

No. 1-10-0590

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IN THE  
APPELLATE COURT OF ILLINOIS  
FIRST JUDICIAL DISTRICT

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THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County.
	)	
v.	)	No. 05 CR 5542
	)	
LUTHER HUNT,	)	Honorable
	)	Mary Margaret Brosnahan,
Defendant-Appellant.	)	Judge Presiding.

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JUSTICE HOWSE delivered the judgment of the court.  
Presiding Justice Epstein and Justice McBride concurred in the judgment.

**ORDER**

¶ 1 *Held:* Judgment entered on defendant's convictions for aggravated criminal sexual assault affirmed over his challenge to the sufficiency of the evidence, and his claim that the trial court erred in admitting evidence of other crimes.

¶ 2 Following a jury trial, defendant Luther Hunt was found guilty of three counts of aggravated criminal sexual assault, then sentenced to an aggregate term of 45 years' imprisonment. On appeal, defendant contends that the State failed to prove him guilty of aggravated criminal sexual assault where no bodily harm occurred during the sexual assaults, and that the trial court erred in admitting evidence of other crimes.

¶ 3 The record shows, in relevant part, that defendant was charged with six counts of aggravated criminal sexual assault, two counts of aggravated kidnapping, and aggravated battery in connection with a day-long episode on January 29, 2005, during which he physically and sexually abused his girlfriend, D.O., and caused her to suffer fractured ribs. Prior to trial, the State filed a motion to admit proof of other crimes specifying eight incidents in which defendant had been physically or sexually violent towards D.O. during November and December 2004. The State asserted that these incidents were relevant to defendant's state of mind, motive, and intent, and established his continued hostility and animosity towards D.O. Defendant filed a written response arguing that the other crimes were never reported, witnessed, or documented, and that their probative value did not outweigh their prejudicial effect. After hearing argument on the State's motion, the court ultimately ruled that the State could introduce seven of the "prior bad acts" with a part thereof stricken, stating, "I believe the State has the right to go into the relationship between the victim and the defendant."

¶ 4 At trial, D.O. testified that in early 2004, she met defendant while attending a church in Rogers Park, began dating him in August of that year, and moved in with him the following October. The relationship started off well, but things began to deteriorate when defendant became physically and verbally abusive towards her in November 2004. D.O. testified to various incidents which occurred that month, including one where defendant hit her across the head with his hand and threw her computer off the balcony because she slept on the couch instead of in bed. He also accused her of having sex with another man after she developed a urinary tract infection, then kicked her onto the floor and stomped on her back with his foot, and hit her in the face accusing her of having a relationship with his friend, Mike Hall, who had given her a business card. On other occasions, he began hitting her during an argument over a scarf, and hit her after the male assistant of her divorce attorney called to confirm a scheduled appointment.

¶ 5 D.O. further testified that during December 2004, defendant once woke her wanting oral sex, then held her hair and pushed her head back and forth towards his penis. During a trip to Omaha, Nebraska to visit her children that month, she and defendant stayed overnight in a hotel, and the next morning, defendant accused her of having sex with the hotel manager and began hitting her. In December 2004 and January 2005, D.O. reported these incidents to Between Friends, a counseling program for women who are in violent relationships.

¶ 6 D.O. then testified that about 6:30 a.m. on January 29, 2005, she was sleeping in the apartment she shared with defendant at 1648 Juneway Terrace, in Chicago, when she was awakened by defendant's hand on her vagina. After she moved his hand away, defendant asked why she was using "a Kotex," *i.e.*, a sanitary napkin, and she responded that she was about to start her period. At that point, defendant hit her in the left eye with a closed fist, grabbed her by the hair, and dragged her out of bed towards the bathroom while kicking her in the legs and back, and hitting her in the head and chest. D.O. screamed and pleaded with him to stop. However, in the bathroom, defendant told her that "he was going to kill me. I was going to die that day."

