No. 2—09—0460
Order filed January 13, 2011

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the Circuit Court of Lake County.
Plaintiff-Appellee,	)	
v.	)	No. 08—CF—834
DOMINIC J. DOUGHERTY,	)	Honorable George Bridges,
Defendant-Appellant.	)	Judge, Presiding.

JUSTICE BOWMAN delivered the judgment of the court.
Justices Zenoff and Burke concurred in the judgment.

ORDER

Held: The trial court did not err in allowing evidence in rebuttal that defendant was arrested on an outstanding warrant. Even otherwise, any error would have been harmless.

Following a jury trial, defendant, Dominic J. Dougherty, was convicted of aggravated robbery (720 ILCS 5/18–5(a) (West 2008)) and sentenced to nine years' imprisonment. On appeal, defendant argues that the trial court erred in allowing at trial evidence of another crime. We affirm.

I. BACKGROUND

On March 26, 2008, defendant was charged by indictment with aggravated robbery. The indictment alleged that on February 25, 2008, defendant, while indicating that he was armed with

a firearm, knowingly took money "from the presence of" someone by threatening the imminent use of force. In July 2008, defendant filed a motion to suppress evidence. He alleged that a statement that he had provided to the police was involuntary because the police ignored his request for an attorney and obtained the statement through the use of physical abuse and false promises. The trial court denied the motion to suppress in October 2008, and the cause proceeded to a jury trial on March 9, 2009.

According to the evidence presented by the State, Laura Cornojo was working at the Zapopan Bakery in Waukegan on the night of February 25, 2008. Shortly after 8 p.m., a man with a gun entered. He was wearing a black ski mask, a sweatshirt, and gloves. Cornojo described the man as young, thin, about 5'8" or 5'9" tall, and with light blue eyes. He had a cap in his back pocket and a hammer hanging from his pants. Speaking Spanish, the man told her about three times to hurry up and open the register. After she did so, the man took all of the bills over $1 and left. The store's owner originally estimated the amount stolen at $340 or $350 but later calculated that it was about $450.

The police found footprints in the snow outside of the bakery that eventually led to a parking lot. The evidence technician did not try to take any fingerprint impressions inside of the bakery because he was told that the offender was wearing gloves. The police did not have any physical evidence linking defendant to the crime.

Detective Andy Ulloa provided the following testimony. On February 26, 2008, he and other officers went to defendant's apartment and met defendant as he was coming out. The two-bedroom apartment was dark, with just one light in the kitchen, and there were clothes and garbage throughout; it was in "complete disarray." Therefore, the police did not do a detailed search of the

apartment and did not look for a gun, hammer, or ski mask. Defendant left with the police and was taken to the police department. Detective Thomas read defendant his *Miranda* rights, and defendant signed a rights waiver form at 5:40 p.m. Defendant, who had blue eyes, admitted speaking Spanish and having a fake gun.

Detective Domenic Cappelluti testified as follows. He met with defendant on February 27, 2008, at about 6:30 p.m. Defendant had been in custody since 5:15 p.m. the prior evening. Defendant said that he was hungry so Cappelluti brought him food. At about 7:30 p.m., he escorted defendant to an interview room and allowed him to smoke a cigarette. Cappelluti read defendant his *Miranda* rights, and defendant signed a waiver form. Defendant then said that he knew he was going to jail because he had gone into the bakery and demanded money. Defendant swore that the gun he used was a fake. He said that before entering the bakery, he had a baseball cap on but he put the cap in his back pocket and wore a "monster mask." He said that he robbed a female employee, took about $400, and fled on foot. Defendant said that he then left in a car and threw the fake gun out of the window because he did not want to get caught with it. When asked if he was by himself in the car, defendant said that "he did not want to involve anybody else." Defendant spoke to Cappelluti in Spanish and said that he was half Spanish. Defendant said that he did not have a job but was trying to get one. He said that he wanted to use the money he stole to buy a birthday gift for his mother but instead spent it " 'on everyday bullshit.' "

Cappelluti gave defendant several choices for making a statement, saying that he could make a videotaped statement, write a statement, or have Cappelluti prepare a typed statement. Defendant said that he preferred that Cappelluti prepare a statement for him, and Cappelluti did so. At about 9:43 p.m., he read the statement out loud to defendant and gave him a chance to read it and make

changes. Defendant said that the statement was correct, wrote "Thank you very much" at the bottom, and signed it. He thanked Cappelluti several times and shook his hand.

