

No. 1-12-2955

**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).

---

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.
	)	
v.	)	No. 11 CR 17460
	)	
FLOR DE MARIA ARGUETA,	)	Honorable
	)	James B. Linn,
Defendant-Appellant.	)	Judge Presiding.

---

JUSTICE HOFFMAN delivered the judgment of the court.  
Presiding Justice Connors and Justice Delort concurred in the judgment.

**ORDER**

¶ 1 *Held:* We affirm defendant's conviction of promoting prostitution over her contention that the trial court allowed inadmissible evidence that she was involved in a human trafficking operation.

¶ 2 Following a bench trial, defendant Flor De Maria Argueta was convicted of promoting prostitution and sentenced to 18 months' imprisonment. On appeal, defendant contends that she was denied a fair trial where the court allegedly allowed other-crimes evidence regarding a human trafficking investigation that was not a charged offense. We affirm.

¶ 3 At trial, Officer Dan Rodriguez testified that he worked for the Chicago Police Department's human trafficking task force, which was in charge of investigating victims of human trafficking. On September 20, 2011, he was part of an investigation team that found an advertisement in a Spanish newspaper that stated, "Latin [girls], sensual are waiting in the area near north." The advertisement also provided a phone number, which Rodriguez called. Rodriguez spoke to a woman, later identified as defendant, on the phone. Rodriguez indicated that he was interested in a date, and defendant told him that a one hour session would cost \$120 and a half hour session would cost \$80. She then directed Rodriguez to the intersection of Monticello and North Avenues in Chicago.

¶ 4 After arriving at Monticello and North Avenues, Officer Rodriguez, who was undercover and had four marked \$20 bills with him, again spoke to defendant on the phone. She directed him to 1553 North Monticello Avenue, and when Rodriguez arrived at the address, defendant opened the door to the apartment and he entered. Defendant told Rodriguez that she had "one girl available" and that a younger girl was on her way to the apartment. Codefendant Jessica Lemus-Rivera, who is not a party to this appeal, walked out of the back room and defendant introduced Rodriguez to her. Defendant asked Rodriguez if he was interested in the half hour or hour session. Rodriguez responded that he was interested in the half hour session and asked defendant what he could get for the money. Defendant stated, "oral copulation and sexual intercourse." Defendant opened the door to the back room and codefendant escorted Rodriguez inside. Defendant explained that Rodriguez had to give her the \$80, and he complied. Rodriguez initially went into a separate room with codefendant, but then exited that room and decided to wait for the younger girl.

¶ 5 Officer Rodriguez testified that from a human trafficking standpoint, he had to wait for the younger girl because if she was a minor he had to do a "recovery" and protect her from any sexual acts. Rodriguez waited about 45 minutes, but the second girl never arrived. Rodriguez told defendant that he was running out of time, and defendant responded that the younger girl would arrive eventually. Defendant and codefendant directed him to the back room, and Rodriguez had a conversation with codefendant that ended with Rodriguez calling for police backup, announcing his office, and arresting defendant and codefendant. Rodriguez recovered the marked bills he gave to defendant from a kitchen cabinet in the apartment.

¶ 6 Following argument, the trial court found defendant guilty of promoting prostitution. In doing so, the court stated that it believed Officer Rodriguez's testimony beyond a reasonable doubt.

¶ 7 On appeal, defendant contends that her conviction should be vacated and her cause remanded for a new trial because the trial court deprived her of a fair trial where it admitted other-crimes evidence, *i.e.*, testimony that Officer Rodriguez was undertaking a human trafficking investigation. She claims that this purported evidence prejudiced her where it was far more serious than the conduct with which she was actually charged.

¶ 8 Defendant acknowledges she did not raise this issue in the trial court and requests that we review the issue under the plain error doctrine. The plain error doctrine permits a reviewing court to consider unpreserved error where (1) a clear or obvious error occurred and the evidence is so closely balanced that the error alone threatened to tip the scales of justice against the defendant, regardless of the seriousness of the error; or (2) a clear or obvious error occurred and that error is so serious that it affected the fairness of the defendant's trial and challenged the integrity of the judicial process, regardless of the closeness of the evidence. *People v. Sargent*,

239 Ill. 2d 166, 189 (2010).

¶ 9 We begin our plain error analysis by first determining whether any error occurred at all. *Id.* If error did occur, we will consider whether the first prong of the plain error doctrine has been satisfied as defendant only advanced an argument in her brief on appeal under that prong. Defendant bears the burden of persuasion to show that plain error occurred. *Id.* at 189-90.

¶ 10 Evidence of crimes for which the defendant is not on trial is only admissible when relevant for a purpose other than to show defendant's propensity to commit a crime. *People v. Donoho*, 204 Ill. 2d 159, 170 (2003); see also *People v. Reeves*, 385 Ill. App. 3d 716, 731 (2008) (applying the rule limiting other-crimes evidence to "bad acts"). Several recognized purposes include identity, motive, intent, design, course of conduct, or common scheme. *People v. Poe*, 16 Ill. App. 3d 805, 806 (1974). In addition, the offering of other-crimes evidence may be admissible when it "constitutes a continuing narrative of the circumstances attending the entire transaction." *People v. Evans*, 373 Ill. App. 3d 948, 958 (2007), quoting *People v. Carter*, 362 Ill. App. 3d 1180, 1189 (2005).