¶ 7 Defendant began filling the bathtub with water as D.O. fought and tried to get away, and he eventually started kicking her leg to get her into the tub. Once he had forced her into the tub of cold water, he made her lie down such that she was submerged, pinned her down, and held her head under the water. He then pulled her head up and said, "[Y]ou're going to tell me what happened. What's going on between you and Mike Hall." When she said that nothing was going on, he pushed her head under water again. After pushing D.O.'s head under water about six times, defendant dragged her out of the tub by her hair, and began hitting and kicking her while she was on the bathroom floor. D.O. testified that she had "knocked over a lot of stuff" when she was fighting to stay out of the tub, and that defendant told her, "[Y]ou're gonna to [*sic*] clean up this bathroom floor." However, she testified that "I guess, I wasn't picking up the items fast

enough," because defendant started kicking her again and dragged her into the bedroom by her hair.

¶ 8 Back in the bedroom, defendant again demanded that D.O. tell him about her relationship with Hall, and made her take her clothes off and stand in front of him while he called her names and humiliated her. He then made D.O. get in bed. At this point, she was sore everywhere and particularly concerned about her side. When she told defendant that she needed medical attention, he responded, "[Y]eah, you would like that, wouldn't you." He also told her that he would be her doctor, and that she was going to die.

¶ 9 Defendant used D.O.'s cell phone to call her employer, as she was supposed to be in at 8:30 a.m., and held it up to her ear while she informed the receptionist that she would not be coming in that day. She did not provide any explanation because defendant had threatened to kill her and she was scared. Defendant also called D.O.'s aunt and hung up, and when her aunt called back, he put the phone to D.O.'s ear. D.O. told her aunt that she was doing okay and, again, did not explain what had happened because defendant had threatened her and she was scared. D.O. then lay in bed in pain from about 9 a.m. until later in the afternoon while defendant remained in the bedroom with her, except for a brief moment when he got her some crackers.

¶ 10 About 5 p.m., defendant went to the store and took D.O.'s cell phone with him. D.O. was not confident that he had gone and thought he was outside the door, and thus stayed in bed because she could not lift herself up. When defendant returned, he entered the bedroom and said, "[Y]ou're gonna tell me what's going on between you and Mike Hall," and D.O. told him again that "nothing is going on." Defendant then retrieved some hair products and lotion bottles from the bathroom and threw them at D.O., saying, "[Y]our [*sic*] gonna tell me what's going on between you and Mike Hall." She slid off the bed when some of these bottles hit her in the chest,

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and defendant said, "I thought you couldn't move," then picked up an umbrella and began "jabbing" as if he was going to hit her, telling her that "he was going to jab my eyes out."

¶ 11 At this point, defendant ordered D.O. to get back into bed, joined her, and requested her to perform oral sex on him. Although she responded, "I can't do that," defendant replied, "Did I ask you," and grabbed her hair, pulled her head toward his penis, inserted it in her mouth, and ejaculated. He then got on top of D.O. while she lay flat on her back in the bed and put his penis inside her vagina. She told him, "You're too heavy. I can't do this," and defendant eventually said, "I don't want your nasty pussy," and told her that he wanted to have anal sex with her. D.O. testified that defendant then "pulled me up and put me over the bed," put his penis in her anus, which she told him was "painful," and ejaculated. D.O. is unsure whether defendant ejaculated when he penetrated her vaginally.

¶ 12 Afterwards, defendant went to the bathroom, washed off, returned to the bed, and fell asleep 15 to 20 minutes later. D.O. then picked up her phone from next to defendant's pants and called 911 from the bathroom. When she heard defendant waking up, she told him someone was at the door and ran out of the apartment in her bathrobe. D.O. told a woman outside the building next door that she needed help, and the woman let her into her building where she called 911 again. When police arrived, D.O. was taken by ambulance to Saint Francis Hospital where she reported that she had been raped. D.O. identified photographs that were taken of her at the hospital which showed an open cut near the corner of her left eye, bruising on her arms, bruising on her upper left shoulder, scratches and bruising near her neck, bruising on her upper back, an injury on her breast, and bruising on her left thigh. After she was released, she went to stay with her cousin in Zion, saw another doctor the next day, and learned that she had broken ribs. D.O. testified that she never consented to oral, vaginal, or anal sex with defendant during the incident in question.

