

**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).

2015 IL App (3d) 140139-U

Order filed October 26, 2015

---

IN THE  
APPELLATE COURT OF ILLINOIS  
THIRD DISTRICT

A.D., 2015

THE PEOPLE OF THE STATE OF	)	Appeal from the Circuit Court
ILLINOIS,	)	of the 12th Judicial Circuit,
	)	Will County, Illinois,
Plaintiff-Appellee,	)	
	)	Appeal No. 3-14-0139
v.	)	Circuit No. 13-CM-1405
	)	
GREGORY A. WILLIAMS,	)	Honorable
	)	Victoria M. Kennison,
Defendant-Appellant.	)	Judge, Presiding.

---

JUSTICE CARTER delivered the judgment of the court.  
Justices Holdridge and Lytton concurred in the judgment.

---

**ORDER**

¶ 1 *Held:* Trial court did not abuse its discretion in allowing the State to question the victim regarding the victim's petition for order of protection.

¶ 2 Defendant, Gregory A. Williams, appeals his conviction for domestic battery (720 ILCS 5/12-3.2(a)(1) (West 2012)). Defendant contends that the trial court committed prejudicial error in allowing the State to question the complaining witness regarding her petition for order of protection where the court had previously ordered that all references to past physical abuse by defendant would be barred. We affirm.

¶ 3

## FACTS

¶ 4

One June 6, 2013, the State charged defendant by criminal complaint with domestic battery. The complaint alleged that on June 1, 2013, defendant caused bodily harm to Lora Jackson in that he struck her about the body.

¶ 5

Prior to trial, the defense filed a motion *in limine* asking the court to bar the State from introducing previous allegations of abuse made by Jackson against defendant. Specifically, the motion asserted that the State had tendered certain discovery to the defense, and that, "[a]ccording to [the] tendered reports, [Jackson] alleges that on at least ten to twenty prior occasions, the defendant has been physically abusive towards [Jackson]." The State had no objection to the motion. In turn, the court declared: "We will show then by agreement that the Defense's motion is granted and the State is directed to inform their witnesses that there should be absolutely no mention of any prior incidents of alleged physical abuse by the defendant towards the named victim." No written order was filed.

¶ 6

At defendant's subsequent jury trial, the State called Jackson as its first witness. Jackson testified that she lived with defendant and their children—Gregory Jr., age 23; and Bianca, age 16—at the time of the incident in question. Defendant had been Jackson's boyfriend for 21 to 22 years. They began living together in 2012.

¶ 7

Jackson recalled being home on the day of June 1, 2013, along with Bianca and defendant. Jackson was exhausted from a previous argument with defendant, and went to her bedroom around 8 p.m. Defendant came into the bedroom and started to argue with her. Jackson testified that she got off the bed and asked defendant to leave. Defendant then pushed her back onto the bed. Jackson stood up and attempted to push defendant out of the room. Defendant then struck Jackson twice in the breast with a closed fist. Jackson screamed because

of the pain. After Jackson screamed, Bianca entered the room and got between Jackson and defendant. Jackson later went to Bianca's room and complained about the pain in her breast.

¶ 8 Jackson explained that she did not call the police immediately after the incident because she had already called the police earlier that day. Jackson testified that she had called the police earlier in the day because she "felt the drama coming on" between her, defendant, and Gregory Jr.

¶ 9 Jackson testified that she went to the police two days after the altercation with defendant. She filled out a police report and had photographs taken of her injury. A series of four photographs, admitted into evidence, show a large bruise covering most of Jackson's left breast. Jackson testified that the bruising was caused by the altercation with defendant.

¶ 10 On cross-examination, Jackson expounded on her contact with police prior to the incident. She testified that defendant and Gregory Jr. had been in an argument earlier in the day. Jackson called the police because the argument became loud and intense. The police did not arrest defendant and did not remove him from the home. After the police left the house, Gregory Jr. went out with some friends. It was at this point that Jackson went to go lie down in her room. Jackson reiterated that when she stood up from the bed, defendant pushed her back down. Jackson admitted that when providing her written statement to the police, she did not include the fact the defendant had pushed her onto the bed.

¶ 11 Defense counsel then asked Jackson if she had previously come before the court and filled out a legal document related to the case. When Jackson replied that she had, the State objected. In a sidebar, defense counsel explained that she was attempting to impeach Jackson's testimony. The court asked whether there was "anything else on the petition that [counsel was]

going to attempt to question [Jackson] about." When defense counsel responded in the negative, the trial court allowed counsel to proceed, effectively overruling the State's objection.

¶ 12 Defense counsel asked Jackson if she had come before the court previously regarding this matter and "filled out a petition that [she] had to sign afterwards." Jackson responded that she had. Counsel then showed Jackson a petition dated June 25, 2013, and marked as defense exhibit 2. Jackson agreed that the petition described the events of June 1, but did not include the fact that defendant had pushed her onto the bed.