¶ 11 When other-crimes evidence is offered, the trial court must weigh its probative value against its prejudicial effect, and may exclude evidence if its prejudicial effect substantially outweighs its probative value. *People v. Illgen*, 145 Ill. 2d 353, 365 (1991). The admissibility of evidence is within the sound discretion of the trial court, and its decision may not be overturned on appeal absent a clear abuse of discretion. *Evans*, 373 Ill. App. 3d at 959.

¶ 12 Here, we agree with the State that no error occurred when the court allowed Rodriguez to testify regarding his human trafficking investigation because Officer Rodriguez's testimony did not describe or suggest that defendant was involved in any other criminal misconduct, and certainly not any involvement by her in an illegal human trafficking operation. Here, the

contested dialogue between the assistant State's Attorney and Rodriguez was as follows:

"Q. Why did you exit the room?

\*\*\*

A. I came out of the room because as previously mentioned the defendant had mentioned that there was another girl coming and that she was young of age. So to wait for the other female I decided to come out of the room and wait.

Q. From a human trafficking standpoint why was that important to you?

MR. WHITE [defense attorney]: Objection.

THE COURT: Overruled.

A. Because if she's a minor we have to do a recovery and protect her from any sexual acts.

MR. WHITE: Objection, move to strike.

THE COURT: Overruled."

¶ 13 The above testimony shows that instead of Officer Rodriguez accusing defendant of any kind of misconduct related to human trafficking, he was simply explaining why he wanted to wait for the younger girl to arrive. See *People v. Johnson*, 114 Ill. 2d 170, 194 (1986) (the consequential steps in the investigation of a crime and the events leading up to an arrest are important to a full explanation of the State's case to the trier of fact). Taken in its entirety, Rodriguez's testimony showed that after defendant introduced him to codefendant, and he and codefendant had a conversation in the back room, he decided to wait for the younger girl to arrive. Rodriguez actually curtailed his investigation for 45 minutes to wait and see if she arrived at the apartment. As the State points out, without Rodriguez's explanation as to why he chose to wait for the unidentified girl who never showed up, the trial court would have been left with a long, unexplained time gap that could have only invited speculation about his conduct.

¶ 14 We further note that, as defendant correctly acknowledges, unless the record affirmatively establishes otherwise, a judge in a bench trial is presumed to know the law and to consider only admissible evidence. *People v. Tye*, 141 Ill. 2d 1, 26 (1990). In the present case, the trial court was entitled to consider Rodriguez's stated reason for not arresting defendant and

codefendant immediately after they committed the charged prostitution crimes because it was relevant to explain the course of his undercover investigation. Moreover, the State neither made an opening statement nor argued the evidence at the conclusion of trial, and there was no evidence in the record showing that the trial court drew any inference that defendant was involved in human trafficking. In its findings, the court simply indicated that it found Rodriguez to be a credible witness. The fact that the State, at sentencing, argued in aggravation that the human trafficking motive was "at the core of this case" does not change this result. Therefore, the trial court did not abuse its discretion in allowing Rodriguez's testimony regarding why he was waiting for the younger girl, and no error occurred here. Because no error occurred, we need not address defendant's claim that the evidence was closely balanced.

¶ 15 In reaching this conclusion, we find *People v. Naylor*, 229 Ill. 2d 584 (2008), relied on by defendant, distinguishable from the case at bar. In *Naylor*, our supreme court found that the trial court improperly overruled an objection to the admission of the defendant's prior conviction for impeachment purposes, constituting reversible error. *Id.* at 603. In doing so, the *Naylor* court held that "[w]here an objection has been made to the evidence and overruled, it cannot be presumed that the evidence did not enter into the court's consideration. The ruling itself indicates that the court thought the evidence proper." *Id.* at 605. Here, defendant maintains that, similarly to *Naylor*, the fact that the court overruled an objection to the human trafficking reference itself indicates that the court thought this to be proper and relevant evidence. However, unlike *Naylor*, no error occurred in this case when the trial court admitted Rodriguez's testimony concerning his human trafficking investigation. Thus, even if defendant is correct and the court did consider this testimony, she was not prejudiced by the court's consideration of properly admitted evidence.

¶ 16 Defendant alternatively contends that this court should find her trial counsel was ineffective for failing to argue in her posttrial motion that the trial court erred in allowing Officer Rodriguez's testimony about the human trafficking investigation. A defendant alleging ineffective assistance of counsel must establish that both her counsel's performance was objectively unreasonable and defendant was prejudiced by the unreasonable performance. *People v. Enis*, 194 Ill. 2d 361, 376 (2000), citing *Strickland v. Washington*, 466 U.S. 668, 687 (1984). Based on the evidence in this case, defendant cannot show she was prejudiced or that counsel's performance was objectively unreasonable. We have found the trial court did not err in allowing into evidence Rodriguez's statements about why he was waiting for the younger girl, and counsel is under no obligation to preserve issues for review where no error occurred. See *People v. Ivy*, 313 Ill. App. 3d 1011, 1018 (2000) (stating that counsel is not required to make futile motions to avoid charges of ineffective assistance of counsel).

¶ 17 For the foregoing reasons, we affirm the judgment of the circuit court.

¶ 18 Affirmed.