¶ 13 The record further shows that Dr. Jeffrey Choh of Midwestern Regional Medical Center, in Zion, reviewed x-rays of D.O.'s ribs on February 1, 2005, and discovered two mildly displaced fractured ribs. He testified that such a fracture required a "tremendous amount of force," and that D.O.'s injuries were not inconsistent with being punched or kicked in the body.

¶ 14 As pertinent to his particular claim, defendant testified that on the morning of January 29, 2005, he and D.O. had a disagreement because D.O. "is the type of person that likes dual penetration," and defendant "prefer[s] vaginal sex." They "kind of went at one another" during this argument, and defendant hit her over her eye and caused a cut. He took D.O. into the bathroom, turned on the water, and applied pressure to the cut, but when the bleeding stopped, D.O. "went at" him again, at which point they fell into the tub. They struggled as defendant tried to get out and D.O. tried "to get the best" of him, and he eventually got out first, followed by D.O. who got out on her own. He never forced her head under the water, and the argument stopped at this point. Defendant is "pretty sure" that he did not kick D.O. that day, and did not do so on purpose. However, he could have hit her in the ribs with a closed fist that day "because we were going at one another pretty good when she was scratching and carrying on." He also noted that "when we fell into the tub, she could have sustained some injuries."

¶ 15 Defendant further testified that about 3 p.m., D.O. initiated a sexual encounter during which he performed oral sex on her and had vaginal sex with her as well. D.O. never told defendant that having sex hurt too much, never complained of discomfort from the injury she received that day, and never told him to stop. She did not perform oral sex on him, and he did not have anal sex with her. He subsequently went to Walgreen's to get a prescription filled, and stopped in a Certified to pick up food while he was out, then prepared dinner when he returned home. After dinner, he lay down in bed, and when he woke up, D.O. ran out of the bathroom, left out the front door, and ran downstairs.

¶ 16 In rebuttal, Chicago Police detective Nicholas Forrestal testified that on the evening of January 30, 2005, he met with defendant in an interview room at police headquarters. After being read his *Miranda* rights and confirming that he understood those rights, defendant acknowledged that he wanted to speak with Detective Forrestal, and told him that on the morning of January 29, he grabbed D.O.'s panties and became angry after she pushed his hand away. He punched D.O. in the eye while she was in the bathtub, dragged her into the bedroom, told her several times, "I am going to beat your ass," and pointed an umbrella at her. Meanwhile, D.O. complained about her side hurting and informed him that she needed to see a doctor, and defendant acknowledged that D.O. probably injured her ribs during the "tussle" he had with her.

¶ 17 Defendant told Detective Forrestal that he had vaginal sex with D.O. about noon, then later had oral, vaginal, and anal sex with her about 10 p.m. He told him that D.O. never refused to have sex with him, was probably too afraid to do so because of what he had done to her during their "bad fight," and probably waited for him to fall asleep before leaving the apartment because she was afraid of him.

¶ 18 On January 31, 2005, Detective Forrestal spoke with defendant again with an assistant State's Attorney (ASA) present. The ASA read defendant his *Miranda* rights, and defendant acknowledged his understanding of those rights and indicated that he wanted to speak with them. Defendant then told them that he and D.O. had both fallen into the tub, and that he would not describe the sex he had with D.O. that morning as "make-up sex," but rather, "that is just what he and [D.O.] would do." He also stated that D.O. had been in so much pain that she called him into the bathroom on two separate occasions so that he could wipe her vagina. Defendant further told them that D.O. had been scratched at the zoo, and put the bruises on her body herself in order "to put a sex case on him," and "that he did come in the victim's mouth, butt, and vagina, but if you checked [D.O.'s] butt, there would be cum from two guys because when he put his

penis into her butt and pulled it out there was junk, or cum, from another guy already in there." Detective Forrestal testified that he did not notice any injuries on defendant, and that defendant never pointed out any injuries to him.

