2016 IL App (2d) 140750-U
No. 2-14-0750
Order filed October 18, 2016

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS, Plaintiff-Appellee, v. TED V. COX, Defendant-Appellant.	))))))))))	Appeal from the Circuit Court of Boone County. No. 14-CF-85 Honorable C. Robert Tobin III, Judge, Presiding.

JUSTICE JORGENSEN delivered the judgment of the court.
Presiding Justice Schostok and Justice McLaren concurred in the judgment.

ORDER

¶ 1 *Held*: (1) The trial court did not abuse its discretion in denying defendant's motion to sever two charges: the offenses were linked, as the second was committed during the arrest for the first and shared the same alleged motivation, and there was a "common scheme," as the second was an outgrowth of the first; in any event, as the evidence of each was admissible as to the other, to show knowledge, motive, and lack of mistake, any error was harmless; (2) defendant was entitled to full credit against various fines, to reflect the 105 days he spent in presentencing custody; we also remanded for the reduction of a collections fee.

¶ 2 Defendant, Ted V. Cox, appeals his convictions of aggravated battery to a person 60 years of age or older (720 ILCS 5/12-3.05(d)(1) (West 2014)) and aggravated battery to a correctional institution employee (720 ILCS 12-3.05(d)(4)(i) (West 2014)). He contends that

the trial court erred in denying his motion to sever trial on the offenses. He also contends that the trial court erred in failing to give him credit against his fines for time spent in presentence custody and asks that the cause be remanded for recalculation of a collections fee. We affirm the denial of defendant's motion to sever but modify the sentencing order to reflect the credit and remand for recalculation of the collections fee.

¶ 3 I. BACKGROUND

¶ 4 Defendant was charged in connection with two incidents that occurred on April 18, 2014. One set of charges alleged that he committed aggravated battery when he made contact of an insulting or provoking nature by pushing his mother, Mary, who was over age 60. The other set of charges alleged that he committed aggravated battery when he made contact of an insulting or provoking nature by spitting on sheriff's deputy Charles Shutz during a search at the county jail after his arrest in the incident involving Mary. Before trial, defendant moved to sever the charges involving Mary from the charges involving Shutz. Defendant argued that the incidents were not part of the same comprehensive transaction and that he would be prejudiced by joinder of the charges because it would allow for otherwise inadmissible other-crimes evidence to be presented on each set of charges. Defendant also informed the State of his intent to assert the affirmative defense of self-defense as to the charges involving Mary, although he later did not argue self-defense at trial. The State contended that the incidents were linked by defendant's ongoing anger throughout the time period of the crimes.

¶ 5 The trial court entered a written ruling denying the motion, finding that the acts took place within approximately an hour and that there was an "alleged continuing mens rea from one offense to the other." The court noted that the State's theory of the case was that defendant was in a state of rage throughout the time frame encompassing both events. It also found that

severance would not promote judicial efficiency. The court also addressed factors as to whether defendant was in a similar position of authority in relation to each victim and whether the victims were similar, finding that those factors did not apply. The court found that defendant would not be prejudiced by the joinder of the charges, noting that the evidence of each crime was admissible as to the other offense because the two offenses were intrinsic to each other and were relevant to show defendant's *mens rea*.

¶ 6 Evidence at trial showed that, on the date of the incidents, defendant was living with Mary and became angry over an e-mail he received from his online girlfriend. He and Mary had a discussion in which Mary told defendant that she believed he was an alcoholic. Defendant then went into the garage and injured his hand, causing it to bleed, by smashing a portion of a speaker. He came back into the house and, according to Mary, said that he wanted to hit her. Mary stated that she grabbed the cordless phone and that defendant knocked it out of her hand and punched the wall socket that the phone base was connected to. Mary called the police, and another argument occurred in which, she testified, defendant pushed her against the wall with his left hand on her shoulder and his right hand on the lower part of her neck. In her written police statement, she said that defendant grabbed her by her arms and she did not mention him touching her neck. She also acknowledged that it was defendant's right hand that was bleeding and that there was blood on her left shoulder, so that his hand would have been on her shoulder. Defendant's nephew, who also lived at the home, testified that he saw defendant grab Mary by the shoulders and pin her against the wall.

