

No. 1-12-1881

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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 22121
)	
VENITA WHITE,)	Honorable
)	Carol M. Howard,
Defendant-Appellant.)	Judge Presiding.

JUSTICE LIU delivered the judgment of the court.
Presiding Justice Harris and Justice Simon concurred in the judgment.

O R D E R

¶ 1 **Held:** The trial court properly admitted evidence of other crimes when that evidence showed defendant's propensity to commit acts of domestic violence against the victim. Defendant was found guilty of first degree murder beyond a reasonable doubt when the evidence at trial established that she grabbed a knife and stabbed the victim during an argument.

¶ 2 Following a bench trial defendant Venita White was found guilty of first degree murder and sentenced to 20 years in prison. On appeal, defendant contends that the trial court erred

when it admitted proof of other crimes, *i.e.*, prior acts of domestic violence against the victim, because these incidents were remote in time and factually dissimilar. Defendant also contends that her conviction for first degree murder must be reduced to involuntary manslaughter because the evidence at trial only established that she acted recklessly. We affirm.

¶ 3 Defendant's arrest and prosecution arose out of a November 2009 incident during which the victim, defendant's long-time boyfriend Andre Brooks, was fatally stabbed.

¶ 4 Prior to trial, the State filed a motion pursuant to section 115-7.4 of the Code of Criminal Procedure of 1963 (the Code) (725 ILCS 5/115-7.4 (West 2008)), to admit evidence of three prior acts of domestic violence between defendant and the victim. The first took place in June 1999, when defendant kicked the victim's car. The second occurred in September 1999, when defendant struck the victim, the victim's car, and the victim's girlfriend, Stephanie Harris, with a baseball bat. The third took place in October 1999, when defendant argued with the victim over money, attempted to hit him with a baseball bat, and ultimately stabbed him in the arm. After hearing argument, the court granted the State's request to admit evidence of the September and October incidents to show defendant's propensity to commit acts of domestic violence against the victim. However, the court found that the prejudice of the June incident, a property crime that did not involve a physical confrontation with the victim, outweighed any probative value. The court also instructed the State to present the testimony of only one witness per incident.

¶ 5 The matter then proceeded to a bench trial. Lieutenant Joseph Sterb testified that when he arrived at defendant's building with other emergency personnel, defendant was outside and led them the second-floor apartment. When he asked defendant what happened, she stated that she stabbed the victim.

¶ 6 Detective Greg Swiderek testified that he spoke to defendant at a police station after she had been taken into custody. During these conversations, which were videotaped, they discussed the events which led to the victim's death. Defendant did not indicate that the victim had threatened her or tried to hit her that evening. However, defendant did state that she had stabbed the victim in the past when he was choking her. During Swiderek's testimony, portions of defendant's videotaped statements were played for the court.

¶ 7 In her statements, defendant indicated that she and the victim had been in a relationship, on and off, for 22 years. She initially stated that she and the victim had a "little dispute," and when the victim stood up she grabbed a knife. Defendant was not going to "stick" the victim but when he came up to her she probably pushed the knife and he fell on it. She acknowledged that there had been prior similar incidents in their relationship. Specifically, the victim had obtained an order of protection against defendant when she lived at Cabrini Green, but he then came to her home and broke a window. Defendant was eating at the time and came outside holding a knife. The victim then choked her so she stabbed him in the arm. Although she was arrested following this incident, the charges were later dropped.

¶ 8 With regard to this incident, defendant explained that the victim was angry with her because he had given her money to pay a bill, but that she had given the money to a friend who wrote a check for the bill that ultimately bounced. The victim did not believe her explanation. He thought she had given the money to another man. They also argued about the victim coming home late. Although the argument ended, defendant then said something to the victim and they began to argue again. At one point, the victim stood up and defendant grabbed a butcher knife. She explained that she grabbed the knife to defend herself. Without the knife, the victim would have "got" her. She explained that defendant would "not actually *** abuse" her; rather, he

would grab or choke her. The victim said he was going to leave and defendant followed him, asking why he came home late and why he lied about his whereabouts. When the victim moved closer defendant poked him with the knife.