¶ 19 Prior to deliberations, the trial court instructed the jury, *inter alia*, that:

"Evidence has been received that the Defendant has been involved in conduct other than that charged in the Information.

This evidence has been received on the issues of the Defendant's intent and motive and may be considered by you only for that limited purpose.

It is for you to determine whether the Defendant was involved in that conduct, and, if so, what weight should be given to this evidence on the issues of intent and motive."

¶ 20 The jury returned verdicts finding defendant guilty of three counts of aggravated criminal sexual assault.

¶ 21 The trial court subsequently granted defendant's request to proceed *pro se* during post-trial proceedings, and defendant filed, *inter alia*, a *pro se* motion for a new trial, two *pro se* amended motions for a new trial, and a *pro se* "Memorandum of Law in support of [defendant's] Motion for New Trial in the alternative means seeking an Acquittal on the Merits." At the hearing on defendant's motions, the trial court verified that defendant was electing to proceed on his *pro se* memorandum of law and the latter of his *pro se* amended motions for a new trial. The court also specifically noted, "I'll file-stamp that paragraph that you added regarding proof of other crimes issue," which refers to a handwritten, file-stamped document in the record in which defendant claimed that the State should not have been allowed to admit proof of other crimes. The court then heard argument on defendant's post-trial motions, denied them, and ultimately

sentenced defendant to three consecutive terms of 15 years' imprisonment on his aggravated criminal sexual assault convictions, for a total of 45 years' imprisonment.

¶ 22 In this appeal from that judgment, defendant first contends that the State failed to prove him guilty beyond a reasonable doubt of aggravated criminal sexual assault where the aggravating factor of bodily harm, *i.e.* fractured ribs, did not occur during the assaults. He claims that the physical act(s) that caused D.O.'s broken ribs did not occur "sufficiently close" in time to the sexual assaults, and that his convictions should be reduced to criminal sexual assault.

¶ 23 The State responds that the jury could have reasonably concluded that D.O. suffered injuries to her ribs immediately before and during the sexual assaults. The State further responds that the evidence, viewed in the light most favorable to the State, was sufficient to establish the contemporaneous nature of the bodily harm suffered during or in the course of the sexual assaults.

¶ 24 Where, as here, defendant challenges the sufficiency of the evidence to sustain his convictions, the question for the reviewing court is whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crimes beyond a reasonable doubt. *People v. Jordan*, 218 Ill. 2d 255, 269 (2006). It is the responsibility of the trier of fact to determine the credibility of the witnesses and the weight to be given their testimony, to resolve any inconsistencies and conflicts in the evidence, and to draw reasonable inferences therefrom. *People v. Sutherland*, 223 Ill. 2d 187, 242 (2006). A reviewing court will not overturn the decision of the trier of fact unless the evidence is so unreasonable, improbable, or unsatisfactory as to justify a reasonable doubt of defendant's guilt. *People v. Smith*, 185 Ill. 2d 532, 542 (1999).

¶ 25 To sustain defendant's convictions of aggravated criminal sexual assault, the State was required to prove that defendant caused bodily harm to the victim during the commission of a

criminal sexual assault. 720 ILCS 5/12-14(a)(2) (West 2004). A criminal sexual assault occurs where defendant commits an act of sexual penetration by the use of force or threat of force. 720 ILCS 5/12-13(a)(1) (West 2004).

¶ 26 Viewed in the light most favorable to the prosecution, the record shows that on the morning of January 29, 2005, D.O. was awakened by defendant's hand on her vagina which she pushed away. This provoked a violent response from defendant and began the day of terror which culminated in three acts of criminal sexual assault. Defendant began by punching D.O. and dragging her into the bathroom by her hair where he threw her into a tub of cold water and held her face down. Then, when this was over, he resumed kicking her, dragged her into the bedroom, and made her undress and stand in front of him while he humiliated her. Later in the day, defendant pelted D.O. with hair products and lotion bottles, and jabbed at her with an umbrella while threatening to poke her eyes. He also sexually penetrated her orally, vaginally, and anally without consent, having at one point placed his significant weight on top of her such that she exclaimed that he was too heavy. At some point during this day-long episode, defendant broke two of D.O.'s ribs. We find this evidence sufficient to allow the trier of fact to find the essential elements of aggravated criminal sexual assault proved beyond a reasonable doubt. 720 ILCS 5/12-14(a)(2) (West 2004).

