FOURTH DIVISION
July 20, 2017

No. 1-14-3058

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. 11 C4 40429
	)	
CHADWICK WAKEFIELD,	)	Honorable
	)	Gregory Robert Ginex,
Defendant-Appellant.	)	Judge Presiding.

PRESIDING JUSTICE ELLIS delivered the judgment of the court.
Justices McBride and Burke concurred in the judgment.

O R D E R

¶ 1 *Held*: Defendant's conviction for unlawful use of a weapon by a felon affirmed. Defendant was not denied fair trial by State's alleged violations of *in limine* rulings. Mittimus amended to correct sentencing credit.

¶ 2 Following a jury trial, defendant Chadwick Wakefield was convicted of unlawful use of a weapon by a felon and sentenced to five years' imprisonment. On appeal, defendant contends that he was denied his right to a fair trial because the State violated the court's pretrial orders by: (1) presenting the jury with irrelevant and highly prejudicial gang evidence; (2) asking a police officer about his prior contacts with defendant; and (3) eliciting prejudicial testimony from its

rebuttal witness that extended beyond the scope of proper rebuttal. Defendant also contends, and the State agrees, that his mittimus should be amended to reflect additional credit against his sentence for time he spent in pretrial custody. We affirm but correct the mittimus.

¶ 3 Before trial, defendant filed a motion *in limine* asserting that the State should be precluded from "referring to any alleged gang affiliation concerning [defendant]." Defendant further argued that the State should be precluded from "presenting any evidence relating to past encounters" between defendant or any of the defense witnesses and the Melrose Park police—specifically, the facts of an unrelated case that brought the police to the location where defendant was arrested.

¶ 4 The State filed a motion *in limine* asserting that, if Stephen Garner testified for the defense, the State would call police officers in rebuttal to establish their reason for being at the location where defendant was arrested. The State said that the officers would testify that they went to the location looking for Garner because Garner had driven his vehicle at one of the officers two days earlier. The State also planned to introduce evidence that, as a result, Garner had pled guilty to aggravated assault of a peace officer with a vehicle. The State argued that the circumstances involved in the prior incident and Garner's conviction were relevant if he testified because such information was directly related to Garner's motive, bias, and credibility.

¶ 5 At a hearing on the motions, the trial court asked if the police officers were going to testify that they knew defendant from a prior incident, and the prosecutor replied, "No." Reading defendant's motion, the court stated, "Gang affiliation, I don't know if there is any gang affiliation that would be relevant here." The prosecutor replied, "No. He's not charged as a gang member."

¶ 6 Regarding the rebuttal testimony, the State argued that if Garner testified, his credibility would be at issue because he would be testifying against the police officers whom he tried to run over with his car. The trial court stated that if Garner testified, the State had a right to cross-examine him regarding a situation that affected his credibility. Defense counsel argued that the prosecutor would be able to ask Garner if he pled guilty to the offense, but "not go into the whole facts of that case." The trial court responded, "Well, no, not the facts of the case." The State then explained that the reason it wanted to discuss the facts of the other case was because that case directly affected the officer who would be testifying. The following colloquy then occurred:

> "THE COURT: Now, in the course of this, assuming we go beyond what we need to go beyond in the defense case they call Mr. Garner. I don't know what Mr. Garner is going to say. He may say, you know, I was there with him. He didn't have a gun. That's fine. He may say whatever. But whatever he says, the problem is the prior incident can't affect Mr. Wakefield. In other words, the testimony of the officer regarding Garner should not affect anything with Mr. Wakefield. He's a passenger in a car.
>
> [Assistant State's Attorney (ASA)]: No, but it directly affects Mr. Garner's credibility and bias and motive to testify.
>
> THE COURT: What I'm saying is this, and I want to try and be clear on this. It's very subtle. If Mr. Garner testifies, then your cross or the only evidence you can put in is that aren't you the individual who pled guilty to this with this officer. I don't want any mention of the defendant with him. He shouldn't be involved with that at all.
>
> [ASA]: That's fine.
>
> THE COURT: Do you understand that?

[ASA]: Sure.

THE COURT: So if Garner testifies, yeah, this and this and the officer's lying, well, wait a minute, aren't you the guy that had this encounter with this officer and pled guilty to that? But no mention of the defendant's, you know, involvement or company or that."

