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IN THE
APPELLATE COURT OF ILLINOIS
SECOND DISTRICT

THE PEOPLE OF THE STATE)	Appeal from the Circuit Court
OF ILLINOIS,)	of Du Page County.
)	
Plaintiff-Appellee,)	
)	
v.)	No. 10-CF-1859
)	
JOHN M. THOMPSON,)	Honorable
)	John J. Kinsella,
Defendant-Appellant.)	Judge, Presiding.

JUSTICE McLAREN delivered the judgment of the court.
Justices Zenoff and Schostok concurred in the judgment.

ORDER

- ¶ 1 *Held:* The trial court did not abuse its discretion in admitting evidence of defendant's abusive conduct that, although occurring after he allegedly completed his offense, was part of the continuous narrative of the contextual events.
- ¶ 2 After a jury trial, defendant, John M. Thompson, was convicted of aggravated battery (720 ILCS 5/12-4(b)(18) (West 2010)) and sentenced to three years' imprisonment. On appeal, he contends that the trial court erred in admitting evidence of remarks that he made to a police officer and a paramedic after he committed the alleged battery. We affirm.

¶ 3 The State alleged that, on August 10, 2010, knowingly and without legal justification, defendant made physical contact “of an insulting or provoking nature” with Robert Lewis, a police sergeant, by biting him in the hand, knowing that Lewis was a peace officer executing his official duties (see 720 ILCS 5/12-3(a)(2), 12-4(b)(18) (West 2010)). We summarize the trial proceedings.

¶ 4 James Joy testified that, on August 10, 2010, he was the assistant grocery manager of a Jewel-Osco store in Wheaton. At about 5 p.m., he saw defendant and another man sitting or standing on the sidewalk, with two or three bottles of wine between them. Defendant was talking “nonsense” loudly and appeared intoxicated. Another employee called 911. Two or three minutes later, the police arrived.

¶ 5 Wheaton police officer Jill Uhlir testified on direct examination as follows. At about 5:15 p.m., she and her partner, Bob Knight, arrived at the Jewel-Osco. Exiting her squad car, she saw defendant and another man sitting outside an entrance, conversing. There were wine bottles on the ground. Defendant’s speech was slurred. He was talking about “Nazis and solar energy.” Uhlir spoke to him while Knight spoke to the other man. Uhlir asked defendant to produce identification; he called her a Nazi and told her to get a warrant. Uhlir repeated her request; defendant stood up and said, “Just arrest me.” Uhlir responded that she did not want to arrest him, but just wanted to know his name and residence so she could take him home. Defendant said that he would not leave. Uhlir told defendant that the police had been asked to make him leave. Defendant repeated that he was not leaving. He demanded to see the store manager. Uhlir responded that the manager had called the police in the first place and that, if defendant did not leave, he would be arrested.

¶ 6 Uhlir testified that defendant repeated that he would not leave. He stood up and started pacing back and forth, holding a partly-full wine bottle. Uhlir told him to sit down; he complied.

A piece of tin foil fell out of his pocket. Uhlir picked it up. Defendant started shouting in protest, standing up and swinging the wine bottle, so Uhlir called for backup. Sergeant Lewis and Officer Hasan arrived soon. Lewis went up to defendant and grabbed a wine bottle from between his legs. Defendant started yelling and stood up. Lewis told him to put his hands behind his back, because he was under arrest. Lewis and Hasan each tried to put one of defendant's hands behind his back, which they did despite his resistance. Uhlir opened the door to her squad car. Lewis and Hasan tried to put defendant in back, but he resisted by refusing to bend. He called the officers "Nazis, all kinds of swear names."

¶ 7 Uhlir testified that Lewis then told defendant to get into the car. Lewis put one hand "over like where [defendant's] mouth was" in order to turn defendant's head, because spit was coming out of his mouth. Lewis had leather gloves on. As Lewis managed to turn defendant's head, defendant bit him between the thumb and first finger. In about five seconds, Lewis managed to extricate his hand from defendant's mouth. He took out his Taser and threatened to use it on defendant, but Hasan opened the squad car from the other side and put defendant inside. Defendant stopped screaming but said that his chest hurt. For that reason, paramedics were called, arriving about a minute later.

¶ 8 Defendant's attorney objected that any testimony by Uhlir about the paramedics would be irrelevant to the charged offense. The trial court overruled the objection. Uhlir continued as follows. After defendant was put into an ambulance, she rode in back with him and a female paramedic to the hospital. Defendant was strapped to a gurney. He was "[s]creaming and swearing and saying vulgar things" to the two women. (Defendant's attorney did not object to this specific testimony.) Uhlir saw no injuries on defendant. At the hospital, she accompanied him to the emergency area.