¶ 9 Defendant further explained that she had been at home drinking waiting to go to a party, but that her plans fell through so she went to get food. When she came home, the victim was not there. When the victim came home he said that he had been in his old neighborhood, however, defendant knew that this was a lie so they began to argue. She grabbed a knife when the victim stood up, and they then "tussled" over it. Defendant thought she had given the victim a little poke and that he was faking an injury until she saw the blood. When the victim fell to the floor, he told her to call an ambulance. She then called 911.

¶ 10 Stephanie Harris, who had two daughters with the victim, testified that the victim "dated" defendant before, during, and after their relationship. On September 30, 1999, she and the victim were in the victim's car when they realized that defendant was following them. Although the victim tried get away from defendant, she continued to follow them, tried to "race" the victim's car, and attempted to hit the victim's car with her car and a baseball bat. Ultimately, the victim and defendant both pulled over and got out of their cars. Defendant began swinging the bat. Although the victim tried to shove defendant back into her car, she continued to swing the bat. When Harris heard defendant's children "hollering," she got out of the victim's car in order to push him back toward his own vehicle. At this point, defendant came up behind Harris and hit her across the "butt" with the baseball bat.

¶ 11 The parties stipulated that officer Sean Pickett would testify, if called to testify, that in October 1999 he spoke to the victim who was suffering a stab wound to the arm. Although he searched the area for defendant and a knife, he was unable to find either.

¶ 12 Ultimately, the trial court found defendant guilty of knowing first degree murder. The trial court made no specific findings of fact when finding defendant guilty. However, at the sentencing hearing, the court stated that on the night of the victim's death, defendant and the victim fought as they "always fought, thinking they were going to make up later like they always made up." However, on this occasion, defendant took a carving knife to the argument and "you cannot take *** a turkey carving knife to an argument and not know there is a great probability of great bodily harm with death." The court then sentenced defendant to 20 years in prison.

¶ 13 On appeal, defendant first contends that the trial court erred when it admitted proof of other crimes, *i.e.*, two prior instances of domestic violence, because the prejudicial effect of this evidence outweighed its probative value when the other events were factually dissimilar and occurred more than a decade prior to the victim's death.

¶ 14 Generally, evidence of crimes for which the defendant is not on trial is only admissible when relevant for a purpose other than to show a defendant's propensity to commit a crime. *People v. Donoho*, 204 Ill. 2d 159, 170 (2003). However, pursuant to section 115-7.4 of the Code (725 ILCS 5/115-7.4 (West 2008)), specific instances of a defendant's prior acts of domestic violence are admissible and may be considered for their bearing on any matter, including propensity, to which they are relevant when the probative value of the evidence is not outweighed by the risk of undue prejudice to the defendant. See also *People v. Dabbs*, 239 Ill. 2d 277, 290-91 (2010) ("evidence of a defendant's commission of other acts of domestic violence may be admitted in a prosecution for one of the offenses enumerated in the statute, so long as the evidence is relevant and its probative value is not substantially outweighed by the risk of undue prejudice"). When weighing the probative value of the evidence against any undue prejudice to the defendant, the trial court may 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) (West 2008).

¶ 15 The admissibility of other crimes evidence rests within the sound discretion of the trial court, and its decision will not be disturbed absent a clear abuse of that discretion. *People v. Wilson*, 214 Ill. 2d 127, 136 (2005).

¶ 16 In this case, the trial court properly allowed, pursuant to section 115-7.4 of the Code, evidence of two prior incidents of domestic violence when these incidents showed defendant's propensity to commit such acts against the victim. These incidents are factually similar to the argument that led to the victim's death in that they involved defendant physically attacking defendant by striking him with a baseball bat or stabbing him with a knife. Moreover, the probative value of this evidence was not substantially outweighed by its prejudicial effect. In other words, the probative value was great as it showed defendant's propensity for committing domestic violence against the victim as well as defendant's intent and motive to commit the charged crime. See *People v. Abraham*, 324 Ill. App. 3d 26, 35 (2001) ("prior assaults against a victim of a crime that a defendant is charged with committing is probative of intent or motive"); *People v. Illgen*, 145 Ill. 2d 353, 367 (1991) (a defendant's prior acts of violence against the victim are admissible to negate a claim the victim's injury was accidental and to prove absence of mistake). Here, the evidence at trial established that defendant grabbed a knife during an argument and stabbed the victim. The details of this incident are factually similar to those of the October 1999 incident where defendant stabbed the victim, and the testimony regarding the prior acts of domestic violence established that defendant had a propensity to physically attack the victim during arguments. See *People v. Nash*, 2013 IL App (1st) 113366, ¶ 23, (noting the similarity of the defendant's previous attacks on his wife).

