

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).

2014 IL App (3d) 120944-U

Order filed October 27, 2014

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

A.D., 2014

| | | |
|--------------------------------------|---|--|
| THE PEOPLE OF THE STATE OF ILLINOIS, |) | Appeal from the Circuit Court of the 10th Judicial Circuit, Peoria County, Illinois, |
| Plaintiff-Appellee, |) | |
| v. |) | Appeal No. 3-12-0944 |
| CHARLES WILLIAMS, |) | Circuit No. 12-CF-2 |
| Defendant-Appellant. |) | Honorable Timothy M. Lucas, Judge, Presiding. |

JUSTICE SCHMIDT delivered the judgment of the court.
Justices Holdridge and McDade concurred in the judgment.

ORDER

- ¶ 1 *Held:* The trial court did not abuse its discretion in denying motion for mistrial where it cured potential prejudice by sustaining objection to testimony, admonishing the jury to disregard witness's response, and later instructing the jury not to consider any evidence that had been stricken.
- ¶ 2 Defendant, Charles Williams, was charged by information with home invasion (720 ILCS 5/12-11(a)(1) (West 2010)). At trial, a State's witness made a passing reference to defendant's previous tenure in the Department of Corrections (DOC). The defense immediately objected and moved for a mistrial. The court denied the motion for mistrial, sustained the objection and

instructed the jury to disregard the witness's comment. Defendant was subsequently found guilty and sentenced to a term of 14½ years' imprisonment. Defendant appeals, arguing that the court abused its discretion in denying his motion for mistrial. We affirm in part and remand with directions.

¶ 3

FACTS

¶ 4

On January 1, 2012, defendant was charged by information with home invasion (720 ILCS 5/12-11(a)(1) (West 2010)). The information alleged, *inter alia*, that on or about December 30, 2011, defendant entered the dwelling of Latonia Smith without authority to do so. The matter proceeded to a jury trial on October 2, 2012.

¶ 5

The State's first witness was Smith. Smith testified that defendant was a former boyfriend and that he lived at her home—along with her children—while she and defendant were in a relationship. After the relationship ended in October of 2011, defendant moved out of the house to stay with his sister in Indiana. Defendant left some clothes in the house when he moved out, but told Smith to get rid of them. Smith considered defendant to have moved out permanently. After defendant moved out, Smith never invited him back.

¶ 6

Smith testified that on December 30, 2011, she received a ride home from work from Lavay Miller. Upon arriving at her house that afternoon, she saw defendant standing on her porch. Smith opened the door to the home, and defendant brushed past her and went inside. Smith suggested they talk outside, at which point defendant exited the home. After a brief exchange on the porch, Smith told defendant he was not welcome there, then went inside and locked the door.

¶ 7

Smith testified that defendant then kicked the front door open, denting the door and the lock, and entered the house. As Smith ran to call the police, she heard defendant and Miller

arguing. Defendant threatened to kill everyone in the house and grabbed a "handful" of knives. Smith testified that defendant was "coming at" her and Miller with the knives. Defendant then began fighting with Miller, but fled when police arrived.

¶ 8 On cross-examination, defense counsel returned to the events of the initial breakup, asking Smith, "[H]e left his stuff at the house. Right?" Smith replied as follows:

"He didn't leave that much stuff. It was probably just maybe like some things that he'd worn from when he got home from the Department of Corrections; a sweatshirt, a pair of jeans from the Department of Corrections, and like a pair of tennis shoes. Things he didn't want."

Defense counsel immediately requested a bench conference, after which the court instructed that the jury should be removed from the courtroom.

¶ 9 Defense counsel argued that Smith's references to the DOC was "highly prejudicial," and requested a mistrial. The court found that the testimony "was not particularly irrelevant to the question that was posed to the witness," denied the motion for a mistrial, and chose instead to admonish the jury that it should disregard what it had heard. When the jury returned to the courtroom, the court stated:

"I am going to advise you at this time that you are to completely disregard the last answer that was provided to you by Ms. Smith at the time that we did break. So you will be later instructed as to what you are permitted to consider, which is the evidence received and the exhibits which are received, and anything that is not received or is subsequently advised to be received for only a limited purpose is to be treated in that fashion. You are to disregard her last response.

