

No. 1-09-1208

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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. 06 CR 10750
)	
JEROME JAMES,)	Honorable
)	William G. Lacy,
Defendant-Appellant.)	Judge Presiding.

JUSTICE ROCHFORD delivered the judgment of the court.
Presiding Justice Hall and Justice Lampkin concurred in the judgment.

O R D E R

HELD: Where the evidence of uncharged conduct was relevant, probative, substantially similar to the crimes charged and not overly prejudicial, the trial court did not abuse its discretion in admitting the evidence.

After a jury trial, defendant, Jerome James, was found guilty of three counts of aggravated battery of a peace officer and sentenced to three six-year prison terms to be served concurrently. On appeal, he argues that he was deprived of a fair trial because the trial court improperly admitted overly prejudicial evidence of an uncharged act. We affirm.

Following physical altercations between defendant, an inmate

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at Cook County jail, and several correctional officers, defendant was charged with six counts of aggravated battery against three correctional Officers: Ollie Gavin, Tyrone Gilmore and Brian Ruzanski. At trial, the State presented the testimony, among others, of correctional Officers Gavin, Gilmore and Ruzanski, and Sergeant Timothy Doody, and Lieutenant Kieran Mundt. At issue in the present appeal is Lieutenant Mundt's testimony that defendant bit his hand.

The officers' testimony revealed that, at approximately 4:15 p.m. on April 26, 2006, correctional officers, including Officers Gavin and Ruzanski, were lining up the inmates to pat them down to check for weapons and drugs in preparation of moving them from tier 1-A to the recreation room. Despite Officer Gavin's requests, defendant refused to stand in line and Officer Gavin contacted his supervisor, Sergeant Doody. Ultimately, Officer Gilmore and Lieutenant Mundt also came when all available officers were called to assist.

Officer Gavin testified that while Sergeant Doody was ordering defendant to go to the recreation room, defendant walked past Sergeant Doody and punched Officer Gavin in the chin with a closed fist. One officer told the other inmates to lie down so they would not get involved, while Officers Ruzanski and Gilmore helped restrain defendant. The officers fell to the ground trying to handcuff defendant, who continued to punch and kick at them, hitting both officers. After defendant was detained, Officer Gavin

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went to Cermak Health Services of Cook County (Cermak), the jail's hospital, where he received three or four stitches for his bleeding chin.

Officer Gilmore testified that he went to tier 1-A and saw Officer Gavin and Sergeant Doody directing defendant to get in line. Defendant was loud, seemed upset and was in a defensive stance with his back against the wall. Officer Gilmore saw defendant strike Officer Gavin with a closed fist. Officer Gilmore was joined by Officer Ruzanski in trying to restrain defendant while defendant began swinging wildly. Defendant struck Officer Gilmore in the chin where he sustained a long cut on the inside of his lip. In addition to the cut, Officer Gilmore also injured his wrist in the scuffle. Officer Gilmore was sent to the Receiving, Classifications and Diagnostics Center (RCDC) and then went to Cermak.

Sergeant Doody corroborated the testimony of Officers Gavin and Gilmore. Sergeant Doody saw defendant punch Officer Gavin with a closed fist. Sergeant Doody called for all officers to respond, then ordered the rest of the inmates to lie down on the floor.

Officer Ruzanski further corroborated the testimony of Officers Gavin, Gilmore and Sergeant Doody. Officer Ruzanski saw defendant strike Officers Gavin and Gilmore in the face. As Officer Ruzanski helped restrain defendant, defendant fell to the ground on top of Officer Ruzanski's hand. Officer Ruzanski was told to go to RCDC medical. After getting his hand wrapped,

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Officer Ruzanski was sitting on a bench in RCDC when defendant being escorted in handcuffs and shackles. Defendant told Officer Ruzanski, "I will see you on the street, motherf**ker". Defendant then lunged at Officer Ruzanski, and he "head-butted" the side of Officer Ruzanski's head and threw himself on top of Officer Ruzanski. Lieutenant Mundt helped pull Officer Ruzanski from under defendant, and told Officer Ruzanski to go to Cermak. Officer Ruzanski sustained a fractured hand.

