

estranged husband's mother, Sue Armstrong, was going to deliver the daughter to the White County sheriff's department to facilitate an exchange. Defendant was in the back parking lot of the sheriff's department awaiting the arrival of her daughter.

¶ 5 Deputy Randy Graves was on hand to assist in the transfer of the child. He testified that defendant's daughter did not want to participate in the visitation, and, therefore, he told Sue Armstrong to "go ahead and leave." Defendant's daughter and Sue Armstrong then got into a car, and Sue drove away. Upon seeing this occur, defendant got into her own car and, according to Graves, "squealed her tires" as she drove away in what Graves believed was pursuit of Sue Armstrong.

¶ 6 Graves testified that defendant failed to stop at a stop sign, so he got in his car to pursue defendant and execute a traffic stop. He saw her disobey a second stop sign, and he activated his lights. Defendant did not stop, so he activated his siren. Defendant eventually stopped by a watermelon stand.

¶ 7 Graves approached defendant's vehicle and told her he was stopping her for traffic violations. He requested her driver's license and insurance card. Defendant gave Graves her license, but she did not have an insurance card. Graves returned to his squad car to write citations and noticed the address on the license was not current. He returned to defendant's vehicle and asked for her current address. Defendant told Graves she was "homeless." By this time another officer arrived on the scene. Graves returned to his squad car and continued to write the citations. Graves saw defendant looking into her review mirror and giving him the middle finger and making faces at him. Graves also testified that during this time defendant was playing her radio "real, real loud."

¶ 8 After completing the paperwork, Graves returned to defendant's car and handed her the citations. Graves noticed that defendant's attitude had completely changed, and she was looking straight ahead and applying makeup. Defendant took the citations and "wadded them

up and threw them on the floor." Graves told defendant she was free to leave. Defendant then drove off in the direction of Sue Armstrong's home. Graves drove to Armstrong's residence, but defendant was not there. He then drove to defendant's estranged husband's home and saw defendant's car parked in the yard. Graves testified he called for backup. Approximately five minutes passed when he saw defendant in the backyard of the home getting up from a trampoline and heading toward her car. When she got to her car, Graves activated his lights.

¶ 9 After a while, defendant approached Graves's squad car. Graves opened his door and told defendant to return to her car. Defendant cursed at Graves and did not go back to her car. Graves then told her he was going to arrest her for trespassing. He ordered her to "turn around and put her hands behind her back." Defendant then turned around and started heading back toward her car, so Graves followed her and "grabbed her." He testified he grabbed her left arm first and put a handcuff on it. He tried to put the handcuff on her right arm, but defendant would not let him and kept trying to pull away. At that point, defendant clawed Graves's right arm. In response, Graves "went ahead and just pushed her to the ground because [he] couldn't get her arm." Once on the ground, he was able to handcuff defendant. As he was finishing, Deputy Cantrell arrived. Graves had one knee on the ground and one knee on defendant's back upon Cantrell's arrival.

¶ 10 Graves and Cantrell lifted defendant from the ground and asked defendant if she was hurt. Defendant responded that she was not hurt and was transported to jail. Graves identified People's Exhibit A as a photograph of his right arm taken approximately one hour after the incident. The photograph shows a red mark on Graves's right arm.

¶ 11 Jason Carter, an officer with the Carmi police department, confirmed Graves's testimony about defendant's behavior when she left the parking lot. Scott Cantrell, who responded to Graves's call for backup, testified that when he arrived on the scene defendant

was pinned to the ground and handcuffed by Graves. Cantrell testified that he secured defendant in his car and drove her to jail. During the drive, defendant was "respectful" to Cantrell and she was upset and crying. Cantrell testified that he did not see any injuries on defendant, but noted that he was not looking for any injuries.

