ARKANSAS COURT OF APPEALS
NOT DESIGNATED FOR PUBLICATION
SAM BIRD, JUDGE

DIVISION IV

CACR07-422

JANUARY 9, 2008

MARY SPAUNHURST APPELLANT	APPEAL FROM THE SEBASTIAN COUNTY CIRCUIT COURT [NO. MC-2006-57]
V.	HON. JAMES R. MARSCHEWSKI, JUDGE
STATE OF ARKANSAS APPELLEE	AFFIRMED

Mary Louise Spaunhurst was convicted in a jury trial for driving while intoxicated, first offense. In accord with the jury's recommendation, she was sentenced by the trial judge to a $750 fine and to twelve months' imprisonment in the county jail, with nine months suspended. She contends on appeal that the trial court erred in denying her motion for a mistrial when the arresting officer referred to the occurrence of an aggravated assault, an offense with which she was not charged. She argues that the prejudicial effect of the remark is reflected in the jury's recommendation of sentencing her to the maximum sentence of twelve months' imprisonment, even though part of it was suspended. We agree with the State that her argument is not preserved for appellate review, and we affirm the conviction.

Sergeants Thomas Robinson and John Classen of the Fort Smith Police Department

testified at trial about events that began around December 31, 2005, when they heard a be-on-the-lookout broadcast for a red pickup truck being chased by a silver car on Highway 71. Around 5:30 Robinson and Classen momentarily saw the red truck in the southbound traffic, the silver car directly behind it. The vehicles drove at a fairly high rate of speed through the parking lot of a Pic-N-Tote Convenience Store, with customers and cars at the gas pumps and other stores. Robinson testified that it "seemed obvious" that the car was trying to catch the truck as the vehicles proceeded westward on Grinnell.

Robinson and Classen followed the vehicles to the intersection of Grinnell and 35th Terrace, where there was a stop sign. The pickup stopped but was rear-ended by the car, which hit hard and caused debris to fall from the point of impact. The truck pulled away and the car immediately followed. Robinson testified that "it looked . . . like the car tried to hit the truck again." Although Classen turned on the blue lights, the car sped up and continued "to go after the truck." The car did not stop until its hood came up and blocked the windshield. Spaunhurst, the driver, was ordered out and was handcuffed.

Robinson testified that it was "obvious" that Spaunhurst had been drinking. Her speech was slurred and unintelligible, her eyes were glassy and bloodshot, her movements were extremely uncoordinated, her hair and clothes were disheveled, and there was a strong odor of alcoholic beverages about her. Classen testified that Spaunhurst was crying and very upset, and that he could smell the odor of intoxicants on her. She told him that she was trying to catch her boyfriend, who was in the truck, and that she was mad at him about an incident at a bar. Classen observed heavy damage to the front of the car.

Officer Carson Addis, also of the Fort Smith Police Department, testified that he transported Spaunhurst to the Sebastian County Detention Center after she was stopped by Sergeants Robinson and Classen. Addis testified that her performance on field-sobriety tests led him to believe that she was intoxicated. The written report of a breath test that he administered to her, which registered a .23 blood-alcohol reading, was introduced into evidence through his testimony.

The following exchange occurred during cross-examination:

ADDIS:	When I arrived on the scene, Sergeant Classon and Sergeant Robinson already had her in handcuffs on the scene. I marked on the breath/blood alcohol report form, no injury, because she said she wasn't injured.
DEFENSE COUNSEL:	And you marked it No. 1, no accident. Why did you mark that?
ADDIS:	Because there was no vehicle accident, just an aggravated assault.

Spaunhurst's counsel moved for a mistrial, arguing that the response was unresponsive to the question in "any form or fashion" and "came completely out of the blue." He expressed his belief that Addis intentionally told the jury that Spaunhurst had committed an aggravated assault.

The trial court offered to admonish the jury to disregard the response as nonresponsive. Counsel agreed, again stating that the answer was nonresponsive and had nothing to do with the question. The court admonished the jury to "disregard the . . . last answer by the officer as being nonresponsive to the question as to why he didn't mark the

accident on the report." Counsel renewed his motion for a mistrial at the conclusion of the State's case. He argued that the damage of Addis's answer could not be undone by the court's admonishment, that the answer had nothing to do with the question and was not responsive at all, and that it was a purposeful "cheap shot." The motion was again denied.

Spaunhurst contends on appeal, as she did below, that the trial court erred in denying her motion for a mistrial after Addis stated that she had committed crimes for which she was not charged. She now argues that proof of other crimes is inadmissible when 1) its purpose is to persuade the jury that the accused is a criminal likely to commit the crime as charged or 2) its only relevancy is to show that the prisoner is a person of bad character. Spaunhurst objected below, however, that Addis had intentionally informed the jury that Spaunhurst had committed an aggravated assault. Parties are bound by the scope and nature of the objections and arguments made at trial. *Tillman v. State*, 364 Ark. 143, 217 S.W.3d 773 (2005). Because Spaunhurst's appellate arguments are not properly before us, we cannot address them and we affirm the conviction.

Even if we were to address the merits of the argument, we would affirm. A mistrial is a drastic remedy and should be declared when there has been an error so prejudicial that justice cannot be served by continuing the trial, or when it cannot be cured by an instruction or admonition. *See Holsombach v. State*, 368 Ark. 415, ___ S.W.3d ___ (2007). The trial court has wide discretion in granting or denying a motion for mistrial, and, absent an abuse of that discretion, its decision will not be disturbed on appeal. *Id.* The trial court is in a

superior position to determine the effect of the remark on the jury. *Ward v. State*, 338 Ark. 619, 1 S.W.3d 1 (1999).

Here, Sergeants Robinson and Classen were on the lookout for a pickup truck being chased by a silver car. The car, driven by Spaunhurst, chased the truck through a convenience store parking lot, where there were gas pumps and people, and rammed the truck when it approached a stop sign. Spaunhurst continued to follow the truck after hitting it and, even though officers turned on their overhead lights, she did not slow down until the hood of her car came up and blocked her windshield. She was arrested after she stopped her car.

Spaunhurst registered a blood-alcohol level of .23 in the breathalyzer test. Officer Addis's testimony that "there was no vehicle accident, just an aggravated assault," was given after her counsel asked why Addis had marked "no accident" on a form. We agree with the State that this evidence of another crime, under the *res gestae* exception, was admissible to establish the facts and circumstances surrounding the alleged offense. *See Gaines v. State*, 340 Ark. 99, 8 S.W.3d 547 (2000). It was also cumulative to the testimony of Sergeants Robinson and Classen demonstrating that Spaunhurst's behavior was purposeful, in that the officers observed her intentionally use her car to hit the truck. *See id.*

The trial court was in the best position to witness the effects of this allegedly prejudicial remark, and it admonished the jury to disregard the statement as nonresponsive and denied the motion for a mistrial. We find no abuse of discretion by the trial court in the denial of the motion for mistrial. The conviction is therefore affirmed.

Affirmed.

PITTMAN, C.J., and ROBBINS, J., agree.