2017 IL App (1st) 143961-U

SECOND DIVISION
November 21, 2017

No. 1-14-3961

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County, Illinois.
	)	
v.	)	No. 08 CR 4830
	)	
WILLIE WASHINGTON,	)	Honorable
	)	Angela Munari Petrone,
Defendant-Appellant.	)	Judge Presiding.

JUSTICE MASON delivered the judgment of the court.
Presiding Justice Neville and Justice Hyman concurred in the judgment.

ORDER

¶ 1 *Held*: The trial court did not abuse its discretion in admitting: (1) other-crimes evidence to show defendant's propensity to commit sexual assault and (2) defendant's prior conviction for predatory criminal sexual assault for impeachment purposes after defendant denied sexually assaulting the victim and her sisters.

After a jury trial, defendant Willie Washington was found guilty of four counts of predatory criminal sexual assault of S.T., who was a minor and his step-granddaughter, and sentenced to four consecutive natural life sentences. On appeal, Washington claims that the trial court abused its discretion in: (1) admitting other-crimes evidence that was excessive and led to an improper mini-trial of the other crimes and (2) permitting the State's impeachment of

Washington with his prior conviction for predatory criminal sexual assault. Finding no error, we affirm.

¶ 2 BACKGROUND

¶ 3 The State charged Washington with: (1) 8 counts of predatory criminal sexual assault; (2) 20 counts of criminal sexual assault; (3) 6 counts of aggravated criminal sexual abuse; and (4) 6 counts of criminal sexual abuse. The State proceeded to trial on the following counts of predatory criminal sexual assault: (1) penis to vagina contact when the victim was under 13 years old; (2) penis to anus contact when the victim was under 13 years old; (3) mouth to vagina contact when the victim was under 13 years old; and (4) penis to mouth contact when the victim was under 13 years old. This was not Washington's first predatory criminal sexual assault charge; he was previously charged and convicted of predatory criminal sexual assault in 2013 for assaulting S.T.'s older sister. See *People v. Washington*, 2016 IL App (1st) 140417-U (affirming Washington's conviction).

¶ 4 Before trial, the State moved to introduce other-crimes evidence of Washington's sexual assaults of S.T.'s sisters, V1 and V2,[1] to show Washington's propensity to commit sexual assaults, intent, *modus operandi*, motive, identity, and lack of consent, asserting that the assaults occurred within the same time frame and were similar in nature. Washington opposed the motion arguing that there were some inconsistencies in S.T.'s and her sisters' accounts and that admitting the other-crimes evidence would be unduly prejudicial because it would create the risk of conducting a mini-trial on the other incidents.

[1] We refer to S.T.'s sisters, who were also minors at the time of the alleged assaults, as V1 and V2 given that (i) they have unique names, which could lead to identification, and (ii) they all have names beginning with the letter "S." *In re Edgar C.*, 2014 IL App (1st) 141703, ¶ 8 (citing Ill. S. Ct. R. 660(c) (eff. Oct. 1, 2001)); *People v. Arze*, 2016 IL App (1st) 131959, ¶ 5 n.3.

¶ 5 The trial court granted the State's motion, in part, ruling that the State could admit evidence of Washington's other crimes against V1 and V2 to show only propensity given the "striking similarities" in the offenses between S.T. and her sisters. In particular, the trial court found the following 13 similarities between Washington's assaults against S.T. and her sisters: (1) he was step-grandfather to all the victims; (2) the victims are sisters; (3) Washington and the victims lived in the same residence; (4) the acts occurred in the same place; (5) he punished all the victims with a belt; (6) he told each victim not to tell or he would get in trouble; (7) he used Vaseline or other lubrication when assaulting each victim; (8) the victims were of similar ages when he committed the acts; (9) the occurrence of the offenses overlapped; (10) he bribed each victim by taking her to the store with the understanding that the treats were not free; (11) he promised S.T. and V1 money if they continued to be with him; (12) he gave S.T. and V1 sexual instructions and told them to do certain things; and (13) he performed similar acts on each victim. But in conducting the balancing test, the trial court denied the State's motion to show intent, *modus operandi*, lack of consent and identity, finding admission of the evidence for those purposes would be prejudicial.

