2017 IL App (1st) 161823-U

No. 1-16-1823

Order filed December 6, 2017

Third Division

IN THE

APPELLATE COURT OF ILLINOIS

FIRST DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County.
	)	
v.	)	No. 16 DV 72241
	)	
FREDRICK HEYMAN,	)	Honorable
	)	Yolande M. Bourgeois,
Defendant-Appellant.	)	Judge, presiding.

JUSTICE FITZGERALD SMITH delivered the judgment of the court.
Justices Howse and Lavin concurred in the judgment.

ORDER

¶ 1 *Held*: Defendant's conviction for domestic battery affirmed over his contention that the trial court erred when it admitted evidence of defendant's prior bad acts and barred evidence of the victim's prior bad acts.

¶ 2 Following a bench trial, defendant Fredrick Heyman was convicted of domestic battery (720 ILCS 5/12-3.2(a)(1) (West 2016)) and sentenced to 12 months conditional discharge. On appeal, defendant contends that the trial court erred in admitting evidence of his prior bad acts and barring evidence of the victim's prior bad acts. We affirm.

¶ 3 The State charged defendant with domestic battery in that he knowingly, without legal justification, caused bodily harm to Sarah Antrim-Cambium, his girlfriend, by striking her in the right side of her face with a closed first, causing bruising and swelling.

¶ 4 Prior to trial, the State filed a motion and an amended motion to admit proof of defendant's other crimes pursuant to section 115-7.4 of the Illinois Code of Criminal Procedure (725 ILCS 5/115-7.4 (West 2016)). The amended motion alleged "that on January 23, 2015, defendant and the victim became engaged in a verbal altercation while they were driving regarding defendant's daughter. As the argument escalated, defendant grabbed the victim's hair and slapped her face multiple times." At a pretrial hearing on the motion, defendant objected on the grounds that the State's original motion alleged the altercation occurred in "December 2015" while its amended motion had a date of "January 23, 2015," thus rendering the evidence unreliable. The court granted the State's motion.

¶ 5 At trial, Antrim-Cambium testified that she had a dating relationship with defendant from June 2014 to January 30, 2016. On the evening of January 30, 2016, defendant was driving Antrim-Cambium home from dinner. During the ride, she and defendant were arguing. When they arrived at her home, the argument had died down. Antrim-Cambium asked defendant if he "was coming upstairs," and he said no. Antrim-Cambium stayed in the car to continue their discussion and defendant stated that he was going to drive them to his house instead. The argument picked back up and ended when defendant stopped the car, grabbed Antrim-Cambium's hair, and pulled her head over his leg.

¶ 6 Defendant was screaming at Antrim-Cambium and began punching her in the head with a closed first. Defendant struck Antrim-Cambium "several times." She then threw his phone on the

floor as she tried "to get away." Antrim-Cambium attempted to grab defendant's glasses to protect herself, but could not reach them because defendant bit her thumb. Once he let go, Antrim-Cambium was able to grab defendant's glasses and toss them to the floorboard of the car. While still holding onto Antrim-Cambium's hair, defendant said "get my glasses, you bitch. Get my phone." He allowed her head up just enough for her to pick up his belongings and, at that point, Antrim-Cambium was able to reach the door handle and kick it open. Antrim-Cambium started screaming, but could not get away from the car because defendant was still holding her hair.

¶ 7 Antrim-Cambium heard someone yell out from an apartment window nearby, "Stop that, I see you hitting that woman. I've called 911." Antrim-Cambium told defendant he was "going to jail," and he responded by punching her multiple times. Defendant finally let Antrim-Cambium go when a man, subsequently identified as Joshua Pryor, came down to the car from his apartment. Pryor brought Antrim-Cambium to his apartment to wait for the police to arrive. Antrim-Cambium testified she was "shaken," "afraid," had a "huge knot" on her head, and thought she might have had a brain injury.

¶ 8 After Antrim-Cambium told the police what had occurred, she was taken by ambulance to Saint Francis Hospital where she was diagnosed and treated for subdural hematoma. Photographs of injuries Antrim-Cambium sustained to her face and hand were admitted into evidence.

