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IN THE
APPELLATE COURT OF ILLINOIS
SECOND DISTRICT

PEOPLE OF THE STATE)	Appeal from the Circuit Court
OF ILLINOIS,)	of Winnebago County
)	
Plaintiff-Appellee,)	
)	
v.)	No. 06—CF—0338
)	
RONNIE R. WATTS,)	Honorable
)	John R. Truitt
Defendant-Appellant.)	Judge, Presiding.

JUSTICE BIRKETT delivered the judgment of the court.
Justices Bowman and Schostok concurred in the judgment.

ORDER

Held: Section 115—7.3 of the Code of Criminal Procedure does not violate due process and is therefore not unconstitutional because it bears a rational relationship to a legitimate state purpose. See *People v. Dabbs*, 239 Ill. 2d 277 (2010). Also, trial court properly allowed two witnesses to testify about other-crimes evidence to demonstrate defendant’s propensity to commit the instant offenses when there were sufficient similarities between the other-crimes evidence and the charged conduct (725 ILCS 5/115—7.3 (West 2006)).

After a jury trial, defendant, Ronnie Watts, was convicted of predatory criminal sexual assault of a child (720 ILCS 5/12—14.1(a)(1) (West 2006)) and aggravated criminal sexual abuse (720 ILCS 5/12—16(c)(1) (West 2006)). He was sentenced to a term of natural life imprisonment,

along with a concurrent term of six years' imprisonment. On appeal, defendant argues that his convictions and sentences should be reversed and this cause remanded for a new trial because: (1) the trial court abused its discretion in allowing two witnesses to testify regarding other-crimes evidence; and (2) the statute which allows propensity evidence to be admitted at trial violates defendant's due process rights and is therefore unconstitutional. See 725 ILCS 5/115—7.3 (West 2006). For the following reasons, we affirm the ruling of the trial court.

I. FACTS

The record reflects that before trial, the State filed several motions *in limine*. One of those motions sought the admission of the testimony of two women, Samantha H. and Yukondra S.¹ In the motion, the State requested that these women be allowed to testify that when they were children, the defendant performed sexual acts upon them which were similar to the acts charged against defendant in the instant case. In its motion, the State contended that this testimony was necessary for the State to establish defendant's intent, motive, lack of mistake and propensity.

At the hearing on the motion *in limine*, defense counsel acknowledged that the trial court's ruling was controlled by section 115—7.3 of the Code of Criminal Procedure. See 725 ILCS 5/115—7.3 (West 2006). Counsel argued that the evidence of defendant's prior conduct with Samantha H. and Yukondra S. should not be admissible because it would be too prejudicial, the evidence of other-crimes was too remote in time, and that the alleged conduct was not sufficiently similar to the conduct that was the subject of the instant charges.

The trial court continued the hearing to analyze the Illinois Supreme Court's decision in *People v. Donoho* as it related to the proximity in time of the other-crimes evidence to the time the instant charged offenses allegedly occurred. See *People v. Donoho*, 204 Ill. 2d 159 (2003). The

¹ Yukondra's name is spelled in various ways throughout the record.

hearing was later reconvened, and the trial court granted the State's motion *in limine*. Specifically, the court said that its concerns about the proximity in time among the offenses had been allayed. It also found that there were sufficient similarities between the charged conduct and the prior offenses because the victims were all fairly close in age at the time that the respective abuse occurred, and that the alleged abuse had occurred when the victims were in the defendant's care.

At trial, the victim, 10-year-old C.S., testified that defendant was married to her Aunt Jackie. From Kindergarten through third grade, C.S. had overnight visits with her aunt and a cousin. C.S. referred to her vagina as her "private" She said that defendant touched her private under her clothes while they were in his bedroom on one occasion. Another time, defendant touched her private underneath her clothes while she was in the bathroom. C.S. also said that defendant touched the outside of her private with his penis one night while she laying on the couch in the living room and everyone else was sleeping. C.S. said that when defendant touched her it made her feel bad.

Winnebago police detective Pete Dal Pra testified that he questioned defendant on October 6, 2005. Dal Pra told defendant that he thought defendant had attempted to put his penis in C.S.'s vagina. In response, defendant said that he could not remember. On January 24, 2006, Dal Pra again questioned defendant. Throughout his interrogation, defendant nodded his head in response to questions. When Dal Pra told defendant that he wanted him to say something, defendant said that he did not care about C.S. Defendant also said, "if you want me to say – if you want me to admit something, fine, I screwed her for about five seconds, so put that in a statement." When asked to sign a typed admission, defendant refused and said that he was being sarcastic. He said that "maybe he was a hideous awful monster." Dal Pra arrested defendant for sexual contact with C.S. and Dal Pra left the room. He returned to the interrogation room about twenty minutes later, along with

detective Heidenreich. Del Pra said that Heidenreich asked defendant how many times he had had sex with C.S. In response, defendant replied that he could not remember.

