2013 IL App (1st) 111034-U

FOURTH DIVISION
MARCH 28, 2013

No. 1-11-1034

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. 09 CR 12845
	)	
JORGE FLORES-SANCHEZ,	)	Honorable
	)	Timothy J. Chambers,
Defendant-Appellant.	)	Judge Presiding.

JUSTICE PUCINSKI delivered the judgment of the court.
Presiding Justice Lavin and Justice Fitzgerald Smith concurred in the judgment.

O R D E R

¶ 1 *Held:* The trial court properly allowed three instances of other-crime domestic violence evidence, which did not result in an improper "mini-trial" on the uncharged offenses. Affirmed; fines and fees order corrected.

¶ 2 After a jury trial, defendant Jorge Flores-Sanchez was convicted of domestic battery of his former girlfriend, Melissa Varvouledos, and violation of an order of protection. He was sentenced to 18 months' imprisonment and the trial court entered a new order of protection. Defendant was assessed a total of $985 in fines and fees. On appeal, defendant contests the trial court's admission of other-crimes evidence and contends that if this court finds the other-crimes evidence was properly admissible, the trial court nevertheless erred in failing to limit the State's

use of the evidence, creating an improper and prejudicial mini-trial. He further contends the fines and fees order miscalculates the total assessment amount and fails to provide pre-sentence credit for time served, and requests this court correct the order.

¶ 3 Prior to trial, the State moved to admit other-crimes evidence of four prior incidents of domestic violence that defendant committed against Varvouledos, as permitted by section 115-7.4 of the Code of Criminal Procedure of 1963 ("Code"). 725 ILCS 5/115-7.4 (West 2008). The State proffered that the other-crimes evidence showed defendant's intent and lack of mistake, and argued that under section 115-7.4, the evidence was admissible for its bearing on any crime to which it was relevant. After a hearing, the trial court allowed three incidents that occurred on September 21, 2008, January 7, 2009, and January 15, 2009, and denied the motion as to the fourth incident involving telephone harassment because it was too dissimilar to the other incidents. The trial court explained the other-crimes evidence was relevant to show the absence of mistake, particularly because defendant made a prior statement asserting that Varvouledos fell down the stairs. It also explained that the three other incidents concerned the "same type of facts" as alleged in the instant case because they involved the "same defendant, the same victim, the same type of abuse," and that "even though they are remote in time," the court stated the prior incidents "can show a continuing pattern between this victim and this defendant[.]"

¶ 4 Defendant's case proceeded to a jury trial. Regarding the domestic battery charge for which defendant was being tried, Varvouledos testified that on June 26, 2009, she took their son Julian to defendant's home so that he could babysit Julian while she ran errands. While there, Varvouledos and defendant began arguing about whether they were both dating other people. She testified that defendant had not been drinking that day. During the argument, defendant called Varvouledos a "whore" and a "b***." As Varvouledos was attempting to go into the living room to get Julian, defendant choked her, and pushed her onto the kitchen floor. When

she was able to stand, she picked up Julian and moved to leave the apartment when defendant struck her in the back and hit Julian in the leg. Varvouledos put Julian down and began walking to the front door. Defendant followed her to the door and pushed her down 10 stairs. Defendant said to Varvouledos, "Look how mad you made me and look what you made me do. Now I'm going to get in trouble because of you. And you get me so mad." There was an order of protection in effect, issued May 7, 2009, at the time of this incident.

¶ 5 Varvouledos drove herself to the police station, and then an ambulance took her and Julian to the hospital. Varvouledos was given a sling for her arm and pain medication. She had marks on her neck and eye, and bruises on her legs. An evidence technician photographed Varvouledos' injuries and the photographs were entered into evidence. Varvouledos testified that her bruises darkened in the days after the photographs were taken.

¶ 6 Chicago police officer Patricia Moran arrested defendant in response to a call of domestic violence at defendant's residence for the June 26 incident. After taking defendant to the police station, Moran went to the hospital and spoke with Varvouledos in the triage area for about 5 to 10 minutes. Varvouledos was barefoot and crying and had red marks on her neck.