¶ 6 The State also filed a motion *in limine* seeking to introduce Washington's 2013 conviction for predatory criminal sexual assault against V1 in rebuttal if Washington testified and denied committing the assaults. Washington opposed the motion arguing that admission of his previous conviction would be prejudicial. The trial court preliminarily granted the State's motion *in limine* to use the 2013 conviction, but later reserved its ruling, indicating that it would consider the issue later.[2]

[2] The State also sought to introduce Washington's 2002 conviction for burglary, but the trial court denied the State's request outright because he was sentenced to 30 months' parole and more than 10 years had elapsed since the date of the conviction.

¶ 7 During opening statements, the State informed the jury that it would "hear from [the victim's] two sisters who would tell you that during this same time frame *** the defendant did the exact same thing to them; that he violated their trust; that he violated their bodies by sexually assaulting them, by raping them on more than one occasion." The State also informed the jury that "the defendant *** gave handwritten statements to the assistant state's attorney and admitted to sexually assaulting both [the victim] and her two sisters and he signed his name to those statements admitting to what he did."

¶ 8 At trial, S.T., who was then 20 years old, testified that she lived in a four-bedroom apartment on South Oglesby Avenue in Chicago with Washington, her two sisters, her two brothers, her grandmother, and her mother. The family lived in that apartment from 1997 to 2003.

¶ 9 Washington would babysit the children when their mother and grandmother were not home. Once when Washington was babysitting, S.T., who was then five years old, was outside playing and Washington yelled outside her grandmother's bedroom window for S.T. to come inside and upstairs to the bedroom. After S.T. got to the bedroom, Washington asked if she wanted to play a game. Washington told S.T. to pull down her pants, and he started touching her vagina with his hands. After the incident, Washington told her to "keep it between us. It would be our secret." S.T. then went back outside to play.

¶ 10 After the first incident, Washington touched S.T. frequently and the incidents typically occurred in her bedroom, her grandmother's bedroom, and her mother's bedroom. The assaults escalated when he began to perform oral, vaginal, and anal acts on her. Washington inserted his penis into S.T.'s vagina "a lot." Washington also inserted his penis into S.T.'s anus twice. Washington would sometimes use Vaseline when performing the sexual acts. Washington made S.T. place his penis in her mouth a few times. Washington would put his mouth on S.T.'s vagina

2 to 3 times a week from the time she was 5 until she was 10 years old. During this time, S.T. never told anyone about Washington's acts because she was scared and Washington told her not to tell anyone.

¶ 11 When S.T. was nine years old, she and her family moved to Calumet Park. After the move, Washington made sexual contact with her less frequently, but did so every few weeks. While the family lived in Calumet Park, Washington would insert his penis inside of S.T.'s vagina and mouth. The incidents occurred in her grandmother's bedroom and in the laundry room. When S.T. was 10 years old, she told Washington that she did not like it and threatened to tell her grandmother–his wife. But S.T. did not tell her grandmother at the time, and Washington stopped making sexual contact with her.

¶ 12 When S.T. was 12 years old, she moved to Arkansas by herself to live with her aunt and her aunt's family. While living in Arkansas, S.T. had no contact with Washington. On one occasion when S.T. was 13 years old, her aunt asked S.T. if anyone had ever touched her. S.T. answered no, but her aunt continued to ask and on the third time, S.T. admitted that Washington had touched her. An investigation of the assaults then began.

¶ 13 V1's and V2's testimony was consistent with S.T.'s testimony. Specifically, Washington made sexual contact with V1 and V2 when they lived in the Oglesby apartment and Calumet Park house. Washington touched V1 sexually and inserted his penis into her mouth and anus. Washington touched V2 sexually and inserted his penis in her mouth, vagina, and anus. Washington occasionally used Vaseline when making sexual contact with V1 and V2. V1 and V2 also told their aunt in Arkansas that Washington made sexual contact with them. V1 and V2 likewise told the police about Washington's sexual contact with them.