¶ 7 As trial began, the court told the jury, "If I sustain an objection to a question that's asked of a witness and do not permit it to be answered, you *** should not speculate as to what the answer might have been given, *** nor should you draw any inference from that question itself."

¶ 8 At trial, Melrose Park police investigator Leonard Bartemio testified that he worked in "a tactical unit, which is narcotics and gangs." When asked by the prosecutor what his job entailed, the investigator replied, "High crimes, anything—homicides, drugs, gang related issues."

¶ 9 Bartemio testified that, around 9 p.m. on April 27, 2011, he was a passenger in an unmarked police vehicle being driven by Sergeant James Nowicki. They parked on the street to conduct surveillance of a house at 502 South 10th Avenue in Maywood, Illinois. The officers saw defendant and Clifford Johnson walk down the street towards them and proceed up the driveway of the house. Nowicki drove up to the driveway, and Bartemio got out of the car and said, "[P]olice." Defendant and Johnson ran up the driveway and into the backyard. Nowicki and Bartemio pursued them. The officers first stopped Johnson near a fence, and while Nowicki detained him, Bartemio continued chasing defendant into the yard. Other officers then arrived in the yard from the other side of the house, and Investigator Raul Rodriguez detained defendant near the fence. Rodriquez told Bartemio that an object was thrown in the area, and within seconds Bartemio recovered a black semiautomatic handgun from the cement ground about five

feet away from defendant. There were no other objects in the area. Bartemio removed the magazine from the gun and a bullet from the chamber. Bartemio searched the rest of the backyard, including the area underneath the back porch, but did not recover any other items.

¶ 10 The prosecutor asked Investigator Bartemio if he had "ever encountered *** defendant before the date of April 27th of 2011[.]" Defense counsel objected, and the court asked the prosecutor for the relevance of the question. The prosecutor replied, "I just wondered if the officer had any contact with the defendant." The court sustained the objection, and Bartemio did not answer the question.

¶ 11 On cross-examination, Bartemio acknowledged that the officers were at the house looking for a person who was not defendant or Johnson. Bartemio testified that he did not recover a cell phone in the yard and did not recall if one was recovered.

¶ 12 Rodriguez testified that he was assigned to the tactical division, and when asked by the prosecutor what his duties were, he replied, "Main focus is gangs and narcotics." Investigator Rodriguez was part of the team that was conducting the investigation at the house in Maywood. He was in a second car with two detectives parked around the corner from the house. After conducting surveillance for about 20 minutes, Sergeant Nowicki and Investigator Bartemio notified Rodriguez over the radio that two individuals were walking toward the house. One of the detectives drove the car around the corner and parked on 10th Avenue.

¶ 13 Rodriguez got out of the car and saw Bartemio approaching the house. Rodriguez heard Bartemio yell, "[T]hey're running." Rodriguez ran along the other side of the house parallel to Bartemio and saw defendant running around the back of the house. Rodriguez pointed his flashlight at defendant, opened the gate of the fence, and yelled, "Stop, police."

¶ 14 Rodriguez testified that defendant stopped running, looked at him, and threw a black object to the ground from his right hand. Rodriguez was about 15 feet away from defendant at the time and heard a metallic sound on the ground. Rodriguez approached defendant, drew his weapon, and ordered defendant to get down on the ground. Defendant lay down on a concrete slab about five feet from where he had tossed the object. No one else was in the area.

¶ 15 Rodriguez said that, as he handcuffed defendant, Bartemio approached, and Rodriguez directed Bartemio to the direction where defendant had thrown the object. Rodriguez testified that, seconds later, Bartemio informed him that he found a gun. Rodriguez looked and saw a black nine-millimeter semiautomatic handgun with a brown handle on the concrete ground next to some stairs.

¶ 16 The State presented two experts who testified that the gun was operable and that no fingerprints suitable for comparison were found on the gun or ammunition. The parties stipulated that defendant had been convicted of a qualifying felony for the unlawful use of a weapon by a felon charge.

¶ 17 James Robinson testified for the defense. He said that, in April 2011, he lived at 502 South 10th Avenue in Maywood with about 10 other people. Defendant was friends with Robinson's niece, and Robinson had been friends with defendant and his family since 1998.

