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2012 IL App (4th) 100623-U

Filed 1/31/12

NO. 4-10-0623

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from
Plaintiff-Appellee,)	Circuit Court of
v.)	McLean County
LAWRENCE RICHARD RAMEY,)	No. 07CF1201
Defendant-Appellant.)	
)	Honorable
)	Charles G. Reynard,
)	Judge Presiding.

JUSTICE COOK delivered the judgment of the court.
Justices Appleton and McCullough concurred in the judgment.

ORDER

¶ 1 *Held:* The trial court did not abuse its discretion in (1) limiting defendant's cross-examination of the victim concerning prior inconsistent statements; (2) excluding evidence, pursuant to the rape-shield statute, that the victim made prior accusations of sexual assault against her stepbrothers; and (3) preventing defendant from introducing testimony that the victim had a reputation for untruthfulness in the community.

¶ 2 In February 2010, a jury found defendant, Lawrence Richard Ramey, guilty of aggravated criminal sexual abuse (720 ILCS 5/12-16 (West 2008)). Defendant committed a sexual act with his stepdaughter, N.P., who was then under the age of 18. In July 2010, the trial court sentenced defendant to 180 days in the McLean County jail and 48 months' probation. Defendant argues the court erred by (1) limiting his cross-examination of N.P. concerning prior inconsistent statements, (2) excluding the evidence that N.P. made false allegations of sexual assault against her two stepbrothers, and (3) preventing him from presenting testimony that N.P.

had a reputation for untruthfulness in the community. Defendant also claims that the court's rulings resulted in cumulative error denying him the right to a fair trial. We affirm.

¶ 3

I. BACKGROUND

¶ 4 In November 2007, defendant was charged with one count of criminal sexual assault (720 ILCS 5/12-13(a)(2) (West 2008)), a Class 1 felony (720 ILCS 5/12-13(b)(1) (West 2008)). The count, the first of three, charged that defendant used a vibrator to commit an act of sexual penetration upon N.P. He was also charged with two counts of aggravated criminal sexual abuse (720 ILCS 5/12-16(b) (West 2008)), Class 2 felonies (720 ILCS 5/12-16(g)). The second count charged that defendant's hands touched N.P.'s vagina. The third count charged that defendant's hands touched N.P.'s breasts. During these incidents, N.P. was under the age of 18 years. The State did not proceed to trial on the second count. Following a jury trial, defendant was convicted of aggravated criminal sexual abuse for touching N.P.'s breasts and sentenced to 180 days in the McLean County jail and 48 months' probation.

¶ 5

On November 7, 2007, N.P. told her best friend, Katie Eckert, via an instant message communication, that defendant sexually abused her. The following day, Eckert reported the allegations to the Department of Children and Family Services (DCFS). Charnette Griffin, an investigator with DCFS and a forensic interviewer with the Children's Advocacy Center (CAC), interviewed N.P. regarding the allegations. N.P.'s mother, Christine Ramey, drove her to the interview at CAC. During the interview, N.P. denied, approximately six times, that defendant had sexually abused her. However, on the drive back home from the interview, N.P. (according to N.P.) told her mother that the allegations of abuse were true. Christine testified that the conversation never occurred.

¶ 6 Later that same day, after receiving a copy of the instant messenger conversation between N.P. and Eckert, Griffin interviewed N.P. for a second time. During the second interview, N.P. told Griffin that defendant placed a vibrator against her vagina, masturbated in her presence, showered with her, and touched her breasts.

¶ 7 As a result of Eckert's report to DCFS, defendant was interviewed by Clifford Rushing, a deputy sheriff with the McLean County sheriff's department. During the interview, defendant denied sexually abusing N.P. However, defendant admitted showering with N.P. on multiple occasions. Defendant claimed that he showered with N.P. because he needed to rinse off before work and N.P. refused to get out of the shower. He denied having any physical contact with N.P. while in the shower. Defendant was arrested the following day, November 9, 2007.

