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No. 3--09--0801

Order filed February 7, 2011

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

A.D., 2011

THE PEOPLE OF THE STATE)	Appeal from the Circuit Court
OF ILLINOIS,)	of the 12th Judicial Circuit,
)	Will County, Illinois,
Plaintiff-Appellee,)	
)	
v.)	No. 07--CF--1418
)	
RITA MUELLER,)	Honorable
)	Edward Burmila, Jr.,
Defendant-Appellant.)	Judge, Presiding.

JUSTICE SCHMIDT delivered the judgment of the court.
Justices Holdridge and Lytton concurred in the judgment.

ORDER

Held: Defendant's conviction for disorderly conduct was upheld because there was sufficient evidence for the jury to find that defendant knowingly caused a false report of child abuse to be transmitted to DCFS, her trial counsel's actions were objectively reasonable, and the trial court's evidentiary rulings were not erroneous. Additionally, defendant's sentence was not an abuse of discretion.

Defendant, Rita Mueller, was found guilty by a jury of disorderly conduct (720 ILCS 5/26--1(a)(7) (West 2006)) and

sentenced by the trial court to 30 months' imprisonment. Defendant appealed, arguing that: (1) she was not proven guilty beyond a reasonable doubt; (2) her trial counsel rendered ineffective assistance; (3) the trial court erred in allowing certain evidence; and (4) the trial court abused its discretion in not sentencing her to probation. We affirm.

FACTS

Defendant was charged by indictment with disorderly conduct for knowingly causing a false report of child abuse to be transmitted to the Department of Children and Family Services (DCFS) in violation of section 1(a)(7) of the Criminal Code of 1961 (Criminal Code). 720 ILCS 5/26--1(a)(7) (West 2006). Specifically, the indictment alleged that defendant sent a letter to Dr. Meda Thompson, an elementary school principal, falsely accusing a student's father with sexual abuse, knowing that Thompson was mandated to report suspected child abuse.

Prior to trial, the defense filed a motion *in limine*, seeking to exclude all correspondence, other than the letter to Thompson. The State opposed the motion because it wanted to show defendant's common design and motive to harass the staff at the high school her daughter had attended. The trial court granted the motion in part, allowing the letter to Thompson and all correspondence addressed to Donna M., whose children were the subject of the letter sent to Thompson.

Donna testified for the State. She was a teacher at the high school where defendant's daughter was a student in 2001. In the fall of 2002, Donna was concerned about some of the things defendant's daughter had said, and Donna attended a meeting with defendant, defendant's husband, and other school personnel. Donna testified that defendant acted angry at the meeting. At that time, Donna was no longer teaching defendant's daughter, and Donna had no further official contact with defendant at the high school. However, Donna testified that in February 2003, defendant saw Donna at a school basketball game and crossed the gym to sit directly behind Donna. At the end of the game, defendant kicked a drink onto Donna. On another occasion, defendant stood outside Donna's classroom and stared at Donna.

Thereafter, in 2005, Donna received a typed, unsigned letter in the mail at her home, stating that her husband was having an affair, and included a used condom. Later in 2005, Donna was contacted by DCFS about a complaint alleging that her husband was sexually abusing their younger daughter. In March 2006, after Donna had recently moved, Donna saw defendant at a children's museum in the new town, and defendant walked in front and stopped a few inches in front of Donna's face and stared at her. Donna felt threatened by defendant. The next month, Donna received another anonymous letter in the mail, stating that she could run but could not hide. At that time, Donna contacted the police.

Thereafter, in December 2006, Donna received a greeting card at her home, sympathizing the deaths of her two young daughters, who were both very much alive. The card was signed by Carrie Dale of the Compassionate Friends Agency. Donna again called the police.

School personnel from Naperville Central testified to defendant's anger and dissatisfaction over the way the school handled an incident with defendant's daughter. Arthur Paulsen was the principal when the original incident occurred in 2002 wherein defendant's daughter was not allowed to return to school until she was assessed by a psychologist outside of the school district. He testified that he met with defendant a number of times that school year, and that defendant was unhappy with the way the school had handled the incident with her daughter.

Defendant was unhappy with Donna, but Paulsen declined to set up defendant's requested meeting with Donna. Paulsen testified that he was mandated to report allegations of child abuse to DCFS.

James Caudill testified that he took over as principal of the high school, and he met with defendant and her husband in August 2003. They wanted a personal meeting with Donna, which Caudill denied. Defendant renewed her request to meet with Donna several times throughout the school year. Defendant's daughter graduated in May 2004.

Superintendent Alan Leis met defendant in September 2003. At that time, defendant expressed concerns about Donna's actions

the previous school year, criticized how her daughter's case had been handled, and demanded an apology from Donna. Leis testified that, as a mandated reporter, he was required to follow-up and report any case of child abuse.

