

evidence of a pill found during a search of his person six months after the charged crimes. The trial court granted the motion, and the State appealed. We affirm.

¶ 3

FACTS

¶ 4 The defendant was indicted for crimes that occurred on or about April 1, 2009, involving a female victim over 60 years of age. The defendant was charged with home invasion (720 ILCS 5/12-11(a)(3) (West 2008)), two counts of aggravated criminal sexual assault (720 ILCS 5/12-14(a)(4), (5) (West 2008)), robbery (720 ILCS 5/18-1(a) (West 2008)), and two counts of aggravated criminal sexual abuse (720 ILCS 5/12-16(a)(3), (6) (West 2008)). Prior to the defendant's trial, the parties agreed on the disposition of a number of motions *in limine*. One motion was not agreed: the defendant's motion to exclude evidence of a package labeled "Stiff Nights" that contained one pill, which was found during a search of the defendant's person on October 14, 2009, six months after the alleged crimes for which he was indicted. The defendant's motion argued that the pill was irrelevant, and its prejudicial effect outweighed its probative value. The State argued that the pill was relevant because the victim had made a statement that the person who had committed the crimes against her had trouble getting an erection. The State argued that the pill was designed to help someone achieve an erection, so its probative value in identifying the defendant was not substantially outweighed by any prejudicial effect.

¶ 5 The trial court granted the defendant's motion, without prejudice, finding that there was not a sufficient nexus between the pill and the charged crimes to find that it was more probative than prejudicial because more than six months had elapsed. The trial court noted that there was no indication that the victim saw the defendant ingest a pill, nor any indication that the defendant

had a prescription that could be traced back to the time of the crime. The trial court denied the State's motion to reconsider, which added the information that the defendant had just purchased the pill at a gas station when it was discovered by the police officers. The State appealed.

¶ 6

ANALYSIS

¶ 7 The State argues that the pill is relevant as circumstantial corroboration of the victim's identification of the defendant, and its probative value is not substantially outweighed by its prejudicial effect. The defendant contends that the trial court acted within its discretion in excluding the evidence.

¶ 8 Any evidence that tends to make a fact of consequence to the determination of the action more probable than not is relevant. *People v. Harvey*, 211 Ill. 2d 368 (2004). However, even if evidence is relevant, a trial court may reject the evidence if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury. *People v. Dabbs*, 239 Ill. 2d 277 (2010). Rulings on evidentiary matters, including motions *in limine*, are within the discretion of the trial court, and we will not disturb a trial court's evidentiary ruling absent an abuse of that discretion. *Harvey*, 211 Ill. 2d at 392.

¶ 9 In this case, identification of the defendant as the perpetrator of the crimes was a fact in controversy. The discovery of a pill designed to help a person achieve an erection in the defendant's possession, and the victim's statement that the perpetrator had trouble getting an erection during the crimes, was relevant to the determination of that fact.

¶ 10 However, the pill was not found on the defendant's person until six months after the charged crimes. As the trial court noted, there was a lack of information regarding whether the victim saw the perpetrator take any pills, or whether the defendant had a prescription for the pill

that was filled at the time of the crimes. In fact, in its motion to reconsider, the State noted that the pill was purchased over-the-counter by the defendant on the day that it was found on his person. Due to the lack of nexus between the crimes and the defendant's purchase of a single pill six months later, we cannot say that the trial court abused its discretion by granting the defendant's motion *in limine*..

CONCLUSION

¶ 11 The judgment of the circuit court of Will County is affirmed.

¶ 12 Affirmed.

¶ 13 PRESIDING JUSTICE SCHMIDT, dissenting:

¶ 14 The trial court and majority misapprehend, and misapply, the principle of law allowing exclusion of evidence which is more prejudicial than probative in this instance. As such, I respectfully dissent.

¶ 15 The majority acknowledges that the trial court suppressed evidence of the pill finding "there was not a sufficient nexus between the pill and the charged crimes to find that it was more probative than prejudicial because more than six months had elapsed." *Supra* ¶ 5. Citing *Dabbs*, the majority claims that a trial court "may reject the evidence if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury." *Supra* ¶ 8.

¶ 16 Justice Steigmann recently addressed a similar misapprehension and misapplication of the "prejudicial versus probative" test in *People v. Pelo*, 404 Ill. App. 3d 839 (2010).

"The question is not whether relevant evidence is more prejudicial than probative; instead, relevant evidence is inadmissible only if the prejudicial effect of admitting that evidence substantially

outweighs any probative value. [Citation.] *** 'Prejudicial effect' in this context of admitting that evidence means that the evidence in question will somehow cast a negative light upon a defendant for reasons that have nothing to do with the case on trial.

[Citation.] In other words, the jury would be deciding the case on an improper basis, such as sympathy, hatred, contempt, or horror.

[Citation.]" (Emphasis in original.) Id. at 867.

¶ 17 The trial court and majority agree that defendant's possession of the pill and the victim's statement that the perpetrator had trouble achieving an erection render possession of the pill relevant evidence. Supra ¶ 9. I agree.

¶ 18 Nevertheless, they conclude that evidence of defendant's possession of the pill is too remote in time to the commission of the crime rendering such evidence more prejudicial than probative. To prove unfair prejudicial effect, however, it is necessary to show that a jury would "somehow cast a negative light upon defendant" for his possession of an erection pill. In today's society, one cannot watch a major sporting event without observing stories and commercials for Cialis or Viagra, given their sponsorships. There is nothing in the evidence or in the collective common knowledge to suggest that this evidence would likely cause a jury to decide the case on an improper basis. Since there is no prejudicial effect, it cannot outweigh the probative value.

¶ 19 The fact that defendant possessed the pill six months after the rape, and that he had no prescription for other aides, simply goes to the weight of the evidence not its admissibility. Having found that possession of the pill is relevant and admissible given the victim's testimony that her assailant could not achieve an erection, I find no authority to support the conclusion that

a jury would decide the matter on an improper basis attached to men carrying erectile aides. As such, I find the trial court erred in suppressing evidence of defendant's possession of the Stiff Nites pill.