¶ 12 Defendant's mother, Dawn Beadles, testified that on the date in question she and her husband were at the Carmi police station in order to pick up defendant's daughter for visitation with defendant. Officer Carter and Deputy Graves approached her car and told her that "visitation was refused again." Dawn and her husband then left the police station. They returned home, but soon left to go to a restaurant. As they were driving to the restaurant, Dawn saw defendant's car on the side of the road with Graves and Carter nearby. Dawn and her husband stopped their car and saw defendant in her car "crying and upset." After the traffic stop was completed, Dawn saw defendant drive away. She testified her daughter drove away in a normal manner. The next time she heard from defendant was when defendant called from jail to tell her she had been arrested.

¶ 13 Dawn and her husband visited defendant in jail the following day. At that time, defendant showed them bruises located up and down her arms. Defendant told her parents her back hurt and Deputy Graves caused the bruises. Defendant was released from jail the following day, at which time Dawn took photographs of the bruises on defendant's arms and shoulder. According to Dawn, defendant had a bruise on her back. John Beadles, Dawn's husband and defendant's father, corroborated Dawn's testimony.

¶ 14 Defendant testified that she and her husband had been estranged since 2005. On October 20, 2007, defendant was at the Carmi police station to videotape the exchange of her daughter for visitation. However, she was again denied visitation and became angry, upset, and frustrated. She said that as she was driving off the parking lot, she hit some uneven pavement which caused her tire to squeal. She testified she "did not blow any stop signs."

She was stopped by Deputy Graves, who had activated his lights and siren. After sitting in the car for a long time, she decided to apply makeup to try to improve her mood. She looked into her review mirror to apply the makeup. She said after Graves gave her the tickets, she drove away, but did not wad up the tickets and throw them on the floor.

¶ 15 Defendant attempted to clear her head after the denied visitation with her daughter by going on a drive in the country. She went to the "marital property" where she had lived with her estranged husband for seven years prior to their separation. According to defendant, the house had been empty since 2006 due to fire damage. After arriving, she parked the car and walked around the back and got on her daughter's trampoline and tried to calm down. She soon heard a car door and was surprised to see Deputy Graves. Defendant got off the trampoline and walked toward her car. She looked at Graves and could not figure out why he was there. She got into her car and searched for a cigarette lighter. Graves activated the lights on his squad car. After about five minutes, defendant exited her vehicle.

¶ 16 Defendant asked Graves why he was there. Graves told defendant she was not supposed to be there. Defendant said she became alarmed because Graves would not tell her why he was there, despite her repeated requests for such information. Ultimately, Graves exited his vehicle and told defendant to get back into hers. As defendant turned to return to her car, Graves took her left arm behind her back, turned her, and shoved her against her car. He told her she was under arrest for trespassing and whatever other charges with which he might be able to charge her.

¶ 17 He asked defendant to give him her right hand. She tried to explain that the property was hers and she was not trespassing, but Graves pressed her against the car, cuffed her right hand, and took her shoulders and slammed her into the ground face first. When her shoulder hit the ground, Graves dug his knee into her back and repeatedly slammed her into the ground. He told defendant she was going to jail. Graves then radioed that defendant was

resisting arrest and that he needed backup. Defendant said she became frightened and that she did not scratch Graves. She said if she did scratch him, it was done unintentionally. Defendant said she was in pain while in jail and did not do anything to herself to cause the bruises.

¶ 18 In rebuttal, the State called Sheila Headlee, a part-time correctional officer with the sheriff's department. She testified that she assisted in booking defendant into jail on October 20, 2007, and at that time there were no injuries on defendant's body. She said that defendant was specifically examined for injuries. After none were found, that finding was written in an "incident book."

¶ 19 Doug Maier, the sheriff of White County, identified People's Exhibit B as photocopies of pages from an "Incident Log" referencing defendant when she was incarcerated for the incident in question. He testified that the log is a book which "[c]orrectional officers are required to log anything out of the ordinary in this incident book." He said it was done in the ordinary course of business. The first entry was signed by both Sheila Headlee and Billie Smith. The additional entries were signed only by Billie Smith, a correctional officer who has been employed at the jail since 2002.