Lieutenant Mundt testified that he was asked to help escort defendant to RCDC medical with Officer Benjamin Daniel and another officer. Lieutenant Mundt held defendant's left arm as they walked and the other two officers walked behind defendant.

At this point in the testimony, the trial court told the jury that they were about to receive evidence of conduct from defendant for which he was not charged. The court warned that the testimony could only be considered for the sole purpose of determining defendant's intent or state of mind. The trial court said:

"[Y]ou are about to receive evidence that the Defendant has been involved in conduct other than that charged in the Indictment. This evidence is going to be received on the issue of Defendant's intent or state of mind and may be considered by you only for that limited purpose. It is for you to determine whether the Defendant was involved in that conduct and, if so, what weight should be given to this evidence on the issues of intent or

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state of mind of the Defendant."

These instructions were given in light of a motion *in limine* defendant brought before trial that was denied by the trial court.

Lieutenant Mundt continued his testimony and explained that, as they walked into the RCDC waiting room, defendant pulled him sharply to the right, "head-butted" Officer Ruzanski, then fell on top of him. After Lieutenant Mundt pulled Officer Ruzanski from under defendant, he noticed his own hand was bleeding and saw what looked like a tooth mark on his knuckle. Lieutenant Mundt was treated at Cermak and saw defendant upon his return approximately 30 minutes later. Defendant said, "[w]elcome to my world b*tch. Now you got AIDS, too."

Officer Daniel testified that after defendant fell on top of Officer Ruzanski, he attempted to restrain defendant and saw defendant turn his head toward Lieutenant Mundt's hand, and Lieutenant Mundt pull his hand back.

After the State rested, Inspector Sofus testified for defendant that she was assigned to investigate the aggravated battery charges and interviewed the officers involved. The first time she interviewed Lieutenant Mundt, he did not mention the statement defendant made after he was bitten. However, in the second interview, he told her defendant said, "[w]elcome to my world."

Investigator Ron Sachtelben testified that he took photos of the injuries of defendant and Officers Gavin, Gilmore, Ruzanski and

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Lieutenant Mundt.

Lawrence Tubbs, who was an inmate on tier 1-A at the time, testified that when the inmates were searched, they faced the wall and had their pants pulled down by the correctional officers. After the search, Mr. Tubbs saw a "white shirt", or a sergeant, start "messing with" defendant. Another officer pushed defendant and then the officers "rushed" defendant. The other inmates were told to get on the floor, but Mr. Tubbs could still see seven or eight officers jumping on defendant. Mr. Tubbs did not see defendant attack any officer.

Michael Broadway, who was facing a murder charge, testified that, on April 26, 2006, he was being processed in RCDC when he saw defendant being escorted out. Mr. Broadway did not see defendant lunge at anyone. He saw defendant "talking back and forth" with an officer who struck defendant twice outside the RCDC, and then saw a group of officers tackle defendant to the ground. Broadway was facing a murder charge.

Assistant state's attorney, Greg Ahern, testified as a rebuttal witness for the State and explained that he had interviewed Mr. Broadway, and Mr. Broadway had said he saw defendant get hit when he was being escorted into RCDC, not outside the area.

Bernard McNutt testified that he was working as an emergency medical technician at Cermak on April 26, 2006. Mr. McNutt saw defendant say something to an officer on a bench in RCDC, saw him

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"head-butt" the officer and fall on top of him. Mr. McNutt did not see an officer punch or hit defendant before the "head-butt."

Investigator Dale Peters testified that he was assigned to investigate the incident. Investigator Peters interviewed Mr. Tubbs, who failed to mention that every inmate had his pants pulled down, that an officer started the altercation by pushing defendant, that he continued watching the incident after he was on the ground, or that he observed six or seven correctional officers jumping on defendant. Mr. Tubbs did say that an officer pulled defendant out of line and began hitting him.