¶ 9 The State asked Uhlir whether defendant had interacted with the hospital staff. Defendant objected. At a sidebar, the judge asked what relevance the question had, given that the offense was already complete when defendant went to the hospital. The prosecutor explained that the evidence showed defendant's "continuing state of mind." The judge noted that that was why he had overruled the first objection, but he sustained this objection.

¶ 10 Uhlir testified on cross-examination that, when she arrived at the Jewel-Osco, defendant was being loud but not attacking or threatening anyone. Uhlir observed defendant bite Lewis for about five seconds, but she saw no injury to Lewis. The paramedics did not treat Lewis.

¶ 11 Lewis testified as follows. When he arrived at the Jewel-Osco, Uhlir, Knight, and Hasan were there. After being briefed, Lewis walked up to defendant, who was sitting with a half-full wine bottle between his legs and appeared to be intoxicated and very agitated. For the officers' safety, Lewis took the bottle. Defendant told him, "So you're the tough guy." Lewis told defendant to stand up because he was going to be arrested. Defendant stood up. He was still swearing and used the term "Nazi" a few times. Hasan took out a pair of handcuffs. He and Lewis each took one of defendant's arms. Defendant "tighten[ed] up" and tried to pull away. He was still swearing and yelling. After 15 seconds, the officers handcuffed defendant, arresting him for public intoxication and disorderly conduct.

¶ 12 Lewis testified that defendant was still uncooperative. Lewis helped to walk defendant to Uhlir's squad car and told him to get inside, but defendant refused to bend at the waist and tried to push away. He was swearing, yelling, and calling the officers Nazis. Defendant started spitting, so Lewis placed his hand on defendant's jaw and turned his head to the right, using just enough force to do so. He never put his hand over defendant's mouth. Defendant was able to "get his head to go

down,” and he bit Lewis’s right hand between the thumb and the forefinger. Although Lewis had gloves on, he “felt the pain.” After about five seconds, he got his hand out of defendant’s mouth. Aside from the pain, Lewis felt “pretty upset. Someone just bit [his] hand.” Defendant’s bite produced redness but did not break the skin. Lewis threatened to tase defendant, but Hasan got defendant into the squad car.

¶ 13 At a sidebar, before paramedic Jamie Demes testified, defendant objected to “any testimony of [Demes]” as “beyond the scope of the crime, and *** irrelevant and immaterial to the crime that is charged.” The prosecutor said that he planned “to get out *** that [defendant] was combative,” which was relevant to his intent or “state of mind.” The judge overruled defendant’s objection.

¶ 14 Demes testified on direct examination as follows. After she and another paramedic arrived at the Jewel-Osco, she exited and spoke with the police officers. Defendant was removed from a squad car, and Demes helped to place him onto a cot. Defendant smelled strongly of alcohol. He was saying “[v]ery vulgar things,” including that “[w]e were all fucking Nazis” and that Demes was “a fucking cunt and a fucking bitch.” After defendant was placed into an ambulance, she and Uhlir tried to calm him down and speak to him. Defendant responded, “Fucking cunt.” Defendant’s attorney did not object to the foregoing testimony. Demes testified on cross-examination that, in the ambulance, defendant continued to use “bad language” and smelled of alcohol.

¶ 15 The State rested. Defendant put on no evidence. In his closing argument, the prosecutor did not mention what defendant said to Uhlir and Demes after his arrest. In his closing argument, defendant contended primarily that the evidence did not prove that he actually bit Lewis, because it would have been difficult to do so after Lewis grabbed his jaw, and because the State had not corroborated Lewis’s account with evidence that he had received treatment or reported the bite.

Defendant did not argue that the State had failed to prove that the bite, if it happened, was insulting or provoking. He questioned why, given defendant's apparent lack of injuries, the ambulance was called. In rebuttal, the prosecutor argued that the evidence proved that defendant did bite Lewis, despite the minimal force that Lewis had applied to defendant's jaw. He also contended that the evidence showed that there had been good reason to take defendant to the hospital, given his intoxication and complaints of pain. In this context, the prosecutor argued that Demes had rightly been concerned for defendant's safety, as he had responded to her questions about his well-being by saying "all these horrible things to her." The jury convicted defendant.

¶ 16 In his posttrial motion, defendant argued in part that the trial court erred in (1) allowing Uhlir to testify about what happened after the paramedics arrived; and (2) allowing Demes to testify about what she observed at the scene of the offense. The trial court denied the motion and sentenced defendant to three years' imprisonment. He timely appealed.

¶ 17 On appeal, defendant contends that the trial court abused its discretion in allowing the State to introduce evidence that he called Uhlir and Demes "fucking," "cunt," bitch," and "Nazi." He asserts that this evidence was legally irrelevant because it involved events that happened after the alleged offense. The State responds that (1) defendant has forfeited the claim of error; (2) the court did not abuse its discretion; and (3) any error was harmless.