Licensed clinical psychologist Denise Tompkins testified that defendant contacted her in the fall of 2002 to conduct an evaluation of defendant's daughter. Tompkins met with defendant's daughter. Defendant reacted angrily during the meeting scheduled to discuss Tompkins' impressions and recommendations. Defendant requested that Tompkins not attend the school staffing for her daughter. Two years later, in July 2004, defendant contacted Tompkins to request her help in clearing her daughter's name with the school. Tompkins declined to do so. Thereafter, in November 2004, defendant submitted a letter to Tompkins that challenged everything that Tompkins had stated in her notes regarding defendant's daughter.

Thompson was the principal of the elementary school where Donna's older daughter was a student in 2005. In the fall of 2005, Thompson received an anonymous typewritten letter in the mail, allegedly authored by one of Donna's neighbors. The letter suggested that both of Donna's daughters may have been molested, specifically alleging sexual activity between Donna's husband and Donna's younger daughter. The letter also accused Donna and her husband of using drugs and alcohol. After receiving the letter,

Thompson called the child abuse hotline pursuant to the requirement that she contact DCFS whenever she suspected child abuse.

Sue Cattaneo, a Child Protection Services Investigator for DCFS, investigated the letter, speaking with school personnel, Donna, her husband, and her children. Cattaneo concluded that the claims in the letter were unsubstantiated.

Nick Liberio, a Naperville police officer, interviewed Donna about the harassing letters after she initiated contact with the police in April 2006, after receiving the first anonymous letter at her new address. In the course of his investigation, Liberio found no deoxyribonucleic acid or fingerprints on the letters sent to Donna, found that no one named Carrie Dale worked for the Compassionate Friends Agency, and found no basis for the allegation that Donna and her husband used drugs or alcohol.

In May 2007, Liberio interviewed defendant in her home. Defendant admitted that she was upset with Donna and the manner in which the school had handled the situation with her daughter. She initially denied sending any cards or letters to Donna. But, after she was shown the letters, including the one written to Thompson, she admitted to authoring and sending all the items. Defendant then wrote a letter, apologizing to the school staff for her actions that resulted in their anguish and concern. Liberio testified that he also showed defendant correspondence

with her daughter's school regarding a special education dispute, but that defendant's apology was not written to address that correspondence.

Defendant's husband, Jonathan Mueller, testified for the defense. He testified that he was present the whole time the police questioned defendant in their home and she was never shown the letter addressed to Thompson. He testified that defendant denied sending the letters to Donna and did not admit to any dislike of Donna. He testified that defendant admitted sending letters to their daughter's school regarding the special education issue.

Defendant testified, denying that Liberio showed her the letter written to Thompson during the interview in her home. Defendant denied sending any cards or letters to Donna. She explained that her letter of apology addressed the special education dispute.

The jury returned a verdict of guilty of disorderly conduct. Defendant's posttrial motion, raising the same issues argued on appeal, was denied. At defendant's sentencing hearing, defendant presented evidence in mitigation, such as her age, education, lack of criminal history, and efforts to provide care for her mother. The State presented evidence in aggravation, which included a number of anonymous letters containing accusations against relatives of the various school officials involved in the

dispute regarding defendant's daughter. The trial court sentenced defendant to 30 months' imprisonment. Defendant's postsentencing motion was denied. Defendant appealed.

ANALYSIS

Defendant challenges her conviction on four grounds: (1) the State failed to prove her guilty of disorderly conduct beyond a reasonable doubt; (2) her trial counsel rendered ineffective assistance of counsel; (3) the trial court erred in admitting certain evidence; and (4) the trial court abused its discretion in sentencing defendant to 30 months' imprisonment.

I. Reasonable Doubt

Defendant argues that she was not proven guilty beyond a reasonable doubt because the State did not prove that Thompson had reasonable cause to believe that a child had been abused and that she knew the child in her official capacity. The State responds that it did not have to prove that Thompson properly transmitted the report under section 4 of the Abused and Neglected Child Reporting Act (Reporting Act) (325 ILCS 5/4 (West 2004)) and that defendant was proven guilty of disorderly conduct beyond a reasonable doubt.

Due process requires proof of guilt beyond a reasonable doubt to convict a criminal defendant. *People v. Ross*, 229 Ill. 2d 255 (2008). When reviewing a challenge to the sufficiency of the evidence, a reviewing court must determine whether, after

viewing the evidence in the light most favorable to the State, any rational trier of fact could have found the elements of the crime beyond a reasonable doubt. *Ross*, 229 Ill. 2d 255. "Under this standard, the reviewing court does not retry the defendant, and the trier of fact remains responsible for making determinations regarding the credibility of witnesses, the weight to be given their testimony, and the reasonable inferences to be drawn from the evidence." *Ross*, 229 Ill. 2d at 272. A conviction will be reversed when there is a reasonable doubt as to the defendant's guilt because the evidence is so unreasonable, improbable, or unsatisfactory. *Ross*, 229 Ill. 2d 255.