¶ 9 Antrim-Cambium testified that two days after the assault, she went to court to request an emergency order of protection against defendant. During the hearing on her request, she had testified to a previous incident of abuse by defendant, telling the court it had occurred in

December 2015. However, she had told the court the wrong date. In fact, the correct date of that prior incident was January 23, 2015. On that date, she and defendant were driving to defendant's home while having an argument in the car. Mid-argument, defendant stopped the car, grabbed Antrim-Cambium by her hair, and slapped her across the face "several times" with an open hand. Antrim-Cambium did not report this incident to police.

¶ 10 Joshua Pryor testified that, on the evening of January 30, 2016, he and his girlfriend, Zemaria Jeanty, were at home watching a movie. He heard "loud noises" outside and looked out the window of his second floor apartment to see what was going on. Pryor saw a "semi parked" car and the "driver hitting the passenger." He realized that the passenger was a woman, and saw the driver push the woman's head into the dashboard. At that point, Pryor went outside.

¶ 11 Pryor saw Antrim-Cambium standing outside the car as defendant was exiting the car. Pryor took Antrim-Cambium to his apartment for her safety. Pryor acknowledged that he did not see the entire altercation and only saw what happened inside of the car after he looked out of the window. He did not see Antrim-Cambium strike or scratch defendant, pull defendant's glasses off his face, or take defendant's cell phone out of the console.

¶ 12 Zemaria Jeanty testified that she was watching a movie when she heard a noise outside. She went to her window and saw a car with its door opened. She originally saw only one person in the car, but she could hear "an altercation." She then heard "screaming" and realized there were two people in the car. She saw a woman "leaned over" in the passenger's seat and a man who had the woman's "hair wrapped up in his fist" while he was hitting her. Jeanty screamed "let her go" and that she was "calling the police." She saw the woman's head bounce off the dashboard. Jeanty then called the police.

¶ 13 Pryor returned to the apartment with the woman, Antrim-Cambium, and Jeanty noticed she had a bruise on her forehead, a black eye, and "some other bruising." Jeanty acknowledged that she did not see the entire altercation. She did not see Antrim-Cambium pull defendant's glasses off of his face, throw defendant's cell phone out of the window, grab for defendant's crotch, or scratch defendant's neck or face.

¶ 14 The court denied defendant's motion for a directed finding.

¶ 15 Defendant testified that, on January 30, 2016, he and Antrim-Cambium were leaving a restaurant and he was driving towards her apartment. When he got to Antrim-Cambium's apartment building, she "refused to get out of the car." Defendant decided to drive to his house instead. He stated that the conversation "had been heated," so he pulled out his phone because he thought he might need it to call the police. But, before he could call the police, Antrim-Cambium threw his phone out the window.

¶ 16 Defendant stopped the car, and he and Antrim-Cambium argued "some more." Antrim-Cambium started "scratching at [defendant's] face and pulled [his] glasses off." Photos showing scratches to defendant's neck and face were entered into evidence. Defendant "struggled" with Antrim-Cambium to get his glasses back and eventually retrieved them. Defendant stated there was "no physical contact whatsoever" until Antrim-Cambium scratched his face and pulled off his glasses.

¶ 17 Defendant told Antrim-Cambium to stop attacking him, but she continued to "scratch" him and pulled off his glasses again. Defendant "tried to restrain" Antrim-Cambium by grabbing both of her arms or wrists. He then released one hand, grabbed her hand, and bit her thumb. Defendant stated that he bit Antrim-Cambium because he was attempting to "secure her hand,"

but did not want to "injure" her, so he "gave that up immediately." Next, defendant put Antrim-Cambium in a headlock as she continued to "scratch at" him and attempted to grab his crotch. Defendant stated that he and Antrim-Cambium "were fighting" until he heard a man's voice say "hey, stop it or knock it off," at which time they both stopped.

¶ 18 Defendant testified he did not "think" that he grabbed Antrim-Cambium by the hair during the argument. He denied banging her head against the dashboard. He stated that he "struck her in the top of the head" and "punch[ed]" her forehead, "based on where her swelling was," because he was trying to get her to stop attacking him. He was "trying to avoid her face" and "trying to hit her lightly" in an attempt to send her a message to stop "attacking" him. Defendant did not "believe" he hit Antrim-Cambium in the eye.

¶ 19 Defendant testified that he recalled the incident that Antrim-Cambium testified occurred on January 23, 2015, although he did not remember the exact date. Defendant stated that he and Antrim-Cambium were driving "about 40 or 50 miles an hour" when Antrim-Cambium became upset about something and opened the car door as if she was attempting to jump out of the moving car. Defendant "reached" his hand "around her neck" and "wrapped her and held her" while he was driving because he did not want her to jump out of the car.

