

No. 2—09—1018
Order filed May 17, 2011

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
SECOND DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the Circuit Court of Du Page County.
)	
Plaintiff-Appellee,)	
)	
v.)	No. 06—CF—1525
)	
WALTER A. RINEBOLD,)	Honorable John J. Kinsella,
)	Judge, Presiding.
Defendant-Appellant.)	

JUSTICE HUTCHINSON delivered the judgment of the court.
Presiding Justice Jorgensen and Justice Hudson concurred in the judgment.

ORDER

Held: The trial court did not abuse its discretion when it admitted statements as other-crimes evidence because the trial court could have concluded that defendant's contact with another minor was done for the purpose of sexual gratification and that the probative value of that evidence outweighed the prejudicial effect to defendant. We affirmed the judgment of the trial court.

Following a jury trial, defendant, Walter A. Rinebold, was found guilty of three counts of aggravated criminal sexual abuse pursuant to section 12—16(c)(1)(i) of the Criminal Code of 1961 (the Criminal Code) (720 ILCS 5 /12—16(c)(1)(i) (West 2006)), and sentenced to concurrent terms of three years' imprisonment for each count. Prior to trial, the trial court held a hearing to determine

whether statements and allegations made by J.R., a minor, would be admissible at trial as evidence of another offense pursuant to section 115—7.3 of the Code of Criminal Procedure of 1963 (the Criminal Procedure Code) (725 ILCS 5/115—7.3 (West 2006)). The trial court admitted the evidence. Contending the trial court abused its discretion by admitting the other-crimes evidence, defendant now appeals. We affirm.

The relevant facts reflect that defendant resided in Lombard with his son, Michael, his son's wife, Bridget, and their two minor children, one of whom is the victim. During the early hours of May 21, 2006, Michael returned from a neighbor's house and found defendant sitting next to the victim on her bed in the basement. Defendant told Michael that the victim needed a pull-up diaper and then defendant went upstairs. While giving the victim a hug, the victim told Michael to tell defendant not to touch her on her butt.

Michael went back to his neighbor's house and returned with Bridget. Upon returning home, the victim asked Bridget to tell defendant never to touch her again. Bridget asked the victim to explain what she meant, and the victim told Bridget that defendant had his "thing" out and made her touch it. The victim told Bridget that defendant said he sometimes gets "horny" and that this is how we deal with things like that in our house. The victim said she was patting defendant's "thing" when they heard the front door open and defendant put his "thing" away and zipped his pants. The following day, the victim told a police officer about the incident, explaining that defendant made her touch him. Subsequently, Robert Holguin, a senior criminal investigator with the Du Page County State's Attorney's Office, conducted an interview with the victim.

On June 29, 2006, defendant was charged by indictment with four counts of aggravated sexual abuse. Count I alleged that on May 21, 2006, defendant touched the victim's buttocks for the

purpose of sexual gratification. Count II alleged that between December 1, 2005, through April 9, 2006, defendant touched the buttocks of a different individual, J.R., for the purpose of sexual gratification. Count III alleged that on May 21, 2006, defendant touched the anus of the victim for the purpose of sexual gratification. Count IV alleged that on May 21, 2006, the victim touched defendant's penis for the sexual gratification of defendant. The trial court subsequently granted defendant's motion to sever count II and the allegations involving J.R.

On August 12, 2008, prior to trial, the trial court conducted a hearing to determine whether other-crimes evidence concerning statements and allegations made by J.R. that defendant inappropriately touched her would be admissible. The State first called Dawn R., defendant's daughter, to testify. Dawn testified that her sister, Kristy R., and Kristy's three daughters, who included J.R., lived with her. Dawn testified that her sister-in-law, Bridget, called her in May 2006 and asked whether defendant had sexually touched J.R. or one of Kristy's other daughters. Dawn testified she spoke with J.R. and one of J.R.'s sisters and asked them if they had been touched in a way they did not like. J.R. told her "yes," but Dawn did not ask her who touched her. Dawn testified that it was not her place to ask J.R. who touched her. Dawn testified that J.R.'s sister denied being touched in a way she did not like. Dawn testified that she later told Bridget and Kristy what J.R. told her, including that J.R. did not specify whether defendant touched her.

