

No. 1-08-0315

NOTICE: This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

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.	)	Nos. 04 CR 7326
	)	04 CR 7327
	)	04 CR 7328
	)	04 CR 7329
	)	04 CR 7330
)	
NOLAN WATSON,	)	Honorable
	)	Lawrence P. Fox,
Defendant-Appellant.	)	Judge Presiding.

JUSTICE FITZGERALD SMITH delivered the judgment of the court.
Presiding Justice Lavin and Justice Sterba concurred in the judgment.

ORDER

- ¶ 1 *Held:* Where evidence of second sexual assault was relevant to prove defendant's criminal intent, trial court did not abuse its discretion in admitting evidence of other crime as probative of defendant's propensity to commit sex offenses; the judgment of the trial court was affirmed.
- ¶ 2 Following a jury trial, defendant Nolan Watson was convicted of four counts of aggravated criminal sexual assault and one count of kidnaping and was sentenced to two

consecutive sentences of 20 years in prison. On appeal, defendant contends the trial court abused its discretion in admitting evidence of a separate sexual assault to demonstrate his propensity to commit sexual offenses. We affirm.

¶ 3 Before trial, the State filed a motion to allow evidence of other assaults by defendant as proof of his propensity to commit sex crimes, pursuant to section 115-7.3 of the Code of Criminal Procedure of 1963 (the Code) (725 ILCS 5/115-7.3©) (West 2004)). Specifically, the State described the sexual assaults of four women in addition to M.A., the victim in the instant case. The motion described attacks on the following victims: K.K. on October 27, 1999, K.D. on September 30, 2001, D.C. on October 7, 2001, and T.C. on September 18, 2002. Each of those women identified defendant as their attacker in a March 2004 lineup, as did M.A.¹

¶ 4 Following a hearing, the trial court granted the State's motion to allow evidence of those incidents. The court noted the offenses occurred within a three-year period of the instant assault and were "extremely similar," involving women between the ages of 18 to 21, with the exception of one victim, who was 48 years old. The court ruled the earlier sexual assaults were admissible under section 115-7.3 to prove defendant's propensity to commit such offenses. The court stated that due to the similarity of the offenses and their proximity in time and location, the probative value of that evidence outweighed any prejudice to defendant.

¶ 5 At trial, M.A. testified defendant sexually assaulted her on December 14, 1999. M.A. testified that after attending school that day and working that evening, a co-worker dropped her off at a bus stop at about 11:15 p.m. Defendant drove up to the bus stop in his car, got out of the car, and ordered M.A. to "get in, bitch. Get in the car." M.A. said defendant held an object to her side that felt like a gun.

¹ Upon being convicted and sentenced for the assault on M.A., defendant pled guilty to the sexual assaults of K.K., K.D., D.C. and T.C.

¶ 6 Defendant guided M.A. to his car and "crossed over" her to get to the driver's seat and put his arm over her legs to prevent her from going anywhere. M.A. saw a gun between defendant's legs. Defendant drove to a block of vacant buildings near 75th Street and Normal Avenue and ordered M.A. to get into the back seat of the car. Defendant got in the back seat and directed her to perform oral sex. After she did so, defendant became irritated and told her to stop and take her clothes off. Defendant forced M.A. to have intercourse and drove her back to the intersection where she had been waiting at the bus stop. M.A. flagged down a passing car and was driven to the police station and was then taken to a hospital to be examined. The State presented DNA evidence matching a swab from M.A.'s vagina to defendant. M.A. was 18 years old at the time of the attack.

¶ 7 In accordance with the court's ruling on the State's motion to admit evidence of other sex offenses, T.C. testified that in the early morning hours of September 18, 2002, she was walking home from a friend's house. A man she identified in court as defendant approached her near 74th Street and Halsted Avenue and began talking to her. Defendant grabbed T.C. around her neck and held a knife to her back, stating "Bitch, if you scream, I'll kill you."

¶ 8 Defendant walked T.C. through an alley and to an abandoned building, where they went down an outer stairway leading to a basement. Defendant demanded that T.C. perform oral sex and then told her to remove her clothes and bend over. When defendant could not enter T.C. from behind, he said, "Bitch, lay down." After having intercourse for 10 minutes, defendant got up, and T.C. took her clothes and ran to the house of a relative who lived nearby. T.C. then proceeded to a hospital to be examined.