¶ 8 On September 15, 2009, the State filed a motion *in limine* to preclude evidence that defendant's two sons, Jonathan and Michael Ramey, were acquitted of charges arising out of allegations of sexual assault made by N.P. Defendant filed a response arguing the admissibility of that evidence. The trial court granted the State's motion. The court determined that the rape-shield statute (725 ILCS 5/115-7(a) (West 2008)) barred the evidence from admission.

¶ 9 Defendant also petitioned the trial court to allow cross-examination of N.P. concerning prior inconsistent statements made during the first CAC interview. During the interview, N.P. denied, at least six different times, the allegations of abuse. Defense counsel wanted to go "through the questions and answers as were reflected in the CAC interview." The court allowed limited questioning concerning the interview in order to avoid confusion and conflict with its October 15, 2009, *in limine* ruling concerning defendant's sons.

¶ 10 At trial, N.P. recounted multiple incidents of sexual abuse. N.P. testified that

sometime during the spring of 2006, while she was asleep in her downstairs bedroom, she felt vibrations on her side and then the top of her vagina. Upon feeling the vibrations, she rolled over and brushed the vibrating object away. She stated that defendant was operating the vibrator. She testified that: "Well, besides the fact that he's the only adult male, you could tell, like who—a figure, and like, who it is after your eye adjust, so I saw him."

¶ 11 N.P. also testified that defendant would voluntarily give her back rubs when her back was sore. She stated that when defendant gave her a back rub, her shirt was normally pulled above her head and defendant's hands would touch the sides of her breasts.

¶ 12 She testified that defendant would unsnap her bra "and things like that." She felt defendant wanted her to be "sexually playful" with him; otherwise, he would not grant her permission to go places or do things. Defendant admitted pinching N.P.'s butt and snapping her bra strap but stated that he had no sexual intent when performing the actions.

¶ 13 N.P. showered in the master bathroom of the Ramey's house, because the other bathroom in the house did not have a shower curtain and was dirty. N.P. testified that defendant would sometimes get into the shower with her to rinse off. Defendant admitted that this occurred approximately 10 times. At trial, N.P. testified that while in the shower defendant would get close enough to her that she could feel his penis on her leg and on one occasion defendant masturbated in the shower. N.P. also testified regarding another incident in which defendant masturbated while she was present. She stated that as she was leaving the laundry room, defendant grabbed her chest and started to masturbate.

¶ 14 During the trial, defendant wanted Jessica Umstatt to testify concerning N.P.'s reputation. Jessica attended Olympia High School with N.P. and was the best friend of one of

defendant's stepbrothers. Umstattd's conversations regarding N.P. concerned a single incident involving a sexual encounter that N.P. may have had with some boys. The trial court determined that Umstattd's reputation testimony was insufficiently distinguishable from personal opinion based upon a single incident. The court barred the evidence.

¶ 15 After the sentencing hearing, the trial court sentenced defendant as stated.

¶ 16 This appeal followed.

¶ 17 II. ANALYSIS

¶ 18 On appeal, defendant argues that the trial court erred by (1) limiting his cross-examination of N.P. concerning prior inconsistent statements, (2) excluding the evidence that N.P. made false allegations of sexual assault against her two stepbrothers, and (3) preventing defendant from presenting testimony that N.P. had a reputation for untruthfulness in the community. Last, defendant claims the court's rulings resulted in cumulative error denying him the right to a fair trial.

¶ 19 A. Prior Inconsistent Statements

¶ 20 A defendant has a right, under the confrontation clause of the sixth amendment (U.S. Const., amend. VI), to cross-examine a witness in order to show motive, bias, or other factors that might influence testimony. *People v. Dall*, 207 Ill. App. 3d 508, 524, 565 N.E.2d 1360, 1369 (1991). "A trial judge retains wide latitude in imposing reasonable limits on cross-examination based on concerns of harassment, prejudice, confusion of issues, witness safety, or repetitive interrogation. [Citation]." *Dall*, 207 Ill. App. 3d at 524, 565 N.E.2d at 1369. To determine if the cross-examination allowed satisfied the requirements of the right of confrontation, a court should not look at what a defendant had been prohibited from doing, but to