In closing arguments, the State mentioned the bite to Lieutenant Mundt's knuckle and defendant's statement, "Welcome to my world, b*tch. Now you got AIDS too." once during closing argument and once during rebuttal.

The jury found defendant not guilty of causing bodily harm to Officer Gilmore (count 3) and guilty of the five remaining charges. After merging two counts, the court imposed three concurrent six-year prison terms for aggravated battery based on causing bodily harm to Officer Gavin (count 1), for aggravated battery based on making physical contact of an insulting or provoking nature to Officer Gilmore (count 4), and for aggravated battery based on causing bodily harm to Officer Ruzanski (count 5).

On appeal, defendant contends the trial court abused its discretion in admitting testimony that defendant bit Lieutenant Mundt and said, "Welcome to my world, b*tch. Now you got AIDS

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too." Specifically, defendant argues the testimony's prejudicial impact outweighed its probative value and, therefore, it was improperly admitted.

Evidence of other crimes is admissible for any purpose other than demonstrating defendant's propensity to commit crimes. *People v. Lovejoy*, 235 Ill.2d 97, 135 (2009). Other-crimes evidence may be admitted to show *modus operandi*, intent, identity, motive or absence of mistake. *People v. Adkins*, 239 Ill.2d 1, 11 (2010). Even if relevant for a permitted purpose, evidence of other crimes should be excluded if its prejudicial effect outweighs its probative value. *Adkins*, 239 Ill.2d 1 at 11. The admissibility of evidence is a decision soundly within the discretion of the trial court, and will only be reversed upon a showing of a clear abuse of discretion. *Lovejoy*, 235 Ill.2d at 135-36. A trial court abuses its discretion when its "decision is arbitrary, fanciful, or unreasonable, such that no reasonable person would take the view adopted by the trial court." *Lovejoy*, 235 Ill.2d at 125.

Here, we find the court did not abuse its discretion in allowing the other-crimes evidence to be admitted. This evidence was both relevant and probative to defendant's state of mind during the charged conduct. Defendant was charged with aggravated battery against three correctional officers. While the State's witnesses testified that defendant started the altercation, the defense witnesses testified that defendant never punched, "head-butted", or kicked anyone. The testimony that defendant bit Lieutenant Mundt

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when Lieutenant Mundt was helping rescue Officer Ruzanski from defendant's attack and later said, "Welcome to my world, b*tch. Now you got AIDS too.", is relevant to show that defendant's intent was aggression and violence toward the officers. Additionally, the other-crimes evidence is substantially similar to the charged conduct, as both instances involve unprovoked violence from an inmate against a corrections officer. When evidence of other crimes is being offered to prove intent or state of mind, general areas of similarity are sufficient to allow admission of the evidence. *People v. Wilson*, 214 Ill.2d 127, 140-41 (2005).

Defendant argues that the evidence was more prejudicial than probative because of the reference to the transmission of a deadly disease. However, there was no evidence as to whether defendant or Lieutenant Mundt had tested positive for AIDS. The focus was not on the potential transmission of AIDS, but, rather, on how the statement demonstrated defendant's intent to bite Lieutenant Mundt. In its closing argument, the State strongly emphasized what defendant was thinking when he made the statement, not whether defendant actually transmitted AIDS to Lieutenant Mundt. Additionally, the trial court gave a limiting instruction to the jury, both just before Lieutenant Mundt testified about the bite and defendant's statement and just before deliberation, that the testimony of the uncharged offense could only be used to consider defendant's intent or state of mind. See *Lovejoy*, 235 Ill.2d at 136-37 (admission of other-crimes evidence upheld where it was

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relevant to defendant's intent and the trial court further limited prejudice by giving a limiting instruction to the jury). Under these circumstances, we cannot find that the court abused its discretion.

For the foregoing reasons, we affirm the judgment of the trial court.

Affirmed.