

NOTICE
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2013 IL App (4th) 110754-U

NO. 4-11-0754

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED
May 1, 2013
Carla Bender
4th District Appellate
Court, IL

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from
Plaintiff-Appellee,)	Circuit Court of
v.)	Sangamon County
VINCENT P. SCHNOOR,)	No. 09CF441
Defendant-Appellant.)	
)	Honorable
)	April Troemper,
)	Judge Presiding.

JUSTICE POPE delivered the judgment of the court.
Justices Appleton and Knecht concurred in the judgment.

ORDER

¶ 1 *Held:* The trial court did not err in admitting other-crimes evidence for the limited purpose of showing defendant's criminal intent and absence of an innocent state of mind.

¶ 2 In April 2011, a jury convicted defendant, Vincent P. Schnoor, of unlawful possession of a stolen vehicle (625 ILCS 5/4-103(a)(1) (West 2008)). In July 2011, the trial court sentenced defendant to nine and one-half years in prison. Defendant appeals, arguing the court erred in admitting other-crimes evidence. We affirm.

¶ 3 I. BACKGROUND

¶ 4 On June 1, 2009, the State charged defendant with unlawful possession of a stolen vehicle (625 ILCS 5/4-103(a)(1) (West 2008)), alleging "defendant, or one for whom he is legally responsible, *** possessed or received a 2002 green Dodge Pickup truck *** knowing it

to have been stolen or converted." Defendant's first trial ended in a mistrial due to a hung jury.

¶ 5 On April 6, 2011, prior to defendant's retrial, the State filed a notice of intent to introduce evidence of defendant's prior conduct involving two incidents of unlawful possession of a stolen vehicle. The State argued the evidence was highly relevant and material to the issue of defendant's criminal intent and the absence of his innocent state of mind. Specifically, the State contended the evidence rebutted defendant's claim he only drove the stolen truck in this case because the individual he was with was too drunk to drive. The first instance occurred on November 6, 2008, when police observed defendant getting into a van the Salvation Army had reported stolen. Defendant admitted taking the keys to the van after breaking into the Salvation Army's office. The second incident occurred on June 10, 2009, when police arrested defendant after observing him enter a Jeep, which had been reported stolen. According to police, the ignition had been "punched," meaning it could be started without a key.

¶ 6 On April 18, 2011, defendant filed a motion *in limine* requesting the trial court bar the State from introducing the other-crimes evidence. Defendant argued, *inter alia*, the absence-of-mistake exception to the general ban on other-crimes evidence did not apply and the prejudicial nature of the evidence outweighed its probative value.

¶ 7 During the hearing on defendant's motion, defendant argued the evidence was overly prejudicial and would serve only to confuse the jury. The State argued the evidence was necessary to rebut defendant's claim of innocent involvement in the theft of the truck. At the conclusion of the hearing, the trial court denied defendant's motion. In making its ruling, the court stated the following: "Just so it is clear, the Court did do the balancing test and did find that the probative value is not substantially outweighed by the prejudicial [e]ffect allowing the

other[-]crimes evidence to come in."

¶ 8 During defendant's jury trial, Mark Burtle, a Department of Agriculture employee working at the Illinois State fairgrounds, testified he returned from his lunch break on May 19, 2009, to discover the green 2002 Dodge truck he was using that day was missing. Burtle testified his co-worker called the police and reported the vehicle stolen.

¶ 9 City of Springfield police officer Eric Johansson testified he responded to a May 19, 2009, call regarding suspicious activity downtown. When he arrived, he found Shane Jones sitting in the driver's seat of a green Dodge truck. Johansson testified there was an outstanding arrest warrant for Jones and the truck had been reported stolen. As a result, Johansson arrested Jones. Johansson testified nothing indicated Jones was intoxicated. During the course of the arrest, Jones pointed to a red Pontiac, which was parked nearby. When Johansson approached the Pontiac, he could see the front license plate for the stolen truck on the front seat. It matched the rear license plate, which was still on the vehicle. A receipt from a towing company bearing defendant's name was also visible through the window of the Pontiac.

¶ 10 Illinois State Police sergeant Brad Sterling testified Jones implicated defendant in the theft of the truck. During an initial interview, defendant told Sterling he had nothing to do with the theft of the vehicle and it was Jones who had stolen the truck. However, after Sterling told defendant he did not believe him, defendant responded he wanted to change his story and tell the truth. According to defendant's statement, Jones told him he wanted to take a truck. Defendant accompanied Jones to the fairgrounds. Jones told defendant he knew where the keys were kept and went to get them. When Jones returned, he started the vehicle and began to drive.