¶ 18 On the night of April 27, 2011, Robinson called defendant and made plans for defendant to come to his house. Robinson was standing on his front porch and saw defendant and Johnson walking up the street. Robinson then went inside his house because defendant usually came to the back door. Defendant and Johnson came along the north side of his house, not up the

driveway. Robinson went to the back door and saw defendant on the bottom step of the back stairs. Robinson said that there were no lights on in the backyard and it was very dark.

¶ 19 Robinson said that he heard a voice on the side of the house, and defendant stepped off of the stairs and walked three to four feet back and to the side. Robinson went to a window on the side of the house, looked outside, and saw defendant and Johnson with two police officers. Robinson said that the officers searched the backyard with flashlights for 10 to 15 minutes. The officers then walked toward the front of the house, and Robinson went to his living room and sat down. Robinson never saw defendant run and never saw him with a gun in his hand.

¶ 20 On cross-examination, Robinson acknowledged that he never went to the police and told them his version of what happened that night. He also acknowledged that he could not see the concrete slab from the window inside his house.

¶ 21 Stephen Garner,[1] defendant's friend, testified that on April 27, 2011, he lived at 501 South 10th Avenue with 11 or 12 people. Defendant was coming to the house that night to watch a basketball game. About 8 p.m., Garner was speaking with defendant on the phone when "the phone dropped." Garner knew defendant was coming to the back door, so he looked out his bedroom window in the back of the house and saw police officers with flashlights. He also saw defendant and Johnson in the yard. The police officers searched the yard with their flashlights for about 20 minutes while defendant was standing on the north side of the house. The officers found an object, took defendant away, and let Johnson go. Garner never saw defendant with a gun in his hand that night.

[1] Garner's first name is spelled in the record as both Stephen and Steven.

¶ 22 On cross-examination, Garner testified that he had been friends with defendant for about 15 years. Garner acknowledged that he pled guilty to a felony conviction for aggravated assault of a police officer with a vehicle, that the offense occurred two days before April 27, 2011, and that it involved Melrose Park police officers. Garner also acknowledged that he was not arrested on the date of his offense, April 25, 2011, and that he went to the Melrose Park police department sometime after April 27, 2011. When the prosecutor asked Garner if the officer involved in the offense was Sergeant Nowicki, the trial court sustained defense counsel's objection, and the question was not answered.

¶ 23 Defendant testified that on April 27, 2011, he was on his way to the house on 10th Avenue to watch a basketball game with Robinson. Defendant and Johnson stopped in front of the driveway of the house while defendant called Garner on his cell phone to ask him to let them in. As defendant and Johnson walked up the driveway, defendant was talking with Garner on the phone, telling him that they were going to the back door.

¶ 24 Defendant testified that, when he and Johnson reached the back of the house, he saw flashlights. A police officer told defendant and Johnson to get down, and defendant dropped his phone and got down on the ground. Other officers then entered the yard from the other side of the house.

¶ 25 Defendant said that the police searched the yard for 15 to 20 minutes, found an object under the back stairs, and handcuffed him. Defendant denied that he ran from the police and denied that he had a gun in his hand that night. Defendant acknowledged that he had a 2004 felony conviction for robbery.

¶ 26 In rebuttal, the State called Sergeant Nowicki, who testified that on April 27, 2011, he was the "[s]ergeant in charge of [the] gang, narcotic unit." Over defense counsel's objection, Sergeant Nowicki testified that, around 7 p.m. on April 25, 2011, he responded to "a call that there was a possible gang involvement incident[.]" He further testified that, as he tried to make a traffic stop, "[t]he vehicle attempted to run [him] over." Garner was driving that vehicle, and during the subsequent investigation, Nowicki was trying to locate Garner.

¶ 27 During a sidebar, defense counsel argued that Nowicki's testimony was not rebutting anything because Garner admitted that he pled guilty to the offense. The State responded that Nowicki's testimony addressed Garner's bias in testifying. After some discussion, the trial court ruled that Nowicki could testify that he was looking for Garner, but there could be no connection with defendant. The court also ruled that Nowicki could testify that he did not find a cell phone and that he held Johnson near the fence.

