its effect upon defendant.

¶ 10 Defendant testified that he went to the Station on February 7, 2008, where he told the receptionist to "please call

the police to have me placed back in jail." Defendant was then told to leave the Station but refused to do so, sitting down on the lobby floor. Defendant had been to the Station four times previously but "[t]hey keep throwing me out of jail" so "I'm asking them to take me to the County Jail."

¶ 11 During closing arguments, the ASA referred to Craig's testimony that defendant told her he wanted to be arrested. Defendant's objection was sustained. The ASA also argued that Craig's account was corroborated by defendant himself.

¶ 12 Following closing arguments and jury instructions, defendant made a motion for mistrial based upon the State's closing-argument reference to defendant's statement to Craig. The court denied the motion, noting that it was "shocked" that the State would refer to the statements in question in "flagrant disregard" of several rulings to exclude the statements, but finding that the sustaining of the objections and the curative instruction were sufficient to avoid mistrial.

¶ 13 Following deliberations, the jury found defendant guilty. After arguments in aggravation and mitigation, the court sentenced defendant to two years' probation including a condition that defendant avoid contact with WLS at the Station premises.

¶ 14 Defendant filed a post-trial motion, claiming in relevant part that he was deprived of a fair trial by the State's

closing-argument reference to the excluded statement by defendant to Craig. The motion was denied, and this appeal followed.

¶ 15 On appeal, defendant contends that he was deprived of a fair trial when the ASA's closing argument referred to an inculpatory statement by defendant that the court had excluded from evidence.

¶ 16 Improper remarks by a prosecutor generally do not constitute reversible error unless they result in substantial prejudice to the defendant. *People v. Chromik*, 408 Ill. App. 3d 1028, 1040 (2011). Potential prejudice associated with improper prosecutorial remarks is usually cured by the prompt sustaining of an objection combined with proper jury instruction. *Chromik*, 408 Ill. App. 3d at 1040. A reviewing court will find reversible error only if the defendant demonstrates that the improper remarks were so prejudicial that justice was denied or the verdict resulted from the error. *People v. Jacobs*, 405 Ill. App. 3d 210, 220-21 (2010).

¶ 17 Here, we find that defendant was not deprived of a fair trial because he was not prejudiced by the improper argument referring to his barred statements. The court sustained defense objections to the barred statements during testimony and arguments, with one exception, and gave a limiting instruction as well as the general instruction that closing arguments are not evidence. Furthermore, though it is not an element of the

offense of criminal trespass to real property that defendant wanted to be arrested, there was properly-admitted evidence to that effect in the form of defendant's own testimony. Moreover, the elements of the offense -- that defendant remained on the Station premises after being told to depart the premises (720 ILCS 5/21-3(a)(3) (West 2008)) -- were overwhelmingly shown by defendant's testimonial admissions as well as by properly-admitted evidence from the State's witnesses. Thus, we conclude that the verdict against defendant was not the result of the State's improper closing argument.

¶ 18 Accordingly, the judgment of the circuit court is affirmed.

¶ 19 Affirmed.