¶ 27 Defendant, nonetheless, takes issue with the amount of time that elapsed between his acts which caused D.O.'s rib injury and his sexual assault of her, citing *People v. Colley*, 188 Ill. App. 3d 817 (1989), *People v. Thomas*, 234 Ill. App. 3d 819 (1992), *People v. Fryer*, 247 Ill. App. 3d 1051 (1993), and *People v. White*, 195 Ill. App. 3d 463 (1990). He claims that unlike the victims in those cases, who suffered bodily harm "immediately prior to or after the sexual assaults," more than eight hours elapsed between the physical attack and sexual assault of D.O., during which time he had even left the apartment at one point.

¶ 28 We observe that Illinois case law requires the State to prove that the aggravating factor, in this case bodily harm, occurred contemporaneously with the criminal sexual assault. *People v. Giraud*, 2011 IL App (1st) 091261, ¶23. However, this court has declined to draw a bright line between the times at which the sexual act and bodily harm occurred out of concern that doing so would defeat the statutory purpose of protecting victims from sex offenders. *Colley*, 188 Ill. App. 3d at 820. This court thus determined in *People v. Porrata*, 244 Ill. App. 3d 529, 536 (1993) that the beating inflicted by defendant was "an integral part of the continuous course of conduct which included the sexual abuse," and "that the physical harm defendant inflicted upon the victim occurred and existed during the commission of the offenses."

¶ 29 In this case, we similarly find that the jury could have reasonably found that the beating and torture inflicted by defendant upon D.O., and the broken ribs that she suffered as a result, ultimately rendered her vulnerable to defendant's subsequent sexual assault of her, and was thus an integral part of the continuous course of conduct which led to defendant's sexual abuse of D.O. on the day in question. *Porrata*, 244 Ill. App. 3d at 536. The sexual motivations behind defendant's attack on D.O. were readily apparent from the start, when he began beating her after she removed his hand from her vagina, were further on display during the actual beating when he ordered D.O. to, *inter alia*, undress so that he could call her names and humiliate her, and culminated in the sexual assaults when defendant realized that she could move on her own again. Our previous decisions in *Colley*, *Thomas*, *Fryer*, and *White* do not preclude the finding reached in this case, nor is the evidence on which it is based so unreasonable, improbable, or unsatisfactory as to justify a reasonable doubt of defendant's guilt (*Smith*, 185 Ill. 2d at 542). We therefore affirm defendant's aggravated criminal sexual assault convictions.

¶ 30 Defendant next contends that the trial court erred by admitting proof of his other crimes where such evidence was more prejudicial than probative. The State responds that defendant has

forfeited this claim by failing to raise it in a post-trial motion, that he has forfeited plain error review by failing to argue for it, and, further, that he forfeited this claim by raising his prior bad acts during opening statement and direct examination. Defendant replies that he did raise an issue regarding the improper admission of his "other crimes" in a post-trial motion, and that counsel only brought up defendant's other crimes at trial after the court had ruled that such evidence was admissible.

¶ 31 The record shows that defendant filed a number of *pro se* post-trial motions, and also presented the court with a handwritten document in which he claimed that the State should not have been allowed to admit proof of other crimes. The record also shows that the trial court specifically noted at the hearing on defendant's post-trial motions that it would "file-stamp that paragraph that you added regarding proof of other crimes issue" when it was verifying which post-trial motions were under consideration. It is thus evident from the record that the trial court considered defendant's other crimes claim along with his post-trial motions, and we therefore agree with defendant that he properly raised an issue regarding the admissibility of his other crimes in a written post-trial motion, as required. *People v. Enoch*, 122 Ill. 2d 176, 186 (1988).