¶ 7 During the course of the trial, pursuant to the ruling on the State's motion *in limine*, the State also presented testimony from Varvouledos and other witnesses regarding the circumstances surrounding three prior incidents of domestic violence committed by defendant against Varvouledos. The first occurred on September 21, 2008. In the early morning hours, defendant accused Varvouledos of having another man in the car with her and when she returned home, defendant accused her of lying when she denied that another man was with her. He pushed Varvouledos down onto the couch twice, choked her, and threw her over a table. Varvouledos called the police and filed a report but did not seek an order of protection.

¶ 8 Officer Ken Mikolajczyk testified that he responded to the September 21 call and observed the apartment in "considerable disarray," noting items strewn on the floor and broken glass. Mikolajczyk observed red marks on Varvouledos' face, red markings around her neck that indicated someone tried to choke her, and bruises on her upper body. Varvouledos told the officer that she sustained her injuries from a domestic incident between herself and defendant, and that it was an "ongoing problem." Mikolajczyk left the apartment to look for defendant but was unable to locate him.

¶ 9 Varvouledos further testified that on January 7, 2009 at about 9:30 a.m., defendant arrived intoxicated at Varvouledos' home. They argued about his intoxication and defendant choked Varvouledos, pushing her down while he did. While pushing her down, defendant struck her in the chest, which was more sensitive due to her heart condition, and she hit her head on a metal fixture. Varvouledos called the police and filed a report, but did not seek an order of protection and did not want to file charges against defendant because she wanted him to have a relationship with Julian. Responding officer Katlin Cygnar testified that she observed that Varvouledos was upset and looked as though she had been crying. She also had redness on her cheeks. Cygnar completed an incident report and provided Varvouledos with information regarding obtaining an order of protection.

¶ 10 Finally, Varvouledos testified regarding a third incident that occurred on January 15, 2009. Defendant arrived at her home intoxicated and they argued about his drinking. Defendant struck Varvouledos in her face multiple times with a closed fist and then choked her. Varvouledos sustained bruises from this and the prior incident. She called the police and when they arrived, she filed a report. She did not allow the evidence technicians to photograph her injuries, but the next day, Varvouledos allowed her friend to photograph them. In the

photographs, Varvouledos had bruises on her face and neck, a black eye, and a bloody lip. Some of the injuries were from the January 9 incident. The photographs were admitted into evidence.

¶ 11 Chicago police officer Specht testified that he was dispatched to Varvouledos' home after the January 15 incident and observed that Varvouledos had redness and swelling on the right side of her face, and bruising and swelling in the left chin area. She was visibly distraught. Specht offered to have an evidence technician photograph Varvouledos' injuries but she refused.

¶ 12 The trial court instructed the jury prior to each instance of testimony regarding the other-crimes evidence that such evidence would be presented, but that the jury may only consider the evidence for the issues of intent and absence of mistake. The judge repeated the instruction to the jury after the close of evidence. The State also explained during its closing argument that the jury would receive instructions to consider the other-crimes evidence only on the issues of intent and absence of mistake.

¶ 13 The jury found defendant guilty of violation of an order of protection and domestic battery as to Varvouledos. The trial court sentenced defendant to 18 months' imprisonment. On appeal, defendant contends the trial court erred in admitting other-crimes evidence and that even if other-crimes evidence was properly admissible, the trial court nevertheless erred in failing to limit the State's use of the evidence, creating an improper and prejudicial mini-trial.

¶ 14 Whether to admit evidence of a prior criminal offense ("other-crimes evidence") rests within the sound discretion of the trial court, and we will not reverse its decision unless there was a clear abuse of discretion. *People v. Chapman*, 2012 IL 111896, ¶ 19; *People v. Wilson*, 214 Ill. 2d 127, 136 (2005). We will find an abuse of discretion only when a trial court's decision is "arbitrary, fanciful or unreasonable" or "where no reasonable man would take the view adopted by the trial court." *People v. Donoho*, 204 Ill. 2d 159, 182 (2003). This court "owes some

deference to the trial court's ability to evaluate the impact of the evidence on the jury." *People v. Chambers*, 2011 IL App (3d) 090949, ¶ 10.