¶ 7 Defendant testified that Mary had a knife when he entered the house and that he knocked it out of her hand. He testified that he took the phone from her and threw it on the floor but that he accidentally punched the phone base through the wall. As to the allegation that he battered

Mary by pushing her, defendant denied pushing Mary and said that he placed his hands on her shoulders to try to control the situation and show her that he was just trying to talk to her. He said that he was not trying to hurt her in any way.

¶ 8 After the incident, members of the Boone County sheriff's department arrived and took defendant into custody. An officer testified that, when he spoke to defendant at Mary's home, defendant initially was angry but then calmed down. However, he became upset and began yelling when placed in handcuffs. He kicked the screen door open as they were leaving the house and was uncooperative. Defendant was transported to the county jail. A video taken during the transport showed defendant initially sitting quietly in the squad car, but later he began to curse repeatedly and expressed anger at the police. He was still cursing and angry when the car arrived at the jail. Shutz had been notified that defendant was uncooperative at the scene of the arrest. He assisted in removing defendant from the squad car and asked defendant if he was alright. Defendant responded with profanity. His handcuffs were left on because he was being verbally abusive and somewhat uncooperative. Defendant was taken to a booking room where he was searched. Defendant continued to remain agitated and, when asked to open his mouth, he spat on Shutz. Defendant said on another video that he did not spit on anyone and was just trying to clear his mouth. At trial he testified that he did not intentionally spit on anyone and that he was heavily intoxicated.

¶ 9 Defendant was found guilty and he filed a motion for a new trial, alleging in part that the court erred in denying his motion to sever. The motion was denied, and defendant was sentenced to four years' incarceration and various fines and costs. Defendant was not given credit against his fines for time spent in presentence custody. He appeals.

¶ 10 II. ANALYSIS

¶ 11 Defendant contends that the trial court erred by denying his motion to sever. He argues that the crimes were not part of the same comprehensive transaction and that he was prejudiced because joinder of the charges allowed inadmissible other-crimes evidence to be presented in each case.

¶ 12 A court may allow charges to be tried together if the offenses could have been joined in a single charge. 725 ILCS 5/114-7 (West 2014); *People v. Johnson*, 2013 IL App (2d) 110535, ¶ 45. Specifically, offenses may be charged in the same charging instrument with a separate count for each offense when the offenses charged are based on the same act or on two or more acts that are part of the "same comprehensive transaction" (725 ILCS 5/111-4(a) (West 2014)), unless it appears that the defendant will be prejudiced by joinder of the charges (725 ILCS 5/114-8(a) (West 2014); *Johnson*, 2013 IL App (2d) 110535, ¶ 45).

¶ 13 "A trial court has substantial discretion in deciding whether to sever separate charges, and its decision will not be reversed on appeal absent an abuse of that discretion." *Johnson*, 2013 IL App (2d) 110535, ¶ 46. "An abuse of discretion occurs only where no reasonable person would agree with the trial court's ruling." *Id.*

¶ 14 A number of factors affect whether two or more crimes are part of the " 'same comprehensive transaction' " such that they can be joined. *Id.* ¶ 47. These factors are (1) the proximity in time and location of the offenses; (2) the identity of evidence needed to demonstrate a link between the offenses; (3) whether there was a common method in the offenses; and (4) whether the same or similar evidence would establish the elements of the offenses. *Id.*; *People v. Walston*, 386 Ill. App. 3d, 598, 601 (2008). We have rejected consideration of additional factors sometimes seen in the case law, such as whether the defendant was in a similar position of authority in relation to each victim, whether the victims were similar, and whether the severance

would promote judicial efficiency. *Walston*, 368 Ill. App. 3d at 601-603. In particular, we rejected consideration of judicial efficiency because joinder will expedite the judicial process in most cases and judicial efficiency has no bearing on the controlling issue of whether the multiple offenses are part of the same comprehensive transaction. *Id*. at 602.

¶ 15 The first factor, the proximity in time and location of the offenses, is the primary and most helpful factor. See *Johnson*, 2013 IL App (2d) 110535, ¶ 48; *Walston*, 386 Ill. App. 3d at 603. This factor "asks whether the offenses to be joined were close in time and location. As events become separated by time and distance, the likelihood decreases that they may be considered part of the same comprehensive transaction as is required by the statute." *Johnson*, 2013 IL App (2d) 110535, ¶ 48. " '[N]o matter how similar two incidents are, incidents not occurring within a very close time and space to one another will most likely be separate incidents.' " *Id*. (quoting, *Walston*, 386 Ill. App. 3d at 605.