what the defendant had been allowed to do. *People v. Brown*, 243 Ill. App. 3d 1057, 1063, 614 N.E.2d 160, 164 (1993). On review, a trial court will only be overturned upon a showing of a clear abuse of discretion. *Dall*, 207 Ill. App. 3d at 524, 565 N.E.2d at 1369. The trial court abuses its discretion when its determination is arbitrary, fanciful, or where no reasonable person would take the view adopted by the trial court. *People v. Santos*, 211 Ill. 2d 395, 401, 813 N.E.2d 159, 162 (2004).

¶ 21 Prior to trial, defendant motioned the court to allow cross-examination of N.P. as to each of the inconsistent statements she made during the first CAC interview. Defense counsel wanted to go "through the questions and answers as were reflected in the CAC interview." During that interview, N.P. repeatedly denied that defendant had sexually abused her. However, during the second interview and at trial, N.P. alleged that defendant placed a vibrator against her vagina, masturbated in her presence, showered with her, and touched her breasts. The court ruled that defendant would not be allowed to cross-examine N.P. as to all of the inconsistent statements but was limited to impeaching her with her own statement to Griffin:

"GRIFFIN: So bottom line, you said nothing's going on?

N.P.: Yeah...

GRIFFIN: Okay.

N.P.: *** nothing's happening."

The court also allowed defense counsel to ask a follow-up question to N.P. as to whether she had essentially made the same denial six times.

¶ 22 Defendant's objection to the ruling was properly preserved for appeal, because defendant objected, at trial and in his posttrial motion, to the trial court's ruling. *People v.*

Enoch, 122 Ill. 2d 176, 186, 522 N.E.2d 1124, 1130 (1988).

¶ 23 Defendant claims that the limitations the trial court placed on the cross-examination of N.P. constituted an abuse of discretion, because the restrictions prevented defense counsel from challenging N.P.'s credibility. He further argues that the limited scope of cross-examination prevented defense counsel from demonstrating to the jury the gravity and weight of N.P.'s prior inconsistent statements.

¶ 24 The trial court did not abuse its discretion in limiting the scope of defendant's cross-examination of N.P. Before restricting defense counsel's efforts to cross-examine N.P., the court carefully reviewed each of the impeaching statements individually. The court's ruling allowed defendant to specifically refer to the most clear denial of the allegations of abuse and then ask N.P. if she made similar comments in her initial statement to Griffin. See *People v. Tenner*, 157 Ill. 2d 341, 365-66, 626 N.E.2d 138, 149 (1993) (no abuse of discretion in trial judge's exercise of his latitude in imposing reasonable limits on cross-examination to prevent repetitive interrogation to limit defendant to presenting one impeaching letter from victim and asking if the victim had sent additional similar letters to defendant).

¶ 25 The jury was also well informed that during the first CAC interview N.P. repeatedly denied being abused by defendant. Defense counsel was authorized to ask N.P. whether at one point during the end of the interview Griffin asked her if "bottom line" nothing is going on. At trial, N.P. also admitted that she "as many as six times denied that there was any abuse or any inappropriate touching of that nature at the hands of defendant." The limitations the trial court placed on defendant's cross-examination of N.P. were reasonable restrictions, especially considering the October 15, 2009, *in limine* ruling concerning defendant's sons. The

interview at issue includes multiple references to defendant's sons, which could have led to confusion of the issue.

¶ 26 Additionally, defense counsel questioned N.P. concerning her inability to place a time on the alleged sexual offenses and her delay in reporting them. Defense counsel also cross-examined N.P. about her failure to tell her mother about the masturbation incidents and back massages. Christine testified that N.P. never told her anything about defendant's inappropriate behavior in the shower or laundry room.