¶ 11 Defendant stated Jones was very intoxicated and almost hit defendant as well as a gas pump. Defendant became concerned for his safety and told Jones he would drive the truck. Defendant stated he drove the truck from the fairgrounds to the 800 block of south 4th street in Springfield. Defendant also stated he allowed Jones to use his tools, which were inside his red Pontiac, to remove the front license plate. Defendant told Sterling he took the license place and placed it on top of his vehicle. According to Sterling, defendant stated, " I did take the truck; I'm not going to deny that.' " Defendant's signed written statement was introduced into evidence.

¶ 12 Illinois State Police sergeant Kelly Walter testified she participated in the investigation and was present during defendant's interview and when he gave his statement. Walter testified defendant's initial statement indicated he was not involved in stealing the truck. However, Walter testified defendant later changed his story and stated he drove the vehicle and assisted Jones in removing the front licence plate. The State introduced the evidence of defendant's prior possession of two stolen vehicles and then rested.

¶ 13 Defendant testified he and Jones walked to the fairgrounds on May 19, 2009. According to defendant's testimony, Jones was drinking alcohol and was drunk. Jones told defendant he was a Department of Agriculture employee. Once inside the fairgrounds, Jones told defendant he knew where a truck containing the keys was located. Jones got in the truck and started to drive. Defendant testified he believed Jones had authority to take the truck. However, on cross-examination, defendant admitted he told Jones he would not be able to get the truck off the fairgrounds because of the police presence.

¶ 14 According to defendant's testimony, Jones was driving erratically and almost ran defendant over. Jones also nearly hit a tractor and a gas tank. As a result, defendant told Jones

he was too drunk to drive and offered to drive the truck for him. Defendant testified he was concerned for public safety due to Jones' "erratic driving." Defendant testified he drove the truck "to keep Mr. Jones from driving it and [to] protect public property from limb and life."

¶ 15 Defendant testified he parked the truck where police found it because it was "a high police presence area." Defendant took the keys and dropped them into a "peg hole" in the bed of the truck. Although defendant admitted providing Jones with tools to remove the license plate, he testified he did it "to keep Jones there." Defendant testified he left the plate "on top of [the] roof of a 1998 [Pontiac] Grand Prix." Defendant denied the red Pontiac was his vehicle. Instead, he maintained it belonged to an individual named Colleen Starks. Defendant also testified he called the police after he left Jones and alerted them "there were two suspicious people in the alleyway between 3rd and 4th" street.

¶ 16 In rebuttal, the State called Larry Shafer who was in the area where the stolen truck was located, checking on a vacant building at approximately 1 p.m. Shafer testified he called 911 to report two suspicious men in the area, going from house to house. The State also called the 911 dispatcher who testified he received the call regarding two suspicious men going from house to house in the downtown area. The dispatcher checked his records and determined only the one call had been received.

¶ 17 On April 20, 2011, the jury convicted defendant of unlawful possession of a stolen vehicle.

¶ 18 On May 10, 2011, defendant filed a posttrial motion, arguing, *inter alia*, the trial court erred in denying defendant's motion *in limine* to exclude the other-crimes evidence.

¶ 19 On July 8, 2011, the trial court denied defendant's posttrial motion and continued

the matter for sentencing.

¶ 20 On July 22, 2011, the trial court sentenced defendant as stated.

¶ 21 This appeal followed.

¶ 22 II. ANALYSIS

¶ 23 On appeal, defendant argues the trial court erred in admitting other-crimes evidence where it was overly prejudicial. Specifically, defendant contends the court failed to conduct the balancing test and consider whether the prejudicial impact of the evidence outweighed its probative value. We disagree.

¶ 24 "The term 'other-crimes evidence' encompasses misconduct or criminal acts that occurred either before or after the allegedly criminal conduct for which the defendant is standing trial." *People v. Spyrès*, 359 Ill. App. 3d 1108, 1112, 835 N.E.2d 974, 977 (2005). "[E]vidence of other crimes is admissible if relevant for any purpose other than to show a defendant's propensity to commit crimes." *People v. Dabbs*, 239 Ill. 2d 277, 283, 940 N.E.2d 1088, 1093 (2010). It is within the trial court's discretion to decide whether evidence is relevant and admissible, and a trial court's decision concerning the relevance and admissibility of evidence will not be reversed absent a clear abuse of discretion. *People v. Morgan*, 197 Ill. 2d 404, 455, 758 N.E.2d 813, 842 (2001). An abuse of discretion occurs when the ruling is arbitrary or fanciful, or where no reasonable person would adopt the trial court's view. *People v. Illgen*, 145 Ill. 2d 353, 364, 583 N.E.2d 515, 519 (1991).