¶ 16 For example, the denial of a motion to sever charges for shooting two victims and using a gun to steal the car of a third victim was affirmed when the crimes took place within two blocks. *People v. Quiroz*, 257 Ill. App. 3d 576, 586 (1993). Joinder was also appropriate when a defendant was tried for unlawful possession of cannabis with intent to deliver and unlawful delivery of cannabis when he sold drugs to a police informant and a subsequent search of his home revealed approximately 5,000 grams of marijuana. The offenses occurred within hours of each other at the same location, and the defendant was committing the possession offense when the delivery offense occurred. *People v. Ott*, 237 Ill. App. 3d 119, 123 (1992); see also *People v. Harmon*, 194 Ill. App. 3d 135, 140 (1990) (crimes took place only a few blocks apart, likely in less than an hour, and sprang from a common motive).

¶ 17 In comparison, joinder was not appropriate when a defendant started multiple fires at different locations on different dates and there was no evidence that the crimes were committed as part of a common scheme. *People v. Marts*, 266 Ill. App. 3d 531, 543 (1994). Severing cases was also required when murders occurred on different days at different locations with different motives. *People v. Lewis*, 240 Ill. App. 3d 463, 468-69 (1992); see also *Walston*, 386 Ill. App. 3d at 608-09 (sexual assaults of two different victims 16 days apart with no evidence of a common scheme were not part of the same comprehensive transaction). Finally, the weight of the first factor was neutral when a domestic battery and possession of a handgun occurred in different locations of the same home and the defendant was in constructive possession of the handgun when the domestic battery occurred. *Johnson*, 2013 IL App (2d) 110535, ¶ 49.

¶ 18 The second factor, the identity of evidence needed to demonstrate a link between the offenses, asks not whether evidence of the two crimes is similar or identical, but whether the court can identify evidence linking the crimes. *Id.* ¶ 50. For example, in *Quiroz*, there was evidence linking the two shootings to the armed robbery, because, during the time between the two sets of crimes, the defendant unsuccessfully attempted to gain entrance into the home of a fellow gang member as he fled the scene of the shootings. *Quiroz*, 257 Ill. App. 3d at 586.

¶ 19 The third factor, " 'the common method' " factor, "asks whether the offenses were part of a 'common scheme,' so that each of the offenses supplies a piece of a larger criminal endeavor." *Johnson*, 2013 IL App (2d) 110535, ¶ 51. For example, in *Quiroz*, the three crimes were part of a common scheme when the last crime was committed in an attempt to flee the scene of the first two. *Quiroz*, 257 Ill. App. 3d at 586. Likewise, offenses were properly joined when the second offense was an outgrowth of the first. *People v. Reynolds*, 116 Ill. App. 3d 328, 335 (1983). In *Reynolds*, the defendant committed an armed robbery beginning at approximately 11 p.m. At

11:42 p.m. a vehicle in which the defendant was riding as a passenger was stopped by a police officer for speeding about 1½ miles from the scene of the robbery. Brandishing a gun, the defendant then took the officer's service revolver and squad car. We held that joinder was appropriate since the defendant was fleeing the scene of the first crime, making the second crime an outgrowth of the first. *Id.*; see also *Quiroz*, 257 Ill. App. 3d at 586 (armed robbery was a direct outgrowth of the defendant's need to flee the scene); *People v. Mikel*, 73 Ill. App. 3d 21, 27-28 (1979) (the defendant's actions were all part of a shooting spree, showing that they were part of the same general transaction or scheme with a common motive, design, and method of operation).

¶ 20 The fourth factor, whether the same or similar evidence would establish the elements of the offenses, may be considered in the joinder analysis, but it may be used only to determine whether multiple offenses are part of a single comprehensive transaction. *Johnson*, 2013 IL App (2d) 110535, ¶ 52; *Walston*, 386 Ill. App. 3d at 607. If there is no commonality of evidence to prove the elements of each offense, then this factor will not be found to apply. See *Johnson*, 2013 IL App (2d) 110535, ¶ 52 (status as a felon and constructive possession of a handgun shared no commonality with the evidence of domestic battery).

¶ 21 Here, the trial court wrongly considered factors that we have expressly disapproved. In particular, the court found that joinder would promote judicial efficiency. However, it is well established that "we review the trial court's judgment, not its reasoning, and we may affirm on any grounds in the record, regardless of whether the trial court relied on those grounds or whether the trial court's reasoning was correct." *Suchy v. City of Geneva*, 2014 IL App (2d) 130367, ¶ 19.