¶ 20 Defense counsel asked defendant whether Antrim-Cambium had attempted to open the door while the car was moving on other occasions. The State objected. Defense counsel argued the State had been allowed to introduce defendant's prior bad acts and defendant's testimony would explain Antrim-Cambium's pattern of prior bad acts. The court sustained the objection, stating defendant should have filed a pretrial motion.

¶ 21 The court found defendant guilty of domestic battery and sentenced him to 12 months conditional discharge. It found defendant to be "not credible," noting there was no way Antrim-Cambium received all of her injuries by defendant only hitting her once on top of the head. Defendant's amended motion to reconsider or for a new trial was denied. This appeal followed.

¶ 22 On appeal, defendant argues the trial court denied him a fair trial and abused its discretion when it admitted evidence of his alleged prior bad acts but barred evidence of Antrim-Cambium's prior bad acts.

¶ 23 Section 115-7.4 provides:

> "(a) In a criminal prosecution in which the defendant is accused of an offense of domestic violence as defined in paragraphs (1) and (3) of Section 103 of the Illinois Domestic Violence Act of 1986, * * * evidence of the defendant's commission of another offense or offenses of domestic violence is admissible, and may be considered for its bearing on any matter to which it is relevant.
>
> (b) In weighing the probative value of the evidence against undue prejudice to the defendant, the court may consider:
>
> (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." 725 ILCS 5/115-7.4(a), (b) (West 2016).

¶ 24 Section 115-7.4 expressly permits the introduction of evidence in domestic violence cases that the defendant committed prior acts of domestic violence. *People v. Donoho,* 204 Ill. 2d 159, 176 (2003). This evidence is admissible for any relevant matter, including the defendant's

propensity to commit the charged offense. *People v. Heller*, 2017 IL App (4th) 140658, ¶ 44 (citing *People v. Dabbs*, 239 Ill. 2d 277, 284 (2010)). However, other crimes evidence is admissible in domestic violence cases only "so long as * * * its probative value is not substantially outweighed by the risk of undue prejudice." *Dabbs*, 239 Ill. 2d at 291; 725 ILCS 5/115-7.4(b) (West 2016). The trial court must therefore weigh the probative value of the evidence against its undue prejudice, taking into account (1) the proximity in time to the charged offense; (2) the degree of factual similarity to the charged offense; or (3) any other relevant facts or circumstances. 725 ILCS 5/115-7.4(b) (West 2016).

¶ 25 Although there will always be some form of dissimilarity between independent offenses, only general similarity is necessary for the admission of other crimes evidence. *People v. Taylor*, 101 Ill. 2d 508, 518 (1984). The admissibility of other crimes evidence under section 115-7.4 is a matter that is within the sound discretion of the trial court, and we will not reverse the court's decision to admit other crimes evidence absent a clear abuse of that discretion. *Dabbs*, 239 Ill. 2d at 284. The trial court abuses its discretion if its evaluation of the evidence was arbitrary, fanciful, or unreasonable, or where no reasonable person would agree with it. *Donoho*, 204 Ill. 2d at 182.

¶ 26 We find that the trial court did not err in allowing testimony regarding defendant's prior act of domestic violence against Antrim-Cambium. Defendant argues the court failed to conduct the proper balancing test to determine whether the probative value of the evidence outweighed the prejudicial effect. The report of proceedings on the State's motion *in limine* rebuts this assertion.

¶ 27 During the hearing, the trial court specifically stated it had to consider "[p]roximity in time, a factual similarity between the charged offense, and the prior crime, and other relevant facts and circumstances." It then found that proximity in time between the two acts existed, noting that courts have "held as much as five years apart on proximate time." Here, the first act of domestic violence occurred only a year before the act at bar. See *Donoho*, 204 Ill. 2d 159 at 183-84 (affirming admission of the defendant's other crimes, which occurred 12 and 15 years prior to the charged offense, and declining to adopt a bright-line, 10-year limit rule, and instead finding that timing should be evaluated on a "case-by-case" basis) (citing *People v. Davis*, 260 Ill. App. 3d 176, 192 (1994) (affirming the admission of other crimes evidence over 20 years old where the court found it to be "sufficiently credible and probative")).

