

2012 IL App (2d) 100976-U  
No. 2-10-0976  
Order filed April 13, 2012

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IN THE  
APPELLATE COURT OF ILLINOIS  
SECOND DISTRICT

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THE PEOPLE OF THE STATE	)	Appeal from the Circuit Court
OF ILLINOIS,	)	of Lake County.
	)	
Plaintiff-Appellee,	)	
	)	
v.	)	No. 09-CF-4359
	)	
JERAMI J. HENDERSON,	)	Honorable
	)	Daniel B. Shanes,
Defendant-Appellant.	)	Judge, Presiding.

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JUSTICE ZENOFF delivered the judgment of the court.  
Justices Hutchinson and Hudson concurred in the judgment.

**ORDER**

*Held:* The trial court did not abuse its discretion in excluding evidence of an alleged confrontation between the victim and defendant's friend's sister, as the probative value (suggesting that it was more probable that defendant's friend injured the victim) was speculative while the danger of undue prejudice (suggesting sympathy for defendant or antipathy for the victim) was substantial; in any event, any error was harmless, as the evidence against defendant was strong and the jury received indirect evidence of the confrontation.

¶ 1 After a jury trial, defendant, Jerami J. Henderson, was convicted of two counts of aggravated battery (720 ILCS 5/12-4(b)(1) (West 2008)) and one count of criminal damage to property (720 ILCS 5/21-1(1)(a) (West 2008)). He was sentenced to concurrent prison terms of 4½ years for

aggravated battery and 3 years for criminal damage to property. On appeal, defendant contends that the trial court abused its discretion by granting the State's motion *in limine* to bar evidence of a confrontation between the victim and the sister of his codefendant. We affirm.

¶2 Defendant and Matthew Peters were each charged with two counts of aggravated battery (720 ILCS 5/12-4(b)(1) (West 2008)) in that, on November 1, 2009, (1) they each struck Aaron Akins about the head with a baseball bat, a deadly weapon; and (2) they each struck Akins about the body with a baseball bat. They were charged alternatively with aggravated battery in that they each struck Akins in the head and body with a baseball bat while on a public way (720 ILCS 5/12-4(b)(8) (West 2008)). Both were also charged with criminal damage to property for knowingly causing more than \$300 damage to the windows of Akins' car. 720 ILCS 5/21-1(b) (West 2008).

¶3 After the jury was selected, the State moved orally to exclude any questioning about Akins' alleged attack on Peters' sister, Rachel Hall. The prosecutor explained, "The story as to why [defendant and Peters] went over to allegedly Mr. Akins with a baseball bat is that Mr. Peters had received a call from his sister who had previously dated Aaron Akins. She reported that she was riding her bicycle and Mr. Akins had in his car either swerved at her or somehow run her off the road and made her crash her bike." The prosecutor stated that the police had investigated the alleged incident but that no charges had been filed.

¶4 Defendant opposed the motion. His attorney argued that the incident provided "context" for the "entire situation" and that it went to Peters' motivation and conduct. Asked by the judge how she would introduce the evidence of the incident (Hall had not been listed as a witness), she explained that she would cross-examine Akins about his statement to the police in which he mentioned the incident. The prosecutor responded that, although the incident might shed light on Peters' and

defendant's motivation, it could also suggest to the jury "an issue of self-defense or defense of a third person where none exists" and "invite jury nullification \*\*\* based on sympathies outside of what's allowable by the law." Defendant's attorney told the court that she would question not only Akins but also Peters about the incident, as Peters had entered a guilty plea and was going to testify against defendant. The prosecutor noted that no charges had resulted from the alleged incident; that Akins had denied that it happened; and that Peters had not been present when the alleged incident occurred.

¶ 5 The judge noted that defendant was not raising self-defense but sought to introduce the evidence relating to the Akins-Hall confrontation solely for impeachment. However, Akins had denied that the incident had occurred and no charges had been filed, so it was doubtful that the impeachment could be perfected. Moreover, the impeachment would "at best" be on a collateral matter. Finally, there were many other avenues available to attack Akins' and Peters' credibility. The court granted the State's motion.