¶ 14 On January 10, 2008, as part of the investigation, Assistant State's Attorney Michael Sorich interviewed Washington and summarized his statements regarding the alleged sexual

assaults of S.T., V1, and V2 in three separate handwritten statements–one relating to each girl. ASA Sorich read the entirety of Washington's three statements to the jury. The content of all three statements detailing Washington's touching of S.T. and her sisters were similar. Specifically, in each statement Washington admitted that he touched each girl's breasts, buttocks, and vagina under their clothes 5 to 7 times at the Oglesby apartment and approximately 12 times at the Calumet Park house. Washington also admitted he touched the girls at the Calumet Park house in the laundry room and his bedroom. Washington signed each of the three statements, which also stated that "I am not under the influence of alcohol or drugs at this time." According to ASA Sorich, Washington appeared alert and coherent during the entire interview.

¶ 15 Before Washington testified in his own defense, the trial court revisited the State's motion *in limine* regarding Washington's previous predatory criminal sexual assault conviction. The trial court ruled that the prior conviction could only be admitted during rebuttal as impeachment if Washington opened the door by either denying the other-crimes evidence or denying that he was previously convicted. The trial judge explained her ruling to Washington before he testified. Washington's counsel also informed him that his 2013 conviction would be admitted if he opened the door by denying the acts. Washington proceeded to testify and when asked about the allegations in the handwritten statements, the following colloquy occurred:

> "Q: Okay. And you heard Mr. Sorich testify; is that right?
>
> A: Yes, I did.
>
> Q: Okay. And he produced documents which he says that you signed; is that right?
>
> A: Yes, ma'am.
>
> Q: One of these was signed at 3:45 on January 10th, he says. One was signed at 4:00 – 4:44 on January 10th. And one was signed at 4:25 in the afternoon or early evening on January 10th, 2008.
>
> Do you recall that?

> ***
>
> A: They told me that I could sign the papers and I could leave, you know, because I kept telling them *I did not do those allegations*. And then they say, Okay. You can leave. I was drunk and high at the time when I was signing that. (Emphasis added.)
>
> * * *
>
> Q: Drunk and high. I'm sorry. What does that mean?
>
> A: It was all the drugs and alcohol. I was smok–I had dope and also I was drinking heavily. I had gin and beer.
>
> * * *
>
> Q: And these statements are basically admissions that you touched these girls at the time; is that right?
>
> A: Yes.
>
> Q: Okay. Now, are these statements true?
>
> A: No, they is [sic] not.
>
> Q: Okay. But you signed each of these statement?
>
> A: Yes, I did.
>
> Q: And you–Why did you sign these statements?
>
> * * *
>
> A: Well, they told me–They told me after the–the allegation, I was telling them that *I did not do the crimes*. They said, you can just go ahead and sign them and you can go home." (Emphasis added.)

¶ 16 Washington continued to deny the sexual assault allegations and claimed that he did not read the written statements before he signed each page. At the conclusion of Washington's testimony, the State requested a sidebar. During the sidebar, the State asked the trial court to again revisit its ruling regarding admission of Washington's prior conviction for predatory criminal sexual assault asserting that he opened the door by denying that he committed the crimes. Defense counsel acknowledged the risk that the prior conviction could be admitted if

Washington testified that he did not touch the victims at all and informed the court that he had advised Washington of that possibility. Consistent with its preliminary ruling on the State's motion *in limine*, the trial court allowed the State to introduce a certified copy of the 2013 predatory criminal sexual assault conviction during rebuttal, but cautioned the State not to bring out any facts of that case, including the victim's name. After Washington's testimony on cross-examination concluded where he, again, denied making any sexual contact with S.T., V1 and V2, the State admitted the certified copy of his 2013 criminal conviction as its only rebuttal evidence and did not further question Washington.

¶ 17 During closing arguments, the State referenced the testimony of S.T.'s sisters highlighting that their testimony corroborated S.T.'s testimony and "shows you the defendant's propensity for committing these types of offenses. It shows you that this is who the defendant is and what he does." The trial court overruled Washington's objection to this statement. The State continued that "[t]he defendant was doing it to all three sisters at the same time, at the same locations, in the same manner, preying upon his grandchildren's trust, young age, and vulnerability." The State also highlighted Washington's written statements admitting to the sexual assaults.