¶ 28 After the sidebar, Sergeant Nowicki testified that he went to the house on 10th Avenue on April 27, 2011, to look for Garner, where he saw defendant and Johnson approaching the house. When Bartemio yelled at them, defendant and Johnson ran up the driveway, and Nowicki and Bartemio chased them into the backyard. Nowicki stopped Johnson near the fence, about 10 to 12 feet away from defendant. After defendant was detained, Nowicki supervised the search of the backyard. Police recovered a semiautomatic weapon, but no other items. Nowicki did not see Garner at the house that night.

¶ 29 Following Nowicki's testimony, the State presented a certified copy of defendant's prior conviction for burglary and rested.

¶ 30 While instructing the jury, the trial court again admonished the jurors that they should "disregard questions which were withdrawn or to which objections were sustained." The jury found defendant guilty of unlawful possession of a weapon by a felon.

¶ 31 In his motion for a new trial, defendant argued that the State violated some of the trial court's rulings on his motion *in limine*. Defense counsel first argued that the State violated the court's order barring reference to any alleged gang affiliation, because all three police witnesses testified that they were assigned to a gang unit. Counsel argued that the State had tried to "backdoor insinuate" that this case involved a gang investigation and that defendant was somehow involved with gangs.

¶ 32 Counsel also argued that the State violated the court's order barring any evidence regarding past encounters between defendant and the Melrose Park police when the prosecutor asked Investigator Bartemio if he had ever encountered defendant before April 27, 2011. Counsel acknowledged that the court sustained his objection but argued that defendant was still prejudiced, because the jurors heard the question and could have speculated about a prior incident.

¶ 33 Finally, counsel argued that the State improperly questioned Nowicki about the facts of Garner's case, including the fact that Garner had tried to run Nowicki over, which did not rebut any of Garner's testimony. Counsel asserted that Sergeant Nowicki should not have been allowed to testify because he was not a rebuttal witness but was instead a ploy by the State to have the last word in direct evidence.

¶ 34 With respect to the gang evidence, the court stated, "[W]e were very, very careful about what we did here. Each of the officers testified to what their duties are and what they do." The

court noted that the officers testified that "they were in gang and narcotics," then explained "[j]ust because they're in that unit does not necessarily mean that they would color the Defendant with that offense." The court found that defendant was not prejudiced by any gang testimony because "[a]ll they did was testify to what their unit of assignment was."

¶ 35 The court further found that there was "no indication of past encounters with the Defendant[.]" The court stated, "I don't believe the evidence indicated anything that any police officer testified that he knew the Defendant previously or there was any previous encounter."

¶ 36 With regard to the State's rebuttal evidence, the court found that, based on the testimony from Garner and defendant, "the State ha[d] every right to bring in Sergeant Nowicki in rebuttal." The court explained:

> "It affected *** Garner's credibility and Sergeant Nowicki not only was able to rebut the fact that the Defendant threw a cell phone, because he said—Nowicki said there was no cell phone, they never found a cell phone, and there was a weapon found within five feet of him. So I do believe all of the testimony was proper.
>
> I don't believe that the Defendant was prejudiced in any way. I believe the rulings that this Court made were proper[.]"

¶ 37 The trial court sentenced defendant to five years' imprisonment.

¶ 38 On appeal, defendant contends that he was denied his right to a fair trial because the State violated the court's rulings on his motion *in limine*. Defendant argues that the State improperly presented gang evidence, impermissibly questioned Investigator Bartemio about his prior contacts with defendant, and elicited prejudicial testimony from Sergeant Nowicki that extended beyond the proper scope of rebuttal. Defendant claims that the trial court abused its discretion

when it allowed the jury to hear the improper questions and testimony, and that the cumulative effect of these errors had an improper influence on the jury's credibility determinations, thereby entitling him to a new trial.

¶ 39 The State responds that it complied with the trial court's rulings and that there was no abuse of discretion by the trial court, as no improper evidence was presented. Alternatively, the State argues that any possible error was harmless where the evidence overwhelmingly established that defendant was a felon who unlawfully possessed a gun.