¶ 17 This court also notes that the trial court denied the State's motion as to an incident that the court deemed too factually dissimilar, *i.e.*, a property crime, and limited presentation of the other crimes evidence to only one witness per incident. We cannot say that the trial court abused its discretion when it permitted the State to present evidence regarding two prior incidents of domestic violence perpetrated by defendant upon the victim when the record shows that the court considered the facts of the prior incidents and the current offense, the requirements of section 115-7.4, and denied that State's motion in part because the June 1999 incident was too dissimilar. See *Donoho*, 204 Ill. 2d at 186 (finding no abuse of discretion when the record reflected that the court engaged in a meaningful evaluation of the other-crimes evidence's probative value versus its prejudicial impact).

¶ 18 Defendant, on the other hand, argues that testimony regarding these prior incidents of domestic violence should have been excluded because they were too remote in time, that is, they took place some 10 years before the victim's death. See *e.g.*, *People v. Childress*, 338 Ill. App. 3d 540, 552-53 (2003) (finding it proper to exclude evidence of a sexual offense that occurred 13 years before the charged offense).

¶ 19 We reject defendant's suggestion the evidence of her prior acts of domestic violence against the victim were of a reduced probative value because they occurred approximately 10 years before the victim's death, as our supreme court has declined to adopt a brightline rule as to when other crimes evidence is too remote in time to be probative. See *Illgen*, 145 Ill. 2d at 370 (whether other crimes evidence is to be admitted "should not, and indeed cannot, be controlled solely by the number of years that have elapsed between the prior offense and the crime charged"); *Donoho*, 204 Ill. 2d at 184 (affirming the admission of other-crimes evidence when the incidents occurred 12 to 15 years before the conduct at issue and noting other cases admitted

such evidence when it was over 20 years old). Although defendant is correct that the age of the prior acts of domestic violence was a consideration, it was not dispositive (*Illgen*, 145 Ill. 2d at 370), because remoteness is merely one of the factors for the trial court to consider under section 115-7.4 of the Code. See 725 ILCS 5/115-7.4(b) (West 2008) (in weighing the probative value of the evidence against undue prejudice to the defendant, the court may consider the proximity in time to the charged offense, the degree of factual similarity to the charged offense, or other relevant facts and circumstances). Ultimately, the trial court did not abuse its discretion in admitting evidence of defendant's prior acts of domestic violence against the victim when these incidents were factually similar to the events surrounding the victim's death in that they involved defendant striking or stabbing the victim during a physical confrontation and established her propensity to commit acts of domestic violence against him. *Wilson*, 214 Ill. 2d at 136.

¶ 20 Defendant next contends that the evidence was insufficient to prove her guilty of knowing murder beyond a reasonable doubt. Specifically, defendant argues that the evidence presented at trial and the trial court's findings established that she acted recklessly rather than with the awareness that death or great bodily harm was practically certain to occur.

¶ 21 In assessing the sufficiency of the evidence, this court must determine whether any rational trier of fact, after viewing the evidence in the light most favorable to the State, could have found the elements of the offense proved beyond a reasonable doubt. *People v. Baskerville*, 2012 IL 111056, ¶ 31. "Under this standard, all reasonable inferences from the evidence must be allowed in favor of the State." *Baskerville*, 2012 IL 111056, ¶ 31. The trier of fact is responsible for resolving conflicts in the testimony and weighing the evidence. *People v. Jackson*, 232 Ill. 2d 246, 281 (2009). This court is prohibited from substituting its judgment for that of the fact finder on issues involving witness credibility and the weight of the evidence. *Jackson*, 232 Ill.

2d at 280-81. In weighing the evidence, the fact finder is not required to disregard the inferences that naturally flow from the evidence, nor must it search for any possible explanation consistent with a defendant's innocence and raise it to the level of reasonable doubt. *Jackson*, 232 Ill. 2d at 281. A criminal conviction will not be reversed based upon insufficient evidence unless the evidence is so improbable or unsatisfactory that it creates a reasonable doubt as to the defendant's guilt. *People v. Givens*, 237 Ill. 2d 311, 334 (2010).