Dr. Raymond Davis, Jr., testified that he was a pediatrician and the medical director of the Carrie Lynn Children Center (Center). On January 18, 2006, Davis examined C.S. at the Center. During the genital examination, Davis found an abnormality that he referred to as a hymenal transsection. Davis explained that a hymenal transsection was a tear in the hymen. The tear was located near C.S.'s anus, which Davis opined was consistent with sexual abuse. Davis said that the tear could have been caused by another type of injury, but noted that C.S.'s mother, who was present during the exam, did not mention any other type of injury that C.S. had sustained. Davis also said that such a tear could be caused by an object being inserted in to C.S.'s vagina.

Samantha H. testified that she was 19 years old at the time of the trial in the instant case. She said that defendant was a friend of her parents. According to Samantha, one day between January and March 1998, she and her brother spent the night at defendant's apartment. At one point, Samantha's brother watched a movie in the living room, while she watched a movie in defendant's bedroom. While she was on the bed, defendant put his mouth on her vagina and rubbed his penis on her vagina. Samantha was eight-years-old at the time. When she was 17 years old, she told her parents what had happened.

Yukondra S. testified that she was 30 years old. When she was a young girl, defendant was married to her mother. Yukondra said that between the ages of three and eight-years-old, defendant would make her suck his penis, that he would lick her vagina and fondle her with his fingers. He also put his penis into her vagina. She could not testify to how many times the assaults occurred, but said that it felt like every day. It made her feel horrible, and she was frightened of defendant. Yukondra said that defendant also beat her, her sisters, her brother, and her mother.

Catherine McDermott, a social worker, testified that she was a sexual assault counselor at Riverview Sexual Assault Center in Galena, Illinois. McDermott said that she provides counseling services for adults primarily, but also children and adolescents as needed. According to McDermott, children who are victims of sexual abuse are typically frightened, which explains delays in reporting. Victims of child sexual abuse may suffer from Child Sexual Abuse Accommodation Syndrome. This syndrome is studied in order for lay people to understand how children cope with sexual abuse. The syndrome has five distinct features which include secrecy, helplessness, entrapment and accommodation, delayed or confined disclosure, and recantation

During closing argument, defense counsel argued that Samantha and Yukondra's testimony was not credible. In rebuttal, the State referenced Samantha and Yukondra's testimony and said that it should be considered when analyzing defendant's intent or lack of mistake.

At the close of trial, the State provided a jury instruction that stated that there had been evidence that defendant was "involved in conduct other than that charged in the indictment. This evidence has been received on the issue of the defendant's intent and lack of mistake and may be considered by you only for that limited purpose." The State contended that the instruction was appropriate, in light of the court's prior ruling. Defense counsel's objection was overruled.

The jury found defendant guilty of predatory criminal sexual assault of a child (720 ILCS 5/12—14.1(a)(1) (West 2006)) and aggravated criminal sexual abuse (720 ILCS 5/12—16(c)(1) (West 2006)). Defendant's motion for a new trial was denied.

II. ANALYSIS

On appeal, defendant argues that the trial court erred in granting the State's motion *in limine* to allow Samantha and Yukondra to testify about other-crimes evidence. Defendant also contends that section 115—7.3 of the Code of Criminal Procedure, which allows other-crimes evidence to be

admitted into evidence to demonstrate a defendant's propensity to commit the charged offense in some instances, is unconstitutional. See 725 ILCS 5/115—7.3 (West 2006). We shall address defendant's constitutional argument first.

A. Constitutionality of Section 115—7.3

Defendant contends that section 115—7.3 of the Code of Criminal Procedure (Code) violated his constitutional right to due process, including a fair trial before an impartial jury. Specifically, he alleges that section 115—7.3 of the Code alters our system from a confrontation between advocates over the elements of the charge into a general investigation of the accused's propensities. 725 ILCS 5/115—7.3 (West 2006).

A statute is presumed constitutional, and the party challenging the statute bears the burden of demonstrating that it is unconstitutional. *People v. Donoho*, 204 Ill. 2d 159, 177 (2003). A court has a duty to construe a statute in a manner that upholds its validity and constitutionality if it can be reasonably done. *People v. Malchow*, 193 Ill. 2d 413, 418 (2000). Whether a statute is constitutional is a question of law that we review *de novo*. *Malchow*, 193 Ill. 2d at 418.

