

2014 IL App (3d) 120834-U

Order filed July 14, 2014

Modified upon denial of rehearing September 29, 2014

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IN THE  
APPELLATE COURT OF ILLINOIS

THIRD DISTRICT

A.D., 2014

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the Circuit Court
	)	of the 21st Judicial Circuit,
	)	Iroquois County, Illinois,
Plaintiff-Appellee,	)	
	)	Appeal No. 3-12-0834
v.	)	Circuit No. 12-CF-44
	)	
KEITH A. TRUESDELL,	)	Honorable
	)	Gordon L. Lustfeldt,
Defendant-Appellant.	)	Judge, Presiding.

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JUSTICE LYTTON delivered the judgment of the court.  
Justices Holdridge and McDade concurred in the judgment.

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**ORDER**

¶ 1 *Held:* The trial court did not commit plain error by admitting testimony of the victim's teacher where the teacher testified to the victim's demeanor at school during the period of time in which defendant was accused of sexually assaulting the victim.

¶ 2 Following a bench trial, defendant, Keith A. Truesdell, was convicted of five counts of predatory criminal sexual assault of a child (720 ILCS 5/12-14.1(a)(1) (West 2006)) and one count of criminal sexual assault (720 ILCS 5/12-13(a)(4) (West 2006)). Defendant was sentenced to terms of six years' imprisonment for each count of predatory sexual assault of a child and four years' imprisonment for criminal sexual assault, with all sentences running

consecutively. The testimony of the victim's fourth grade teacher, Penny Gertsch, was heard at defendant's trial, over defendant's objection. Gertsch testified to the victim's demeanor at school around the time the sexual assaults began. Defendant appeals, arguing that the trial court committed plain error in admitting the testimony because it lacked relevance. We affirm.

¶ 3

### FACTS

¶ 4

On April 4, 2012, defendant was charged by indictment with 23 counts of predatory criminal sexual assault of a child (720 ILCS 5/12-14.1(a)(1) (West 2006)) and 13 counts of criminal sexual assault (720 ILCS 5/12-13(a)(4) (West 2006)). The alleged victim on all 36 counts was defendant's daughter.

¶ 5

Prior to trial, defendant filed a motion *in limine* seeking to exclude the testimony of Gertsch, who was expected to testify as to the victim's mental and emotional state at school at the time the assaults began. Defendant argued that this evidence was irrelevant to the charged offenses and would be improperly prejudicial. After the court deferred ruling on the motion, defendant waived his right to a jury trial. When Gertsch was called to testify, defendant renewed his objection to the testimony. The court chose to hear the testimony and stated that it would "take up [defendant's] objection when it's done."

¶ 6

Gertsch testified that she was a fourth grade teacher in the 2007-08 school year and that the victim was in her class. Gertsch recalled that on a number of occasions that year the victim came to school "very upset and crying[.]" and stated that this behavior began in the late fall of 2007. Gertsch stated that the victim "became a little more withdrawn and despondent as the school year went on[.]" On redirect, Gertsch testified that "[a] couple of mornings [the victim] came in visibly balling [sic], crying, you know, not just I'm in a bad mood, didn't want to get up this morning," and that the crying continued though the school year. Following Gertsch's

testimony, the court denied defendant's motion to exclude the testimony. Addressing defendant's main argument as to relevancy, the court stated that just because the victim's change in behavior could be explained in other ways did not mean the evidence was inadmissible.

¶ 7 Later in the trial, the victim testified that defendant first sexually assaulted her sometime around Halloween in 2007. The victim testified that defendant sexually assaulted her every weekday morning following the first assault. The victim recalled that the assaults continued regularly throughout the 2007-08 school year, but that the frequency declined in the summer months.

¶ 8 On August 23, 2012, defendant was found guilty on five counts of predatory criminal sexual assault of a child and one count of criminal sexual assault. On October 2, 2012, defendant was sentenced to six years' imprisonment for each count of predatory sexual assault of a child and four years' imprisonment for criminal sexual assault, with all sentences running consecutively. No posttrial motion was filed. Defendant appeals.