¶ 6 We summarize the trial evidence. Joshua Hallissey testified as follows. On November 1, 2009, he lived in Zion and had known Akins since early October. That evening, at about 8 p.m., as he was sitting in his living room, he saw Akins, who had a job delivering pizza, pull up in front of the house and park on the other side of the street. Akins started to exit the car. Two men walked toward him and began to swing baseball bats at his car. One of the men, whom Hallissey identified in court as defendant, had a cast on his arm; he went around to the driver's side and hit the front window. The other man went to the passenger side and hit the rear passenger-side window, then the rear window. From the sounds of the bats, Hallissey could tell that one bat was wooden and the other was metal. Defendant then struck the driver's door right above the window and next swung the bat at Akins, hitting him in the knee. Hallissey ran out the door. The attackers had run off.

¶ 7 Hallissey got into his Jeep and pursued the attackers. He came across a car parked in the middle of the street. Five people, including defendant and the other attacker, were inside. Hallissey called the police. The car drove away. Hallissey went to Akins' car. The police arrived and drove Hallissey and Akins to a place where Hallissey saw two men and identified them as the attackers. They did not have the bats. In court, Hallissey identified photographs of Akins' car and of defendant. The photographs were admitted into evidence. Before November 1, 2009, he had never seen defendant or the other attacker. Hallissey admitted that he had given the police a written statement that did not mention windows being broken or anyone getting hit.

¶ 8 After Hallissey testified, and before the State called Akins, defendant's attorney noted that the State's opening statement had mentioned the dating relationship between Akins and Hall. She again moved to allow evidence of the alleged confrontation between Akins and Hall. The trial judge ruled that the parties could question witnesses about Akins' dating relationship with Hall. However, evidence of the alleged confrontation between Akins and Hall would not be admitted.

¶ 9 Akins testified on direct examination as follows. On November 1, 2009, he knew Hallissey because he was dating Harli Jackson, the granddaughter of Hallissey's neighbor. He had dated Hall about three to four months earlier and knew her brother, Peters. That evening, he pulled up outside Jackson's house. As he exited his car, he saw defendant and Peters emerge from a car stopped at a red light nearby and approach him. Defendant and Peters each had a baseball bat. Defendant asked Akins, "Is it fun to hit little girls?" or something similar. He came up to Akins, hit his car, hit Akins in the right knee at least seven or eight times, then continued to hit the car. Peters kept hitting the car. Defendant "shoved the bat into [Akins'] eye" once. A minute or two after the attack ended,

Hallssey came out and chased defendant and Peters. Akins recalled, but was not completely sure, that defendant used a wooden bat and Peters used a metal one.

¶ 10 Akins testified that the police arrived and drove him to an alleyway nearby, where he saw defendant and Peters. Akins identified photographs of his car and the damage and of his injuries.

¶ 11 On cross-examination, Akins confirmed that Hall was his ex-girlfriend and that he knew Peters through Hall. The attack occurred a few months after Akins and Hall broke up.

¶ 12 Brandi Hewkin testified that, on November 1, 2009, she picked up defendant, Peters, Hall, and Mark Redmond and drove them to Akins' workplace. After Akins exited and drove off, Hewkin followed him until he stopped outside a house. Hewkin then stopped. Defendant and Peters got out, and Hewkin drove off, planning to take Hall and Redmond home. She did not see where defendant and Peters went. A few minutes later, she received a call to pick them up. Hewkin met up with defendant and Peters, who were carrying baseball bats. At their direction, she drove to some woods and threw the bats out the window. Next, she dropped off Hall and Redmond at the alleyway, where police were present. Hewkin had known that Hall had previously dated Akins.

¶ 13 Peters testified on direct examination as follows. He had pleaded guilty to criminal damage to property in connection with the attack on Akins. He had known defendant since about 2005. Peters did not know Akins personally, but he knew that Akins had dated his sister. On November 1, 2009, Peters and defendant, each wielding a baseball bat, approached Akins' car. Peters repeatedly struck the car, breaking out the windows and a taillight. He did not see defendant do anything to the car. Peters told Akins that "this [was] the last time he's going to, in politer words, mess with [Peters'] little sister." Defendant "lightly hit" Akins' knee with the baseball bat. Peters did not hit Akins. After they finished the attack, he and defendant ran off, had some words with

Hallissey, and got into Hewkin's car, where Hall and Redmond were also sitting. Hewkin drove off and threw the bats into the woods. Shortly afterward, Hewkin drove to the alleyway, where the police had arrived. Later, Peters showed officers where the bats were hidden, and the officers retrieved them.