The statement, admitted into evidence, provides in relevant part:

"I just want to clear me [*sic*] name and tell the truth about what I did. Nothing else. I know I'm white and have blue eyes, and speak Spanish. I just don't want the police to think I did more than what I really did.

The person I trust the most is my mom. *** I just want her to get my side of the story, not what she hears.

Det. Cappelluti treated me with respect. I even had an opportunity to go on video, but I just want to have Cappelluti prepare this for me so I know that the court gets exactly what I'm saying. I want the judge to know that I'm a good person inside.

Me and Cappelluti talked for a while. I ate and got something to drink. We talked about back in the day, when I was still a bad kid. But I grew up. I told Cappelluti how many problems I had with gang bangers trying to get me because I could handle my own and didn't want to mess with that gang shit anymore.

On Monday night I don't know what I was thinking. I ran into the Spanish Bakery on Washington, just passed Lewis. I had a small fake gun on me. Like a black revolver. I had a mask on. I had gloves on. I had a black hoody on. I was just stupid and made a big mistake. I pointed the fake gun at the girl and told her in Spanish to hurry up and to open the register. I never said anything about hurting her or shooting her or anything. I'm a man and take responsibility for what I did. I ain't going to say anything about anyone else. I'm sorry but I tossed the fake gun and don't know where I threw it out at. [sic] But, I know it looked

real and want to prove to everyone that it was fake. I'm sorry to Det. Ulloa and Det. Thomas, but I just wanted to talk now. I don't want them to think I was responsible for more, just because I didn't say anything at first. I got about $400 from the bakery. I just used it to buy some food and survive. I told Cappelluti I had a hat in my back jeans pocket. I tried every temp place to get a job, but most places don't even give me a chance because of my background. I asked Cappelluti t[*sic*] put a copy of this statement in my property.

The above is ***true and accurate*** and I am giving it of my own free will and no threats or promises have been made to me." (Emphasis in original.)

After the trial court denied defendant's motion for a directed verdict, defendant presented alibi witnesses who placed him at home on the night of the robbery. Defendant's mother, Geralyn Romero, testified that on February 25, 2008, she lived in an apartment with defendant and her older son, daughter, and grandson. They were all home at about 8 p.m. She was having a competition with defendant on a computer game and he spent the night trying to beat her score. When Romero went to bed at 9 p.m., defendant was still at home.

Romero left for work early in the morning on February 26, and the apartment was in order. However, when she returned home at about 5:30 p.m., it had been "ransacked." Closets, drawers, and purses had been emptied, and furniture had been knocked over. Romero received a call from one of her other sons saying that defendant had been arrested, so she called the Waukegan Police Department and county jail, but both locations denied having him in custody. The police department did not admit having defendant in custody until February 28.

Defendant's sister, Veronica Gomez, corroborated Romero's testimony that defendant was playing computer games the night of February 25. Gomez was home until 11:30 p.m. that night, and

defendant never left during that time. Gomez also corroborated Romero's testimony that they did not learn of defendant's whereabouts until February 28.

Defendant testified as follows. He was 23 years old. On the night of February 25, 2008, he was home playing a computer game. It was snowing and he did not leave the apartment the entire day. At about 5:15 p.m. the following day, he answered the doorbell and was thrown against the wall and handcuffed by the police. The officers searched the apartment for about five minutes. Afterwards, they put him in a police car and, at his request, took him to a bowling alley so he could give his brother his keys. The police then took him to an interrogation room at the police department, where he sat for 30 to 45 minutes before Detectives Thomas and Ulloa came in. After he refused to answer questions, he was "smacked" on his ears and head. Defendant was in the room for about two hours.

Later that evening, the police took him to a car and said that he was leaving. Defendant asked where they were taking him but was told not to worry. They drove him to a park on Western Avenue. The officers walked him to the back of the park and threw him in the snow and on a bench. They also "smacked" him and handcuffed him to a bench. After about 30 to 45 minutes, the officers drove him to a boat dock on the lake and held him over the water. Defendant was scared. Next they returned to the station and put defendant in an interrogation room, where they continued to question him until he was put in a cell for the night. Defendant did not receive any food that day.