¶ 28 The trial court next found "factual similarities, same parties." The evidence supports this determination given the general similarity between the two acts and the common cause for the abuse. During both offenses, defendant was driving with Antrim-Cambium in the car when, during an argument, defendant grabbed Antrim-Cambium by her hair and struck her in her face.

¶ 29 The court next addressed defendant's argument that the evidence should be barred because Antrim-Cambium's assertion of the prior bad act was unreliable given that she had been inconsistent as to when it occurred. Antrim-Cambium had first asserted it occurred in December 2015 but in the amended motion, asserted it occurred on January 23, 2015. The court correctly noted that this related to the weight of the evidence, not its admissibility.

¶ 30 Although the trial court did not specifically articulate its finding that the probative value of the evidence outweighed the potential undue prejudicial effect to defendant, it applied the requisite statutory considerations before admitting the evidence and could reasonably come to

this determination based on the evidence. Both incidents concerned Antrim-Cambium and defendant and took place within a relatively short period of time. Further, they showed a common cause (argument) and type (hair pulling and hitting her in the face). The trial court has broad discretion in determining admissibility under section 115-7.4 (*People v. Gist*, 2013 IL App (2d) 111140, ¶ 18) and it did not abuse its discretion in admitting the evidence of defendant's prior bad act here.

¶ 31 Moreover, assuming *arguendo* the other crimes evidence was erroneously admitted, defendant cannot show this evidence amounted to prejudicial error. *People v. Nieves*, 193 Ill. 2d 513, 530 (2000) (even if other crimes evidence is incorrectly admitted, it is harmless error when a defendant is neither prejudiced nor denied a fair trial). The evidence presented at trial - Antrim-Cambium's testimony, her physical injuries, and the testimony from Pryor and Jeanty - overwhelmingly supported defendant's conviction for domestic battery. The trial court found defendant's version of events "not credible." Further, defendant admitted he struck Antrim-Cambium during the altercation and had the opportunity to explain the earlier January 2015 incident, reframing it as his attempt to hold Antrim-Cambium "around her neck" to keep her from jumping out of a moving car. Thus, even if the other crimes evidence was admitted in error, defendant suffered no prejudice therefrom.

¶ 32 Turning to defendant's second argument, we cannot find the trial court erred by denying defendant leave to admit evidence of Antrim-Cambium's alleged "prior erratic and aggressive behavior." Defendant's proposed testimony was that Antrim-Cambium had attempted to open the car door while it was moving on multiple "other occasions." He asserted this demonstrated Antrim-Cambium's "pattern of prior bad acts."

¶ 33 Defendant's theory of defense was mutual combat and self-defense, and that Antrim-Cambium was the initial aggressor. Pursuant to *People v. Lynch*, 104 Ill. 2d 194 (1984), a defendant who raises mutual combat and self-defense may offer substantive evidence of the victim's violent or aggressive character under one of two scenarios. First, if the defendant knew of the victim's violent or aggressive character or prior acts, the evidence may be offered to support defendant's contention that his use of force was justified under self-defense. *Lynch*, 104 Ill. 2d at 199-200. Second, when there are conflicting accounts as to how the events in question transpired, the defendant may offer evidence to bolster his claim that the victim was the initial aggressor. *Id.* at 200. It is within the trial court's discretion to decide whether evidence is relevant and admissible, and we will not disturb that finding without a clear abuse of discretion. *Dabbs*, 239 Ill. 2d at 284.

¶ 34 Neither of these *Lynch* prongs is applicable in this case. There is no question that conflicting versions as to what occurred were presented at trial. However, evidence under *Lynch* is only admissible if it constitutes "reasonably reliable evidence of a violent character." *Lynch*, 104 Ill. 2d at 201. Defendant's proffered other crimes evidence would demonstrate that Antrim-Cambium attempted to open the car door while it was moving on prior occasions. This evidence was neither probative of Antrim-Cambium's violent or aggressive character nor had it anything remotely to do with defendant's mutual combat or self-defense claims. Moreover, admission of this evidence would have been cumulative, as the court already heard and considered defendant's testimony that Antrim-Cambium attempted to exit a moving vehicle during the January 23, 2015, incident. Accordingly, there was no basis to admit this evidence.

¶ 35 For the foregoing reasons, we find that the trial court did not err in admitting evidence of defendant's other crimes and barring admission of evidence regarding Antrim-Cambium's prior acts. The judgment of the trial court is affirmed.

¶ 36 Affirmed.