In *People v. Donoho*, our supreme court held that the legislative history of section 115—7.3 of the Code revealed an intent to use other-crimes evidence to protect society against sex offenders who have a propensity to repeat their crimes, and that the legitimate state purpose served by the statute was to respond to the problem of recidivism by sex offenders. *Donoho*, 204 Ill. 2d 159, 174 (2003). The court concluded that the statute met the rational basis test under an equal protection analysis because it promoted effective prosecution of sex offenses and strengthened evidence in sexual abuse cases. *Donoho*, 204 Ill. 2d at 178. A year later, the court referred to section 115—7.3 of the Code when it noted that the legislature had relaxed evidentiary rules in some instances based

upon its concerns for the welfare and safety of children. See *People v. Huddleston*, 212 Ill. 2d 107, 133 (2004); 725 ILCS 5/115—7.3 (West 2002).

While the court in *Donoho* did not address the issue of due process, it did find that the statute bore a rational relationship to a legitimate legislative purpose when it conducted its equal protection analysis. *Donoho*, 204 Ill. 2d at 178. Further, the *Donoho* court noted that, “courts have held that admitting other crimes evidence does not implicate the due process rights to a fair trial where the evidence is relevant and its probative value is not outweighed by its prejudicial effect.” *Donoho*, 204 Ill. 2d at 177. Since then, both the Fifth and First Districts of our appellate court have held that the Illinois Supreme Court’s belief that section 115—7.3 of the Code does not violate due process was “implicit in the above-quoted passage.” *People v. Beatty*, 377 Ill. App. 3d 861, 883 (2007); *People v. Everhart*, 405 Ill. App. 3d 687, 703 (2010).

The Illinois Supreme Court recently addressed the issue of whether section 115—7.4 of the Code violated due process. See *People v. Dabbs*, 239 Ill. 2d 277, 940 N.E.2d 1088 (2010) (evidence of a defendant’s commission of other acts of domestic violence may be admitted in a prosecution for domestic violence, as long as the evidence is relevant and the probative value is not substantially outweighed by undue prejudice); 725 ILCS 5/115—7.4 (West 2008). In *Dabbs*, the defendant made an almost identical argument that defendant in this case raises here. Specifically, the defendant in *Dabbs* argued that section 115—7.4 of the Code was unconstitutional and that it provided “a second-class trial and alters the judicial system from one of confrontation between advocates over the elements charged into a one-sided investigation into the character of the accused.” *Dabbs*, 239 Ill. 2d at 286.

The *Dabbs* court held, in pertinent part:

“When a statute is challenged on due process grounds, no classification is at issue. Rather, the rational basis test requires that we examine the substance of the statute to determine whether it bears a rational relationship to a legitimate legislative purpose. The State argues that section 115—7.4 serves a purpose similar to that served by section 115—7.3 and is, therefore, rationally related to a legitimate legislative purpose. We agree.” *Dabbs*, 239 Ill. 2d at 293.

We conclude that the supreme court’s implicit ruling in *Donoho*, as well as its reference to section 115—7.3 of the Code while conducting a due process analysis in *Dabbs*, leaves no question that the Illinois Supreme Court has held that section 115—7.3 of the Code does not violate due process. *People v. Donoho*, 204 Ill. 2d 159 (2003); *People v. Dabbs*, 239 Ill. 2d 277 (2010). Accordingly, defendant’s contention is without merit.

B. Admissibility of Other-Crimes Evidence

We shall first address the issue of whether the trial court properly granted the State’s motion *in limine* and allowed Samantha and Yukondra to testify about other-crimes evidence in order to demonstrate defendant’s propensity to commit the instant offenses. See 725 ILCS 5/115—7.3 (West 2006).

Evidence regarding other crimes is generally inadmissible to demonstrate propensity to commit the charged crime. *People v. Donoho*, 204 Ill. 2d 159, 170 (2003). Evidence regarding other-crimes generally is admissible, however, to prove intent, *modus operandi*, identity, motive, absence of mistake, or any relevant fact other than propensity. *Donoho*, 204 Ill. 2d at 170. However, section 115-7.3 of the Code of Criminal Procedure provides an exception to the general rule in criminal cases when a defendant is charged with predatory criminal sexual assault and aggravated criminal sexual abuse, among other offenses. See 725 ILCS 5/115—7.3(a)(1) (West 2006); 720

ILCS 5/12—14.1(a)(1) (West 2006); 720 ILCS 5/12—16(c)(1)(I) (West 2006). Under that section, evidence of another criminal sexual assault “may be admissible (if that evidence is 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 2006)), including a “defendant’s propensity to commit sex offenses.” *Donoho*, 204 Ill. 2d at 176.