In the afternoon of February 27, Detective Cappelluti came into the cell and asked if he needed anything. Defendant said that he had only eaten breakfast that day and was hungry, so Cappelluti brought him food from McDonald's. Cappelluti said that defendant needed to eat the food in the interrogation room, and he left him alone there for a while. Cappelluti then returned and

said that he was not like other cops, that it was bad that they beat him, and that they were trying to charge him with multiple robberies. Cappelluti offered defendant a deal, saying that if defendant signed a statement, he would be charged with only a Class 4 felony and let go. Defendant signed the statement based on the promise. Defendant wrote "thank you" on the statement because Cappelluti said that it would look good for his supervisor. Defendant also thanked Cappelluti because he thought that he really was going home and that Cappelluti had helped him. Defendant denied robbing the bakery. On cross-examination, defendant denied telling the police that he had dumped the gun in a garbage can at the park. He told them that he sometimes carried a gun because he sold drugs. They asked him where the gun was but he did not reply. Defendant did not tell the police that he was playing a computer game on the night of the robbery but did tell them that he was at home. Detective Ulloa was the officer who went through things and dumped things on the floor in the apartment after defendant's arrest. Defendant admitted signing the rights waiver form and statement. However, Cappelluti made up all of the details about the offense. Defendant identified a booking photo of himself but said that he did not remember that picture being taken because "[he] [had] other pictures taken at Waukegan." Defendant agreed that he was seen by a nurse. He testified that he had a few bruises on his ribs and his left ear as a result of the police beatings.

In rebuttal, Detective Scott Thomas testified that he went with Detective Ulloa to defendant's apartment. Defendant was in the hallway, and he escorted them into the apartment. They were going to search the apartment to look for a firearm but did not because there was garbage and dirty laundry everywhere, and it would have taken multiple officers several hours to go through everything. Thomas did not recall seeing a computer. They were in the apartment for five minutes or less. He never yelled at or struck defendant.

At one point Thomas left the police station with defendant and Detectives Grazita and Ulloa because defendant said that he was going to show them where he hid the gun. Defendant directed them to a park where he said that he hid the gun by a garbage can, but at the park they did not see any footprints in the snow or the garbage can that defendant had described. Therefore, they returned to the police station. They never went to Lake Michigan, and no one held defendant over a lake. The booking photo of defendant was taken on February 28, 2008, at 9 p.m., and it was an accurate description of how defendant looked when Thomas spoke to him. In response to a question by defense counsel, Thomas agreed that the police arrested defendant when they saw him outside of his apartment.

Following Detective Thomas's testimony, the State requested that it be allowed to introduce evidence that the police went to defendant's apartment because they had an outstanding bench warrant for him. Over defendant's objection, the trial court said it would allow the evidence, noting that the defense had asked Thomas about arresting defendant at the apartment.

The trial court gave the jury a limiting instruction that there was going to be evidence of defendant's involvement in another offense, but the jury could consider the evidence only for the limited purpose of explaining why the police arrested defendant. Detective Ulloa then testified that the police went to defendant's apartment to "pick him up on [an] outstanding bench warrant." He also testified consistently with Detective Thomas that they drove defendant to the park to look for his fake gun and that they never drove to Lake Michigan or hit defendant. On cross-examination, Ulloa agreed that the bench warrant was for a misdemeanor charge.

Detective Michael Reed testified that he was present when Detective Cappelluti questioned defendant. Defendant was sad but fully cooperative throughout the interview. Cappelluti never

made any promises to defendant. Cappelluti did say that defendant's cooperation would be documented.

A nurse with the Lake County Sheriff's Department testified that he examined defendant on March 2, 2008, and did not observe any injuries on him. The nurse did not look at his body.

The parties stipulated that defendant had been convicted of felony theft in Lake County in August 2002, and the stipulation was admitted into evidence.

The jury found defendant guilty of aggravated robbery. On April 17, 2009, the trial court denied defendant's motion for a new trial and sentenced him to nine years' imprisonment. Defendant timely appealed.