¶ 15 Under section 115-7.4 of the Code of Criminal Procedure of 1963 (the "Code") (725 ILCS 5/115-7.4 (West 2008)), specific instances of defendant's prior acts of domestic violence are admissible and may be considered for their bearing on *any matter* to which they are relevant. (Emphasis added.) Generally, other-crimes evidence is admissible if relevant for any purpose other than propensity, including, but not limited to, motive, intent, identity, lack of mistake and *modus operandi*. *People v. Dabbs*, 239 Ill. 2d 277, 283 (2010). This section of the Code provides an exception to the prohibition against the use of propensity evidence, and permits admission of such propensity evidence in a prosecution for domestic violence where the other-crimes evidence is relevant, and the probative value is not substantially outweighed by the risk of undue prejudice. 725 ILCS 5/115-7.4; see also *Dabbs*, 239 Ill. 2d at 290. Further, in weighing the probative value against undue prejudice to the defendant, the trial court may also consider the proximity in time to the charged offense, the degree of factual similarity to the charged offense, or other relevant facts and circumstances. 725 ILCS 5/115-7.4(b)(3).

¶ 16 In this case, the trial court properly allowed evidence of the three prior incidents of domestic violence because the prior incidents are relevant to show defendant committed domestic violence against Varvouledos during the June 26 incident. As allowed by the statute, the evidence of defendant's prior incidents of domestic violence against Varvouledos show his propensity to commit such acts against her. All of the incidents are factually similar in that they involved defendant's physically attacking Varvouledos by shoving, striking, and choking her and were preceded by an argument between the two. Further, all three prior incidents of domestic violence are also in close proximity as they are within nine months of the June 26 incident for which defendant was tried. There is no indication in the record that the trial court's ruling in

admitting the other-crimes evidence was arbitrary, fanciful, or unreasonable because the record shows the trial court considered the facts of the prior and current offenses, and the requirements of section 115-74. The evidence was also relevant to rebut defendant's theory at trial that the abuse did not happen and that Varvouledos lied because she was seeking custody of their son.

¶ 17 Defendant argues that the other-crimes evidence should not have been admitted because intent and absence of mistake were not at issue at trial. However, the statute permits other-crimes evidence for its bearing on *any matter to which it is relevant*, and the evidence was clearly relevant, as explained above. 725 ILCS 5/115-7.4 (a). Additionally, this court can affirm on any ground in the record. See *Chambers*, 2011 IL App (3d) 090949, ¶ 21. In light of this, defendant's argument is misplaced.

¶ 18 Moreover, the probative value of the other-crimes evidence was not substantially outweighed by its prejudicial effect. As explained above, the evidence was relevant. Further, the probative value was great as it showed defendant's propensity for committing domestic violence against Varvouledos, as well as defendant's intent and motive to commit the charged crime. See *People v. Abraham*, 324 Ill. App. 3d 26, 35 (2001) ("[T]he principle that prior assaults against a victim of a crime that a defendant is charged with committing is probative of intent or motive is well established.") citing *People v. Heard*, 187 Ill. 2d 36, 59 (1999); and *People v. McCarthy*, 132 Ill. 2d 331, 337 (1989). Further, the prior assaults are probative of motive because they reveal defendant's hostility toward Varvouledos. See *Heard*, 187 Ill. 2d at 59. We cannot say that the trial court abused its discretion in deciding the probative value of the other crimes outweighed their prejudicial effect. The trial court was in the best position to determine the effect the evidence would have on the jury and we will not substitute the court's judgment for our own. See *Illgen*, 145 Ill. 2d at 376.

