2015 IL App (4th) 140978-U

NO. 4-14-0978

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED
August 24, 2015
Carla Bender
4th District Appellate
Court, IL

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from
Plaintiff-Appellant,	)	Circuit Court of
v.	)	Jersey County
DANIEL L. THAXTON,	)	No. 14CF96
Defendant-Appellee.	)	
	)	Honorable
	)	Joshua A. Meyer,
	)	Judge Presiding.

JUSTICE APPLETON delivered the judgment of the court.
Justices Harris and Holder White concurred in the judgment.

ORDER

¶ 1 *Held*: (1) The trial court erred in granting defendant's motion *in limine*, barring the State from presenting evidence the roadway, upon which defendant was allegedly driving at a time his driver's license was revoked, was "publicly maintained." Without dispositive evidence of the contrary, the State should be afforded the opportunity to prove whether the road was a "highway" as defined by the applicable statute.

(2) The trial court erred in granting defendant's motion *in limine*, barring the State from presenting evidence of defendant's prior bad acts when the same could be admissible to prove absence of mistake.

¶ 2 The State appeals from the trial court's order granting defendant's motion *in limine*, barring the State from presenting critical evidence to its case in chief. Because the State viewed the court's order as fatal to the prosecution of defendant, the State filed a certificate of impairment to challenge the court's order. After a review of the record, we agree with the State and find the court abused its discretion in granting defendant's motion *in limine* on the issues raised by the State in this appeal. We reverse and remand.

¶ 3 I. BACKGROUND

¶ 4 In July 2014, a civil process server approached defendant outside his home in an attempt to serve him with a summons. When defendant realized what her purpose was, he ran at her and ordered her off his property, while kicking rocks at her car. While inside her vehicle, she tossed the summons onto the ground through her open window and proceeded to back out of defendant's driveway onto Burch Lane. As she drove on Burch Lane, she saw defendant following her on a motorcycle. Defendant pulled in front of her vehicle, preventing her from proceeding further. When she told defendant she had called the police, he retreated and drove back to his residence.

¶ 5 Jersey County Sheriff's Deputies Brett Vetter and John Wimmersberg responded to defendant's residence. One officer touched the muffler of the motorcycle and confirmed it had just been ridden. Neither officer saw defendant riding the motorcycle on Burch Lane. The police advised defendant he was under arrest. Defendant struggled with the officers until they were able to gain control of him. Deputy Vetter reported defendant spit blood on his uniform. According to Sergeant Tim Chappell, during defendant's interview, defendant acknowledged spitting blood on Deputy Vetter, stating: " 'I would not have spit on Deputy Vetter, but he put the blood in my mouth so I put it back on him.' "

¶ 6 As a result of this incident, the State charged defendant with (1) aggravated battery (720 ILCS 5/12-3.05(d)(4) (West 2012)) for knowingly spitting blood on a police officer (count I); (2) driving while his driver's license was revoked (625 ILCS 5/6-303(a), (d-2) (West 2012)) after driving a "Honda dirt bike on Burch Lane" on a revoked license due to a prior driving-under-the-influence conviction (count II); (3) resisting a peace officer (720 ILCS 5/31-1 (West 2012)) for refusing to cooperate during his arrest (count III); and (4) disorderly conduct

(720 ILCS 5/26-1(a)(1) (West 2012)) for throwing a rock at the process server's vehicle and "chasing her down with his dirt bike acting like he was going to hit her car, cursing her out in such an unreasonable manner to alarm and disturb [the process server] and provoke a breach of the peace" (count IV).

¶ 7 Prior to trial, in October 2014, defendant filed a motion *in limine*, wherein he sought to exclude or limit (1) any reference to his criminal history, including prior contacts with the police; and (2) any testimony that Burch Lane was a publicly maintained roadway. After a non-evidentiary hearing, the trial court entered a written order, granting defendant's motion in full. The court did not state the bases, grounds, or an explanation for its decision. The State filed a certificate of impairment. This appeal followed.

¶ 8 II. ANALYSIS

¶ 9 A. Definition of Highway

¶ 10 The Illinois Vehicle Code (Vehicle Code) (625 ILCS 5/1-100 to 20-402 (West 2012)) prohibits driving a vehicle on a "highway" while the person's driver's license is revoked. In particular, section 6-303(a) of the Vehicle Code provides as follows:

> "any person who drives or is in actual physical control of a motor vehicle on any highway of this State at a time when such person's driver's license, permit or privilege to do so or the privilege to obtain a driver's license or permit is revoked or suspended as provided by this [Vehicle] Code or the law of another state, except as may be specifically allowed by a judicial driving permit issued prior to January 1, 2009, monitoring device driving permit, family financial responsibility driving permit, probationary license to

> drive, or a restricted driving permit issued pursuant to this Code or under the law of another state, shall be guilty of a Class A misdemeanor." 625 ILCS 5/6-303(a) (West 2012).

