

**NOTICE:** This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

2016 IL App (3d) 140419-U

Order filed March 14, 2016

---

IN THE  
APPELLATE COURT OF ILLINOIS  
THIRD DISTRICT

A.D., 2016

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the Circuit Court of the 21st Judicial Circuit, Kankakee County, Illinois,
Plaintiff-Appellee,	)	
v.	)	Appeal No. 3-14-0419 Circuit No. 13-CF-203
JOHNNY J. SHANKLIN,	)	Honorable Kathy Bradshaw-Elliott, Judge, Presiding.
Defendant-Appellant.	)	

---

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

---

**ORDER**

¶ 1 *Held:* The trial court did not abuse its discretion in allowing the State to introduce evidence of defendant's other crimes.

¶ 2 Defendant, Johnny J. Shanklin, appeals his conviction for domestic battery. He contends that the trial court abused its discretion in allowing the State to introduce evidence relating to his previous domestic battery conviction. We affirm.

¶ 3 **FACTS**

¶ 4 The State charged defendant by indictment with domestic battery (720 ILCS 5/12-3.2(a)(1) (West 2012)). The indictment alleged that defendant intentionally caused bodily harm to Sheila Cuchiara, a family or household member. The indictment also noted that defendant had been previously convicted of misdemeanor domestic battery in 2011. Because of that prior conviction, the charged offense was a Class 4 felony. See 720 ILCS 5/12-3.2(b) (West 2012).

¶ 5 Prior to trial, the State filed a notice of its intent to offer evidence of defendant's commission of other offenses of domestic violence pursuant to section 115-20 of the Code of Criminal Procedure of 1963 (Code) (725 ILCS 5/115-20 (West 2012)). A hearing on the admissibility of defendant's 2011 domestic battery conviction was held in November of 2013.

¶ 6 At the hearing, Cuchiara testified that she and defendant had been dating for four years. She testified that in May of 2010 she and defendant lived in a Motel 6 for two weeks. On the night of May 24, 2010, while the couple was living at the motel, they got into an argument. The police came to the motel and made defendant leave. However, defendant later returned to the motel, at which point he was arrested. Cuchiara testified that defendant was charged with "domestic" battery even though she did not wish to press charges against him. Though they had been arguing, Cuchiara testified that defendant never struck her. She had called the police because she wanted to stop arguing. Neither she nor defendant had been drinking that night. Cuchiara did not remember the police taking any pictures of her or of the motel room following defendant's arrest. Cuchiara testified that defendant had pled guilty to that domestic battery charge, but she did not know why, because he had not hit her.

¶ 7 Deputy Mike Raymond<sup>1</sup> of the Kankakee sheriff's department testified that on the morning of May 24, 2010, he responded to a call at a Motel 6. Raymond had been to the motel twice on that same night to deal with Cuchiara and defendant. He believed that both individuals were intoxicated. When he arrived at the motel room, defendant opened the door, and then immediately shut it. Moments later, Cuchiara opened the door. Cuchiara's nose was swollen and it was bleeding. She also had bruising and red marks on her arms and shoulders. Raymond entered the room and observed that there was blood on the bedding and pillows. No one other than defendant and Cuchiara was in the room. Cuchiara told Raymond that "nothing happened."

¶ 8 Raymond testified that he arrested defendant for domestic battery. He provided Cuchiara the opportunity to sign a complaint, but she declined. After transporting defendant to a detention center, Raymond returned to the motel, where he took photographs of Cuchiara and the blood-stained bedding. He also noticed blood in the sink. Raymond testified that he took one picture of Cuchiara, "which she really didn't want [him] to take." The State introduced Raymond's photographs into evidence.

¶ 9 With respect to the present incident, Cuchiara testified that she was with defendant on May 2, 2013. Cuchiara recalled that she and defendant were at the house of a woman named Carmen Thomas. Cuchiara and Thomas were drinking, but defendant was not. An argument ensued, and Thomas began hitting Cuchiara. Cuchiara testified that Thomas had "jumped on" her twice before. Thomas hit Cuchiara so hard that Cuchiara's eyes were bleeding.