¶ 9 T.C. testified M.A. was present at the March 2004 lineup at which she identified defendant. The State did not present evidence of the attacks against K.K., K.D. or D.C.

¶ 10 After that testimony, over defense counsel's objection, the jury was given the following

instruction regarding other-crimes evidence:

"Evidence has been received that the defendant has been involved in an offense other than those charged in the indictment. This evidence has been received on the issues of the defendant's intent, motive, and propensity and may be considered by you only for that limited purpose. It is for you to determine whether the defendant was involved in that offense and, if so, what weight should be given to this evidence on the issues of intent, motive and propensity."

¶ 11 That instruction was given again with all other jury instructions at the close of evidence.

¶ 12 For the defense, Tommy Clark, testified defendant was his childhood friend. Clark said defendant brought a woman to Clark's house at about 10:15 p.m. on December 14, 1999, the date on which M.A. was attacked. Clark described the woman as a "lady friend" of defendant but said he had never seen her before. At about 11:30 p.m., he and defendant drove the woman in defendant's car to a street intersection where they dropped her off.

¶ 13 Defendant testified he had sex with M.A. and T.C. on the dates specified and asserted the encounters were consensual. He stated M.A. approached him at a gas station because she lacked the correct change for bus fare, and he took her to Clark's house where they had sex.

¶ 14 On appeal, defendant argues the trial court abused its discretion in admitting the evidence of the assault of T.C. in this case. He contends that assault was not sufficiently similar to the charged offense to be admissible under section 115-7.3 of the Code, and even if the evidence of that offense was probative of his propensity to commit such crimes, its probative value was outweighed by its prejudicial effect.

¶ 15 Under the common law, evidence of other crimes that a defendant has committed is not

admissible purely for the purpose of showing the defendant's disposition or propensity to commit crime. *People v. Illgen*, 145 Ill. 2d 353, 364 (1991); see also *People v. Walston*, 386 Ill. App. 3d 598, 619 (2008) (unfairly prejudicial evidence, even if probative, should not be admitted).

"Courts generally prohibit the admission of this evidence to protect against the jury convicting a defendant because he or she is a bad person deserving punishment," as opposed to being convicted or acquitted based on the charged crime. *People v. Donoho*, 204 Ill. 2d 159, 170 (2003). The rule is "grounded in the concern that such evidence proves too much[.]" as opposed to a concern that a defendant's bad character is irrelevant when he is charged with a crime. *People v. Dabbs*, 239 Ill. 2d 277, 284 (2010).

¶ 16 Here, the State moved to admit the evidence under section 115-7.3, by which the Illinois legislature has provided an exception to the general prohibition of other-crimes evidence. The statute, as related to this case, applies to various enumerated sex offenses. See 725 ILCS 5/115-7.3(a)(1) (West 2004). Under the statute, evidence of another similar sex offense may be admissible (if otherwise admissible under the rules of evidence) and "may be considered for its bearing on any matter to which it is relevant." 725 ILCS 5/115-7.3(b) (West 2004).

¶ 17 Section 115-7.3 provides that in deciding whether to admit such evidence, the court may consider: (1) the proximity of the offenses in time; (2) the degree of factual similarity of the earlier crime to the charged offense; and (3) "other relevant facts and circumstances." 725 ILCS 5/115-7.3(c)) (West 2004). Therefore, when evidence of another crime meets those requirements, such evidence is admissible if it is relevant and if its prejudicial effect does not substantially outweigh its probative value. *Donoho*, 204 Ill. 2d at 182-83.

¶ 18 In both the assaults of T.C. and M.A., defendant approached the victim when she was alone and pressed a weapon to her body to force her to accompany him to a secluded location. Defendant then demanded that she perform oral sex, after which he forced her to have

intercourse. Defendant claimed his sexual encounters with both women were consensual.

¶ 19 Evidence is relevant when it (1) renders a matter of consequence more or less probable or (2) tends to prove a fact in controversy. *People v. Pelo*, 404 Ill. App. 3d 839, 864 (2010).