¶ 18 Before deliberations began, the trial court instructed the jury that evidence of Washington's prior conviction could be considered only as it affected his believability as a witness and could not be considered as evidence of his guilt for the offense with which he was charged.

¶ 19 During jury deliberations, the jury sent a note to the trial judge asking: "[i]s it possible to see the 2013 evidence of Mr. Washington's previous conviction?" The trial judge responded: "The answer is contained in the instructions which you have been given. You have the evidence and the instructions. Please continue to deliberate."

¶ 20 The jury found Washington guilty of all four counts of predatory criminal sexual assault. The trial court denied Washington's posttrial motion for a new trial claiming that the trial court erred by admitting proof of Washington's other sexual offenses and allowing Washington's prior conviction to be admitted in the State's rebuttal case. The trial court sentenced Washington to four consecutive natural life sentences, and denied his motion to reconsider the sentence. This timely appeal followed.

¶ 21 ANALYSIS

¶ 22 Washington first claims that the admitted other-crimes evidence consisting of his assault against S.T.'s sisters was unduly prejudicial because that evidence was excessive and led to an improper mini-trial of the other crimes. Washington contends that the jury's exposure to V1's and V2's testimony regarding Washington's assault against them, the three handwritten statements admitting the assaults, and the State's repeated references to the other-crimes evidence in opening statements and closing arguments negatively impacted the outcome of his trial warranting a new trial.

¶ 23 The admission of other-crimes evidence rests within the sound discretion of the trial court, and we will not reverse the trial court's ruling absent a clear abuse of discretion. *People v. Pikes*, 2013 IL 115171, ¶¶ 11–12. A trial court abuses its discretion where its ruling is arbitrary or one with which no reasonable person would agree. *People v. Hall*, 195 Ill. 2d 1, 20 (2000).

¶ 24 Courts limit the admission of other-crimes evidence to protect against the danger that the jury will convict a defendant because he is a bad person deserving of punishment. *People v. Donoho*, 204 Ill. 2d 159, 170 (2003). Evidence of other crimes is generally admissible only for purposes other than to show the defendant's propensity to commit a crime, such as *modus operandi*, intent, motive, identity, or absence of mistake. *Id*. But section 115-7.3 of the Code of Criminal Procedure (725 ILCS 5/115-7.3 (West 2008)), provides an exception allowing

admission of other crimes involving sexual offenses, including predatory criminal sexual assault, to show propensity and provides that such evidence "may be considered for its bearing on any matter to which it is relevant." 725 ILCS 5/115-7.3(b) (West 2008); *Donoho*, 204 Ill. 2d at 176. The other-crimes evidence must be relevant and will be admitted unless the prejudicial effect of the evidence substantially outweighs its probative value. *Donoho*, 204 Ill. 2d at 177, 183. Section 115-7.3(c) enumerates the following three factors that a court should weigh to determine whether the probative value of the evidence exceeds any undue prejudice to the defendant: "(1) the proximity in time to the charged or predicate offense, (2) the degree of factual similarity to the charged or predicate offense, or (3) other relevant facts and circumstances." *Id*. at 171; 725 ILCS 5-115-7.3(c) (West 2008).

¶ 25 We disagree with Washington that admission of the other-crimes evidence improperly shifted the focus of Washington's trial to the other crimes resulting in a mini-trial on those crimes. Importantly, the admitted evidence highlighted the numerous similarities between Washington's assaults on S.T. and those on her sisters, thus demonstrating Washington's propensity to commit the sexual assaults. Indeed, the sexual assaults against the three girls were inextricably linked, including the acts and circumstances of the assaults, and the testimony of V1 and V2 did not exceed what was required to demonstrate propensity. This negates Washington's claim that he was subjected to a mini-trial on the other offenses. See *People v. Ramsey*, 2017 IL App (1st) 160977, ¶ 33 (holding that the trial court did not abuse its discretion in finding that the probative value of the other-crimes evidence outweighed its prejudicial effect because the defendant's victims shared multiple situational and temporal similarities); *People v. Arze*, 2016 IL App (1st) 131959, ¶ 96 (holding that similarities between victims' testimony about sexual assaults by their doctor, including the acts and circumstances constituting the assaults, supported admission of the other-crimes evidence).