As alleged in his motion, defendant successfully argued Burch Lane does *not* qualify as a "highway" within the meaning of the statute. Presumably agreeing with defendant regarding the nature of the roadway at issue, the court barred the State from referring to Burch Lane as a "publicly maintained" roadway—a phrase taken from the applicable definition. Section 1-126 of the Vehicle Code defines "highway" as "[t]he entire width between the boundary lines of every way publicly maintained when any part thereof is open to the use of the public for purposes of vehicular travel or located on public school property." 625 ILCS 5/1-126 (West 2012).

¶ 11 The State appeals the trial court's order granting defendant's motion *in limine* on this issue. "A motion *in limine* is addressed to a trial court's power to admit or exclude evidence. [Citation.] Motions *in limine* are used to bring the trial court's attention to potentially irrelevant, inadmissible, or prejudicial evidence and obtain a pretrial order from the court excluding or permitting the evidence. [Citation.] The court's evidentiary ruling is reviewed for an abuse of discretion. [Citation.]" *People v. Stevenson*, 2014 IL App (4th) 130313, ¶ 26. "This is the most deferential standard of review recognized by law. [Citation.] Our mere disagreement with the trial court's decision would not be enough to make the decision an abuse of discretion. [Citation.] Rather, the trial court abused its discretion only if the court 'acted arbitrarily, exceeded the bounds of reason, or ignored or misapprehended the law.' [Citation.]" *People v. Hancock*, 2014 IL App (4th) 131069, ¶ 121 (quoting *Cholipski v. Bovis Lend Lease, Inc.*, 2014 IL App (1st) 132842, ¶ 39).

¶ 12 The State argues that, by granting defendant's motion *in limine*, the court ruled, in effect, that Burch Lane was not a "highway" within the meaning of the Vehicle Code. At the hearing on his motion, defendant argued, regardless who owned or maintained it, Burch Lane was *not* open to the public. In support, defendant mentioned an appraisal conducted by "Ms. Howard," which he reportedly tendered to the State, wherein the appraiser "clearly states in the report that it's a private way." This appraisal is not of record, and therefore, we are unable to discern what property was identified and included in this report. Nevertheless, defendant claims, with the appraiser's classification of a "private" roadway, the State is unable to surpass the hurdle of proving public use. Thereby, making the question of public maintenance irrelevant.

¶ 13 Defendant claimed Burch Lane satisfied the definition of private roadway as set forth in section 1-163 of the Vehicle Code (625 ILCS 5/1-163 (West 2012)). That section states: "Every way or place in private ownership and used for vehicular travel by the owner and those having express or implied permission from the owner, but not by other persons." 625 ILCS 5/1-163 (West 2012). The trial court presumably agreed with defendant. The State argues here that maintenance of the road *is* indeed a relevant indicator on the issue of whether Burch Lane is a "highway" within the meaning of the statute.

¶ 14 In *Village of Lake Villa v. Bransley*, 348 Ill. App. 3d 280 (2004), the Second District considered an issue similar to the one before us. There, the defendant was convicted of operating a motorcycle with a suspended driver's license (625 ILCS 5/6-303(a) (West 2000)). *Bransley*, 348 Ill. App. 3d at 281. He appealed, claiming the State had failed to prove he operated his motorcycle on a "highway." *Bransley*, 348 Ill. App. 3d at 281. He insisted he was riding on a private road within a subdivision. *Bransley*, 348 Ill. App. 3d at 282. Admitted into evidence was the subdivision plat, which was accepted and recorded by the Village. *Bransley*,

348 Ill. App. 3d at 282-83. With this acceptance and recordation, the Village held title to the streets included in the subdivision plat. *Bransley*, 348 Ill. App. 3d at 283. The defendant argued whether the streets were "highways" depended not on whether they were publicly owned, but on whether they were publicly maintained. *Bransley*, 348 Ill. App. 3d at 283.

