

No. 1-10-1922

**NOTICE:** This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

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IN THE  
APPELLATE COURT OF ILLINOIS  
FIRST JUDICIAL DISTRICT

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THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County.
	)	
v.	)	No. 09 CR 8871
	)	
CORNELIUS CARTER,	)	Honorable
	)	Clayton J. Crane,
Defendant-Appellant.	)	Judge Presiding.

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JUSTICE CUNNINGHAM delivered the judgment of the court.  
Justices Connors and Harris concurred in the judgment.

**ORDER**

¶ 1 *Held:* Comments made by the State during closing arguments were not improper, or, if improper, the trial court properly sustained defendant's objections. Therefore, the comments did not violate defendant's right to due process and remand for a new trial was not required.

¶ 2 Following a jury trial in the circuit court of Cook County, defendant Cornelius Carter was found guilty of aggravated battery of a police officer and sentenced to six years of incarceration. On appeal, defendant contends that his conviction was the result of improper comments made by the State during closing arguments. For the following reasons, we affirm the judgment of the circuit court of Cook County.

¶ 3 Only a summary of the facts is necessary for an understanding of this case. According to the State's theory of the case, defendant had a domestic dispute with the mother of his children, Angie Moore (Moore), after which the police were called. Defendant left Moore's apartment, but returned

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later that evening in an intoxicated state. While there, he repeatedly knocked on the door and rang the doorbell. He also smeared feces on the window of the apartment. The police were called again, and arrested defendant. During the arrest, defendant smeared feces on Chicago police officer Lohse (Officer Lohse) and bit him on the right knee. At trial, the State did not present charges related to the domestic dispute, contending instead that defendant was guilty of two counts of aggravated battery of a police officer based on bodily harm and insulting or offensive contact.

¶ 4 At trial, Moore testified that on April 28, 2009, she was living on West Maypole Street in Chicago. She denied arguing with defendant that morning, but admitted that she had "an issue" with defendant that required her to contact the police. Defendant left after the police arrived. Later that evening he returned and began ringing the doorbell and knocking. Moore ignored defendant for approximately 10 minutes, then went to a window and "hollered" at him. As she spoke with defendant, she noticed that he was intoxicated. She admitted that she spoke loudly, but testified that defendant remained calm. On cross-examination, Moore testified that she did not call the police that evening. On redirect examination, she testified that she did not see defendant with the police.

¶ 5 Officer Lohse testified that on April 28, 2009, he was in full uniform and driving a marked police car. He responded to a call regarding a domestic disturbance at Moore's residence. When he arrived there, he had a conversation with Moore, and then went to place defendant under arrest. Moore and several other people that were standing outside pointed at defendant. Officer Lohse then said "police stop," but defendant began to walk away and Officer Lohse followed him. When Officer Lohse reached defendant, defendant turned, pushed Officer Lohse, and ran away. Officer Lohse ran after defendant and "took him down." As defendant lay on the ground, he grabbed Officer Lohse's right leg and began to bite his kneecap. Officer Lohse then struck defendant with an open hand, at which point defendant began to flail his arms. Officer Lohse, with the help of a police sergeant, was able to subdue defendant and place him in handcuffs. After the struggle was over, Officer Lohse noticed that defendant's hands were covered with feces and that defendant had smeared feces on

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Officer Lohse from "head to toe," with the majority of the feces being on Officer Lohse's pants leg where defendant had grabbed him while trying to bite his knee. At the end of his shift, Officer Lohse reported to a hospital, where they irrigated his knee and cleaned the wound to protect Officer Lohse from infection. On cross-examination, Officer Lohse admitted that he did not have the material on his uniform tested to determine whether it was feces other than using "the smell test."

¶ 6 The State also presented testimony from the police sergeant who assisted Officer Lohse, after which it rested its case. Defendant rested without presenting evidence, and the parties presented closing arguments. During the State's closing argument, defendant made several objections. The relevant portions of the closing argument are set forth in the analysis section of this order.

¶ 7 Following closing argument, the trial court instructed the jury. During deliberations, the jury sent out a note with several questions including, *inter alia*, a request for a definition of bodily harm. The trial court, without objection from the parties, told the jury to continue deliberating. Ultimately, the jury found defendant guilty of aggravated battery of a police officer based on insulting or provoking contact, but found defendant not guilty of aggravated battery based on bodily harm. The trial court conducted a sentencing hearing where it heard evidence of an unrelated incident in which defendant, while intoxicated and resisting arrest, bit a police officer's knee. The trial court sentenced defendant to six years of incarceration, and defendant timely appealed.

¶ 8 Before reaching the merits of defendant's appeal, we need to address the State's contention that defendant has procedurally defaulted these claims. The State argues that although defendant's supplemental motion for a new trial mentioned the State's closing argument, the allegations were either boiler-plate or were not the same allegations presented in defendant's appellate brief. See *People v. Kitchen*, 159 Ill. 2d 1, 42-43 (1994). We find no merit to the State's procedural default argument. The supplemental motion identifies the same instances of alleged prosecutorial misconduct that he identifies in his brief. Although the improper comments are not quoted in the text of the motion, defendant clearly identified them by reference to the page numbers of the

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transcript of the closing arguments. Accordingly, we find that defendant did not procedurally default his claim of error based on improper closing argument.

