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No. 3--10--0017

Order filed June 14, 2011

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

A.D., 2011

THE PEOPLE OF THE STATE OF)	Appeal from the Circuit Court
ILLINOIS,)	of the 12th Judicial Circuit
)	Will County, Illinois
Plaintiff-Appellee,)	
)	No. 07-CF-2548
v.)	
)	
JOHN L. SASUTA,)	Honorable
)	Edward A. Burmila, Jr.
Defendant-Appellant.)	Judge Presiding.

JUSTICE LYTTON delivered the judgment of the court.
Presiding Justice Carter and Justice McDade concurred in the judgment.

ORDER

Held: Trial court did not commit error by precluding testimony that defendant had African-American friends where defendant was convicted of battery against an African-American that appeared to be racially motivated.

Defendant, John L. Sasuta, was charged with two counts of aggravated battery (720 ILCS 5/12--4(b)(8) (West 2006)) and one count of resisting arrest (720 ILCS 5/31--1(a) (West 2006)). Following a bench trial, defendant was convicted of one count of

aggravated battery against Rashone Franklin. The trial court sentenced defendant to five years in prison. On appeal, defendant argues that the trial court erred in precluding testimony that defendant had African-American friends. We affirm.

Defendant was charged with two counts of aggravated battery for striking Rashone Franklin and biting Patrick Lane and one count of resisting a peace officer at Chuck's Tavern and Grill in Crete on December 14, 2007. Defendant pled not guilty and waived a jury trial.

At defendant's bench trial, Rashone Franklin, a principal at Balmoral Elementary school in the Crete Monee School District, testified that he attended a school Christmas party with his staff on December 14, 2007, at Vic's, an establishment on Main Street in Crete. After the party, many of his staff decided they wanted to go to Chuck's Tavern, approximately one block away. Franklin, who is African-American, walked into Chuck's with a female African-American teacher.

As Franklin walked in, he saw defendant and another individual sitting at the edge of the bar nudging each other, talking and looking at him. When Franklin went to the bar to order a drink, he saw defendant staring at him. He then saw defendant mouth the word "nigger" toward him. Franklin told Patrick Lane, the vice-principal's husband, that he thought they should leave. After about 10 to 15 minutes, Franklin went outside. Lane followed

Franklin outside and told him to relax and have one drink.

As Franklin and Lane went back inside, Franklin was confronted by the man sitting next to defendant at the bar. He told Franklin there was no problem and that they were all just there to "have a good time." As the man was speaking to Franklin, defendant punched Franklin on his left jaw with a closed fist. Franklin fell backward. The police arrived soon after.

Patrick Lane attended the Balmoral Elementary School's staff Christmas party at Vic's on December 14, 2007, with his wife. After the party, they went to Chuck's, along with 30 to 40 other people from the Christmas party. Lane entered Chuck's with his wife, Franklin and several teachers. As soon as they entered, Lane noticed defendant and another man elbowing each other, staring at them and making comments. Lane heard defendant say, "What's these niggers coming in this bar for?" Then, defendant repeatedly said, "Who brought these niggers in here?".

When defendant persisted in "saying stuff," Lane identified himself as an off-duty auxiliary officer from Beecher. Defendant's comments persisted, and Franklin became agitated. Lane requested that Franklin go outside with him. Outside, Lane suggested that they finish their drinks and leave. Franklin agreed, and they went back into the bar. When they reentered the bar, a man with defendant apologized and said, "Everything's cool." The next thing Lane saw was defendant hitting Franklin in the side of his head

with a closed fist. When defendant went to take another swing at Franklin, Lane blocked the hit, grabbed defendant and took him to the ground.

John O'Connor, whose wife is a teacher at Balmoral Elementary School, attended the Christmas party at Vic's on December 14, 2007, and then went to Chuck's Tavern and Grill. When he approached the bar at Chuck's to order a drink, he heard defendant ask, "Why are the niggers in the bar?" Later, O'Connor saw defendant reach over Franklin's shoulder and punch Franklin in the left side of the face with a closed fist. At the time, defendant's friend was talking to Franklin telling him, "Everything's cool." Franklin was not combative or aggressive before defendant hit him.

Timothy Jones testified that he and defendant went to Tyler Roofing in Crete on December 14, 2007, to get paid. While he was there, he had 12 to 15 beers. He and defendant left Tyler Roofing between 5 p.m. and 6 p.m. to go to Chuck's Tavern and Grill. At Chuck's, Jones consumed another 12 beers and 7 shots. While Jones and defendant were at Chuck's, approximately 20 to 30 people came in. When he saw Franklin come in, he asked Lane why he was bringing niggers into the bar and told Lane to take them out of there. Lane responded by saying that he was an off-duty police officer in Beecher. Jones then told Lane to take the niggers to Beecher. Jones did not hear defendant make any racist remarks to Franklin or Lane. Jones does not recall much after that except

that a "scuffle" occurred, and he ended up in the back of a squad car. He believes he suffered a blackout.

Michelle Sasuta, defendant's wife, testified that she went to Chuck's at approximately 9 p.m. on December 14, 2007, to meet her husband. At approximately 9:30 a.m., about 25 to 30 members of the Balmoral Elementary School staff, including Franklin, came into Chuck's. At some point, Jones spilled Franklin's beer and walked outside. Franklin followed him. Defendant then went outside to make sure everything was okay. After they had all returned inside, Franklin began walking toward defendant and said, "There is a fucking problem." Franklin was standing in front of the door, and defendant wanted to leave, so defendant pushed Franklin's cheek and ear to get him out of the way. Franklin fell backward. Lane then grabbed defendant's head, and she did not see what happened next.