Where other-crimes evidence meets the preliminary statutory requirements, the evidence is admissible if it is relevant and if its probative value is not substantially outweighed by its prejudicial effect.” *Donoho*, 204 Ill. 2d 182-83. In weighing the probative value of the evidence against undue prejudice to the defendant, the court may consider: (1) the proximity in time to the charged or predicate offense; (2) the degree of factual similarity to the charged or predicate offense; or (3) other relevant facts and circumstances. 725 ILCS 5/115—7.3(c) (West 2006). The purpose of this inquiry is to avoid admitting evidence that entices a jury to find defendant guilty only because it feels he is a bad person who is deserving of punishment, rather than basing its verdict on proof specific to the offense charged. *People v. Ross*, 395 Ill. App. 3d 660, 674 (2009).

A trial court’s decision to admit other-crimes evidence will not be reversed absent an abuse of discretion. *People v. Cardamone*, 381 Ill. App. 3d 462, 490 (2008). A reviewing court will only find an abuse of discretion if the trial court’s evaluation was unreasonable, arbitrary, or fanciful, or where no reasonable person would adopt the trial court’s view. *People v. Donoho*, 204 Ill. 2d 159, 182 (2003). Reasonable minds can differ about whether other-crimes evidence is admissible without requiring reversal under the abuse of discretion standard. *Donohoe*, 204 Ill. 2d at 186. The reviewing court “owes some deference to the trial court’s ability to evaluate the impact of the evidence on the jury.” *Donoho*, 204 Ill. 2d at 186 (quoting *People v. Illgen*, 145 Ill. 2d 353, 375-76 (1991)).

Defendant claims that Samantha and Yukondra’s testimony should not have been admitted at trial because it was highly prejudicial and not proximate in time. Specifically, defendant noted that Samantha testified about conduct that allegedly occurred ten years ago, and Yukondra testified about events which allegedly occurred over 20 years ago.

A review of the record reflects that the trial court properly weighed the probative value of the other-crimes evidence against its prejudicial effect and determined that Samantha and Yukondra’s testimony was admissible to demonstrate defendant’s propensity to commit the offenses charged in the instant case. See 725 ILCS 5/115—7.3 (West 2006).

With regard to the proximity in time from the prior offenses to the offense alleged in the instant case, our supreme court has specifically held that “admissibility of other-crimes evidence should not, and indeed cannot, be controlled solely by the number of years that have elapsed between the prior offense and the crime charged.” *People v. Donoho*, 204 Ill. 2d at 183 (quoting *People v. Illgen*, 145 Ill. 2d 353, 370 (1991)). Instead, courts should evaluate this issue on a case-by-case basis. *Illgen*, 145 Ill. 2d at 370. The appellate court has affirmed the admission of other-crimes evidence over 20 years old on the ground that such evidence was sufficiently credible and probative. See *People v. Davis*, 260 Ill. App. 3d 176, 192 (1994). Further, the Illinois Supreme Court has affirmed the admission of other-crimes evidence when the other crimes occurred 12 to 15 years prior to the conduct at issue in the case before it. *Donoho*, 204 Ill. 2d at 185. The *Donoho* court held that while 12 to 15 years since the prior offense may lessen its probative value, standing alone it is insufficient to compel a finding that the trial court abused its discretion by admitting evidence about it. *Donoho*, 204 Ill. 2d at 185.

Second, to be admissible, other-crimes evidence must have “some threshold similarity to the crime charged.” *Donoho*, 204 Ill. 2d at 185 (quoting *People v. Bartall*, 98 Ill. 2d 294, 310 (1983)).

As factual similarities increase, so does the relevance, or probative value, of the other-crimes evidence. *Bartall*, 98 Ill. 2d at 310. However, where such evidence is not being offered under the *modus operandi* exception, general areas of similarity will suffice. *Illgen*, 145 Ill. 2d at 372-73.

Here, the trial court found that there was sufficient similarities between the charged conduct and the prior offenses because the victims were all fairly close in age at the time that the respective abuse occurred, and that the alleged abuse had occurred when the victims were in the defendant's care. We agree. The evidence admitted at trial indicated that Samantha was abused by defendant when she was eight-years-old. Yukondra testified that she was abused by defendant from the time that she was three until she was eight-years-old. Although the victim in this case, C.S., did not testify about her exact age when she was abused, she did testify that she spent the night at defendant's home on occasion from the time she was in Kindergarten through third grade, so her abuse also occurred when she was around the same age as Samantha and Yukondra when their abuse occurred.