¶ 14 Peters testified on cross-examination as follows. On November 1, 2009, defendant, who was right-handed, had a cast on his right arm. The cast was "semi-hard on the bottom" and prevented defendant from extending his right arm. Hall and Akins had been "broken up for at least a month" and Akins was dating someone else. Peters acknowledged that, per a plea agreement, he was serving a two-year sentence for criminal damage to property. Also, in his statement to the police, he had said that he never saw defendant hit anyone or anything. Peters clarified that, during the attack, he was holding a wooden baseball bat that had come from his garage, and defendant was holding an aluminum one that had come from Hewkin's car.

¶ 15 On redirect examination, Peters stated that he originally told the police that he had not seen anyone hit Akins with a baseball bat. In response to questioning from both parties, Peters recounted that he had told defendant's investigator that he never saw defendant "swing" his bat at Akins but that the bat may have hit Akins. Peters added that he did not know how defendant "could have been swinging a bat with a broken arm," but he added that he did not specifically recall which arm defendant was holding the bat with.

¶ 16 Zion police officer Joseph Richardt testified that he was dispatched to the scene of the attack. There, he saw that "all the windows [of Akins' car] were broken out." Akins had a laceration above one eye, and his legs were swollen, with large "bumps \*\*\* around his knees." Akins was in pain and had a hard time walking. Richardt drove Akins and Hallissey to the alleyway, where other officers

were present. Defendant, Peters, and Hewkin were there and were taken into custody. Richardt later took photographs of Akins' car and Akins' injuries; the photographs were admitted into evidence at trial. At the police station, Richardt took a photograph of defendant. The photograph showed the cast, which was not a "full hard cast." Richardt asked defendant, "What happened?" Defendant responded, "The person who did it will tell you they did it." Richardt asked, "Who did it?" Defendant responded that Peters broke the windows of the car. The interview then ended.

¶ 17 In her closing argument, defendant's counsel began by telling the jury:

"This wasn't some sort of grudge. The exact statement from [Akins] was so you like to mess with little girls. That's what was said to him when he was approached. That's because something occurred between Aaron and Rachel Hall \*\*\*. Rachel Hall is Matthew Peters' sister. That's why Matthew Peters was there. This wasn't some sort of grudge. The specific statement was so you like to mess with little girls."

Defendant's attorney added later, "The only person with an ax to grind was Matthew Peters against [Akins]." She also contended that Peters' plea agreement made him untrustworthy because it might have induced him to testify that defendant was the one who hit Akins.

¶ 18 The jury convicted defendant. He moved for a new trial, arguing in part that the trial court erred in excluding evidence of the alleged confrontation between Akins and Hall. The court denied the motion and sentenced defendant as noted. He timely appealed.

¶ 19 The sole issue on appeal is whether the trial court erred in excluding evidence that, at some time before the attack on Akins, Akins and Hall had a confrontation, during which Akins allegedly drove his car so as to intimidate Hall and force her bicycle off the road. The State and defendant apparently based their discussion of the incident on a phone call that Hall made to Peters, although

Akins' statement to the police also mentioned, and apparently denied, the allegation. Defendant contends that the evidence of the incident supported his theory of defense: that Peters, not he, was the one who battered Akins. Defendant reasons that the evidence about Akins and Hall, who was Peters' sister, tended to show that Peters had the stronger motivation to attack Akins bodily. Defendant also argues, without much explanation, that the evidence was admissible to impeach Akins. For the reasons that follow, we hold that the court acted within its discretion. We also hold that any error was harmless.