¶ 9 We turn then to the question of the appropriate standard of review. Defendant argues that whether a prosecutor's comments were so egregious as to deny a defendant a fair trial is a legal matter that we review *de novo*. *People v. Wheeler*, 226 Ill. 2d 92, 121 (2007). The State on the other hand argues that the issue should be resolved under an abuse of discretion standard, and notes that our supreme court in *Wheeler* cited with approval *People v. Blue*, 189 Ill. 2d 99 (2000), which had applied an abuse of discretion standard. This court has noted the apparent conflict in supreme court precedent, but has declined to determine the appropriate standard of review where the result would be the same regardless of the standard applied. *People v. Cosmano*, 2011 IL App (1st) 101196, ¶53, citing *People v. Maldonado*, 402 Ill. App. 3d 411, 422 (2010); *People v. Anderson*, 407 Ill. App. 3d 662 (2011). Here, we likewise find that the result would be the same under either standard and decline to decide the issue.

¶ 10 A defendant faces a substantial burden in attempting to overturn a conviction based on improper remarks made during closing argument. *People v. Williams*, 332 Ill. App. 3d 254, 266 (2002). "Although the prosecutor's remarks may sometimes exceed the bounds of proper comment, the verdict must not be disturbed unless it can be said that the remarks resulted in substantial prejudice to the accused such that, absent those remarks, the verdict would have been different." *Id.* citing *People v. Pasch*, 152 Ill. 2d 133, 185 (1992). The closing argument must be considered as a whole rather than focusing on selected phrases or remarks. *People v. Hayes*, 409 Ill. App. 3d 612, 624 (2011).

¶ 11 Defendant notes that the trial court sustained objections to two comments by the State during closing argument. First, the State stated: "[Defendant] had been causing such a disturbance, such a ruckus, that the people in the building, [Moore's] building, were concerned for her safety and contacted the police." Later, the State stated: "You have the testimony of the officer that he had to

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go to UIC Hospital and he had to have the knee irrigated and he had to have the blood taken out of the knee." The trial court properly sustained these objections because each comment exceeded the scope of the evidence heard by the jury—there was no evidence regarding who called the police or what the caller's motivation was, and there was no testimony that Officer Lohse had to have blood removed from his knee. However, defendant's claim of reversible error is not well founded. It is well settled that if a timely objection is made, the trial court can usually correct the error by sustaining the objection. See *People v. Cisewski*, 118 Ill. 2d 163, 178 (1987).

¶ 12 Defendant also identifies two arguments for which the trial court overruled defense objections. First, the State argued that defendant was "causing a disturbance" and that "everyone" pointed him out as the "perpetrator." We find that these arguments were well within the considerable latitude accorded a prosecutor during closing argument. See *Hayes*, 409 Ill. App. 3d at 624, citing *Cisewski*, 118 Ill. 2d at 175. The jury heard testimony that defendant was intoxicated, repeatedly knocked on Moore's door, and smeared feces on her window. Although Moore testified that she was the only one who raised her voice, it is still a reasonable inference that defendant was the root cause of the disturbance, and well within the latitude accorded a prosecutor to make that argument. Similarly, there is nothing objectionable about describing defendant as the "perpetrator." Moore and the other residents of the apartment complex did, in fact, point defendant out to the police. It strains credulity to suggest that when they did so they intended to indicate anything other than that his actions were, if not the sole cause of the disturbance, at least one cause of the disturbance. Accordingly, we find that these arguments were not improper.

¶ 13 Second, defendant contends that the State exceeded the bounds of fair argument when the prosecutor commented that defendant "won't calm down, won't listen to instructions, and won't respect authority." Defendant argues that the failure to respect authority is irrelevant to the offense charged. We find nothing objectionable in these comments. The prosecutor simply described defendant's actions on the night of his arrest. The portrayal of defendant as someone who would not

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respect authority may be unflattering, but it is accurate, and certainly not objectionable.

¶ 14 Defendant finally contends that we need to consider the cumulative effect of these comments and argues that they likely improperly swayed the jury because the evidence was closely balanced. However, where we find a defendant's individual arguments regarding closing argument to be unpersuasive, we generally find the cumulative effect argument unpersuasive as well. See, *e.g.*, *People v. Jackson*, 391 Ill. App. 3d 11, 45 (2009). Moreover, despite defendant's attempt to read a credibility determination from the cryptic message of the jury's questions, the evidence in this case was nothing short of overwhelming. Officer Lohse's testimony was clear, credible and virtually unimpeached. Defendant's suggestion that the police officers were unable to distinguish between mud and feces borders on the ridiculous. We are confident that the allegedly improper comments by the State neither individually nor collectively influenced the jury's verdict in light of this overwhelming evidence. Therefore, we can find no reversible error.

¶ 15 For the foregoing reasons, we affirm the judgment of the circuit court of Cook County.

¶ 16 Affirmed.