Additionally, all of the instances of abuse occurred when the children were in defendant's care. Samantha testified that defendant was a friend of her parents, and that he abused her when she spent the night at his home. Yukondra testified that defendant was her stepfather and that he abused her when he lived with her and her mother. C.S. testified that defendant was married to her Aunt Jackie, and the abuse occurred when she spent the night at defendant's home. Finally, we find that the details of the sexual abuse that Samantha and Yukondra testified about were sufficiently similar to the conduct that was the subject of the instant charges. Although 10 and 20 years, respectively, had elapsed since Samantha and Yukondra had been abused by defendant, the substantial factual similarities between the instant case and the factual scenarios that Samantha and Yukondra testified about were sufficient to justify admission of the other-crimes evidence.

Given these facts, we find that the probative value of the witnesses' testimony was not outweighed by its prejudicial effect, and the trial court did not abuse its discretion in allowing this evidence to be admitted pursuant to section 115—7.3 of the Code. See 725 ILCS 5/115—7.3 (West 2006).

Defendant also argues that the witnesses' testimony was improper to show intent and absence of mistake because he denied committing the acts of which he was accused, and when state of mind is not at issue, the admission of other-crimes evidence for purposes of establishing intent is inappropriate. See *People v. Cardamone*, 381 Ill. App. 3d 462, 490 (2008).

Whether the trial court erred in allowing Samantha and Yukondra to testify in order to demonstrate intent and lack of mistake is largely immaterial based upon our ruling that the testimony was properly admitted to prove defendant's propensity to commit the instant offenses. See 725 ILCS 5/115—7.3 (West 2006). However, we will address this issue to clarify an important point.

Defendant's reliance on *Cardamone* is misplaced. In *Cardamone*, unlike the instant case, we held that while evidence of other offenses would be admissible to show defendant's propensity, the trial court abused its discretion by admitting too much of this type of evidence. *Cardamone*, 381 Ill. App. 3d at 497. Here, on the other hand, we have held that the trial court properly weighed the probative value of the other-crimes evidence against its prejudicial effect and properly determined that the evidence was admissible to demonstrate defendant's propensity to commit the instant offenses. 725 ILCS 5/115—7.3 (West 2006). Our supreme court has long held that the improper introduction of other-crimes evidence is harmless error when a defendant is neither prejudiced nor denied a fair trial based upon its admission. *People v. Nieves*, 193 Ill. 2d 513, 530 (2000). Since the other-crimes evidence in this case was properly admitted on propensity grounds, defendant was not prejudiced by the admission of the evidence on the grounds of intent and absence of mistake..

Finally, the defendant alleges that the trial court erred in failing to instruct the jury at the time Samantha and Yukondra testified as to the specific use of that evidence. He contends that when evidence of prior offenses has been admitted to prove some fact *other than propensity*, the jury must be instructed that such evidence is to be received only for the purpose of proving the specified fact, and that the evidence may be considered only for that limited purpose. *People v. Jackson*, 357 Ill. App. 3d 313, 321 (2005). Further, he submits that the trial court should not only instruct the jury at the close of the case, but also orally from the bench at the time the evidence is first presented to the jury. See *People v. Denny*, 241 Ill. App. 3d 345, 360-61 (1993).

We are not persuaded. Our supreme court has held that although the better practice may be for a trial court to instruct the jury at the close of evidence and also at the time the other-crimes evidence is admitted, the trial court's failure to do so does not mandate reversal. *People v. Heard*, 187 Ill. 2d 36, 61 (1999). Moreover, as we have held, the other-crimes evidence in this case was admitted to demonstrate propensity. Therefore, defendant was not entitled to *any* limiting instruction. A jury instruction that the other-crimes evidence in this case was admissible to establish defendant's propensity, or in other words, to establish "that defendant was the type of person who is likely to have performed those acts that he denies" (*People v. Stanbridge*, 348 Ill. App. 3d 351, 356 (2004)), would have been much more damaging for defendant. See *People v. Janik*, 127 Ill. 2d 390, 398 (1989) (both defendant *and the State* are entitled to appropriate instructions presenting their theories of the case to the jury if the evidence supports those theories). In light of the strong evidence of defendant's guilt as presented to the jury through the testimony of the victim, as well as the testimony of Samantha and Yukondra, which was appropriately admitted to establish that defendant was the type of person who was likely to have committed the instance offenses, we find that any error in failing to instruct the jury at the time the witnesses testified was harmless error. See

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People v. Lieberman, 107 Ill. App. 3d 949, 955 (1982) (use of jury instruction regarding evidence of other crimes which court found was overly broad was not reversible error in view of strong evidence of guilt).

Accordingly, the judgment of the circuit court of Winnebago County is affirmed.

Affirmed.