¶ 19 Finally, the court repeatedly gave limiting instructions and the State also told the jury the evidence could only be used for the limited purposes of intent and motive. These instructions "limited and substantially reduced any prejudicial effect created by the admission of the prior-offense evidence." *People v. Illgen*, 145 Ill. 2d 353, 376 (1991). Defendant's reliance upon *People v. Nunley*, 271 Ill. App. 3d 427, 433 (1995), and *People v. Thigpen*, 306 Ill. App. 3d 29, 38 (1999), to argue that the trial court's limiting instruction do not cure prejudice are unpersuasive. In *Nunley*, this court concluded that the evidence of the other crime was "completely unrelated to the crime at issue." *Nunley*, 271 Ill. App. 3d at 432. Similarly, this court concluded in *Thigpen* that evidence of the defendant's double murder was "irrelevant" and that despite the trial court's limiting instruction, it was not sufficient to cure the unfair prejudice. *Thigpen*, 306 Ill. App. 3d at 38.

¶ 20 The same cannot be said for the present case because the other-crimes evidence was relevant. Based on the foregoing, we conclude the trial court did not abuse its discretion in permitting other-crimes evidence of defendant's prior acts of domestic violence against Varvouledos. See *Chambers*, 2011 IL App (3d) 090949 (analyzing admission of details of defendant's prior domestic violence conviction under analogous statute (725 ILCS 115-20 (West 2008) and concluding the trial court properly permitted the other-crimes evidence).

¶ 21 Next, defendant alleges that even if the other-crimes evidence was properly admitted, the trial court erred in failing to limit the State's use of the evidence, thus creating an improper and prejudicial mini-trial on offenses for which defendant was not on trial. We disagree. "[R]elevant, detailed evidence of *** other crimes is admissible to the extent necessary to fulfill the purpose for which the evidence is being admitted." *People v. Colin*, 344 Ill. App. 3d 119, 130 (2003). Here, the State presented the evidence of the other crimes to show defendant's intent and lack of mistake. We concluded the evidence was also relevant to show defendant's

propensity to commit domestic violence against Varvouledos and his hostility toward Varvouledous, and thus his motive to attack her. Defendant's reliance upon *People v. Thigpen*, 306 Ill. App. 3d 29 (1999), and *People v. Bedoya*, 325 Ill. App. 3d 926 (2001) is misplaced as those cases are distinguishable. In *Bedoya*, this court explained that the "detail and repetition" of the other-crime evidence had "*nothing*" to do with purported purpose of the evidence. (Emphasis added.) *Bedoya*, 325 Ill. App. 3d at 940-41. Similarly, in *Thigpen*, this court concluded that the other-crimes evidence presented during the defendant's trial was "irrelevant." *Thigpen*, 306 Ill. App. 3d at 38.

¶ 22 Moreover, the State limited the evidence to only that which was necessary to corroborate Varvouledos' testimony, and as a result, only Varvouledos and the responding officers testified regarding the prior incidents. Although defendant argues the photographs of the January 9 and 15 incidents were excessive and inflammatory, we find they were relevant to also corroborate Varvouledos' accounts of the previous abuse. Considering that the other-crimes evidence was not excessive such that an improper and prejudicial mini-trial occurred, we find that the trial court did not abuse its discretion in allowing this testimony. See *Colin*, 344 Ill. App. 3d at 131.

¶ 23 Finally, defendant requests this court order his fines and fees order be corrected. The trial court entered an assessment total of $985. Defendant correctly contends this total was miscalculated, and should have been $965. He further contends the $30 Children's Advocacy Center and $200 domestic violence fine should be offset by $5 per day for 57 days of presentence credit. The State does not respond to this issue in its brief; however, we agree with defendant. Pursuant to section 110-14 of the Code of Criminal Procedure of 1963, defendant was permitted to offset any fines against him with credit of $5 per day for his time in custody prior to sentencing. 725 ILCS 5/110-14(a). Defendant was in custody 57 days prior to sentencing, so the $230 should be deducted from the total on his fines and fees order. The original assessment total

was also miscalculated, thus, we modify the total fines and fees assessment to $735 under Supreme Court Rule 615(b)(2). See *People v. Coleman*, 404 Ill. App. 3d 750, 754 (2010) (vacating unauthorized assessments).

¶ 24 For the foregoing reasons, we affirm the judgment of the circuit court of Cook County and order the clerk of the circuit court to modify defendant's assessment order to reflect the correct amount due of $735.

¶ 25 Affirmed; fines and fees order corrected.