¶ 32 We also reject the State's contention that defendant forfeited review of the present issue because he raised his prior bad acts during opening statements and direct examination. While the supreme court has recognized that any issue regarding the impropriety of evidence is forfeited if defendant procures, invites, or acquiesces in the admission of such evidence (*People v. Woods*, 214 Ill. 2d 455, 475 (2005)), the record here shows that defendant contested the admission of his other crimes in a written response to the State's motion seeking to admit that evidence and in subsequent argument before the court. Defendant therefore never "agreed to what he now seeks to challenge on appeal" (*Woods*, 214 Ill. 2d at 475), but rather, adapted his trial strategy to deal

with the evidence which the State was allowed to introduce over his objection. Under these circumstances, we find that defendant has not forfeited his "other crimes" claim.

¶ 33 That said, we note that under Illinois law, all relevant evidence is admissible unless otherwise provided by law. *People v. Dabbs*, 239 Ill. 2d 277, 289 (2010), citing Ill. R. Evid. 402 (eff. Jan. 1, 2011). Relevant evidence is that which has any tendency to make the existence of any fact of consequence to the determination more or less probable than it would be without such evidence. *People v. Illgen*, 145 Ill. 2d 353, 365-66 (1991).

¶ 34 Although the supreme court has long recognized that evidence of other crimes is inadmissible to show defendant's disposition or propensity to commit crime (*Illgen*, 145 Ill. 2d at 364), it is equally well settled that such evidence is admissible if relevant for any other purpose, so long as its prejudicial effect does not substantially outweigh its probative value (*Dabbs*, 239 Ill. 2d at 283-84). It is within the sound discretion of the trial court whether evidence of other crimes is admissible, and we will not disturb its determination absent a clear abuse of discretion. *Dabbs*, 239 Ill. 2d at 284.

¶ 35 Here, the record shows that the trial court allowed D.O. to testify about seven prior incidents in which defendant hit her, accused her of infidelity, and/or acted sexually violent towards her. These incidents revealed striking similarities to the attack in question, and were thus highly probative of the motivation behind defendant's violence towards D.O. on the date in question, and his intent in beating and sexually assaulting her. Furthermore, the record shows that the trial court instructed the jury regarding the limited purpose for which this other crimes evidence could be considered, thereby minimizing any prejudicial effect created by its admission. *Illgen*, 145 Ill. 2d at 376. Under these circumstances, we cannot say that the probative value of D.O.'s testimony regarding defendant's prior abuse was substantially outweighed by the danger of unfair prejudice. *Illgen*, 145 Ill. 2d at 375-76.

¶ 36 Defendant takes issues with this conclusion, claiming that the court "allowed the trial to degenerate into a mini-trial with superfluous details calculated to overemphasize the weight of the collateral offenses," and failed to give the jury a limiting instruction prior to the admission of the other crimes evidence as recommended in the committee notes to Illinois Pattern Jury Instructions, Criminal, No. 3.14 (4th ed. 2011) (hereinafter, IPI Criminal 4th No. 3.14). Defendant's first claim finds no support in the record where there is no indication that a "mini-trial" was had on defendant's prior abuse of D.O., or that "superfluous details" were elicited by the State. To the contrary, the State elicited basic information from D.O. regarding the prior incidents of abuse, and the bulk of her testimony focused on the incident in question.

¶ 37 As for defendant's second claim, he has cited no authority holding that the failure to follow a recommendation found in the committee notes of a jury instruction constitutes error. Moreover, we find nothing improper in this case about the court choosing to give the limiting instruction at issue only prior to deliberations. In sum, we find no merit to defendant's claims, and conclude that the trial court did not abuse its discretion in admitting evidence of defendant's prior abuse of D.O. *Dabbs*, 239 Ill. 2d at 284.

¶ 38 For the reasons stated, we affirm the judgment of the circuit court of Cook County.

¶ 39 Affirmed.