¶ 18 We first reject the State's forfeiture argument. The State notes that, to preserve a claim of trial court error, the defendant must both object contemporaneously and raise the issue in a posttrial motion. *People v. Enoch*, 122 Ill. 2d 176, 186 (1988). The State contends that defendant did not satisfy the first requirement, because he failed to object when Uhlir and Demes testified about his postarrest behavior. We agree with defendant that the State's argument is hypertechnical.

Immediately after Uhlir was asked about defendant's interactions with the paramedics, defendant objected, and his objection was heard on the merits. Immediately before Demes testified, defendant objected, and that objection was also heard on the merits. The precise timing of the objections was of no consequence; at worst, they were slightly early.

¶ 19 We turn to the merits. Defendant challenges the admission of testimony that, after he was arrested, he called Uhlir and Demes "fucking cunt," "fucking bitch," and "Nazi." Defendant maintains that this evidence was legally irrelevant because it described events that took place after the alleged offense was complete and because it served no purpose other than to inflame the jury against him for reasons irrelevant to his guilt. Defendant also contends that the error was not harmless, because the evidence was closely balanced on the issue of whether his act of biting Lewis was "insulting or provoking" (see 720 ILCS 5/12-3(a)(2), 12-14(b)(18) (West 2010)). We reject both arguments.

¶ 20 Whether evidence is relevant and should be admitted is within the trial court's sound discretion, and its decision will not be disturbed on review absent an abuse of that discretion. *People v. Pelo*, 404 Ill. App. 3d 839, 864 (2010). Case law upholds the admission of evidence of what the defendant said or did shortly after he committed the charged offense and was arrested.

¶ 21 In *People v. Wright*, 20 Ill. App. 3d 1039, 1042 (1974), the defendant was convicted of aggravated battery and resisting or obstructing a peace officer. On appeal, he argued that the trial court erred in admitting evidence of his belligerent behavior and use of vulgar language at the jail and the hospital after his arrest. The court held that the evidence was admissible not only because it was relevant to the defendant's state of mind when he committed the offenses, but also because the conduct at issue "occurred immediately after the arrest and [was] part of the continuous narrative

of events and circumstances that formed the context of the arrest.” *Id.* at 1042. *Wright* followed cases holding that the State may offer a continuous narrative of the events that formed the context of a defendant’s arrest. See *People v. Tucker*, 118 Ill. App. 2d 136, 141 (1969); *People v. Alexander*, 69 Ill. App. 2d 27, 29 (1966).

¶ 22 Here, defendant committed the charged offense only about a minute before the paramedics arrived. He was still at the scene of the offense and was still agitated and angry. It is not even clear that he had been arrested for the charged offense. The evidence that defendant spoke abusively to Uhlir and Demes was part of the continuous narrative of the events that formed the context of his arrest and the present charge. Thus, the trial court did not abuse its discretion in admitting it.

¶ 23 We also hold that, even if the admission of the evidence was erroneous, the error was harmless. This is so for three reasons. First, the evidence was not closely balanced. The only point that defendant contested was whether the State proved that he actually bit Lewis. However, Lewis testified clearly and without contradiction that defendant bit his gloved hand and held it in his mouth for five seconds. Uhlir corroborated Lewis by describing the offense consistently with his testimony. Defendant asserts that the evidence was closely balanced on whether the bite was insulting or provoking. We note that he declined to argue this to the jury, probably because Lewis testified not only that the bite made a considerable impression on him psychologically as well as physically but also that it provoked him into threatening to tase defendant if he did not cooperate.

¶ 24 Second, the evidence of defendant’s cursing and anger after he committed the offense was relatively slight in relation to the properly-admitted evidence to the same effect. Defendant repeatedly cursed, verbally abused, and resisted Uhlir, Hasan, and Lewis before the bite. The

evidence that he called Uhlir and Demes bad names afterward was “more coals to Newcastle.” It worked no harm to defendant that had not been worked by the testimony to which he never objected.

¶ 25 Third, the State did not dwell on the evidence of defendant’s behavior after he bit Lewis. In closing argument, the prosecutor did not mention that behavior. In rebuttal closing argument, he noted it briefly, in a direct response to defendant’s argument that there had been no reason to call the ambulance. The evidence that defendant challenges was neither inadmissible nor a significant factor in his conviction, which, therefore, must stand.

¶ 26 If the evidence were closely balanced, as claimed by defendant, then defendant’s state of mind and the circumstances surrounding the battery would tend to establish whether or not his actions were insulting or provoking. Taken in context, we believe defendant’s argument that a reasonable person would believe his claim that his actions were *not* insulting or provocative is disingenuous at best.

¶ 27 For the foregoing reasons, the judgment of the circuit court of Du Page County is affirmed.

¶ 28 Affirmed.