The State next called Kristy R. Kristy testified that Bridget called her on her way home from church and asked if defendant had done anything to her children because Bridget thought defendant inappropriately touched the victim. Kristy testified that she spoke with Dawn upon returning home, telling her that Bridget told her she thought defendant inappropriately touched the victim and wanted to find out if defendant had touched any of Kristy's daughters. Dawn told Kristy she spoke to J.R.

and another daughter, and J.R. said something happened but J.R. did not mention defendant. Kristy testified that, prior to J.R.'s conversation with Dawn in May 2006, J.R. told her defendant made her feel uncomfortable while she was staying at his house because he came home drunk. Kristy testified that, after Dawn's phone call with Bridget, J.R. and the other daughter were interviewed at a children's center regarding whether defendant acted sexually toward them.

On cross-examination, Kristy acknowledged that neither J.R. nor her other daughter told her defendant made them feel uncomfortable except for the one drinking incident. Kristy acknowledged J.R. never told her defendant touched her in an inappropriate manner. Kristy also admitted that J.R. and her other daughter told her a minor boy who lived in their neighborhood touched them in an inappropriate way.

The State next called Sharon Gibson, who was the executive director of the La Salle County Advocacy Center. Gibson testified that, on May 26, 2006, she conducted a tape-recorded interview with J.R. and J.R.'s sister. The tape was admitted into evidence and played before the trial court. After the tape was played, Gibson identified an anatomical drawing used during the interview that J.R. had marked on. According to Gibson, J.R. made the marks after responding to a question by Gibson about where defendant touched her. On cross-examination, Gibson acknowledged that J.R. told her she was sleeping in her bed in the basement when defendant put his finger on her buttocks, but his finger was over her clothes and bed covers. Gibson admitted that J.R. told her defendant touched her in a stroking manner that lasted between two and three seconds, and that defendant did not say anything to her during the occurrence. Gibson further admitted that she had very little information regarding when the alleged touching occurred, but J.R. told her it occurred "way after Thanksgiving, *** way after Christmas, and after Easter."

On September 22, 2008, the trial court issued an order permitting the statements J.R. made to Dawn, Kristy, and Gibson to be entered as other-crimes evidence. In rendering its determination, the trial court stated:

“Insofar as [J.R.’s] statements to [Gibson], even though at the initial stages she was reluctant to acknowledge that anything had occurred, in total her answers and responses were very spontaneous, very consistent in judging the manner of describing her terminology. There did not appear to be any motive to fabricate identified in her statements.

I think there is a clear indicia of reliability and believability in describing the conduct of which could form the basis of the criminal offense. Ultimately that’s a question of fact for the jury, but [J.R.] does describe the behavior.”

Subsequently, on December 19, 2008, the trial court issued an order admitting as other-crimes evidence allegations that defendant committed a criminal act toward J.R. In rendering that order, the trial court stated:

“The fact that the case—the allegations is such that there is some controversy as to whether the crime has been committed is not the measurability of its admissibility. *** [Defendant’s] conduct is described by the victim [and] can constitute a criminal offense as proffered and as such, I will allow it.”

Defendant’s jury trial began on March 25, 2009, and the jury returned a verdict convicting defendant of three counts of aggravated criminal sexual abuse pursuant to section 12—16(c)(1)(i) of the Criminal Code. 720 ILCS 5 /12—16(c)(1)(i) (West 2006). On October 19, 2009, we granted defendant’s motion for leave to file a late notice of appeal, and defendant’s notice of appeal was filed the same day.

On appeal, defendant contends that the trial court erred when it allowed as other-crimes evidence the statements and allegations J.R. made that defendant touched her in a sexual manner. Defendant admits to touching J.R.'s buttocks but maintains that contact did not constitute a "commission of another offense" required by section 115—7.3 of the Criminal Procedure Code because there was no skin-to-skin contact and the contact lasted for only a few seconds. According to defendant, "At most, he may have patted his granddaughter on her bottom," which cannot be considered sexual conduct done for the purpose of sexual gratification or arousal.