¶ 15 Relying on the presumed legislative intent, the court held the subdivision streets where the defendant rode his motorcycle *were* publically maintained within the meaning of section 6-303(a) of the Vehicle Code (625 ILCS 5/6-303(a) (West 2000)). *Bransley*, 348 Ill. App. 3d at 284. The court noted the legislature intended "to protect the public from unsafe or irresponsible motorists by penalizing those who operate vehicles while their driver's licenses have been suspended." *Bransley*, 348 Ill. App. 3d at 284. Pursuant to a Village ordinance, the maintenance of the roadways at issue was to remain the responsibility of the developer until accepted by the Village. *Bransley*, 348 Ill. App. 3d at 284. The court found this contractual arrangement for the temporary maintenance of the roadways by the developer did not transform otherwise public highways to private roads. *Bransley*, 348 Ill. App. 3d at 284. The streets in question were publicly maintained even if maintenance was not physically undertaken by the Village. *Bransley*, 348 Ill. App. 3d at 285.

¶ 16 It is clear that public *maintenance* and public *use* of the road, along with public *ownership*, are strong indicators that the road is a "highway" within the meaning of section 6-303(a) of the Vehicle Code (625 ILCS 5/6-303 (West 2012)). See *Verh v. Morris*, 410 Ill. 206, 211-12 (1951); *People v. Culbertson*, 258 Ill. App. 3d 294, 297 (1994). Here, it is the State's theory that defendant operated a motorcycle on a public roadway when his driver's license was revoked. The State argued public maintenance of the road is dispositive. Defendant's motion *in limine* sought an order prohibiting any testimony regarding the definition of "publicly

maintained." Defendant claimed the State would be required to prove initially that Burch Lane was open for "public use." Since the State, in defendant's opinion, would not be able to prove such claim, the subject of maintenance was irrelevant and should not even be presented to the trier of fact. It appears defendant relied exclusively on the appraiser's classification of the roadway as "private." However, this appraiser's opinion is not dispositive of the legal characterization of a private versus public roadway. Rather, the classification depends on the use, ownership, and maintenance of the roadway. See *Verh*, 410 Ill. at 211-12. As the State notes, this "private roadway" may have been established as public by prescription. See 605 ILCS 5/2-202 (West 2012).

¶ 17 The trial court's order, prohibiting the State from presenting testimony on the definition of "publicly maintained" eviscerated the State's theory of the case. As the State points out in its brief, a court should hesitate to grant a motion *in limine* if the result would eviscerate a party's theory of the case. *People v. Blue*, 205 Ill. 2d 1, 22 (2001). Whether the road was publicly maintained was an element of the offense charging defendant with operating a motor vehicle on a highway while his driver's license was revoked. The State is required to prove: (1) defendant drove a motor vehicle on the highway, and (2) his driver's license was revoked at the time. *People v. Turner*, 64 Ill. 2d 183, 185 (1976). To prove Burch Lane was a highway, the State would have to prove it was publicly maintained *and* open for public use. See 625 ILCS 5/1-126 (West 2012). The court's order prohibited the State's presentation of evidence tending to prove the "publicly maintained" element.

¶ 18 Because the trial court was not presented with sufficient evidence regarding the ownership, maintenance, *or* use of Burch Lane, the court erred in ruling on defendant's motion *in limine* and effectively eviscerating the State's theory of the case. In the absence of dispositive

evidence of private use, the State should be afforded the opportunity to present evidence regarding the characteristics of Burch Lane, which would tend to prove the primary elements necessary to support the charged offense. The court erred in prohibiting the State from presenting such evidence.

¶ 19 In so holding, we rely on our supreme court's cautionary statement regarding the exclusion of evidence resulting from an order *in limine*.

> "Before granting a motion *in limine*, courts must be certain that such action will not unduly restrict the opposing party's presentation of its case. Because of this danger, it is imperative that the *in limine* order be clear and that all parties concerned have an accurate understanding of its limitations. This court must therefore determine whether the order in this case was in fact clear and whether the reasons stated by the circuit court for granting a new trial are indeed supported by the record. If they are not, the circuit court will have abused its discretion." *Reidelberger v. Highland Body Shop, Inc.*, 83 Ill. 2d 545, 550 (1981).

¶ 20 Despite the deference accorded the trial court in deciding motions *in limine*, we find, under these circumstances, the court abused its discretion in granting defendant's motion on this issue. Without evidence to support defendant's conclusory and self-serving claim that Burch Lane was a private roadway, and without explanation from the court as to its findings on the issue, we conclude the court " 'acted arbitrarily, exceeded the bounds of reason, or ignored or misapprehended the law.' " *Hancock*, 2014 IL App (4th) 131069, ¶ 121 (quoting *Cholipski*, 2014 IL App (1st) 132842, ¶ 39).

