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No. 03--09--0097

Order filed March 24, 2011

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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 10th Judicial Circuit,
	)	Peoria County, Illinois,
Plaintiff-Appellee,	)	
	)	
v.	)	No. 08--CF--595
	)	
HOMER G. TRUITT,	)	Honorable
	)	Michael E. Brandt,
Defendant-Appellant.	)	Judge Presiding.

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JUSTICE McDADE delivered the judgment of the court.  
Presiding Justice Carter and Justice Lytton concur in the  
judgment.

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**ORDER**

*Held:* The trial court did not abuse its discretion by admitting the defendant's prior conviction into evidence for purposes of impeachment. Because the prior conviction for theft reflected upon the defendant's honesty and veracity, the decision below is affirmed.

After a jury trial, the defendant was convicted of theft (720 ILCS 5/16--1(a)(1) (West 2008)) and sentenced to one year and one day in prison. At issue in this case is whether the

trial court abused its discretion when it allowed the defendant's 2003 theft conviction into evidence for purposes of impeachment. The defendant argues on appeal that allowing this conviction into evidence was more prejudicial than probative and, as a result, the trial court violated the rule set forth in *People v. Montgomery*, 47 Ill. 2d 510 (1971). We affirm.

#### FACTS

On May 16, 2008, the defendant took metal coils he found near the dumpster of the Peoria County courthouse. The defendant was in the business of locating and selling scrap metal and, according to his testimony, he had previously collected scrap metal from the courthouse. At the time of the incident, the courthouse was undergoing a heating and air-conditioning overhaul, and Peoria County was to be reimbursed for the used metal coils.

It is undisputed that on the afternoon of May 16 the defendant loaded two of the metal coils onto his truck. However, after a conversation with county employees, the defendant removed the coils from his vehicle. On Monday, employees noticed that the coils were missing. Security surveillance revealed that the defendant had returned later that evening and taken the coils. In fact, the only disputed issue for the jury to decide was whether the defendant knew he could not take the coils when he returned on May 16.

At trial, the State offered the testimony of Scott Bishop, the facilities manager of Peoria County, and Samuel Cornell, who both testified that they told the defendant he could not take the heating coils. Neither employee admitted to telling the defendant he could come back at a later time to pick up the coils. The defendant acknowledged that he was told he could not have some of the metal, but thought he could come back at a different time to collect the coils. He testified that he believed he could return after court hours when prisoners were not around.

To rebut the defendant's testimony, the State sought to introduce two of the defendant's prior convictions into evidence. One conviction was a 2002 misdemeanor theft, and the other was a 2003 felony conviction for theft. After considering the probative and prejudicial nature of the convictions, the trial court admitted the 2003 felony conviction for purposes of impeachment. The trial court also instructed the jurors that they were to use the conviction in order to evaluate the defendant's credibility and "not \*\*\* as evidence of his guilt." After deliberations, the jury returned a guilty verdict.

#### ANALYSIS

On appeal, the defendant argues that admitting the 2003 conviction into evidence for purposes of impeachment was more prejudicial than probative. The standard of review is whether

the trial court abused its discretion. This means that we can overturn the decision of the trial court only if its "decision is fanciful, arbitrary, or unreasonable to the degree that no reasonable person would agree with it." *People v. Ortega*, 209 Ill. 2d 354, 359 (2004).

In *Montgomery*, the Illinois Supreme Court held that prior convictions were admissible for impeachment purposes if: (1) the defendant's crime was punishable by death or imprisonment for more than one year, or the crime involved dishonesty or false statement regardless of the punishment; (2) the defendant's conviction or release from confinement, whichever date was later, occurred less than 10 years from the date of trial; and (3) the danger of unfair prejudice does not substantially outweigh the probative value of the conviction. *Montgomery*, 47 Ill. 2d 510. In discussing this third requirement, the *Montgomery* court created a balancing test where the trial court had to consider the length of the criminal record, the age and circumstances of the witness, the nature of the offense, and the extent to which it is important for jurors to hear a defendant's testimony without knowledge of the prior conviction. *Montgomery*, 47 Ill. 2d 510.

In *People v. Williams*, 161 Ill. 2d 1 (1994), the Illinois Supreme Court elaborated upon the rules set forth in *Montgomery*. The court noted that "[t]he *Montgomery* rule does not \*\*\* allow

for the admission of evidence of any and all prior crimes. The focus of *Montgomery* was on crimes which bear on the defendant's truthfulness as a witness." *Williams*, 161 Ill. 2d at 39. As the defendant points out, the *Williams* court stated that prior convictions for the same offense as the one on trial should be admitted sparingly. *Williams*, 161 Ill. 2d 1.

After reviewing the facts and the law, it cannot be said that the trial court abused its discretion by admitting the 2003 conviction into evidence for purposes of impeachment. It is true that the 2003 conviction was a conviction for theft, and as a result it was most likely prejudicial to the defendant. However, it is also true that a prior conviction for theft bears directly on the credibility of the defendant, and therefore it is admissible under *Montgomery*. As the court stated in *Williams*:

"In common human experience, acts of deceit, fraud, cheating, or stealing, for example, are universally regarded as conduct which reflects adversely on a man's honesty and integrity. Acts of violence on the other hand \*\*\* generally have little or no direct bearing on honesty and veracity." *Williams*, 161 Ill. 2d at 37, quoting *Gordon v. United States*, 383 F.2d 936, 940 (D.C. Cir. 1967).

While it could be argued that any prior conviction for the same offense is more prejudicial than probative, our supreme court had the opportunity to make such a rule in both *Montgomery*

and *Williams* and chose not to. Thus, the trial court was within its discretion to conclude that the prejudicial nature of the previous conviction did not substantially outweigh its usefulness to jurors who had to evaluate the truthfulness of the defendant's testimony.

Moreover, the trial court took proper precautions to reduce the prejudicial impact of the defendant's prior criminal history. The court admitted only one of the defendant's two prior convictions. In addition the trial court instructed the jury that the prior conviction could only be used for impeachment purposes and "not \*\*\* as evidence of his guilt of the offense." The Illinois Supreme Court has held that such an instruction helps protect a criminal defendant from unfair prejudice. *People v. Atkinson*, 186 Ill. 2d 450 (1999). Nonetheless, the defendant argues that this limiting instruction is insufficient "in light of the close evidence of innocence or guilt." Even assuming that this is, in fact, a close case, we would still have to reject the defendant's argument. The defendant cites no case law supporting the proposition that jurors cannot be trusted to follow limiting instructions in close cases. As the State notes in its brief, "[t]he jury is presumed to follow the instructions that the court gives it." *People v. Taylor*, 166 Ill. 2d 414, 438 (1995).

Finally, the defendant argues that the trial court could have limited the prejudicial impact of the 2003 conviction by

simply informing the jury that the conviction existed but withholding the nature of the conviction. However, this approach has been rejected by our supreme court. See *Atkinson*, 186 Ill. 2d 450; see also *People v. Cox*, 195 Ill. 2d 378 (2001).

In this case, the trial court admitted evidence of one theft conviction to impeach a defendant's credibility on the witness stand. The trial court further instructed the jury to use the conviction only for purposes of evaluating the defendant's credibility. Without more, it cannot be said that the trial court abused its discretion.

#### CONCLUSION

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

Affirmed.