II. ANALYSIS

On appeal, defendant argues that the trial court erred by allowing the State to introduce evidence in rebuttal that he was arrested on an outstanding bench warrant unrelated to this case. Evidence of other crimes is admissible if it is relevant to establish any material question other than the defendant's propensity to commit a crime. *People v. Harris*, 225 Ill. 2d 1, 28 (2007). Evidence is relevant if it tends to make the existence of a fact of consequence more or less probable. *People v. Munoz*, 398 Ill. App. 3d 455, 481 (2010). However, even if the other-crimes evidence is offered for a permissible purpose, the trial court must exclude the evidence if its prejudicial effect substantially outweighs its probative value. *People v. Moss*, 205 Ill. 2d 139, 156 (2001). The trial court has discretion in deciding whether to allow other-crimes evidence, and its decision will not be reversed absent a clear abuse of discretion. *People v. Wilson*, 214 Ill. 2d 127, 136 (2005). In this case, the other crimes evidence was offered during the State's rebuttal. Rebuttal evidence serves to explain, repel, contradict, or disprove evidence presented by the opposing party. *People v. Dresher*,

364 Ill. App. 3d 847, 862 (2006). Whether to allow rebuttal evidence is similarly within the trial court's discretion, and its decision will not be disturbed unless it abused its discretion. *Id.* An abuse of discretion occurs where the trial court's decision is arbitrary, fanciful, or no reasonable person would adopt the same view. *People v. Donoho*, 204 Ill. 2d 159, 182 (2003).

Defendant points out that evidence of steps taken to investigate a crime are irrelevant and inadmissible unless they specifically connect the defendant to the offense in question. See *People v. Jackson*, 232 Ill. 2d 246, 268-69 (2009). Defendant argues that he never questioned why the police happened to appear at his apartment, so whether he was wanted by police on an unrelated crime was simply irrelevant to the issues at trial. Defendant argues that while the circumstances surrounding his treatment by the police may have been relevant in light of his allegations against the police, the reason of why he happened to be in police custody was not.

Defendant further maintains that even if the evidence had some relevance, its prejudicial effect substantially outweighed its probative value. Defendant argues that the jury already had evidence before it regarding prior criminality, specifically his custodial statement referring to his being a "bad kid" with gang problems and having difficulty getting a job because of his "background," and evidence of a 2002 felony theft conviction. Defendant argues that this evidence allowed the jury to focus on his prior history and character rather than his responsibility for the robbery in question, and learning about an outstanding warrant for yet another crime at the time of the offense could well have constituted the evidence that changed the outcome of the case.

We conclude that the trial court acted within its discretion by allowing evidence during rebuttal that the police arrested defendant on an outstanding bench warrant. The evidence was not admitted to show that defendant had a propensity to commit crimes or simply to describe

investigative steps but rather to explain why the police arrested defendant when they initially confronted him. The information was appropriate for rebuttal because during defendant's case in chief, he testified that he was immediately handcuffed when the police confronted him, and he testified regarding how much time passed before he signed a statement admitting to the crime. The passage of time, along with the alleged beatings and promises by police, formed the defense's explanations of the allegedly false confession. Indeed, during closing argument, defense counsel stated, "Don't you think after 28 and a half hours of being subjected to what the Waukegan Police Department subjected [defendant] to that you would want to go home? *** Fine. I'm going to sign it. I'm out of here. *** Isn't that reasonable?" Thus, the evidence that defendant was arrested on an outstanding warrant was relevant to explain that the police had reason to keep defendant in custody other than as a coercive technique to get him to falsely confess to the bakery robbery. The probative value of this explanation was not outweighed by the prejudicial effect of the evidence, especially considering that the testimony about the bench warrant was very brief; the trial court immediately prior provided a limiting instruction that the jury could consider the evidence only for the purpose of explaining why the police arrested defendant; and the defense was able to bring out in cross-examination that the warrant was for a misdemeanor offense.

The State's citation to *People v. Bryant*, 202 Ill. App. 3d 290 (1990), is particularly appropriate here. There, the trial court allowed evidence in the State's case in chief that the defendant had an unrelated outstanding burglary warrant at the time he was arrested on charges at issue. *Bryant*, 202 Ill. App. 3d at 296. The appellate court rejected the defendant's argument that allowing such evidence was improper, saying that if the jury had not been informed of the warrant for the unrelated offense, the jury might have been left with the incorrect impression that the

defendant was arrested and jailed until he confessed to the crime at issue over one month later. *Id.* at 304-05. Whereas *Bryant* went so far as to allow such other crimes evidence in the State's case in chief, here the State elicited the information about the outstanding warrant only after defendant raised the issue of the length of time in police custody as a contributing factor to the allegedly false confession. See also *People v. Gilliam*, 172 Ill. 2d 484, 514-15 (1996) (where the defendant contended that his lengthy detention contributed to the coercion that resulted in his false confession, evidence of another crime was relevant to establish a legitimate reason for the detention and undermine the defendant's claim of coercion).