¶ 40 Evidentiary rulings are within the trial court's sound discretion and will not be disturbed on review unless the court has abused that discretion. *People v. Caffey*, 205 Ill. 2d 52, 89 (2001). An abuse of discretion will be found only where the trial court's ruling is arbitrary, unreasonable or fanciful, or where no reasonable person would agree with the view adopted by the court. *Id*. The trial court's decision of whether to admit evidence is not made in isolation, but rather, after consideration of many circumstances, including questions of prejudice and reliability. *Id*.

¶ 41 We now turn to each of the three alleged violations of defendant's motion *in limine*.

¶ 42 Defendant first contends that the State presented the jury with irrelevant and highly prejudicial gang evidence when it elicited testimony from all three police officers that they worked in a "gang, narcotics unit," and Sergeant Nowicki testified that two days before defendant's arrest, he responded to a call involving "possible gang involvement." Defendant claims that this repeated testimony regarding "gangs" and Nowicki's testimony that the incident with Garner was gang-related allowed the jury to infer both that Garner was a gang member and that defendant was linked to a gang due to his friendship with Garner.

¶ 43 The State responds that there was no evidence presented that defendant was affiliated with a gang. The State argues that the officers merely explained the responsibilities of the unit they worked in, which did not violate the trial court's ruling on defendant's motion *in limine.*

¶ 44 Evidence of gang affiliation is admissible where it is relevant to an issue in dispute, and its probative value is not substantially outweighed by its prejudicial effect. *People v. Johnson*, 208 Ill. 2d 53, 102 (2003). In this case, however, we find that no evidence of gang affiliation was admitted.

¶ 45 We find the issue raised here similar to that addressed by this court in *People v. Gales*, 248 Ill. App. 3d 204 (1993). In *Gales*, the trial court ruled that the State could not introduce evidence of the defendants' gang affiliation, and the State indicated it did not intend to offer any such evidence during its case in chief. *Id.* at 227. At trial, "[s]everal police officers introduced themselves as 'gang specialist' assigned to 'gang crimes south' with their assignment being 'gang suppression.' " *Id*. The defendant noted on appeal that the word "gangs" was used more than 96 times during the trial and argued that this use of the word indirectly implied that he was a gang member. *Id*. This court pointed out that there was no testimony that any of the defendants were gang members, no testimony about gang activity in the area, and no evidence presented that the investigation was gang related. *Id*. at 228. We noted that the trial court's pretrial ruling clearly barred testimony regarding gang affiliation, and consequently, found that the officers' testimony identifying themselves as "gang crimes specialists" did not violate that ruling or infer that the defendant was a gang member. *Id*. at 228-29.

¶ 46 Here, as in *Gales*, the officers introduced themselves and merely identified their unit of assignment as being related to gangs. Nor did the officers testify that they were specialists in

gang crimes, as in *Gales*; each officer here said that their duties included narcotics, and Investigator Bartemio testified that the unit handled "high crimes," including homicides. There was no evidence or even suggestion that defendant was affiliated with a gang.

¶ 47 True, when Sergeant Nowicki testified about Garner's prior conviction during the State's rebuttal case, he said that he was responding to a call with "possible gang involvement." But Nowicki said that Garner tried to run him over during a traffic stop, which he did not link to gang activity. Thus, the State did not present any evidence that would cause the jury to infer that defendant had a gang affiliation.

¶ 48 Second, defendant contends that the State violated the trial court's ruling barring evidence regarding defendant's past encounters with police when the prosecutor asked Investigator Bartemio if he "ever encountered the defendant before the date of April 27th of 2011[.]" Defense counsel objected, and the court asked the prosecutor for the relevance of the question. The prosecutor then replied, "I just wondered if the officer had any contact with the defendant." The court sustained the objection, and the question was not answered. Defendant argues that although the court sustained the objection, the question itself was highly prejudicial and allowed the jury to infer that defendant had prior contact with the police.

¶ 49 The State responds that the question was open-ended, did not insinuate an answer, and the officer could have answered it either way. The State points out that it did not ask Investigator Bartemio if he knew defendant from a "prior incident," and thus, did not suggest that there was any prior *crime-related* contact. The State also argues that the court cured any possible error by sustaining counsel's objection.