¶ 22 As to the first factor, that factor is fairly neutral. The crimes occurred at separate locations, but within a fairly short time period. In regard to the other factors, the trial court relied heavily on the " alleged continuing mens rea from one offense to the other." Evidence of battery requires knowingly making contact of an insulting or provoking nature. 720 ILCS 5/12-3(a) (West 2014). Defendant argues that there is no connection between the two crimes because evidence of one crime would not show that he knowingly committed the other. But the State contends that defendant was in a continuing state of rage, which connected the crimes and was evidence that defendant knowingly committed each crime. We agree with the State.

¶ 23 Here, there is evidence of a link between the crimes in that the second arose directly out of defendant's arrest for the first and he was allegedly motivated by the same anger throughout the time period encompassing both crimes. Defendant contended that he did not knowingly or intentionally push Mary or spit on Shutz. Thus, his continuing anger was not only evidence linking each crime, it also explained his actions in each incident, and provided evidence of knowledge, lack of mistake, and motive. Further, in regard to a common scheme, as in *Reynolds*, the second offense was an outgrowth of the first. When these factors are considered in connection with the short time between the two crimes, the trial court did not abuse its discretion in denying the motion to sever.

¶ 24 Because we affirm the denial of the motion, we need not address the parties' harmless-error arguments based on the admissibility of other-crimes evidence. However, we note that defendant was not prejudiced by the joinder as the evidence of each crime was relevant and admissible in regard to the other in order to show knowledge, motive, and lack of mistake. See *People v. Wilson*, 214 Ill. 2d 127, 136 (2005) (other-crimes evidence is admissible to show *modus operandi*, intent, identity, motive, or absence of mistake and may be used to show, by

similar acts or incidents, that the act in question was not performed inadvertently, accidently, involuntarily, or without guilty knowledge).

¶ 25 Defendant next contends that he is entitled to full credit against $295 in fines for time spent in presentence custody and that a collections fee must be reduced to 30% of the remaining balance of fines. The State agrees.

¶ 26 Under section 110-14(a) of the Code of Criminal Procedure of 1963 (725 ILCS 5/110-14(a) (West 2014)), any person incarcerated on a bailable offense who does not supply bail and against whom a fine is levied is entitled, upon application, to a credit of $5 per day of presentencing incarceration, with the credit not to exceed the amount of the fine. Defendant was in custody for 105 days before sentencing and is thus entitled to a credit against any fine under section 110-14(a). Here, $295 of the imposed fines are subject to the credit: a $10 circuit-clerk-operations fine (705 ILCS 105/27.3d (West 2014)) charged as a portion of a juvenile-expungement fine (730 ILCS 5/5-9-1.17(b) (West 2014)), a $50 court-system-finance fine (55 ILCS 5/5-1101(c)(1) (West 2014)), a $10 state-police-services fine (730 ILCS 5/5-9-1.1(d) (West 2014)), a $15 state-police-operations-assistance fine (705 ILCS 105/27.3a (West 2014)), a $200 domestic violence fine (730 ILCS 5/5-9-1.5 (West 2014)), and a $10 child-advocacy-center fine (55 ILCS 4/5-1101(f-5) (West 2014)). See *People v. Smith*, 2013 IL App (2d) 120691, ¶¶ 16-21; *People v. Crow*, 403 Ill. App. 3d 698, 706 (2010). Accordingly, we modify the sentencing order to reflect a credit against $295 of defendant's fines.

¶ 27 Defendant states that he was also charged a collections fee of 30% of the balance of fines. See 730 ILCS 5/5-9-3(e) (West 2014). However, the record is insufficient to show if payments have been made since the appeal was filed. The State specifically states that it does not object to remanding the cause for recalculation of that fee. Accordingly, given the State's lack of

objection and that we have reduced the balance of defendant's fines, we remand the cause to allow the circuit clerk to recalculate the collections fee.

¶ 28 III. CONCLUSION

¶ 29 The judgment of the circuit court of Boone County is affirmed as modified, and the cause is remanded. As part of our judgment, we grant the State's request that defendant be assessed $50 as costs for this appeal. 55 ILCS 5/4-2002(a) (West 2014); see also *People v. Nicholls,* 71 Ill. 2d 166, 179 (1978).

¶ 30 Affirmed as modified and remanded.