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IN THE  
APPELLATE COURT OF ILLINOIS  
SECOND DISTRICT

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THE PEOPLE OF THE STATE	)	Appeal from the Circuit Court
OF ILLINOIS,	)	of Kane County.
	)	
Plaintiff-Appellee,	)	
	)	
v.	)	No. 14-CF-1970
	)	
LYNN S. HARRIS,	)	Honorable
	)	Donald M. Tegeler Jr.,
Defendant-Appellant.	)	Judge, Presiding.

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JUSTICE BURKE delivered the judgment of the court.  
Justices Zenoff and Jorgensen concurred in the judgment.

**ORDER**

¶ 1 *Held:* (1) The trial court did not abuse its discretion in admitting video evidence: coupled with other evidence, the videos provided a continuing narrative of the events giving rise to the offense and also were pertinent to the validity of defendant's affirmative defense; (2) the trial court did not abuse its discretion in denying defendant's motion for a mistrial after a witness unexpectedly testified to a prior bad act, as the testimony was isolated and was contradicted by other evidence and the court gave the jury a strongly worded instruction to disregard it.

¶ 2 Defendant, Lynn S. Harris, appeals his convictions of aggravated battery (720 ILCS 5/12-3.05(c) (West 2014)) and mob action (*id.* § 25-1(a)(1)). He contends that the trial court abused

its discretion in admitting YouTube videos into evidence and denying his motion for a mistrial. We affirm.

¶ 3

### I. BACKGROUND

¶ 4 Defendant and his codefendant and daughter, Preona Mayfield, were charged in connection with a November 3, 2014, altercation with Elena Perez and Perez's boyfriend, Carlos Castelan, in the parking lot of the Carpentersville police station. A jury trial was held. Defendant raised the affirmative defense of defense of others, and Mayfield raised self-defense.

¶ 5 Before trial, the State moved *in limine* to present evidence of YouTube videos showing Mayfield at the scene of a November 3, 2014, incident on Cherokee Road in Carpentersville involving Perez and Castelan. The videos showed that Mayfield and others at the scene were angry and that members of defendant's family were arrested. Defendant objected that the videos were irrelevant because they did not involve him or the later altercation in the police station parking lot. The State responded that there was evidence that defendant was at the Cherokee Road incident and that the videos were relevant to show that defendant and Mayfield were the initial aggressors at the police station incident, which negated their affirmative defenses. The court granted the State's motion. The court noted that, although the videos showed no act by defendant, they were relevant to show the context of the altercation in the parking lot of the police station. The court also allowed evidence that Mayfield was involved in a previous altercation with Perez and Castelan at a Carpentersville McDonald's.

¶ 6 At trial, evidence of the Cherokee Road incident was admitted over objection. Castelan testified that, as he was driving his vehicle, he saw defendant walking with another man on Cherokee Road. Defendant was in the middle of the street talking on a cell phone. The other man approached Castelan's vehicle, yelling and hitting it. Several other vehicles arrived, and

people whom Castelan did not recognize began hitting his vehicle with a hammer. Defendant did not approach Castelan's vehicle, and Castelan did not see him among the people who were hitting it. He also did not see Mayfield at the scene.

¶ 7 911 was called, the police arrived, and Castelan and Perez went to the police station to give a written statement. They were met by Castelan's mother. After giving the statement, they were escorted to their cars and they waited while the escorting officer left to confront people who were yelling in front of the police station. According to Castelan, while they were waiting, a truck drove up, blocking them from their vehicles, and defendant rolled down the window and started to say something. Mayfield then got out of the truck, said something to Perez, and pushed her. The women began pushing and shoving each other. Castelan unsuccessfully tried to break up the fight and felt himself being punched in the back of the head and put in a choke hold. Mayfield bit him. Someone sprayed pepper spray, and the police arrived and broke up the fight.