¶ 10 The State also called Miller, whose testimony corroborated that of Smith. Miller testified that defendant was at Smith's house when he dropped her off. Miller got out of his car to ensure that Smith could enter her house. Defendant then "barged" past Smith into the house, and Smith and Miller followed. Smith and defendant returned to the porch at Smith's request, while Miller remained in the house. Smith reentered the house and locked the door behind her, at which point defendant kicked the door in. Miller also testified that defendant threatened to "kill everybody." Defendant grabbed two knives and charged at Smith, then approached Miller. Miller stated that defendant ran from the house when he heard sirens.

¶ 11 The defense called Cedric Martin, who testified that he worked with Smith and previously with defendant. Martin testified that he carpooled to work with defendant and Smith in 2011, and that defendant and Smith were living together at that time. Martin had been inside the home, where he saw that defendant had clothes and other belongings. Martin admitted that he did not know the status of defendant and Smith's relationship.

¶ 12 Smith was called in rebuttal. Smith testified that she and defendant broke up in October of 2011, and that defendant moved out immediately. Smith admitted that Martin had previously provided her rides to work, but had not done so since her breakup with defendant. She testified that Martin had not given her any rides to work in December of 2011.

¶ 13 In closing, defense counsel argued that the State had not met its burden in proving that defendant did not have the authority to enter the home. Following the parties' arguments, the court provided the jury with its instructions. These included the instruction that it "should disregard testimony and exhibits which the Court has refused or stricken."

¶ 14 The jury found defendant guilty of home invasion, and the court entered a conviction on the verdict. Defendant was sentenced to a term of 14½ years' imprisonment. The sentencing

order included a judgment for costs. Defendant's motion to reconsider the sentence was subsequently denied. Defendant appeals.

¶ 15

ANALYSIS

¶ 16

A. Motion for Mistrial

¶ 17

A trial court has broad discretion in determining the propriety of declaring a mistrial. *People v. Hall*, 194 Ill. 2d 305 (2000). The denial of a mistrial will not be disturbed on review absent an abuse of that discretion. *People v. Nelson*, 235 Ill. 2d 386 (2009). An abuse of discretion occurs where the trial court's ruling is arbitrary, fanciful or unreasonable, or where no reasonable person would take the view adopted by the court. *People v. Illgen*, 145 Ill. 2d 353 (1991).

¶ 18

We begin our analysis by noting that Smith's testimony stating defendant had clothes from the DOC, which naturally leads to the inference that defendant had been imprisoned there, was inadmissible. Evidence of other crimes committed by a criminal defendant is generally inadmissible because of its tendency to "overpersuade[] the jury, which might convict the defendant only because it feels he or she is a bad person deserving punishment." *People v. Lindgren*, 79 Ill. 2d 129, 137 (1980). Though no specific offense was referenced, the trial court may nevertheless exclude evidence if its probative value is substantially outweighed by its prejudicial effect. *People v. Donoho*, 204 Ill. 2d 159 (2003). The State does not argue that Smith's comment was admissible.

¶ 19

As a general rule, a court can usually cure an inadmissible statement from a witness by sustaining an objection or instructing the jury to disregard what it has heard. *Hall*, 194 Ill. 2d 305. However, "situations exist where the improper question is so damaging that a trial court cannot cure the prejudicial effect." *Id.* at 342. To determine whether an inadmissible statement

by a witness is curable through jury instruction, courts will look to the character and magnitude of the error. See *Nelson*, 235 Ill. 2d 386; *Hall*, 194 Ill. 2d 305. "A mistrial should be granted where an error of such gravity has occurred that the defendant has been denied fundamental fairness such that continuation of the proceedings would defeat the ends of justice." *Nelson*, 235 Ill. 2d at 435; see also *Hall*, 194 Ill. 2d at 341 (" 'A mistrial should generally be declared only as the result of some occurrence at trial of such character and magnitude that the party seeking it is deprived of his right to a fair trial.' ") (quoting *People v. Redd*, 135 Ill. 2d 252, 323 (1990)).