¶ 26 Moreover, the volume of V1's testimony spanning 23 pages and V2's testimony spanning 24 pages of trial transcript compared to S.T.'s testimony spanning 42 pages is an insufficient basis to find prejudice considering the "striking similarities" in the details of the sexual acts committed upon each girl and that the assaults spanned approximately 5 years. Indeed, the trial court noted 13 similarities between the acts and circumstances of Washington's sexual abuses of S.T., V1, and V2. See *Donoho*, 204 Ill. 2d at 184 (other-crimes evidence must satisfy some threshold similarity to the crime charge). Contrary to Washington's claim, the volume of the other-crimes evidence was not excessive, but appropriate and necessary to illustrate the similarities in the assaults over the course of approximately five years and Washington's propensity to the assault the victims. Notably, as the factual similarities with the other-crimes increase, "so does the relevance, or probative value, of the other-crimes evidence." *Id*.

¶ 27 Because the trial court noted similarities between S.T.'s case and Washington's other crimes, his reliance on *People v. Nunley*, 271 Ill. App. 3d 427 (1995), is misplaced. In *Nunley*, this court expressly found that the other-crimes evidence was unrelated to the crime with which defendant was charged and shed no light upon whether the defendant committed the offense on trial. *Id*. at 432. Although Washington relies on some differences between the crimes as a basis to exclude the other-crimes evidence, "[t]he existence of differences between the prior offense and the current charge does not defeat admissibility because no two independent crimes are identical." *Donoho*, 204 Ill. 2d at 185.

¶ 28 Likewise, the State did not unduly focus on the other crimes, which was apparent during closing arguments where the State emphasized to the jury that it would be deliberating whether Washington was guilty of the acts against "[the victim] and [the victim] only." The other-crimes evidence was probative because it shed light on whether Washington committed the sexual assault of S.T., but the other-crimes evidence was not the focal point of the trial and did not

result in a mini-trial within the trial. Although the other-crimes evidence was clearly prejudicial, the trial court did not abuse its discretion when it determined that its prejudicial effect did not outweigh its value as probative of Washington's propensity to commit sexual assaults.

¶ 29 Washington next claims that the trial court erred in admitting a certified copy of his 2013 conviction for predatory criminal sexual assault of V1 for impeachment purposes asserting that the danger of unfair prejudice outweighed its probative value. We will not reverse a trial court's ruling admitting evidence of a prior conviction for impeachment purposes absent an abuse of discretion. *People v. Mullins*, 242 Ill. 2d 1, 15 (2011).

¶ 30 Our supreme court's decision in *People v. Montgomery* articulated the test for the admissibility of a prior conviction to attack a defendant's credibility. 47 Ill. 2d 510 (1971). Under *Montgomery*, evidence of a defendant's prior conviction is admissible to attack credibility where: (1) the prior conviction was for a crime punishable by death or imprisonment in excess of one year, or a crime involving dishonesty or false statement; (2) less than 10 years has elapsed since the date of conviction of the prior crime or release of the witness from confinement; and (3) the probative value of admitting the prior conviction outweighs the danger of unfair prejudice. *Id.* at 516; *People v. Patrick*, 233 Ill. 2d 62, 68-69 (2009). When conducting the balancing test, the trial court should consider "the nature of the prior conviction, its recency and similarity to the present charge, other circumstances surrounding the prior conviction, and the length of the witness' criminal record." *People v. Boston*, 2017 IL App (1st) 140369, ¶ 72. Washington concedes that the first two prongs of the *Montgomery* test were satisfied, but contends that the trial court improperly determined the prior conviction's probative value outweighed its potential unfair prejudice. *People v. Atkinson*, 186 Ill. 2d 450, 456 (1999).