---

<sup>1</sup>Cuchiara's testimony in regard to the 2010 incident and in regard to the incident that gave rise to the present offense was continuous. For the purposes of clarity, we have grouped the evidence of each offense together, and have thus broken Cuchiara's testimony into separate portions.

¶ 10 Cuchiara did not know who called the police. When the officers arrived, Cuchiara "wasn't in too good shape." Officers took pictures and asked her to sign a complaint against defendant. Cuchiara refused, because it was not defendant who had caused her injuries. She did not tell the officers who did cause her injuries, because she was afraid of Thomas. As far as Cuchiara knew, defendant was not injured on May 2, 2013, because he was not involved in any of the fighting.

¶ 11 Officer Deann Regas of the Kankakee police department testified that on the evening of May 2, 2013, she was dispatched to a house in Kankakee in reference to a domestic problem. The house was two stories, but it was separated into separate apartment units. When Regas arrived, she heard yelling coming from the upstairs unit. Regas described the building as having a common entryway area, with a stairwell leading up to the upstairs unit. Regas began walking up the stairs and saw two individuals in the stairwell, defendant and Cuchiara.

¶ 12 Regas observed that defendant, who was holding a beer can, appeared drunk. Regas asked them what was going on, and defendant responded: "She hit me, so I hit her back." Regas observed that Cuchiara's right eye was swollen, and blood was coming from the left side of her head. Cuchiara, who also appeared intoxicated, told Regas that she and defendant had been drinking all day. Regas did not speak to anyone else at the scene, and did not enter the upstairs residence. She placed defendant under arrest. Cuchiara declined to sign a complaint. Regas testified that Cuchiara never identified an individual named Carmen Thomas.

¶ 13 Prior to closing arguments, the State informed the court that defendant had, in fact, pled guilty to misdemeanor domestic battery in the 2010 case. After arguments, the court ruled that the evidence relating to defendant's prior conviction would be admissible at trial. In so ruling, the court noted that the two cases appeared similar.

¶ 14 At defendant's subsequent jury trial, the three witnesses who testified at the section 115-20 hearing testified in a similar fashion. The court informed the jury of defendant's prior conviction. The jury found defendant guilty, and the court later sentenced him to a term of three years' imprisonment.

¶ 15 ANALYSIS

¶ 16 On appeal, defendant argues that the trial court abused its discretion in admitting evidence of defendant's prior offense. Specifically, defendant contends that because the evidence of his previous offense was significantly stronger than that relating to the present offense, he was unduly prejudiced by the admission of the prior crimes evidence. We hold that the trial court's determination—that the probative value of that evidence was not substantially outweighed by undue prejudice to defendant—was not arbitrary, fanciful, or unreasonable.

¶ 17 The admissibility of evidence at trial is within the sound discretion of the trial court. *People v. Illgen*, 145 Ill. 2d 353, 364 (1991). Accordingly, a reviewing court will not disturb a trial court's determination on evidentiary issues absent an abuse of that discretion. *People v. Harvey*, 211 Ill. 2d 368, 392 (2004). "[A]n abuse occurs when the trial court's ruling is fanciful, unreasonable or when no reasonable person would adopt the trial court's view." *People v. Taylor*, 2011 IL 110067, ¶ 27.

¶ 18 As a general matter, all relevant evidence is admissible at trial as long as the probative value of that evidence is not substantially outweighed by the danger of unfair prejudice to the defendant. Ill. R. Evid. 402 (eff. Jan. 1, 2011); Ill. R. Evid. 403 (eff. Jan. 1, 2011). Evidence of a defendant's prior crimes, however, is *per se* inadmissible to prove a defendant's propensity to commit crime. Ill. R. Evid. 404(b) (eff. Jan. 1, 2011). The rationale underlying this prohibition is that such evidence presents an unusually high risk of prejudice. See, e.g., *People v. Harding*,

401 Ill. App. 3d 482, 490 (2010). Other-crimes evidence tends to be over persuasive, leading to the possibility that a jury may convict a defendant solely because it thinks he or she is a bad person deserving of punishment. *People v. Lindgren*, 79 Ill. 2d 129, 137 (1980).