¶ 27 Last, defense counsel presented testimony from Jessica Umstatted as to N.P.'s motive for making the allegations. Umstatted testified that while in gym class with N.P., she overheard N.P. saying that she was "pissed off" at her mom and defendant, because she "wanted and expected a car for her 16th birthday and she didn't receive one." Additionally, Umstatted testified that she heard N.P. say that she "would do whatever she could to leave" her parents' house.

¶ 28 After reviewing the record, we find that the trial court provided defense counsel sufficient latitude in his attempt to impeach N.P.

¶ 29 B. Prior Allegations of Sexual Assault by N.P.

¶ 30 "A trial court's evidentiary determinations regarding a motion *in limine* will not be disturbed absent an abuse of discretion. [Citation]. A party forfeits review of his or her challenge to the trial court's granting of a motion *in limine* when the party fails to make an offer of proof." *People v. Roberson*, 401 Ill. App. 3d 758, 768, 927 N.E.2d 1277, 1287. An offer of proof has two primary purposes: (1) it discloses to the trial court and opposing counsel the nature of the offered evidence, enabling the court to take appropriate action, and (2) it provides the reviewing

court with an adequate record to determine whether the trial court's action was erroneous. *People v. Thompkins*, 181 Ill. 2d 1, 10, 690 N.E.2d 984, 989 (1998).

¶ 31 "While a formal offer of proof is generally required, an informal offer of proof consisting of counsel's summary of what the proposed evidence might prove may be sufficient if specific and not based on speculation or conjecture. [Citation]." *Roberson*, 401 Ill. App. 3d at 769, 927 N.E.2d at 1287.

¶ 32 In this case, defendant never made a formal offer of proof concerning the exclusion of evidence that N.P. made false allegations of sexual assault against her two stepbrothers. Defendant reserved the right to make an offer of proof with the witnesses present, but the offer was never made. The record also does not include the nature of the sexual assault allegations against N.P.'s stepbrothers. Nevertheless, even if we found defendant's informal offer of proof adequate, the trial court did not abuse its discretion in excluding the alleged false accusations against N.P.'s stepbrothers.

¶ 33 The policy underlying the rape-shield statute is to prevent the defendant from harassing and humiliating the complaining witness with evidence of either the witness' reputation for chastity or specific acts of sexual conduct with persons other than defendant, because that type of evidence has no bearing on whether the witness consented to sexual relations with the defendant. *People v. Summers*, 353 Ill. App. 3d 367, 373, 818 N.E.2d 907, 912 (2004), (citing *People v. Ellison*, 123 Ill. App. 3d 615, 626, 463 N.E.2d 175, 183 (1984)). However, the prior sexual activity of the complainant may be admitted "when constitutionally required." 725 ILCS 5/115-7(a) (West 1998).

¶ 34 "The constitution requires that a defendant 'be permitted to offer certain evidence

which was *directly* relevant to matters at issue in the case, notwithstanding that it concerned the victim's prior sexual activity.' " (Emphasis in original.) *Summers*, 353 Ill. App. 3d at 373, 818 N.E.2d at 913, (quoting *Santos*, 211 Ill. 2d at 405–06, 813 N.E.2d at 164). In *People v. Sandoval*, 135 Ill. 2d 159, 174-75, 552 N.E.2d 726, 733 (1990), the Supreme Court of Illinois found that prior sexual activity may be relevant where it could show bias, interest, or ulterior motive for making a false charge. The supreme court also found prior sexual conduct to be relevant where it could explain physical facts of evidence such as semen, pregnancy, or a physical condition indicative of sexual intercourse. *Sandoval*, 135 Ill. 2d at 185, 552 N.E.2d at 738.

¶ 35 “The true question is always one of relevancy.” *People v. Hill*, 289 Ill. App. 3d 859, 864, 683 N.E.2d 188, 191 (1997). How are the witness' prior accusations of sexual abuse directly relevant to the issues in this case? Defendant failed to show that N.P.'s accusations of sexual abuse against her stepbrothers were directly relevant as to whether he sexually abused N.P., because he failed to present sufficient evidence of a connection between the accusations against his sons and himself. Contrary to defendant's argument, we do not find Umstatted's testimony as to N.P.'s anger with her parents resulting from her stepbrothers being allowed to drive the family's cars as sufficient evidence of a motive to lie about the accusations. We also do not find N.P.'s desire to seek a new living environment as sufficient motive to lie about the allegations. If N.P. was attempting to move from the family home at all costs, why did she wait for someone else to report the abuse and deny the allegations during the first CAC interview?

