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2015 IL App (3d) 140832-U

Order filed October 7, 2015

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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 12th Judicial Circuit, Will County, Illinois,
Plaintiff-Appellant,	)	
v.	)	Appeal No. 3-14-0832
	)	Circuit No. 13-CF-358
HARRY CARR,	)	Honorable
Defendant-Appellee.	)	Sarah F. Jones, Judge, Presiding.

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JUSTICE WRIGHT delivered the judgment of the court.  
Presiding Justice McDade and Justice O'Brien concurred in the judgment.

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**ORDER**

- ¶ 1 *Held:* The trial court did not abuse its discretion by allowing defendant's motion *in limine* since the probative value of the materials was far outweighed by the prejudicial impact.
- ¶ 2 The State appeals from the trial court's order granting defendant's motion *in limine* to bar the State from presenting certain letters, a card, a drawing and various photographs, during defendant's trial. Since the documents were highly prejudicial to the defense and their probative

value was based on circumstantial inferences arising from the materials, the trial court did not abuse its discretion by barring the State from introducing the evidence at trial.

¶ 3

### FACTS

¶ 4

Defendant was charged by indictment with two counts of predatory criminal sexual assault of a child (720 ILCS 5/11-1.40(a)(1) (West 2012)) and three counts of aggravated criminal sexual abuse (720 ILCS 5/11-1.60(c)(1)(i) (West 2012)) based on acts that occurred when defendant was 19 years of age and living in the same household with the victim, A.S., who was under 13 years of age.<sup>1</sup> Count I of the indictment alleged defendant committed predatory criminal sexual assault of a child by placing his finger inside the sex organ of A.S. Count II alleged defendant committed predatory criminal sexual assault of a child by placing his penis on the vagina of A.S. Counts III, IV, and V alleged defendant committed separate acts of aggravated criminal sexual abuse by placing his penis on the hand of A.S., touching the breasts of A.S. with his hands, and touching the vaginal area of A.S. with his hands for the purpose of his sexual gratification, respectively.

¶ 5

Following a pretrial competency hearing, the trial court found that A.S., who was 11 years old at the time of the incidents and 13 years old at the time of the competency hearing, was competent to testify at trial. During additional pretrial proceedings, the trial court also ruled that A.S.'s out-of-court statements would be admitted at trial as an exception to the rule against hearsay pursuant to section 115-10 of the Code of Criminal Procedure of 1963 (Code) (725 ILCS 5/115-10 (West 2012)) (certain hearsay exceptions in prosecutions for physical or sexual acts perpetrated against a child) and evidence that defendant engaged in further acts of sexual penetration with A.S. beyond the charging date could be admitted at trial pursuant to section

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<sup>1</sup>The indictment referred to A.S. as "Jane Doe."

115-7.3 of the Code (725 ILCS 5/115-7.3 (West 2012)) (other bad acts evidence in sex offense cases).

¶ 6 Defendant filed a motion *in limine* seeking to bar the State from presenting three letters and a drawing that defendant sent to Theresa S., A.S.’s mother. Additionally, defendant sought to bar a letter from defendant to A.S.; a greeting card from defendant to A.S.; and two pictures of himself which defendant purportedly provided to A.S.

¶ 7 In the letter to A.S., defendant stated he was in love with A.S. Defendant described how “beautiful” and “sexy” A.S. was, including how her “eyes sparkle before kissing [her] scrumptious pink lips” and how her “terrifically white teeth shimmer.” The letter further stated defendant would always be jealous when A.S. talked about other guys. In the greeting card to A.S., defendant wrote that he loved A.S. and would show her that the next time he saw her. Defendant wrote that he blamed himself for A.S. being in the hospital and would not “let [her] slip out of [his] life again.” Defendant also wrote his address on the card with the words “come after school” underneath.

¶ 8 In three additional letters defendant sent to the victim’s mother, he included general apologies without specifying the conduct he regretted. The letters stated: “God told me to at least apologize [*sic*] for what I’ve done to you”; “I believe that God choose [*sic*] me to go through this to not only to think what I had done was both wrong and unlawful, but to also change and refine me into a better Christian”; “It still wasn’t right to go behind your back and [do] what I had done”; and “I also would like to apologize [*sic*]for my unacceptable behavior while living with you.” One letter stated that the victim’s mother did the right thing and was trying to protect her daughter. The letters thanked the victim’s mother for being kind and forgiving and stated that defendant wanted to become a big brother to her children after he was released from prison.

A colored-pencil drawing of five individuals, possibly the victim's family, was included with one of the letters.

¶ 9 Following arguments from counsel, the trial court found the prejudicial impact of the letters, drawing, card, and photographs outweighed their probative value. The court reasoned that the letters written to A.S. and Theresa S. contained no admissions to the charges. The trial court noted there were some apologies in the letters to Theresa S., but they did not relate to any specific incident. The trial court ruled the State could use the evidence to impeach defendant if he were to testify or in rebuttal if there was testimony from the defense regarding lack of knowledge of the victim or other witnesses.

¶ 10 After the trial court granted defendant's motion *in limine*, the State filed a certificate of substantial impairment to proceed to trial and a notice of appeal following the trial court's ruling on defendant's motion *in limine*.

¶ 11 ANALYSIS

¶ 12 On appeal, the State argues the trial court abused its discretion by barring admission of the letters, drawing, greeting card, and photographs the victim and her mother received from defendant. A reviewing court should not reverse the trial court's grant of defendant's motion *in limine* absent a clear abuse of discretion. *People v. Williams*, 188 Ill. 2d 365, 369 (1999). "An abuse of discretion occurs when the ruling is arbitrary, fanciful, unreasonable, or when no reasonable person would adopt the trial court's view." *People v. Ward*, 2011 IL 108690, ¶ 21.

¶ 13 Here, the trial court observed that the letters defendant sent to the victim's mother did not contain any admissions concerning the sex acts that resulted in the charged offenses. While the letters to the victim's mother expressed some remorse and consciousness of guilt, the language was very general and, for that reason, not highly probative. Similarly, defendant's drawing of a

happy family was not probative of defendant's consciousness of guilt and does not conclusively establish the drawing was intended to communicate any message to the victim or her family. Based on our review of the record, we cannot take issue with the trial court's finding that the probative value of these documents was slight.

¶ 14 Turning to the prejudicial impact of the photographs, letter, and greeting card defendant gave to A.S, the letters expressed defendant's love for A.S. and his thoughts that she was beautiful. The expression of these romantic feelings by defendant, a 19-year-old man, to an 11-year-old girl did not admit to acts of physical contact between defendant and victim. However, defendant's expressed infatuation with A.S. was highly prejudicial. We conclude the trial court did not abuse its discretion by excluding these materials because they did not contain admissions involving sexual contact between defendant and A.S. and would be highly and unfairly prejudicial to defendant if allowed to be admitted as part of the State's evidence during a trial on the merits.

¶ 15 CONCLUSION

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

¶ 17 Affirmed.