¶ 20 In *Hall*, the defendant was on trial for murder, and the State asked a witness if she remembered telling the police about the defendant's previous assault charge. *Hall*, 194 Ill. 2d 305. Before the court could rule on the objection, the witness stated that she did not remember. *Id.* The court then sustained the objection and admonished the jury to disregard what it had heard. *Id.* Reasoning that the State had only asked a single question, and that the witness's answer was simply that she did not remember, the supreme court found that the error was cured by the admonishment to the jury, and that the defendant had not been deprived of a fair trial. *Id.*

¶ 21 In *People v. Hernandez*, 121 Ill. 2d 293 (1988), confessions of codefendants were introduced with the name of a third defendant insufficiently redacted. The trial court subsequently instructed the jury that those statements could be considered only against their authors. *Id.* The supreme court found that a limiting instruction could not possibly cure a failure of the constitutional right of cross-examination. " 'It would be difficult to imagine any evidence that would be more prejudicial' than inculcation of the defendant by a nontestifying codefendant." *Id.* at 318 (quoting *People v. Buckminster*, 274 Ill. 435, 448 (1916)).

¶ 22 Illinois courts have also looked to the culpability of the prosecution in eliciting inadmissible testimony when deciding whether a mistrial is an appropriate remedy. In *Hall*, 194

Ill. 2d 305, the defendant argued—in addition to the argument discussed previously—that the State improperly elicited testimony regarding the defendant's possession of marijuana, in violation of the court's *in limine* order. The trial court accepted the State's explanation that the witness's reference to the marijuana had been unresponsive to the question, and the supreme court relied on this in finding that the improper testimony had been properly cured. In *People v. Hood*, 229 Ill. App. 3d 202 (1992), the court found that an improper question and unresponsive answer in that case were "not accidental," but instead were "deliberate tactics that were highly prejudicial." *Id.* at 214. The improper testimony was held to be incurable. *Hood*, 229 Ill. App. 3d 202.

¶ 23 The inadmissible testimony in the case at hand was of little magnitude, and was therefore sufficiently cured when the court sustained the objection and directed the jury to disregard what it had heard. Although the jury could infer from Smith's testimony that defendant had spent time in the DOC, the passing comment made by Smith provided no details about the reason for defendant's stay, the length of the stay, or how long ago it occurred. There is also no culpability on the part of the State with regard to the inadmissible testimony, as Smith's comment was made in response to cross-examination by defense counsel.

¶ 24 The error in this case was benign in comparison to that in *Hall*, a case in which the inadmissible testimony was still found to be curable. In *Hall*, the defendant was on trial for murder, and the State explicitly mentioned a previous conviction for assault—a violent crime. Here, however, the jury was merely able to infer that defendant was once in the DOC for an unspecified reason and an unspecified period of time.

¶ 25 Furthermore, even if the inadmissible statement had not been curable, any prejudice flowing therefrom would have been *de minimis* in light of the evidence against defendant. The

defense's theory of the case was that defendant had retained authority to enter the house. But Smith testified unequivocally that defendant had moved out, had not been invited back, and that it had been communicated that he was unwelcome. Smith and Miller both testified that defendant fled when it became apparent that the police were coming. See *People v. Harris*, 225 Ill. 2d 1 (2007) (evidence of flight admissible as proof of consciousness of guilt). The defense's lone witness admitted that he was unfamiliar with the status of defendant's relationship with Smith. Though Martin testified that he had seen some of defendant's belongings in the house in December of 2011, Smith had already stated that defendant had left some things behind.

¶ 26 Any amount of prejudice flowing from the inadmissible comments made by Smith was both minimal and cured by the court's subsequent admonishments and instructions to the jury. The court, therefore, did not abuse its discretion in denying defendant's motion for a mistrial.

¶ 27 B. Fines and Fees

¶ 28 Defendant argues that his case payments sheet—indicating a total of \$1,052.50 in monetary assessments—was not entered pursuant to any order enumerating proper assessments in the case. See *People v. Hunter*, 2014 IL App (3d) 120552 (remanding with directions to review cost sheet where specific monetary assessments had not been articulated in a judicial order). Defendant contends that these assessments were improperly imposed by the circuit clerk and that certain errors were made in the calculation of some fines and fees. The State agrees with all of defendant's contentions. We therefore remand the matter for proper entry of a court order for enumerated costs.

¶ 29 CONCLUSION

¶ 30 The judgment of the circuit court of Peoria County is affirmed in part, and the cause is remanded with directions.

¶ 31 Affirmed in part; cause remanded.