Where, as here, a defendant claims the subject of a purported sexual assault in fact consented to a sexual encounter, evidence of a prior sex offense committed by the defendant is relevant to prove the defendant's criminal intent or lack of an innocent frame of mind. *People v. Boyd*, 366 Ill. App. 3d 84, 91-92 (2006) (applying section 115-7.3); *People v. Luczak*, 306 Ill. App. 3d 319, 324-25 (1999); *People v. Harris*, 297 Ill. App. 3d 1073, 1086 (1998) (evidence of similar sexual assault admissible to establish lack of innocent intent where defendant claimed victim consented to sex). The assault against T.C. therefore was relevant to this case.

¶ 20 Defendant nevertheless contends the assault involving T.C. was not similar enough to the charged offense to be probative of his propensity to commit sexual offenses. He points out the incidents occurred in different locations, with T.C.'s assault occurring outside on the ground and M.A.'s assault taking place in a vehicle. He also argues a knife was used in T.C.'s encounter, while it was alleged that he displayed a gun in the instant offense. Defendant further argues the similarities of the incidents are common to many sex offenses.

¶ 21 "The existence of some differences between the prior offense and the current charge does not defeat admissibility because no two independent crimes are identical." *Donoho*, 204 Ill. 2d at 185. Here, in considering the probative value of the prior incidents, the trial court noted the three-year time span between the crimes and, with one exception, the close age range of the victims. For this evidence to be inadmissible, its prejudicial effect must substantially outweigh its probative value. *Donoho*, 204 Ill. 2d at 182-83. Here, the trial court found the opposite to be true. The trial court reasoned that due to the similarity of the offenses and their proximity in time and location, the probative value of that evidence to establish defendant's criminal intent

outweighed any prejudice to defendant.

¶ 22 The admissibility of other-crimes evidence is within the sound discretion of the trial court, and its decision on the matter will not be disturbed absent a clear abuse of that discretion. *Dabbs*, 239 Ill. 2d at 284; *People v. Johnson*, 406 Ill. App. 3d 805, 808 (2010). "An abuse of discretion will be found only where the trial court's ruling is arbitrary, fanciful, unreasonable, or where no reasonable person would take the view adopted by the trial court." *People v. Patrick*, 233 Ill. 2d 62, 68 (2009) (quoting *People v. Hall*, 195 Ill. 2d 1, 20 (2000)). Upon reviewing the record, the trial court did not abuse its discretion in ruling that the evidence of prior sexual assaults in which defendant had been identified as the offender could be admitted. We note, however, that the State ultimately introduced evidence of only one of those incidents.

¶ 23 Defendant nevertheless asserts he suffered prejudice from the prosecution's references to T.C. in closing argument that suggested to the jury he was on trial for both assaults. He directs our attention to isolated words and terms used in the State's rebuttal to the defense's closing argument, noting the prosecutor referred to T.C. and M.A. collectively as "they," "them" and "our victims."

¶ 24 A comprehensive review of the closing arguments requires us to reject defendant's position. In the State's initial closing argument, the prosecution invited the jury to compare the similarities between the assaults of T.C. and M.A. The prosecutor asserted the assault of T.C. demonstrated defendant's intent, motive and propensity to commit sex crimes. Defense counsel responded by reviewing the circumstances of both sex offenses and asking jurors to consider the credibility of T.C.'s testimony and "examine the facts concerning the meeting of [T.C.] and the defendant []." In rebuttal, the State used plural pronouns and referred to the facts of the assault against T.C. to emphasize that if the two victims fabricated their testimony and were wrongfully asserting his guilt of a sex offense (as defendant asserted), the women were "conspiring against

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the unluckiest man in the entire world." In light of the defense's arguments that preceded those comments, we find no prejudice to defendant in the State's closing argument or rebuttal.

¶ 25 In summary, the trial court did not abuse its discretion in admitting evidence of a previous sexual assault against T.C., who identified defendant as her attacker, as probative of defendant 's propensity to commit sex crimes.

¶ 26 Accordingly, the judgment of the circuit court is affirmed.

¶ 27 Affirmed.