Sasuta did not hear defendant make any racist or derogatory statements to anyone at Chuck's that night. She did not hear anyone say "nigger," including her husband. She testified that defendant plays softball with African-Americans and has never exhibited racist attitudes in her presence. When defense counsel asked Sasuta if defendant has any African-American friends, the State objected, and the court sustained the objection.

Defendant testified that on December 14, 2007, he went to Tyler's Roofing with Jones to clean up equipment. While defendant was there, he had about six beers. When he finished cleaning, he

got paid and went with Jones to Chuck's Tavern and Grill. They arrived at Chuck's at about 6:30 p.m. After a couple of hours, he called his wife to pick him up so that Jones would not have to take him home. His wife was at Chuck's for 10 to 20 minutes before the teachers arrived. After they arrived, Jones went outside, and defendant followed him. Outside, Jones told defendant he wanted to leave. When defendant asked why, Jones pointed at Franklin and said, "Why are these fucking niggers here?" Defendant told Jones to relax because they were going to leave. As defendant walked back into the bar, he told Franklin that there were not going to be any problems and that they were leaving as soon as they could.

Defendant went back inside and sat down at the bar. Soon after, Jones came back into the bar. About ten minutes later, defendant heard Franklin repeatedly say, "It's not over. It's far from fucking over." Franklin was standing several feet in front of the door at the time and appeared agitated. Defendant told his wife that it was time to leave. As defendant walked toward the door, Franklin made a step toward him. Defendant pushed Franklin with his left hand and hit him in the face with his right hand. Franklin fell backward. After that, Lane grabbed defendant and took him to the ground. Defendant denied saying any racial slurs.

After all of the evidence was presented, the trial court ruled that the State failed to prove defendant guilty beyond a reasonable doubt of resisting arrest and aggravated battery against Lane.

However, the court found defendant guilty of aggravated battery against Franklin. The court specifically noted that defendant's testimony was incredible.

At defendant's sentencing hearing, Richard Daley, an African-American man, testified that he has known defendant since he was 13 or 14 years old. He sees defendant regularly and considers him a "good friend." Daley testified that defendant was not "racist" and denied ever hearing defendant express a racist attitude.

In sentencing defendant, the trial court considered defendant's lengthy criminal history, which included convictions for attempted murder and aggravated battery. The court also considered the circumstances of the case, finding that defendant's actions were "motivated by racial animus." The court explained: "Now that you have friends that cross racial lines I guess is a good thing, but whether or not you were harboring any animus in your heart over that is something that I can't fathom, but I do take it into account." The court sentenced defendant to five years in prison.

ANALYSIS

Defendant argues that the court erred in excluding testimony that he had African-American friends. The State responds that (1) defendant forfeited any error by failing to make an offer of proof, (2) the testimony was irrelevant and should be excluded, and/or (3) any error in excluding the testimony was harmless.

When a trial court refuses evidence, no appealable issue remains unless a formal offer of proof is made. *People v. Peeples*, 155 Ill. 2d 422, 457 (1993). However, an offer of proof is not required where it is apparent that the trial court clearly understood the nature and character of the evidence sought to be introduced, or where the question itself and the circumstances surrounding it show the purpose and materiality of the evidence. *Id.* at 458.

Here, defense counsel asked defendant's wife if defendant had any African-American friends. The State objected, and the trial court sustained the objection. Defense counsel's question was designed to elicit testimony that defendant had friendly relationships with African-Americans. Because the question itself shows the testimony defense counsel was trying to elicit, no offer of proof was necessary. Thus, we may review the admissibility of the evidence defendant attempted to present.

Evidence is admissible if it (1) fairly tends to prove or disprove the offense charged and (2) is relevant. *People v. Limon*, 405 Ill. App. 3d 770, 772 (2010). Evidence is relevant if it has "any tendency to make the existence of any fact in consequence to the determination of the action more or less probable than it would be without the evidence." *People v. Peeples*, 155 Ill. 2d 422, 455-56 (1993). A trial court may reject proffered evidence on grounds of irrelevance if it has little probative value due to its

remoteness. *Id.* at 456. The admissibility of evidence is within the sound discretion of the trial court, and its decision will not be disturbed absent a clear abuse of that discretion. *People v. Dabbs*, 239 Ill. 2d 277, 284 (2010).

Here, the trial court did not abuse its discretion by preventing defendant's wife from testifying that defendant had African-American friends. Three eyewitnesses testified that defendant used racial epithets toward Franklin and punched him. That defendant may have African-American friends does not make it more or less likely that defendant committed battery against Franklin. The trial court specifically stated at sentencing that it was possible that defendant had African-American friends but "was harboring *** animus in [his] heart over that." Thus, the testimony defendant attempted to introduce was not relevant.

Assuming, *arguendo*, that the testimony was relevant, any error in excluding it was harmless. The exclusion of admissible evidence is subject to a harmless error analysis. *People v. Sipp*, 378 Ill. App. 3d 157, 171 (2007). An error in excluding evidence is harmless if (1) it did not contribute to the conviction, (2) the other evidence presented overwhelmingly supports the conviction, or (3) the evidence excluded was duplicative or cumulative. *People v. Tabb*, 374 Ill. App. 3d 680, 690 (2007).

Here, the exclusion of testimony that defendant had African-American friends did not contribute to defendant's conviction for

battery against Franklin. There was overwhelming evidence, consisting of three eyewitness accounts, that defendant struck Franklin. The trial court found those witnesses to be credible and defendant "incredible." Additionally, the testimony sought to be introduced was similar, if not identical, to Michelle Sasuta's testimony that defendants plays softball with African-Americans and has never exhibited racist attitudes against African-Americans in her presence. For these reasons, any error in excluding the evidence was harmless.

CONCLUSION

The order of the circuit court of Will County is affirmed.
Affirmed.