A defendant commits a crime of disorderly conduct, under the provision that defendant was charged, when she knowingly causes a false report to be transmitted to DCFS under section 4 of the Reporting Act. *People v. Marcotte*, 337 Ill. App. 3d 798 (2003); 720 ILCS 5/26--1(a)(7) (West 2006). Section 4 of the Reporting Act requires, *inter alia*, school personnel, having reasonable cause to believe a child known to them in their professional or official capacity may be an abused or neglected child, to immediately report such to DCFS. 325 ILCS 5/4 (West 2004).

Section 26--1(a) of the Criminal Code requires that defendant "knowingly" cause a false report to be transmitted to DCFS. There is no issue raised with respect to the fact that the report was false and that it was transmitted to DCFS. Section 4-

-5(a) of the Criminal Code provides that a person acts knowingly when she is consciously aware of a fact. 720 ILCS 5/4--5(a) (West 2006). It also provides that "[k]nowledge of a material fact includes awareness of the substantial probability that such fact exists." 720 ILCS 5/4--5(a) (West 2006).

After reviewing the evidence in the light most favorable to the State, we conclude that the jury could have found that defendant sent the letter to Thompson, knowing that Thompson was a mandated reporter, with sufficient facts to create the substantial probability that Thompson would transmit the report to DCFS. Thompson testified that she did, in fact, call DCFS's child abuse hotline to report the suspected abuse. Defendant's mental state was a question for the jury, and there was sufficient evidence for the jury to find defendant guilty beyond a reasonable doubt.

II. Assistance of Counsel

Defendant argues that her trial court was ineffective for failing to: (1) object to testimony that a report to DCFS is "always mandated" and offer a jury instruction on the issue; (2) object to inadmissible evidence; and (3) support the defense theory and impeach the State's theory. The State counters that defense counsel's actions were objectively reasonable.

To establish a claim for ineffective assistance of counsel, a defendant must show that counsel's representation: (1) fell

below an objective standard of reasonableness; and (2) prejudiced the defendant's case. *Strickland v. Washington*, 466 U.S. 668 (1984). Under the first prong, the reviewing court must give deference to counsel's conduct within the context of the trial and without the benefit of hindsight. *People v. King*, 316 Ill. App. 3d 901 (2000). As such, defendant must overcome a strong presumption that counsel's action or inaction was the result of sound trial strategy. *People v. Houston*, 226 Ill. 2d 135 (2007). Under the second prong, defendant must show that, but for counsel's deficient representation, there is a reasonable probability that the outcome of the trial would have been different. *Houston*, 226 Ill. 2d 135. A reasonable probability is a probability sufficient to undermine confidence in the outcome. *Houston*, 226 Ill. 2d 135.

We find that counsel's failure to object to the testimony regarding when a report was mandated to DCFS and failure to tender a jury instruction on the issue of whether Thompson had "reasonable cause" did not constitute deficient performance. As we have already found, the State was not required to prove that Thompson actually had reasonable cause to transmit the report to DCFS, only that defendant knowingly caused the report to be transmitted. Thompson testified that she transmitted the letter pursuant to the requirement that she contact DCFS whenever she suspected child abuse.

Counsel was also not ineffective for failing to object to Cattaneo's testimony that the sexual assault claim contained in the letter to Dr. Thompson was unfounded. This was not hearsay; Cattaneo was testifying regarding the results of her investigation.

There was also no deficient performance in counsel's failure to object to the testimony of Tompkins on the basis of the Mental Health Confidentiality Act. Tompkins raised the issue of confidentiality and her concerns were addressed by the trial court. Tompkins did not testify to any privileged matters. The questions, and Tompkins' answers, did not involve her treatment of defendant's daughter. Tompkins testified regarding her conversations with defendant after Tompkins' treatment of defendant's daughter had concluded.

Defendant's contention that her trial counsel was ineffective for failing to support defendant's defense with documentary evidence is similarly baseless. The documentary evidence trial counsel should have allegedly produced was the vast amount of correspondence that defendant wrote to school personnel regarding her daughter's special education dispute. However, defendant has not overcome the strong presumption that her trial counsel's actions, including a motion *in limine* to bar any letters offered by the State other than the one alleged in the indictment, was sound trial strategy.