¶ 8 Perez, who was a passenger in Castelan's vehicle at the Cherokee Road incident, testified that she saw two men walking on Cherokee Road and that defendant approached the vehicle and pounded on her window, telling her to get out and that "they were going to—." The trial court stopped the testimony *sua sponte*, the jury was taken out, and the court asked the State why the testimony about defendant approaching and hitting the vehicle was not presented in the motion *in limine*. The State said that the testimony was unanticipated and unintended. The court expressed concern about the testimony, noting that "[t]he cat is out of the bag," and held that the offending portion would be stricken. Defendant moved for a mistrial. In denying the motion, the court stated that it would give a very harsh limiting instruction that the jury disregard any and all testimony about the actions of defendant and Mayfield at Cherokee Road, but would allow

Perez to testify that she saw defendant talking on his phone there. The jury was brought back in and instructed as follows:

“Ladies and gentlemen, you just recently heard some evidence in relation to [defendant]. You are to strike that evidence from your memory. You are not to consider it in any way, shape, or form in arriving at your verdict on [defendant]. The evidence you heard was not appropriately presented, and it will not be used by you in any way, shape, or form.

[Defendant] is not charged with anything in relation to what happened on Cherokee [Road] on that evening, and he is not [to] be considered charged and/or committing any offenses on Cherokee [Road] that evening. Therefore, you shall not consider it.”

Perez then testified that she saw defendant on Cherokee Road with a cell phone to his ear.

¶ 9 As to the altercation at the police station, Perez testified that Mayfield got out of the truck yelling, swearing, and saying “ ‘[i]t’s not over.’ ” Mayfield tried to grab her hair, they struggled, and someone, who she believed was Mayfield, sprayed pepper spray in her face. Perez testified that the altercation continued and Mayfield kept coming after her. Mayfield bit her arm and scratched her. She saw defendant and Castelan in an altercation at the same time.

¶ 10 Castelan’s mother testified that, when the truck pulled up, defendant said “ ‘it’s not over’ ” and “ ‘[s]ay something, say something.’ ” Mayfield then got out of the truck, yelling at Perez, and Castelan tried to get between them. Mayfield bit Castelan, and defendant got out of the truck and came at Castelan, telling him to get his hands off Mayfield. Defendant punched Castelan multiple times and put him in a choke hold.

¶ 11 Officer Carlos Gonzalez testified that he was at the Cherokee Road incident, where a crowd had gathered and three juveniles, two of whom were in the Mayfield family, were arrested. Gonzalez identified the YouTube videos, stating that he was present when they were made. Over objection, the videos were played for the jury. Those videos depict multiple police officers standing near several vehicles and people yelling. The person filming the videos expresses anger at the police for making the arrests but letting Castelan leave. The court instructed the jury that the evidence could be considered only for the limited purpose of showing presence at Cherokee Road and knowledge of the arrests.

¶ 12 Gonzalez testified that he escorted Castelan, Perez, and Castelan's mother out of the police station and then left to talk to defendant, who had been yelling "snitch." Gonzalez asked defendant and those with him to leave. Shortly after, Gonzalez was dispatched to a fight in the parking lot. He found defendant with a choke hold around Castelan's neck, and defendant was arrested. Mayfield was visibly pregnant.

¶ 13 Defendant's son testified that he went with defendant and other family members to pick up relatives who had been arrested on Cherokee Road. He said that Castelan, with the help of Perez, opened the door to the truck and pulled Mayfield from the truck. Defendant then got out of the truck to try to help Mayfield. Mayfield's aunt, who filmed the video at the Cherokee Road incident and was present at the police station, gave similar testimony. Mayfield's mother was also at the police station and testified that Castelan and Perez were the aggressors in the incident. Mayfield provided similar testimony.

¶ 14 Defendant testified that he went to the police station to show support and pick up family members. As they were leaving the police station, the back door of the truck was yanked open and Castelan, Perez, and perhaps a third person surrounded Mayfield and hit and kicked her.

Defendant jumped out of the truck to intervene. He restrained Castelan. The police then arrived, and defendant was arrested. Defendant testified that he got out of the truck to protect Mayfield because she was pregnant and the others were trying to kill her. He felt that he had to save his daughter.

¶ 15 The jury found defendant guilty. His motion for a new trial was denied, and he was sentenced to 24 months of probation. He appeals.

¶ 16

## II. ANALYSIS

¶ 17 Defendant first contends that the trial court erred in admitting the YouTube videos into evidence, because he did not appear in them and they were thus inflammatory and irrelevant. The State argues that the videos were relevant as a continuing narrative to show defendant's knowledge of the arrests, which in turn was relevant to his state of mind in relation to his affirmative defense.