¶ 20 The State moved to admit People's Exhibit B under the business records exception to the hearsay rule. It was admitted over defendant's objection, published to the jury, and allowed to go back into the jury room during deliberations. The exhibit is a series of six entries, all which stress that defendant showed no sign of injuries when she was admitted into the jail, but later showed some signs of bruising on her arm. One entry written by Billie Smith states that a bruise she noticed on defendant "could be consistant [*sic*] with the rail on the bunk." Smith went on to explain, "I saw a bruise that looked like that on a male inmate in the back cell," and while she could not remember that inmate's name, she could recall that he told her he got the bruise when he fell on his bunk. The log further states, "Again I stress

that [defendant] had NO marks on her body at time of booking." (Emphasis in original.) The log entries stress that defendant was not injured upon her arrival at the jail and suggest that defendant intentionally bruised herself while incarcerated.

¶ 21 During rebuttal, defendant testified that she was in the holding cell when Billie Smith asked her how she received all of the bruises. Defendant told her that the bruises were caused by Deputy Graves and she requested "medical assistance." Defendant testified that the correctional officers never asked her to turn around, so they did not view her entire body.

¶ 22 After hearing all the evidence, the jury found defendant guilty of resisting arrest, but not guilty of aggravated battery. Defendant filed a motion for judgment notwithstanding the verdict or for a new trial, arguing, *inter alia*, that the trial court erred in admitting People's Exhibit B into evidence. The trial court denied defendant's motion. Ultimately, defendant was sentenced to two years' probation and 100 hours of community service and fined \$1,000. Defendant's motion to reconsider sentence was denied. Defendant filed a timely notice of appeal.

¶ 23

ANALYSIS

¶ 24 The issue we are asked to address is whether the trial court erred in admitting People's Exhibit B into evidence. Defendant contends that the trial court committed reversible error in admitting People's Exhibit B into evidence because it does not qualify for the business records exception and greatly served to discredit defendant's testimony. The State replies that the trial court properly admitted the jail log entries into evidence under the business records exception to the hearsay rule. Assuming *arguendo* that a portion of the jail log entries was inadmissible, the State contends their admission constituted only harmless error and should not result in reversal. After careful consideration, we agree with defendant.

¶ 25 Section 115-5 of the Code of Criminal Procedure of 1963 provides in pertinent part as follows:

"(a) Any writing or record, whether in the form of an entry in a book or otherwise, made as a memorandum or record of any act, transaction, occurrence, or event, shall be admissible as evidence of such act, transaction, occurrence, or event, if made in regular course of any business, and if it was the regular course of such business to make such memorandum or record at the time of such act, transaction, occurrence, or event or within a reasonable time thereafter.

All other circumstances of the making of such writing or record, including lack of personal knowledge by the entrant or maker, may be shown to affect its weight, but such circumstances shall not affect its admissibility.

The term 'business,' as used in this Section, includes business, profession, occupation, and calling of every kind.

(c) No writing or record made in the regular course of any business shall become admissible as evidence by application of this Section if:

(2) Such writing or record has been made by anyone during an investigation of an alleged offense or during any investigation relating to pending or anticipated litigation of any kind ***." 725 ILCS 5/115-5 (West 2006).

Thus, according to section 115-5(c)(2), writings or records relating to a police investigation are normally excluded from the business records exception to the rule against hearsay, even though they are kept "in the regular course" of police "business." *People v. Smith*, 141 Ill. 2d 40, 72, 565 N.E.2d 900, 914 (1990).

¶ 26 Here, the sheriff testified that the incident log was kept in the regular course of business and correctional officers were required to write down anything out of the ordinary. We agree that the contents of the log pertaining to defendant were definitely out of the

ordinary. While we can understand why it might be wise to write down an inmate's lack of injuries upon arrival at the jail, the entries pertaining to defendant go well beyond that and were clearly written in anticipation of litigation. Correctional officer Billie Smith made numerous notations and observations about defendant's appearance. She also concluded that the bruising that appeared on defendant during defendant's incarceration was consistent with bruising that occurred to another inmate when he fell on his bunk. This went well beyond any normal observation made in the normal course of the jail's business.