¶ 31 Washington's prior conviction for predatory criminal sexual assault of V1 was properly admitted for impeachment purposes because he denied committing any sexual assaults against

S.T. and her sisters. The decision to testify ultimately belongs to the defendant, but in choosing to testify, the defendant faces the serious risk of impeachment and may potentially open the door to otherwise inadmissible evidence. *Patrick*, 233 Ill. 2d at 69 (2009). Importantly, the trial court explicitly ruled that Washington's prior conviction could be admitted for impeachment purposes only if Washington testified at trial and opened the door by denying that he committed the crimes. During his testimony, Washington did just that and unequivocally denied not only assaulting S.T. and her sisters, but also that his written statements to that effect were true. Under these circumstances, the trial court did not err in admitting the prior conviction for impeachment purposes. See *People v. Harris*, 231 Ill. 2d 582, 585, 588-92 (2008) (defendant's testimony at trial that "[he] don't commit crimes" sufficiently opened the door for the introduction of certified copies of defendant's two most recent felony juvenile adjudications for impeachment purposes).

¶ 32 In any event, Washington contends that the trial court did not properly conduct the *Montgomery* balancing test. But there is no basis in the record to find that the trial court failed to either conduct the *Montgomery* balancing test or sufficiently consider potential unfair prejudice. See *People v. Watkins*, 206 Ill. App. 3d 228, 245 (1990) (A reviewing court will assume that the trial court conducted the *Montgomery* balancing test absent an express indication that the trial court was unaware of its obligation to conduct the test.) Indeed, the record contains multiple references to the balancing test. Not only did the State's motion *in limine* cite to *Montgomery*, but the trial court initially reserved its ruling on the matter, stating that the prior conviction could not come in unless the defense opened the door. Likewise, the trial court explicitly stated during the hearing on Washington's motion for a new trial that "the probative value of the prior conviction *** did outweigh any prejudicial effect" and cited numerous cases supporting the ruling. Because the trial court originally reserved ruling on the State's motion *in limine* seeking to admit the prior conviction and cited extensive case law in ruling on Washington's posttrial

motion relating to the admission of the prior conviction, the only reasonable inference is that the trial court was mindful of the *Montgomery* balancing test throughout the trial. Accordingly, there is no basis supporting the conclusion that the trial court did not adhere to *Montgomery*.

¶ 33 Moreover, because Washington denied sexually assaulting S.T. and her sisters despite their consistent testimony that the abuse occurred, credibility became an issue for the jury to decide. Consequently, the trial court properly determined that the probative value in admitting the prior conviction for impeachment purposes outweighed any unfair prejudice. And to minimize any prejudicial effect, the trial court barred any examination about the facts of the prior conviction and prohibited disclosure of the victim's name and Washington's sentence. Ultimately, the State admitted a certified copy of the conviction and did not elicit or offer details relating to that prior conviction.

¶ 34 The trial court also instructed the jury that the prior conviction could be considered on the issue of Washington's credibility, but could not be considered as evidence of guilt for the crimes charged. See *Atkinson*, 186 Ill. 2d at 463 (finding no abuse of discretion in admitting a prior conviction for a similar offense particularly where the trial court strictly limited use of the prior conviction by instructing the jury that the prior conviction should be considered only to determine the defendant's credibility.) Similarly, in response to the jury's note requesting the evidence in the prior conviction, the trial court reiterated that it had the instructions and all of the necessary evidence. Although Washington contends that substantial similarities between his prior conviction and the offenses for which he was on trial created "inevitable pressure" on the jury to find him guilty, courts have consistently rejected this same contention. *Id*. at 462-63; *People v. Redd*, 135 Ill. 2d 252, 326 (1990); *People v. Robinson*, 299 Ill. App. 3d 426, 442 (1998). Consequently, the trial court's admission of Washington's prior conviction for predatory criminal sexual assault was not an abuse of discretion.

¶ 35 **CONCLUSION**

¶ 36 For the foregoing reasons, the judgment of the circuit court of Cook County is affirmed.

¶ 37 Affirmed