¶ 50 We agree with defendant that the prosecutor's question violated the court's pre-trial ruling. But our supreme court held that, when there is a timely objection to an improper question at trial, the court can correct the error by sustaining the objection or instructing the jury to disregard the question and answer. *People v. Hall*, 194 Ill. 2d 305, 342 (2000). Here, defense counsel's objection was timely, and the court did not permit Bartemio to answer the improper question. Thus, the objection prevented any prejudicial information—other than the speculative effect of the prosecutor's question—from passing to the jury. Moreover, as the start of the trial, the court told the jury, "If I sustain an objection to a question that's asked of a witness and do not permit it to be answered, you *** should not speculate as to what the answer might have been given, *** nor should you draw any inference from that question itself." And at the conclusion of the trial, while instructing the jury, the court admonished the jurors that they should "disregard questions which were withdrawn or to which objections were sustained." The trial court sufficiently cured the error, and defendant was not prejudiced.

¶ 51 Although it is possible that an improper question could be so damaging that the trial court cannot cure the prejudice (*id*.), this is not such a situation. In *Hall*, the supreme court held that a single question about the defendant's prior conviction, which violated the trial court's ruling on a motion *in limine*, did not prejudice the defendant when the trial court sustained a defense objection and ordered the jury to disregard the answer. *Id.* In this case, there was even less prejudice than in *Hall*. Here, the State asked a single question about defendant's prior contact with the police. At most, that question *implied* prior criminal activity by defendant, unlike the question in *Hall*, which directly linked the defendant to a prior criminal conviction. And in this case, the judge sustained the objection before Bartemio could answer, whereas the jury in *Hall*

heard the answer to the improper question. We find that the question about defendant's contact with Bartemio did not prejudice defendant.

¶ 52 Third, defendant contends that the State violated the trial court's ruling on his motion *in limine* by eliciting prejudicial testimony from Sergeant Nowicki that extended beyond the proper scope of rebuttal. Defendant argues that the State was barred from presenting the facts from the April 25, 2011, incident involving Garner unless Garner first testified to something specific about the officers involved, such as "the officer's lying," at which time the State could then present those facts as evidence of Garner's bias against Nowicki. Defendant notes that Garner did not testify about the officers. He also points out that when the prosecutor asked Garner if the prior incident involved Sergeant Nowicki, the trial court sustained defense counsel's objection. Defendant therefore argues that Sergeant Nowicki's testimony that Garner tried to run him over with a vehicle did not rebut Garner's testimony, and instead, only inflamed the jury.

¶ 53 The State responds that, when read in context, the trial court's order barred it from discussing defendant's role in the April 25, 2011, incident involving the vehicular assault on the officer. The State points out that the court specifically stated that it did not want any mention of defendant being with Garner during the prior incident.

¶ 54 The purpose of rebuttal testimony is to explain, contradict, or disprove defendant's evidence. *People v. Hood*, 213 Ill. 2d 244, 259 (2004). It is improper for the State to introduce rebuttal evidence either that does not serve these purposes (*People v. Sepka*, 51 Ill. App. 3d 244, 260-61 (1977)), or that does contradict the defendant's evidence but only on a collateral or immaterial matter (*People v. Williams*, 96 Ill. App. 3d 958, 964 (1981)).

¶ 55 We do not find reversible error here. First, we question whether the challenged testimony violated the trial court's *in limine* ruling in the first place. The trial court stated, on more than one occasion, that it was permissible for the State to call Sergeant Nowicki as a rebuttal witness if Garner testified for the defense, and that this rebuttal testimony could include the fact that Garner had pleaded guilty to aggravated assault of an officer with a vehicle with regard to Nowicki. The court first told the State that "[i]f Mr. Garner testifies, then your cross or the only evidence you can put in is that aren't you the individual who pled guilty to this *with this officer*." (Emphasis added.) The court later reiterated that "if Garner testifies, yeah, this and this and the officer's lying, well, wait a minute, aren't you the guy that had this encounter *with this officer* and pled guilty to that?" (Emphasis added.)

¶ 56 True, Nowicki had not testified in the State's case-in-chief, so Garner was not literally saying that *Nowicki* was lying, nor did he specifically say that any officer was lying. But his testimony supported the defense's theory that defendant was holding a cell phone in his hand at the time in question, and it contradicted the State's claim that it was a gun, not a phone. So the questions concerning Garner's vehicular assault charge involving "this officer"—Sergeant Nowicki—seemed to fit squarely within the trial court's pre-trial ruling.