¶ 25 In this case, the evidence was admitted to show defendant's intent and the absence of an innocent state of mind. Other crimes evidence can be admitted to show the absence of an accident. *People v. Woods*, 2011 IL App (1st) 091959, ¶ 33, 952 N.E.2d 105; *People v. Young*,

381 Ill. App. 3d 595, 602, 887 N.E.2d 649, 655 (2008) ("[w]hile an innocent state of mind might be present in one instance, the more often it occurs with similar results, the less likely that it was without criminal intent"). Evidence of a defendant's previous crime may be admitted to show " 'the act in question was not performed inadvertently, accidentally, involuntarily, or without guilty knowledge.' " *People v. Haley*, 2011 IL App (1st) 093585, ¶ 55, 960 N.E.2d 670 (quoting *People v. Wilson*, 214 Ill. 2d 127, 136, 824 N.E.2d 191, 196 (2005)). We note defendant does not challenge the applicability of the other-crimes exception on appeal. Instead, defendant contends the trial court failed to conduct the balancing test and adequately consider the prejudicial impact of the evidence in this case.

¶ 26 Even if the other-crimes evidence is sought to be introduced for one of the permissible reasons, the evidence may be excluded if the trial court determines, after conducting a balancing test, the probative value of the evidence is substantially outweighed by the danger of unfair prejudice to the defendant. *People v. Thompson*, 359 Ill. App. 3d 947, 951, 835 N.E.2d 933, 936 (2005). While defendant argues the trial court did not engage in the balancing test, the record makes clear the court in fact did so. See *People v. Davis*, 319 Ill. App. 3d 572, 575, 746 N.E.2d 758, 761 (2001) (finding no error where the transcript made clear the court applied the balancing standard even though the court did not expressly articulate it). During the hearing on the State's motion *in limine*, the trial court expressly stated the following: "Just so it is clear, the Court did do the balancing test and did find that the probative value is not substantially outweighed by the prejudicial [e]ffect allowing the other[-]crimes evidence to come in." Thus, defendant's argument to the contrary is without merit.

¶ 27 In addition, the trial court instructed the jury the other-crimes evidence was to be

considered for the limited purpose of determining defendant's intent and "absence of innocent state of mind." See Illinois Pattern Jury Instructions, Criminal, No. 3.14 (4th ed. 2000) (limiting instruction to explain why the evidence is being admitted). We note the court appropriately instructed the jury with the limiting instruction both at the close of the case as well as from the bench when the evidence was first presented. See *People v. Heard*, 187 Ill. 2d 36, 60-61, 718 N.E.2d 58, 72 (1999) (citing *People v. Denny*, 241 Ill. App. 3d 345, 360-61, 608 N.E.2d 1313, 1324 (1993) (trial courts should instruct the jury of the limited purpose it may consider the other-crimes evidence at the time the evidence is admitted and at the close of the case). This instruction minimizes the possibility the jury considered the other-crimes evidence for an improper purpose. *People v. Tipton*, 207 Ill. App. 3d 688, 697, 566 N.E.2d 352, 359 (1990) ("as a safeguard against any overly prejudicial effect, the jury was given a limiting instruction on the use of the [other-crimes] evidence"); *Denny*, 241 Ill. App. 3d at 360, 608 N.E.2d at 1323 (finding the instruction lessens the impact of even improperly admitted evidence).

¶ 28 Here, the trial court was in the best position to weigh the prejudicial impact of the other-crimes evidence in the context of the entire case. The court indicated it considered the prejudicial impact of the evidence. The court concluded the probative nature of the evidence outweighed any potential prejudice. We cannot say no reasonable person would agree with the court. The court did not abuse its discretion in denying defendant's motion *in limine*.

¶ 29 III. CONCLUSION

¶ 30 For the foregoing reasons, we affirm the trial court's judgment. As part of our judgment, we award the State its \$50 statutory assessment against defendant as costs of this appeal.

¶ 31 Affirmed.