Finally, defendant contends her trial counsel was ineffective for failing to cross-examine Liberio about the absence of a specific reference to the letter to Thompson in his report that stated that defendant admitted sending all the letters, cards, and notes. Again, we find that defendant has not overcome the strong presumption that her trial counsel's examination of Liberio was the result of sound trial strategy. Although Liberio's report does not specify the cards and letters that he showed to defendant, Liberio testified that he specifically showed defendant the letter to Thompson and the special education correspondence with her daughter's school. Defendant's trial counsel examined Liberio, testing his recollection of the interview with defendant, but Liberio was consistent in his testimony that he showed defendant the letter to Thompson and that defendant admitted sending it. Liberio also testified that defendant's apology was not for the special education correspondence.

Giving the appropriate deference to defendant's trial counsel in the context of the trial, we find that defense counsel's actions did not fall below an objective standard of reasonableness.

III. Hearsay and Other Crimes Evidence

Defendant argues that the trial court erred in admitting inadmissible hearsay when it allowed Liberio to testify that

there was no Carrie Dale at the Compassionate Friends Agency and there was no basis to the allegations that there were drugs and alcohol in Donna's household. Defendant also contends that the trial court erred in allowing the State to produce other-crimes evidence and evidence of other incidents involving Donna that merely tended to prove defendant's bad character and deprived her of a fair hearing on the question of whether she wrote the one letter to Thompson. The State argues that the trial court's rulings were well within its discretion.

Evidentiary rulings by the trial court will not be reversed absent a clear abuse of discretion. *People v. Robinson*, 217 Ill. 2d 43 (2005). In evaluating evidentiary rulings, a reviewing court will only find an abuse of discretion "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. Caffey*, 205 Ill. 2d 52, 89 (2001).

Where testimony is offered for the truth of the matter asserted, it is hearsay and inadmissible absent an exception. *Caffey*, 205 Ill. 2d 52. Testimony offered for another purpose, *i.e.*, not for the truth of the matter asserted, is not hearsay. *People v. Simms*, 143 Ill. 2d 154 (1991). A police officer's testimony regarding conversations with others is admissible if not offered to show the truth of those matters but to show the investigative steps taken by the officer. *Simms*, 143 Ill. 2d

154. We find no abuse of discretion in admitting Liberio's testimony because it was not hearsay. The evidence was admissible to show the investigative steps taken by Liberio.

Evidence of other crimes or bad acts is inadmissible for the purpose of showing a defendant's propensity to commit crime. *People v. Heard*, 187 Ill. 2d 36 (1999). However, such evidence is admissible if it is relevant for a purpose other than to show propensity. *Heard*, 187 Ill. 2d 36. Evidence of other crimes may properly be admitted if it is relevant to prove defendant's motive (*People v. Moss*, 205 Ill. 2d 139 (2001)), or if part of a continuing narrative (*People v. Thompson*, 359 Ill. App. 3d 947 (2005)). The determination whether other crimes evidence should be admitted is within the sound discretion of the trial court, and that determination should not be disturbed absent a clear abuse of that discretion. *Heard*, 187 Ill. 2d 36.

When ruling on defendant's motion *in limine*, the trial court found that the probative value of the letters written to Donna was not outweighed by the prejudicial effect. The letters written to Donna, and the testimony regarding defendant's dispute with her daughter's school, were background evidence to prove defendant's motive and continuing actions, not to prove defendant's propensity to commit a crime. We find no abuse of discretion.

IV. Sentencing

Defendant contends that the trial court abused its discretion in sentencing her to 30 months' imprisonment. She argues that the sentence was excessive.

A reviewing court grants deference to a trial court's sentencing decision, and it will not substitute its judgment for that of the trial court simply because it would have weighed the sentencing factors differently. *People v. Streit*, 142 Ill. 2d 13 (1991). The available sentence for the offense of disorderly conduct for knowingly causing a false report of child abuse to be transmitted to DCFS was probation or a term of imprisonment from one to three years. 730 ILCS 5/5--8--1(a)(7) (West 2006); 730 ILCS 5/5--6--1(a) (West 2006).

At her sentencing hearing, defendant presented several witnesses and letters in mitigation. The State presented evidence of a number of other anonymous letters containing damaging allegations. In sentencing defendant, the trial court acknowledged a presumption in favor of probation for defendant's crime. However, the trial court considered the evidence offered in mitigation, and the evidence offered at trial and in aggravation at sentencing, and found that defendant intended to terrorize Donna and the other victims of defendant's letters. Thus, the trial court clearly specified its reasons for deviating from the presumption of probation, based on the seriousness of the offense, and we find no abuse of discretion in that decision.

CONCLUSION

For the foregoing reasons, the judgment of the circuit court of Will County is affirmed.

Affirmed.