¶ 22 Here, defendant contends that the trial court erred in finding her guilty of first degree murder because the trial court's description of her mental state, "fighting as they always fought, thinking they were going to make up later like they always made up" falls under the legal definition of recklessness. Therefore, defendant concludes that this court should vacate her conviction for murder, enter a conviction for involuntary manslaughter, and remand this matter to the trial court for resentencing.

¶ 23 A defendant is guilty of first degree murder when she performs an act which causes the death of another without lawful justification and either intends to kill or do great bodily harm to the victim or knows that her acts create a strong possibility of death or great bodily harm to the victim. 720 ILCS 5/9-1(a)(1), (2) (West 2008). On the other hand, a defendant commits involuntary manslaughter where she unintentionally kills another without lawful justification by recklessly performing an act that is likely to cause death or great bodily harm to another person. 720 ILCS 5/9-3(a) (West 2008). The key difference between first degree murder and involuntary manslaughter is the requisite mental state. Compare 720 ILCS 5/9-1(a)(2) (West 2008) (first degree murder) with 720 ILCS 5/9-3(a) (West 2008) (involuntary manslaughter). A defendant acts knowingly when she is aware that her conduct is practically certain to cause a particular result. 720 ILCS 5/4-5(b) (West 2008). A defendant acts recklessly when she

"consciously disregards a substantial and unjustifiable risk that circumstances exist or that a result will follow * * * and such disregard constitutes a gross deviation from the standard of care which a reasonable person would exercise in the situation." 720 ILCS 5/4-6 (West 2008).

¶ 24 A defendant's state of mind can rarely be proved by direct evidence, however, it can be shown by the surrounding circumstances, including the character of the defendant's acts and the nature and seriousness of the victim's injuries. *People v. Williams*, 165 Ill. 2d 51, 64 (1995).

Whether a defendant acted with the mental state required for first degree murder is a question of fact. *People v. Givens*, 364 Ill. App. 3d 37, 44 (2005)

¶ 25 In the case at bar, taking the evidence in the light most favorable to the State, the evidence at trial established that although defendant stated that she did not intend to stick the victim and that he probably fell on the knife, she also admitted that she grabbed the knife so that she would not be choked and that she stabbed the victim. The trial court determined that defendant acted with the mental state required for first degree murder (*Givens*, 364 Ill. App. 3d at 44), when defendant stated that she was angry with the victim, argued with him, grabbed the knife when he got off the couch, and ultimately stabbed him. See *People v. Ciavirelli*, 262 Ill. App. 3d 966, 973 (1994) ("[a] voluntary and willful act having the natural tendency to cause death or great bodily harm is evidence of an intentional act rather than recklessness"). Based upon the circumstances in the case at bar (*Williams*, 165 Ill. 2d at 64), this court cannot say that no rational trier of fact could have found that defendant acted knowingly when she grabbed the knife during an argument with the victim and then stabbed him. *Baskerville*, 2012 IL 111056, at ¶ 31.

¶ 26 Defendant, however, contends that the trial court's factual findings support her contention that she acted recklessly because the court stated that defendant and the victim fought on the

night of his death as they always did "thinking they were going to make up later like they always made up." We disagree. Initially, we note that following the complained of statement, the trial court immediately remarked that a person cannot take a carving knife into an argument and not know there is a great probability that great bodily harm with death might occur. Here, taking the court's comment in context, rather than a factual finding on defendant's mental state, the court was explaining why the circumstances of this case warranted sentencing defendant to only 20 years in prison.

¶ 27 Ultimately, defendant was proven guilty beyond a reasonable doubt when the evidence at trial established that she grabbed a carving knife during an argument with the victim and subsequently stabbed him in the chest. *Baskerville*, 2012 IL 111056, at ¶ 31. This court reverses a criminal conviction only when the evidence is so improbable or unsatisfactory that it creates a reasonable doubt as to a defendant's guilt (*Givens*, 237 Ill. 2d at 334), this is not one of those cases. Accordingly, we affirm defendant's conviction.

¶ 28 For the reasons stated above, we affirm the judgment of the circuit court of Cook County.

¶ 29 Affirmed.