¶ 36 Relying on *People v. Grano*, 286 Ill. App. 3d 278, 676 N.E.2d 248 (1996), defendant argues that the rape-shield statute does not apply to N.P.'s accusations against his sons.

In *Grano*, the appellate court held that the legislature intended the rape-shield statute to exclude only the actual sexual history of the complainant, not prior false accusations. *Grano*, 286 Ill. App. 3d at 288, 676 N.E.2d at 257. “Language or conversation does not constitute sexual activity.” *Grano*, 286 Ill. App. 3d at 288, 676 N.E.2d at 257. We need not address whether the accusations against defendant's sons are protected by the rape-shield statute, because defendant is unable to prove their relevance. *People v. Davis*, 337 Ill. App. 3d 977, 986, 787 N.E.2d 212, 220.

¶ 37 C. Testimony of Jessica Umstattd

¶ 38 Defendant argues that the trial court erred in preventing defendant from presenting testimony from Jessica Umstattd that N.P. had a reputation for untruthfulness in the community. At trial, Umstattd was to testify that "among the people that [she] had spoken with about [N.P.'s] truthfulness, we'd say she probably has a poor level." Umstattd had only spoken about N.P. on a couple of occasions with approximately seven or eight of her friends. She admitted that the conversations she had had about N.P. involved a single incident, a sexual encounter that N.P. may have had with some boys. Initially, N.P. admitted having sex with these boys, but she later denied it. The court barred the evidence, finding that Umstattd's "reputation testimony is insufficiently distinguishable from personal opinion based upon a single incident, and it has no probative value in the context of the trial."

¶ 39 Defendant preserved the error for review, because he properly objected to the ruling at trial and in a written posttrial motion. *People v. Enoch*, 122 Ill. 2d 176, 186, 522 N.E.2d 1124, 1130 (1988).

¶ 40 "In Illinois, it is well settled that the proper procedure for impeaching a witness'

reputation for truthfulness is through the use of reputation evidence. [Citation]." *People v. West*, 158 Ill. 2d 155, 162, 632 N.E.2d 1004, 1007 (1994). The proper procedure to introduce evidence of reputation is to ask the impeaching witness whether he or she knows the general reputation of the principal witness in the community. *People v. West*, 158 Ill. 2d at 162-63, 632 N.E.2d at 1008.

¶ 41 Umstatt'd's testimony was insufficient to establish N.P.'s reputation within the community. She admitted that her testimony was based on a single instance of alleged untruthfulness by N.P. Reputation may not be established by reference to specific instances of untruthfulness on the part of the witness. *Santos*, 211 Ill. 2d at 404, 813 N.E.2d at 163-64. Umstatt'd's opinion as to N.P.'s reputation for truthfulness was reflective of her own determination and not that of the community. Accordingly, the trial court did not abuse its discretion in excluding Umstatt'd's testimony.

¶ 42 D. Defendant's Contention of Cumulative Error

¶ 43 "Cumulative error requires reversal when, as a result of multiple trial court errors, a defendant is denied a fair trial. [Citation]." *People v. Bowens*, 407 Ill. App. 3d 1094, 1111, 943 N.E.2d 1249, 1266 (2011). Because we rejected each individual claim of trial court error, defendant's cumulative error contention has no merit. See *People v. Garmon*, 394 Ill. App. 3d 977, 991, 916 N.E.2d 1191, 1203 (2009).

¶ 44 III. CONCLUSION

¶ 45 For the foregoing reasons, we affirm the trial court's judgment. As part of our judgment, we award the State its \$75 statutory assessment against defendant as costs of this appeal.

¶ 46 Affirmed.