¶ 13 On redirect, the State asked Jackson the following question: "[Defense counsel] also referenced the fact that you were seeking an order of protection, correct?" This question drew an objection from the defense. In a sidebar, defense counsel insisted that she had merely referred generally to a petition. The court overruled the objection, noting that defense counsel could not refer to the petition and later object.<sup>1</sup>

¶ 14 When questioning resumed, the State asked Jackson why she had sought the order of protection. Defense counsel again objected. In the ensuing sidebar, defense counsel referenced the agreed upon motion *in limine*, arguing that the State's question was too open-ended. The court responded that defense counsel had opened the door by referencing the petition, but still advised the State that it should ask a more direct question.

¶ 15 Redirect examination by the State proceeded:

"Q: Did you seek the order of protection because you are fearful of what may come from the defendant?

A: Yes, I did.

---

<sup>1</sup>Potential further explanation of the court's ruling is described as "inaudible" in the report of proceedings.

Q: And did you seek the order of protection because of things that had previously occurred?

A: Yes, I did.

Q: And those had occurred prior to this June 1st incident, correct?

A: That is correct.

Q: And it was ultimately a culmination of those occurrences which led you to seek that order of protection, correct?

A: That is correct."

Later, the State asked Jackson again why she sought the order of protection. Jackson responded:

"Because of the abuse and because it had just gotten to the point where I am stressed out."

Neither the State's question nor Jackson's response drew an objection from the defense.

¶ 16

The State's second witness was Jackson's daughter, Bianca. Bianca testified that on the night of June 1, 2013, she was in her bedroom when she heard her parents arguing. She stepped into her mother's bedroom and saw Jackson and defendant arguing face to face. Bianca testified that she saw defendant swing his arm, but did not see if or where it struck Jackson. She did not see who started the fighting. Bianca went back to her bedroom and Jackson entered Bianca's room soon thereafter. Bianca observed that Jackson was shocked and upset. Jackson showed Bianca a bruise on her breast.

¶ 17

Police officer John Tuttle also testified for the State. He testified that Jackson reported the incident on the evening of June 3. Jackson showed Tuttle portions of the bruise, and a female dispatcher later took photographs. Tuttle agreed that Jackson had not mentioned being pushed onto the bed by defendant.

¶ 18 The State rested following Tuttle's testimony, and the defense did not present any witnesses. In closing arguments, the defense insisted that Jackson was not a credible witness. In rebuttal, the prosecutor declared that Jackson's testimony "was that this man had beat her and had hit her before on multiple occasions throughout the 20 year romance." The comment drew an immediate objection from the defense. In response, the trial court stated: "Ladies and gentlemen, any statements made by a lawyer not based on the evidence should be disregarded by you. You should use your own recollection of the evidence. And again I would remind you what the lawyers say during the arguments is not evidence."

¶ 19 Following closing arguments, the court admonished the jury that "[t]he evidence which [it] should consider consists only of the testimony of the witnesses and the exhibits which the Court has received." Later, the court stated: "Neither opening statements nor closing arguments are evidence. Any statement or argument made by the attorneys which is not based on the evidence should be disregarded."

¶ 20 The jury found defendant guilty. The court sentenced defendant to a term of 24 months' conditional discharge, including 180 days in jail. Defendant subsequently filed a motion to reconsider in which he argued, *inter alia*, that the State had violated the court's order barring the introduction of prior incidents of physical abuse. The court denied the motion, again reasoning that the defense had opened the door to the State's line of questioning.

¶ 21 ANALYSIS

¶ 22 On appeal, defendant maintains that the State violated the trial court's order by questioning Jackson regarding her petition for an order of protection. Specifically, defendant argues that the court's ruling that the defense had opened the door to that line of questioning was an abuse of discretion. Moreover, defendant contends that the prejudicial effect of the State's

line of questioning was compounded by the State's improper commentary in closing arguments. Upon review, we reject both of defendant's arguments.

¶ 23 Where a defendant challenges the trial court's evidentiary ruling on appeal, the reviewing court must determine whether the trial court abused its discretion in making its ruling. *People v. Johnson*, 361 Ill. App. 3d 430, 440 (2005). The trial court commits an abuse of discretion only where its ruling is arbitrary, fanciful, or unreasonable, such that no reasonable person would take the view adopted by the court. *Id.*

¶ 24 Under the doctrine of curative admissibility, a party may introduce otherwise inadmissible evidence to refute or cure undue prejudice stemming from an opponent's introduction of similar evidence. *People Liner*, 356 Ill. App. 3d 284, 292-93 (2005). Where a party presents evidence that requires such a rebuttal, that party is said to have opened the door to the otherwise inadmissible evidence. See *id.* at 293. Our supreme court has described the doctrine of curative admissibility as follows:

"If *A* opens up an issue and *B* will be prejudiced unless *B* can introduce contradictory or explanatory evidence, then *B* will be permitted to introduce such evidence, even though it might otherwise be improper. [Citations.] Specifically, in a criminal case, where the door to a particular subject is opened by defense counsel on cross-examination, the State may, on redirect, question the witness to clarify or explain the matters brought out during, or to remove or correct unfavorable inferences left by, the previous cross-examination." *People v. Manning*, 182 Ill. 2d 193, 216 (1998).

