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2015 IL App (3d) 130434-U

Order filed February 27, 2015

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

A.D., 2015

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the Circuit Court of the 14th Judicial Circuit, Whiteside County, Illinois,
Plaintiff-Appellee,)	
v.)	Appeal No. 3-13-0434 Circuit No. 12-CF-129
JAMELL A. HARRIS,)	Honorable Stanley B. Steines,
Defendant-Appellant.)	Judge, Presiding.

JUSTICE LYTTON delivered the judgment of the court.
Justices O'Brien and Schmidt concurred in the judgment.

ORDER

¶ 1 *Held:* (1) In defendant's trial for unlawful delivery of a controlled substance, testimony that the confidential informant had previously bought drugs from defendant was not improper other-crimes evidence; (2) the public defender fee is vacated and the cause remanded for a hearing in compliance with section 113-3.1(a) of the Code of Criminal Procedure of 1963 (725 ILCS 5/113-3.1(a) (West 2012)).

¶ 2 Defendant, Jamell A. Harris, was charged with unlawful delivery of a controlled substance (cocaine) within 1,000 feet of a school (720 ILCS 570/407(b)(2) (West 2012)).

During a bench trial, a confidential informant testified to the controlled buy he completed with

defendant. When questioned how he knew defendant, the informant responded that he had bought drugs from defendant in the past. Defendant objected, arguing that the informant's testimony was improper other-crimes evidence. The court overruled the objection and admitted the testimony. The court found defendant guilty and sentenced him to six years' incarceration.

¶ 3 After sentencing, the court imposed a public defender reimbursement fee without allowing defendant an opportunity to present evidence or argument on his ability to pay the fee. Defendant appeals, arguing (1) the court erred by admitting other-crimes evidence; and (2) the public defender fee must be vacated and the cause remanded for a hearing in conformity with the statutory guidelines. We affirm defendant's conviction, vacate the public defender fee, and remand for a new public defender fee hearing.

¶ 4

FACTS

¶ 5 Defendant was charged with unlawful delivery of a controlled substance (cocaine) within 1,000 feet of a school (720 ILCS 570/407(b)(2) (West 2012)). The cause proceeded to a bench trial.

¶ 6 Confidential informant Allen Nelson III testified that he purchased crack cocaine from defendant on March 15, 2012, during a controlled buy. Nelson testified that he called defendant on the telephone to arrange the purchase, while Detective James Sanders listened in. When asked how he knew that the voice on the other end of the telephone belonged to defendant, Nelson testified that he had purchased drugs from defendant on prior occasions and knew the sound of his voice. Defendant objected to that testimony. The court overruled the objection. Nelson testified that he and defendant arranged a place to meet where defendant would sell Nelson \$150 worth of crack cocaine.

¶ 7 Nelson further testified that prior to the meet with defendant, officers strip-searched

Nelson and searched his vehicle to ensure that he did not have any drugs. Officers outfitted Nelson with a button camera that recorded video but not audio. Nelson travelled to the meet location and parked. Officers followed him, conducting surveillance. Defendant approached Nelson's driver-side window. Nelson gave defendant \$150, and defendant spit a substance wrapped in plastic out of his mouth and into Nelson's vehicle. Nelson returned to the police department without making any other stops. He gave officers the package, which officers tested and discovered to be a substance containing cocaine weighing 0.148 grams. Sanders testified that the meet location was within 1,000 feet of St. Mary's Grade School. The court found defendant guilty.

¶ 8 Defendant filed a motion for a new trial, alleging, *inter alia*, that it was error to admit the other-crimes evidence that Nelson had previously purchased drugs from defendant. In denying the motion, the court stated, "So, even if I were in error on that matter, I can't find that it was prejudicial to [defendant] as it did not weigh in on my ruling."

¶ 9 The court sentenced defendant to six years' imprisonment. At the end of the sentencing hearing, the court imposed a \$3,733 public defender reimbursement fee. The court relied on sentencing testimony to find that "[g]iven that you do have the ability to work and have had employment in the past, I do find you have the ability to reimburse the county the \$3,733 that will be paid along with your other costs in this matter." The court did not give defendant an opportunity to present evidence or argument about his ability to pay the reimbursement fee.

¶ 10

ANALYSIS

¶ 11

I. Other-Crimes Evidence

¶ 12

On appeal, defendant first argues that the trial court erred by admitting Nelson's testimony that he had previously bought drugs from defendant.

¶ 13 Generally, evidence of crimes other than those charged is inadmissible. *People v. Donoho*, 204 Ill. 2d 159, 170 (2003). The risk presented by other-crimes evidence is that the trier of fact might convict a defendant merely because he is a bad person, rather than evaluating the defendant's guilt or innocence as to the charged crime. *Id.* However, other-crimes evidence may be admitted if it is relevant "for any purpose other than to show the defendant's propensity to commit crimes." *People v. Wilson*, 214 Ill. 2d 127, 135 (2005). A court's decision to admit other-crimes evidence is reviewed for an abuse of discretion. *Id.* at 136.

¶ 14 In the present case, Nelson was asked by the State how he knew defendant prior to the acts at issue in this case. Nelson responded that he had "[b]ought drugs from him." Nelson's answer was relevant to establish his preexisting relationship with defendant, which helped explain how Nelson would have been able to call defendant to arrange a controlled buy. Establishing a relationship with defendant was necessary to provide the trier of fact the context necessary to understand how Nelson was able to arrange the controlled buy.

¶ 15 The evidence was also relevant to establish how Nelson was able to identify that the voice he heard on the phone while arranging the meet belonged to defendant. The other-crimes evidence thereby served multiple relevant purposes other than showing defendant's propensity to commit the present crime, and the court did not abuse its discretion in admitting it.

¶ 16 Furthermore, even assuming that the admission of the other-crimes evidence in this case was error, any such error was harmless. First, the trial court stated on the record that the other-crimes evidence did not weigh on its decision. Second, the evidence against defendant was overwhelming, where Nelson testified to the details of the controlled buy, officers observed defendant meet with Nelson, Nelson returned from the buy with cocaine, and no cocaine was found on Nelson's person or vehicle prior to the controlled buy.

¶ 17

II. Public Defender Reimbursement Fee

¶ 18

Defendant argues that the court imposed a public defender fee without holding the hearing demanded by section 113-3.1(a) of the Code of Criminal Procedure of 1963 (725 ILCS 5/113-3.1(a) (West 2012)).

¶ 19

Prior to imposing a public defender reimbursement fee, a court must hold a hearing in compliance with section 113-3.1(a). At the hearing, the court must give the defendant an opportunity to present evidence regarding his ability to pay and any other relevant circumstances. *People v. Somers*, 2013 IL 114054, ¶ 14. In addition, the court must consider the defendant's assets and liabilities affidavit. See 725 ILCS 5/113-3(b) (West 2012); *Somers*, 2013 IL 114054, ¶ 14.

¶ 20

In the present case, the court did not provide defendant the opportunity to be heard or to present evidence on his ability to pay. It is unclear whether the court considered defendant's affidavit. The public defender fee proceedings therefore failed to comply with the requirements of section 113-3.1(a). 725 ILCS 5/113-3.1(a) (West 2012). We agree with the parties that the cause should be remanded for a proper hearing.

¶ 21

CONCLUSION

¶ 22

The judgment of the circuit court of Whiteside County is affirmed in part, vacated in part, and remanded with instructions.

¶ 23

Affirmed in part, vacated in part, and remanded with instructions.