¶ 9 ANALYSIS

¶ 10 On appeal, defendant argues that the court erred in admitting Gertsch's testimony because that testimony was not relevant. Because this issue was not raised in a posttrial motion, it has been waived. *People v. Enoch*, 122 Ill. 2d 176 (1988). We therefore cannot review the issue unless it is deemed to be plain error. *People v. Rippatoe*, 408 Ill. App. 3d 1061 (2011). The first step in plain error analysis is determining whether an error occurred at all. *People v. Walker*, 232 Ill. 2d 113 (2009). This error must be "clear or obvious" in order for the analysis to proceed. *People v. Piatkowski*, 225 Ill. 2d 551, 565 (2007).

¶ 11 The admission of evidence is within the sound discretion of a trial court, and we may not reverse the court absent a showing of an abuse of that discretion. *People v. Becker*, 239 Ill. 2d

215 (2010). A defendant must show that "An abuse of discretion occurs where the trial court's decision is arbitrary, fanciful or unreasonable [citation] or where no reasonable person would agree with the position adopted by the trial court." *Id.* at 234.

¶ 12 It is well-settled that only relevant evidence may be admitted at trial. *E.g., People v. Hoerer*, 375 Ill. App. 3d 148 (2007); see also Ill. R. Evid. 402 (eff. Jan. 1, 2011) ("Evidence which is not relevant is not admissible."). Evidence is relevant if it tends to make the existence of a fact that is important to the determination of an action either more or less probable than it would be without the evidence. *People v. Decaluwe*, 405 Ill. App. 3d 256 (2010). "A trial court may reject evidence on the grounds of relevancy if it is remote, uncertain, or speculative." *People v. Cloutier*, 156 Ill. 2d 483, 501 (1993). Even when evidence is relevant, a court may deem it inadmissible if its prejudicial effect upon the defendant outweighs its probative value. *Decaluwe*, 405 Ill. App. 3d 256. "[P]rejudice means 'an undue tendency to suggest decision on an improper basis, commonly an emotional one, such as sympathy, hatred, contempt, or horror.'" *People v. Lewis*, 165 Ill. 2d 305, 329 (1995) (quoting *People v. Eyler*, 133 Ill. 2d 173, 218 (1989), quoting Michael H. Graham, Cleary and Graham's Handbook of Illinois Evidence § 403.1 (4th ed. 1984)).

¶ 13 In the present case, whether the victim was sexually assaulted was plainly a fact important to the determination of the action. Gertsch's testimony that the victim began crying in school beginning in the late fall of 2007 served to corroborate the victim's testimony that the series of sexual assaults began around Halloween of that year. The evidence that the victim continued to cry at school and became increasingly withdrawn as the school year progressed corroborates the victim's testimony that the sexual assaults were ongoing. Gertsch's testimony

tends to make the fact that the victim was sexually assaulted more probable. Gertsch's testimony is therefore relevant.

¶ 14 Defendant's contention that the victim's demeanor at school can be explained in other ways does affect its probative value. Though defendant correctly points out that evidence may be inadmissible if its prejudicial effect outweighs its probative value, the record provides no indication that the testimony had any "undue tendency to suggest decision on an improper basis, commonly an emotional one, such as sympathy, hatred, contempt, or horror." While testimony in cases involving young victims may frequently be prejudicial in that it inflames the passions of the fact-finder, here Gertsch simply reported her observations of the victim while she was at school. Any prejudicial effect that the evidence may have had was minimal, and therefore did not outweigh its probative value.

¶ 15 There was no error, and consequently no error that might be classified as clear or obvious. The court did not abuse its discretion by admitting Gertsch's testimony into evidence.

¶ 16 CONCLUSION

¶ 17 The judgment of the circuit court of Iroquois County is affirmed.

¶ 18 Affirmed.