¶ 57 Second, as the State argued at trial (though not so much on appeal), evidence of this prior charge involving one of the responding officers, Nowicki, could be relevant to expose Garner's bias in favor of defendant and against the officers who came to that house looking for him, including Nowicki. A witness's bias is "always relevant" ground for cross-examination or rebuttal. *People v. Gonzalez*, 120 Ill. App. 3d 1029, 1036–37 (1983), *aff'd*, 104 Ill. 2d 332 (1984); see also *People v. Garrett*, 44 Ill. App. 3d 429, 437 (1976) ("Inquiries of a witness as to

*** his interest in the results of the case, and his feelings of bias, are never collateral."); *Davis v. Alaska*, 415 U.S. 308, 316 (1974) (" 'The partiality of a witness is subject to exploration at trial, and is 'always relevant as discrediting the witness and affecting the weight of his testimony.' ") (quoting 3A J. Wigmore, Evidence s 940, p. 775 (Chadbourn rev. 1970)). Nowicki's testimony on this basis would not have been relevant in the case-in-chief but became relevant once Garner testified for the defense.

¶ 58 We must temper everything we have just said, however, with the fact that the trial court sustained the defense's objection to this line of questioning. Even if we might view the testimony as consistent with the *in limine* ruling, and even if we might find it proper rebuttal testimony as to Garner's bias, it appears that the trial court did not.

¶ 59 But even if we were to assume that error occurred here, we would not reverse defendant's conviction in any event, because any error would have been harmless. Our supreme court has instructed that "when deciding whether error is harmless, a reviewing court may (1) focus on the error to determine whether it might have contributed to the conviction; (2) examine the other properly admitted evidence to determine whether it overwhelmingly supports the conviction, or (3) determine whether the improperly admitted evidence is merely cumulative or duplicates properly admitted evidence." *People v. Becker*, 239 Ill. 2d 215, 240 (2010). Here, the first approach is appropriate.

¶ 60 Most of Nowicki's testimony on rebuttal was indisputably proper. Nowicki testified that he stopped Johnson near the fence, about 10 to 12 feet away from defendant. This contradicted defendant's and Garner's testimony that defendant and Johnson were next to each other in the backyard. More importantly, Nowicki also testified that police did not recover a cell phone,

which contradicts the defense evidence that defendant dropped a cell phone. Comparatively, the reference to Garner's conduct in the unrelated case was brief.

¶ 60 And while the challenged testimony might not have reflected so well on Garner, the prejudice to *defendant* was oblique. Nowicki said that Garner was involved in the attempt to run him down, not defendant. *None* of the State's evidence connected defendant to Garner's past crime—which had been the overriding concern of the trial court in its *in limine* ruling. The jury would thus have to associate defendant with Garner's offense by virtue of their friendship alone. And that is an inference the jury may already have drawn, since Garner had already testified himself that his offense involved the same police department whose officers arrested defendant. In light of all of the other evidence presented at trial, we find that Nowicki's brief testimony on a relatively minor point was harmless.

¶ 61 We also reject defendant's claim that he was prejudiced by the cumulative effect of the alleged errors. As we stated above, the trial court cured any prejudice caused by the State's improper question to Investigator Bartemio, the error in Sergeant Nowicki's rebuttal testimony (if any) was harmless, and defendant's claim that there was improper gang testimony lacked merit. Consequently, we conclude that defendant suffered no prejudice in this case.

¶ 62 Finally, defendant argues, and the State agrees, that he is entitled to sentencing credit for 90 days served in custody, rather than 89, and that his mittimus should be amended to reflect the correct number. Pursuant to our authority (Ill. S. Ct. R. 615(b)(1) (eff. Aug. 27, 1999); *People v. McCray*, 273 Ill. App. 3d 396, 403 (1995)), we direct the clerk of the circuit court to amend the mittimus to reflect that defendant is to receive 90 days of credit for time served.

¶ 63 We affirm the judgment of the circuit court of Cook County and correct the mittimus.

¶ 64 Affirmed; mittimus corrected.