¶ 18 Evidence is admissible when it is relevant to an issue and its probative value is not substantially outweighed by its prejudicial effect. *People v. Gonzalez*, 142 Ill. 2d 481, 487 (1991). Evidence is relevant if it has any tendency to make the existence of any fact that is consequential to the determination of an action either more or less probable than it would be without the evidence. Ill. R. Evid. 401 (eff. Jan. 1, 2011). We review evidentiary rulings for an abuse of discretion. *People v. Thompson*, 2013 IL App (1st) 113105, ¶ 100.

¶ 19 Here, the videos were relevant to show that defendant was aware of the arrests and to provide context about his state of mind when he went to the police station. As the trial court noted, the videos did not portray any prior bad act by defendant. However, coupled with the other evidence, they showed that defendant and Mayfield were at the scene and that their family was angry about the arrests and angry that Castelan was allowed to leave. They thus helped to

explain why defendant went to the police station and used the term “snitch” there. That is, they provided a continuing narrative of events earlier in the evening that were intertwined with the incident at the police station.

¶ 20 The videos were further relevant to defendant’s state of mind in relation to his affirmative defense and the jury’s determination of whether he was actually the aggressor in the incident, although they were not admitted specifically for that purpose. A defendant may not claim self-defense or defense of others when the perilous situation he encountered arose from his own aggressive conduct. *People v. White*, 293 Ill. App. 3d 335, 338 (1997). By raising the defense, the defendant places his mental state as an issue in controversy, as the defense necessarily involves the question of the defendant’s subjective belief and intent at the time of the incident. See *Thompson v. Petit*, 294 Ill. App. 3d 1029 (1998) (discussing self-defense in a civil case). The videos provided context as to why defendant might have been angry with Castelan and Perez, which was relevant to defendant’s subjective belief and intent when he was at the police station. Accordingly, the trial court did not abuse its discretion in admitting the videos into evidence.

¶ 21 Defendant contends that the videos misled the jury because they did not show that he or Mayfield was involved in the Cherokee Road incident. But Castelan and Perez testified that defendant was present during the incident, and defendant concedes that the videos briefly show Mayfield at the scene. Whether the videos carried less weight because defendant did not appear in them was a matter for the jury.

¶ 22 Defendant next contends that the trial court erred in denying his motion for a mistrial after Perez unexpectedly testified that defendant pounded on the window of Castelan’s vehicle at the Cherokee Road incident.

¶ 23 “The decision to declare a mistrial rests within the discretion of the trial court and will not be disturbed on review unless there has been an abuse of discretion.” *People v. Wills*, 153 Ill. App. 3d 328, 339 (1987). “To prevail on appeal, [the] defendant must establish that there was a manifest necessity for the mistrial or that the ends of justice would be defeated by continuance of the trial; that is, that the jury was so influenced and prejudiced that it would not, or could not, be fair and impartial, and the damaging effect of the evidence could not be remedied by admonitions or instructions.” *Id.* at 339-40. “An improper remark will not result in reversal unless it appears that the guilty finding was the result of the error.” *People v. Brooks*, 172 Ill. App. 3d 417, 422 (1988). “A prompt objection, sustaining of the objection, and instruction to disregard the testimony generally cures any potential prejudice.” *Id.*

¶ 24 Here, the remark was isolated and specifically contradicted by Castelan’s testimony that he did not see defendant among the people hitting the car. The court then promptly gave the jury a strongly worded curative instruction that it should disregard the testimony. The jury is presumed to have followed that instruction. See *People v. Taylor*, 166 Ill. 2d 414, 438 (1995). Thus, it does not appear that the guilty finding was the result of the remark such that the court abused its discretion in denying the motion for a mistrial.

¶ 25 Finally, defendant argues that reversal is required based on the cumulative effect of the trial court errors. Having found that the court did not abuse its discretion by admitting the videos into evidence or by denying the motion for a mistrial, cumulative error does not apply.

¶ 26

### III. CONCLUSION

¶ 27 The judgment of the circuit court of Kane County is affirmed.

¶ 28 Affirmed.