¶ 21 B. Evidence of Other Bad Acts

¶ 22 The trial court also granted defendant's motion *in limine* in response to the request to bar the State from any mention of defendant's (1) prior drug-based convictions, (2) prior arrests, (3) prior contacts with the police, (4) prior convictions of any nature, and (5) previously charged crimes. Again, relying on our deferential standard, we determine whether the trial court abused its discretion in granting defendant's motion. *Stevenson*, 2014 IL App (4th) 130313, ¶ 26.

¶ 23 Prior to the filing of defendant's motion, the State filed a disclosure advising defendant it intended to present the following evidence: (1) in March 2005, October 2006, November 2008 (when he spat at an officer), and October 2009, defendant was arrested for resisting a peace officer; and (2) defendant's former spouse, Janice Thaxton, told arresting officers in November 2008 defendant "had a lifelong history of 'hating cops' and always fought when arrested."

¶ 24 The State argues these prior bad acts, especially the November 2008 incident, would be admissible to demonstrate something other than defendant's propensity to commit crime. It is reasonable to assume, if defendant testifies, he would claim he spit on Deputy Vetter by mistake or accident. In fact, in his filed statement of the case, defendant specifically stated "blood accidentally touched the deputy's shirt." In response, the State could argue defendant's spitting was *not* a mistake, as he spit on an arresting officer in November 2008.

> "Evidence of other crimes is not usually admitted to show propensity, *i.e.*, to show that the defendant is the type of person who would have committed the crime charged. [Citation.] This type of evidence is considered dangerous because a jury might convict the defendant for being a bad person rather than for having

> actually committed the crime he is currently charged with. [Citation.] Nevertheless, courts allow evidence of prior crimes to prove a number of things other than propensity, such as *modus operandi* and absence of mistake, provided the prejudicial effect of the evidence does not substantially outweigh its probative value. [Citation.]" *People v. Stanbridge*, 348 Ill. App. 3d 351, 355 (2004).

"Even if other-crimes evidence falls under one of these exceptions, the court still can exclude it if the prejudicial effect of the evidence substantially outweighs its probative value." *People v. Donoho*, 204 Ill. 2d 159, 170 (2003). Proving the absence of a mistake is necessary where, as here, the defendant's physical action is undisputed, but his state of mind is at issue. See *Stanbridge*, 348 Ill. App. 3d at 356.

¶ 25 In one instance, our supreme court determined absence-of-mistake evidence *was* admissible to dispute the defendant's claim he had shot his wife by accident. *People v. Illgen*, 145 Ill. 2d 353 (1991). There, the State was allowed to present evidence the defendant had previously abused his wife. This prior-abuse evidence was relevant to demonstrate the likelihood the defendant shot her intentionally. *Illgen*, 145 Ill. 2d at 366. "Where *** evidence of the defendant's involvement in another offense is offered to prove the absence of an innocent frame of mind or the presence of criminal intent, mere general areas of similarity will suffice." *Illgen*, 145 Ill. 2d at 373.

¶ 26 The case before us has similar qualities. As the supreme court noted, the other-crimes evidence may share "mere general areas of similarity" to be admissible. *Illgen*, 145 Ill. 2d at 373. Further, the time lapse between the two similar events is not imperative. See *Illgen*, 145

Ill. 2d at 370 ("[T]he admissibility of other-crimes evidence should not, and indeed cannot, be controlled solely by the number of years that have elapsed between the prior offense and the crime charged.")

¶ 27 Based on the above authority, we conclude the State should not be barred from presenting evidence that defendant previously spat on an arresting officer. That is, the State should be allowed to present evidence negating defendant's claim he spat on Deputy Vetter by accident. This is especially important here because defendant's intent or state of mind is a necessary element of the charged offense of aggravated battery. See 720 ILCS 5/12-3.05(d)(4); 12-3(a) (West 2012) (defendant knowingly made physical contact with a peace officer). To successfully prosecute, the State must prove defendant *knowingly* made physical contact of an insulting nature with Deputy Vetter. If defendant responds with evidence to demonstrate an innocent state of mind, the State should be allowed to impeach with absence-of-mistake evidence in the form of the November 2008 incident. Thus, we find the trial court erred in granting defendant's motion *in limine*, barring the State from presenting evidence of defendant's prior bad acts, which tend to demonstrate absence of mistake. If the anticipated evidence *is* presented at trial, a limiting instruction should be given to ensure the jury's proper use of the evidence.

¶ 28 III. CONCLUSION

¶ 29 For the reasons stated, we reverse the trial court's order granting defendant's motion *in limine* on the issues raised by the State in this appeal and remand for further proceedings.

¶ 30 Reversed and remanded.