¶ 20 The State argues that defendant forfeited any challenge to the grant of the State's motion *in limine* because he failed to make a formal offer of proof detailing the evidence that he wanted the trial court to admit. See *People v. Roberson*, 401 Ill. App. 3d 758, 768 (2010). We disagree. We note that it was the *State* that raised the issue on the morning of trial, by an oral motion *in limine*. It appears that defendant's attorney did not have an opportunity to make a formal offer of proof. Nonetheless, the trial judge apparently understood the proposed evidence and did not require defendant to make an offer of proof. A formal offer of proof is not always required; counsel's summary of the proposed evidence may suffice if it is specific and not based on speculation or conjecture. *Id.* at 769. Because the parties provided a reasonably specific summary of the proposed evidence and defendant was neither able nor ordered to make a formal offer of proof, we do not deem the issue forfeited. We note, however, that the extent that the proposed evidence was vague or speculative does bear on whether it was properly excluded it.

¶ 21 We turn to the merits. The admission of evidence is within the trial court's discretion, and we may not disturb its decision absent an abuse of discretion. *People v. Limon*, 405 Ill. App. 3d 770,

772 (2010). Evidence is admissible if it is relevant to an issue and its probative value is not substantially outweighed by its prejudicial effect. *People v. Eycler*, 133 Ill. 2d 173, 218 (1989).

¶ 22 Here, the trial court concluded that the probative value of the evidence of the alleged confrontation between Akins and Hall was substantially outweighed by its potential for unfair prejudice. We cannot say that the court abused its discretion. First, we agree with the State that the probative value of the evidence was speculative. Defendant did not raise any affirmative defense, such as defense of another person, to which the confrontation might have been relevant. Defendant did assert that the evidence that Akins and Peters' sister had engaged in hostilities sometime before the attack on Akins would make it more probable that Peters, not defendant, was the one who attacked Akins bodily. This reasoning is tenuous at best. Defendant was Peters' friend and had already agreed to participate in the attack on Akins, making it plain that he shared the grudge.

¶ 23 Also, defendant does not persuade us that the evidence would have impeached either Akins or Peters. There was obviously bad blood between Akins and his two attackers. As the State notes, evidence that Akins had a grudge against Hall, Peters' sister, would not tend to undermine his testimony that defendant was the one who attacked him personally; if anything, it would make that testimony more credible. Moreover, Akins had denied that the alleged confrontation with Hall had ever occurred. Since no charges were filed and Hall was not going to testify, the trial judge rightly reasoned that any impeachment would be impossible to perfect. We also see little impeachment value against Peters, whose testimony already minimized defendant's role in the attack on Akins, to an extent contradicted by the photographic and testimonial evidence of Akins' injuries.

¶ 24 Second, we agree with the State and the trial judge that the danger of undue prejudice from the introduction of the evidence would have been substantial. As the State argued at the trial level,

the evidence could have invited the jury to find for defendant not because of any weaknesses in the proof of his guilt or because of any valid theory of defense, but out of sympathy for defendant as a loyal friend to Hall and Peters, or out of prejudice against Akins as a bad person.

¶ 25 We conclude that the trial court did not abuse its discretion in excluding evidence of the uncharged and disputed confrontation between Akins and Hall. Furthermore, we agree with the State that any error was harmless. As noted, the impeachment value of the evidence was nebulous. Also, the evidence that defendant, and not Peters, hit Akins was extremely strong. Hallissey, Akins, and Peters all testified so unequivocally. Finally, the court admitted a great deal of evidence of Peters' grudge against Akins. Indeed, although direct testimony about the alleged Akins-Hall dustup was barred, indirect evidence of the incident—or at least of Peters' and defendant's belief that it had occurred—was plentiful. Hallissey and Akins both testified that defendant asked Akins, “Is it fun to hit little girls?” Peters testified that he told Akins that “this [was] the last time” that Akins would “mess with” Hall. In closing argument, defendant emphasized his remark to Akins as proving that “something occurred between Aaron and Rachel Hall” that led to the attack on Akins. Thus, although the jury did not get specific details—or denials—of the alleged confrontation between Akins and Hall, it was well aware that there had been such a confrontation and that the events of November 1, 2009, grew out of Peters' anger over what had allegedly happened. The jury convicted defendant anyway, and we see no realistic possibility that its verdict would have been different had the trial court denied the State's motion *in limine*.

¶ 26 For the foregoing reasons, the judgment of the circuit court of Lake County is affirmed.

¶ 27 Affirmed.