¶ 27 In *Bracey v. Herringa*, 466 F.2d 702 (7th Cir. 1972), an inmate sued prison guards for beating him in violation of his civil rights. At trial, six "conduct reports" were admitted into evidence. Four of these reports were prepared by defendants in that case and two were prepared by other guards. The jury found in favor of defendants, but the Seventh Circuit reversed, finding that the prison records were not admissible under the business records exception because they lacked reliability and trustworthiness. *Bracey*, 466 F.2d at 705.

¶ 28 The instant case is similar to *Bracey* because the log entries in question are clearly self-serving and unreliable in that the person who allegedly wrote the log entries, Billie Smith, was not even called to testify at trial and the defense was not given an opportunity to cross-examine her on the statements she made in the log. These log entries were clearly written to protect Deputy Graves from defendant's allegations of abuse.

¶ 29 The State cites *Wheeler v. Sims*, 951 F.2d 796 (7th Cir. 1992), in support of its contention that People's Exhibit B was admissible under the business records exception to the hearsay rule. However, *Wheeler* is actually consistent with the logic in *Bracey*, but is distinguishable on the facts. In *Wheeler*, one of the issues was whether 17 documents, known as Exhibit 11, were admissible under the business records exception. *Wheeler* was an inmate who alleged that beatings administered by prison guards resulted in his paralysis. These documents in Exhibit 11 contained notes documenting Wheeler's ability to move his

legs. The *Wheeler* court applied the following five-part test for admissibility: A document is admissible in evidence (1) if the acts recorded therein were reported by a person with knowledge, (2) if it was the regular practice of the prison as a regularly conducted business activity to record such acts, (3) if the acts were recorded at or near the time of their occurrence, (4) if the documents are properly authenticated, and (5) " 'unless the source of information or the method or circumstances of preparation indicate lack of trustworthiness.' " *Wheeler*, 951 F.2d at 802 (quoting Fed. R. Evid. 803(6)).

¶ 30 *Wheeler* found all of the elements were satisfied, including the fifth element. However, in *Wheeler* the reports in question were not prepared by any of the defendants in the case or by anyone having a clear motive to protect defendants. Most of the reports were medical reports and were prepared by medical professionals to show that Wheeler was not paralyzed. The *Wheeler* court trusted the reliability of the documents, but we cannot say the same about the log entries made by Billie Smith. As a correctional officer, Smith can be considered biased and has a motive to protect Deputy Graves against defendant's allegations of abuse. Thus, we find *Wheeler* distinguishable from the case at bar.

¶ 31 Overall, the facts in the instant case are a cause for concern mainly because there is sufficient evidence to support defendant's defense that Deputy Graves was the aggressor. First, defendant was rightfully upset about being denied visitation with her daughter. Even though Deputy Graves might have been justified in driving to see whether defendant was going to confront Sue Armstrong, once he determined defendant was not at Armstrong's residence, we fail to see why it was necessary for him to drive to the marital residence. Second, we point out that Deputy Graves told defendant she was going to be charged with trespassing. While defendant was originally charged with criminal trespass to property pursuant to count III, that count was dismissed prior to trial, thereby leaving us to further speculate about Deputy Graves's real actions and motives concerning the incident in

question. Third, we find Scott Cantrell's testimony enlightening. He testified that he responded to Deputy Graves's request for backup. When he arrived at the marital residence, he saw defendant pinned to the ground and handcuffed by Officer Graves. Cantrell then transported defendant to the jail. He testified that defendant was upset and crying, but was "respectful." This is inconsistent with Graves's testimony that defendant resisted arrest.

¶ 32 Under the circumstances presented here, we conclude that People's Exhibit B lacks the reliability and trustworthiness necessary to make it admissible as a business records exception to the hearsay rule. The information contained in People's Exhibit B went far beyond ministerial matters, but appears to us to have been prepared in an adversarial context and concerned a true confrontation between law enforcement and defendant. Moreover, given the closeness of this case, as evidenced by the fact that defendant was found not guilty on the charge of aggravated battery, we cannot agree that its admission constituted harmless error.

¶ 33 For the foregoing reasons, the judgment of the circuit court of White County is hereby reversed and remanded for a new trial.

¶ 34 Reversed and remanded.