The term "other-crimes evidence" encompasses both misconduct and criminal acts that occurred either before or after the criminal conduct of which defendant is accused. *People v. Spyles*, 359 Ill. App. 3d 1108, 1112 (2005). Under the common law, evidence of other crimes was inadmissible to demonstrate a defendant's propensity to commit a crime, but was admissible if relevant and offered for a specific purpose, such as consciousness of guilt, *modus operandi*, design, motive, absence of mistake, or knowledge. *People v. Smith*, No. 3—09—0718, slip op. at 4 (Ill. App. Dec. 28, 2010). However, section 115—7.3 of the Criminal Procedure Code is a statutory exception to the common-law rule, and provides that when a defendant is accused of aggravated criminal sexual abuse and other specified offenses, evidence of other offenses may be admissible to show propensity. 725 ILCS 5/115—7.3(a)(1), (b) (West 2006); *People v. Donoho*, 204 Ill. 2d 159, 176 (2003). In determining whether to admit other-crimes evidence, the trial court should consider whether the probative value of such evidence outweighs the prejudice against defendant, taking into account (1) the proximity in time to the charged or predicate offense; (2) the degree of factual similarity to the charged offense; and (3) other relevant similar facts and circumstances. 725 ILCS 5/115—7.3(c) (West 2006). A trial court's decision to admit other-crimes evidence will not be

disturbed unless the trial court abused its discretion by acting in an arbitrary or capricious manner, or where no reasonable person would reach the same conclusion. *Spyres*, 359 Ill. App. 3d at 1113.

Considering the factors provided by section 115—7.3 (c) of the Criminal Procedure Code and the Criminal Code’s definition of sexual abuse, the trial court acted within its discretion by concluding that defendant’s contact with J.R. was done for the purpose of sexual gratification and that the probative value of that evidence outweighed the prejudicial effect. With respect to weighing the probative value against the prejudicial effect, Gibson testified—and the indictment charging defendant with aggravated criminal sexual abuse against J.R. indicated—that defendant touched J.R. between December 1, 2005, and April 9, 2006. This was close in proximity to defendant’s contact with the victim, which occurred on May 21, 2006. See *Smith*, No. 3—09—0718, slip op. at 10-11 (noting the trial court admitted as other-crimes evidence conduct which allegedly occurred five years before the charged offense). In addition, although the contact defendant allegedly had with J.R. was not the same as his contact with the victim, the testimony at the hearing indicated a significant degree of factual similarity. Specifically, both events occurred while the minors were in the basement, in bed, and involved defendant touching the minors on the buttocks. See *People v. Wilson*, 214 Ill. 2d 127, 142 (2005) (“As factual similarities increase, so does the relevance or probative value.”). We note that there was inconsistent testimony regarding the propriety of defendant’s contact with J.R., including Dawn and Kristy’s testimony that J.R. did not specifically tell either of them that defendant inappropriately touched her. However, evaluation of testimony and resolution of conflicts and inconsistencies are within the province of the trial court as the trier of fact. *People v. Lamon*, 346 Ill. App. 3d 1082, 1089 (2004). It was within the trial court’s discretion to give more weight to Gibson’s interview with J.R. See *id.* (“[A] reviewing court may not substitute [its] judgment for that

of the trier of fact on questions involving evidentiary weight, witness credibility, or resolution of conflicting testimony.”).

Moreover, section 12—12(e) of the Criminal Code expressly provides that any intentional or knowing touching, either directly or through clothing, of any part of the body of a child less than 13 years of age done for the purpose of sexual gratification of the victim or accused is considered sexual conduct for the purpose of aggravated criminal sexual abuse. 720 ILCS 5/12—12(e) (West 2006); *In re D.H.*, 381 Ill. App. 3d 737, 741 (2008). Therefore, the lack of skin-to-skin contact does not remove the evidence of J.R.’s statements and allegations from the purview of section 115—7.3. See *Smith*, No. 3—09—0718, slip op. at 10-11 (noting the trial court admitted as other-crimes evidence defendant touching his granddaughter’s vaginal area through her clothing).

Accordingly, because the trial court could have concluded that defendant’s contact with J.R. was done for the purpose of sexual gratification and that the probative value of that evidence outweighed any prejudicial effect to defendant, it did not abuse its discretion when it admitted J.R.’s statements to Dawn, Kristy, and Gibson and her allegations as other-crimes evidence pursuant to section 115—7.3 of the Criminal Procedure Code.

For the foregoing reasons, we affirm the judgment of the circuit court of Du Page County.

Affirmed.