¶ 25 Courts caution that the doctrine of curative admissibility is to be used as a shield, rather than a sword. See *id.* at 216-17. "The doctrine is limited in scope, is merely protective, and goes

only as far as is necessary to shield a party from unduly prejudicial inferences raised by the other side." *Liner*, 356 Ill. App. 3d at 293. Ultimately, admissibility "turns on a balancing of the need to rebut the inference raised against the risk of unfair prejudice that would be posed by the introduction of the rebutting evidence." Michael H. Graham, *Graham's Handbook of Illinois Evidence* § 103.4, at 16 (10th ed. 2010).

¶ 26 In the present case, the inference to be drawn from the defense's cross-examination regarding Jackson's petition was unmistakable. By eliciting the fact that Jackson had not mentioned the push in the petition—a fact she had testified to on direct examination—the defense sought to show that Jackson was not a credible witness. The State, in turn, was free to clarify and explain those matters, and remove the negative inference. See *Manning*, 182 Ill. 2d 216. Initially, the State clarified that the "petition" to which the defense was cryptically referring was a petition for an order of protection. The State further elicited that that petition related to a number of "things that had previously occurred." By establishing that the petition also related to occurrences in the past—rather than just the incident at issue at trial—the State was able to undermine the defense's attempt to impeach Jackson. That is, Jackson's omission of the push onto the bed might be seen as less egregious where the petition was a wide-ranging document covering a number of occurrences, rather than a simple recitation of the facts of the incident in question.

¶ 27 Importantly, the State's redirect examination regarding the petition was extremely limited in scope. Although defendant asserts on appeal that "[t]he State \*\*\* asked Jackson whether it was a culmination of those prior instances of abuse that led her to seek an order of protection against Defendant," that characterization is betrayed by the record. In fact, the State referred to "occurrences," rather than "instances of abuse." The State never referenced abuse of any kind,



and Jackson's sole, unprompted use of the word went without objection from the defense. The State elicited testimony regarding the broader characteristics of the petition reference on cross-examination, but it did not delve into the details of Jackson's many previous allegations of physical abuse.

¶ 28 In light of the above facts, we hold that the trial court's determination that defense counsel opened the door by referencing the petition was not so arbitrary, fanciful, or unreasonable that no reasonable person would take the same view. Accordingly, the trial court did not abuse its discretion in allowing the State to conduct a narrowly tailored cross-examination regarding the petition.

¶ 29 Defendant contends that the trial court's purported error in allowing the State to violate its previous order was compounded when the State explicitly referenced prior abuse in closing arguments. Although defendant has not argued that the State's comments standing alone constitute reversible error—and we have decided that error was not committed during trial—we nevertheless address the substance of defendant's claim. The State concedes that the prosecutor's comments in closing argument were improper, but argues that the error was cured when the court admonished the jury that the lawyers' statements were not evidence.

¶ 30 It is well-settled that the trial court may cure errors in closing arguments by "informing the jury that arguments are not themselves evidence and must be disregarded if not supported by the evidence at trial." *People v. Simms*, 192 Ill. 2d 348, 396 (2000). In the case at hand, the trial court responded to the defense's objection by admonishing the jury twice in succession that the prosecutor's comments did not constitute evidence. Following arguments, the court again reminded the jury that "[t]he evidence which [it] should consider consists only of the testimony of the witnesses and the exhibits which the Court has received." In further instructing the jury,

the court stated: "Neither opening statements nor closing arguments are evidence. Any statement or argument made by the attorneys which is not based on the evidence should be disregarded."

Given the trial court's swift action and repeated admonishments to the jury, we find that the trial court cured any prejudice that may have flowed from the State's improper comments. See *People v. Kidd*, 175 Ill. 2d 1, 51 (1996) (improper comments cured through trial court's swift action); *People v. Cosmano*, 2011 IL App (1st) 101196, ¶ 91 (potential prejudice stemming from prosecutor's improper comment "was cured by the trial court's prompt, repetitive admonishments to the jury and subsequent instruction").

¶ 31

#### CONCLUSION

¶ 32

The judgment of the circuit court of Will County is affirmed.

¶ 33

Affirmed.