Defendant citation to this court's recent case *People v. Limon*, No. 2–09–0058 (Ill. App. November 30, 2010), is not persuasive. There, the defendant was charged with robbery and aggravated battery relating to an incident in which a lady's purse was stolen. The defendant was arrested 11 days later after a foot chase by police. The defendant tripped and fell, and a gun fell from his pants. The defendant struggled with police officers, and his eye was injured. The trial court granted the State's motion *in limine* to allow evidence about the gun and the defendant's struggle with police officers to explain the officers' use of force. *Limon*, slip op. at 1. Prior to the introduction of the evidence at trial, the trial court provided a limiting instruction similar to the one given in the instant case. *Id.* at 2. This court held that the trial court erred in allowing evidence that the defendant had a gun 11 days after the crime at issue, because the probative value of this testimony did not outweigh its prejudicial effect. *Id.* at 2. We rejected the State's argument that evidence of the gun was necessary to rebut the defendant's theory of coercion, which was based on police brutality and his eye injury. We reasoned that the defendant's resistance alone was sufficient to explain the minimal injury. We further stated that the defendant's injury would have become

relevant if the defendant had raised the issue of coercion, but "the trial court allowed the State to present to the jury irrelevant, prejudicial evidence based on the hypothetical possibility that [the] defendant would claim coercion based on police brutality." *Id.* at 3.

In contrast to *Limon*, here the State did not bring in the other-crimes evidence in its case in chief but rather in rebuttal in response to defendant's theory of coercion, as advocated by the *Limon* court. Further, the outstanding bench warrant was not a tangential issue as was the gun in *Limon*; as discussed, the bench warrant provided the police with a legitimate reason to keep defendant in custody and its existence was relevant to rebut the inferences raised by defendant's testimony that he was unduly detained, with the length of the detention being a factor contributing to his allegedly false confession.

Moreover, the other-crimes evidence here was also permissible under the doctrine of curative admissibility, which allows a party to introduce otherwise inadmissible evidence if it is necessary to cure undue prejudice stemming from the other party's introduction of similar evidence. *People v. Duff*, 374 Ill. App. 3d 599, 606 (2007). The doctrine is limited and merely protective, and it extends only as far as necessary to protect a party from unduly prejudicial inferences raised by the other party. *Id.* In this case, defense counsel elicited testimony from Detective Thomas that defendant was in the apartment doorway when the police arrived. Defense counsel then asked, "It was at that point that you placed him under arrest?", and Thomas replied in the affirmative. Defense counsel's emphasis of the moment of arrest, taken in context with evidence presented by the defense, raised the inference that the police did not have a legitimate reason to arrest defendant at that time. Thus, the State's subsequent limited introduction of evidence that the police had an outstanding bench warrant at the time of the arrest was proper under the doctrine of curative admissibility.

Furthermore, even if, *arguendo*, the trial court should have excluded evidence of the bench warrant, any error arising from its admission is undoubtedly harmless. An evidentiary error is harmless if there is no reasonable probability that the jury would have acquitted the defendant absent the error. *In re E.H.*, 224 Ill. 2d 172, 180 (2006). As defendant himself notes, the jury already had before it evidence of defendant's past criminality, such as his written statement's references to him being a "bad kid" with gang problems and having difficulty getting a job because of his "background," and more significantly, stipulated evidence that he had a 2002 felony theft conviction. Defendant also testified that he sold drugs and sometimes carried a gun, which is evidence of additional crimes, as is his testimony that he did not remember when the booking photo shown to him was taken because "[he] [had] other pictures taken at Waukegan." Given the numerous references to various other crimes, even if the jury had not learned that defendant was arrested on a bench warrant for a misdemeanor offense, there is not a reasonable probability that its verdict would have been different.

III. CONCLUSION

For the foregoing reasons, we affirm the judgment of the Lake County circuit court.

Affirmed.