¶ 19 Section 115-20 of the Code provides a statutory exception to the bar against the admission of other-crimes evidence for propensity purposes. 725 ILCS 5/115-20 (West 2012). Specifically, it provides: "Evidence of a prior conviction of a defendant for domestic battery \*\*\* is admissible in a later criminal prosecution for any of these types of offenses when the victim is the same person who was the victim of the previous offense that resulted in conviction of the defendant." 725 ILCS 5/115-20(a) (West 2012). Further, the statute holds that evidence of a prior conviction:

"may be admissible (if that evidence is otherwise admissible under the rules of evidence) and may be considered for its bearing on any matter to which it is relevant if the victim is the same person who was the victim of the previous offense that resulted in conviction of the defendant." 725 ILCS 5/115-20(b) (West 2012).

The statute instructs that "[i]n weighing the probative value of the evidence against undue prejudice to the defendant, the court may consider" the proximity in time of the prior offense, factual similarities between the prior and the present offenses, and any other relevant circumstances. 725 ILCS 5/115-20(c) (West 2012).

¶ 20 In *People v. Chapman*, 2012 IL 111896, ¶ 20, our supreme court held that the admissibility of other-crimes evidence to show propensity pursuant to section 115-20 of the Code is governed by the same balancing test applied to evidence generally. That is, such evidence will be admissible, as long as it is relevant, and its probative value is not substantially

outweighed by the risk of undue prejudice. *Id.* In addition to the actual fact of a prior conviction, evidence of the facts underlying that prior conviction is also admissible under section 115-20. *People v. Chambers*, 2011 IL App (3d) 090949, ¶ 17.

¶ 21 In the present case, the probative value of the evidence relating to defendant's 2010 domestic battery conviction was high. Each incident involved alcohol and blows to Cuchiara's head and face. Moreover, each time Cuchiara refused to sign a complaint against defendant. The evidence was thus probative not just to show that defendant had a propensity to harm Cuchiara, but also to impeach Cuchiara's testimony that defendant had not been the one to injure her.

¶ 22 To be sure, the possibility of prejudice to defendant certainly existed, as it would any time evidence of prior crimes is admitted. The question, however, is not whether the other-crimes evidence is merely prejudicial. Instead, the question is whether the probative value of that evidence is substantially outweighed by the risk of undue prejudice. Ill. R. Evid. 403 (eff. Jan. 1, 2011). In noting this distinction we disagree with defendant's assertion that the evidence of the 2010 offense was substantially greater than the evidence of the present offense, leading the jury to convict defendant based on the prior offense. In the present case, defendant actually admitted to Regas that he had struck Cuchiara.

¶ 23 By enacting section 115-20, the legislature made clear that the general prejudice that accompanies introduction of other-crimes evidence for propensity purposes is acceptable in domestic violence prosecutions. Indeed, the present situation—in which the victim is reluctant to speak out against her serial abuser—is precisely the type of situation that statutes such as section 115-20 are intended to address. See Andrea M. Kovach, *Prosecutorial Use of Other Acts of Domestic Violence for Propensity Purposes: A Brief Look at its Past, Present, and Future*,

2003 U. Ill. L. Rev. 1115 (2003). Thus, we cannot say that the prejudice substantially outweighed the great probative value. More importantly, we cannot say that the trial court's determination to that effect was arbitrary, fanciful, or unreasonable.

¶ 24

#### CONCLUSION

¶ 25

The judgment of the circuit court of Kankakee County is affirmed.

¶ 26

Affirmed.