2015 IL App (5th) 130418-U

NO. 5-13-0418

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Madison County.
	)	
v.	)	No. 10-CF-2618
	)	
BYRON SKALISIUS,	)	Honorable
	)	Kyle Napp,
Defendant-Appellee.	)	Judge, presiding.

JUSTICE CHAPMAN delivered the judgment of the court.
Justices Goldenhersh and Schwarm concurred in the judgment.

ORDER

¶ 1 *Held*: The trial court did not abuse its discretion in allowing the introduction of other-crimes evidence where the two crimes were overwhelmingly similar and proximate in time, and the evidence was far more probative than prejudicial.

¶ 2 The State charged the defendant with three counts of criminal sexual assault (720 ILCS 5/12-13(a)(2) (West 2006)) and one count of unauthorized video recording (720 ILCS 5/26-4(a-5) (West 2006)). Before trial, the State filed a motion seeking to introduce evidence of a prior sexual offense. The defendant asked the court to bar the evidence, arguing that the other-crimes evidence was not sufficiently similar to the charged offense to overcome the prejudicial impact of its introduction. The trial court

disagreed and granted the State's motion. The jury convicted the defendant of one of the three counts of criminal sexual assault and one count of unauthorized video recording. The defendant seeks a new trial, arguing that the trial court erred in denying his motion to bar evidence of a prior offense. We affirm.

¶ 3 FACTS

¶ 4 Background

¶ 5 The State charged the defendant by indictment with three counts of criminal sexual assault and one count of unauthorized video recording involving the victim, C.K. In the same indictment, the State charged the defendant with criminal sexual assault involving a different victim, R.B. The defendant filed a motion to sever the claims involving the second victim from his case involving the first victim. The State argued against the severance claiming that the offenses were part of the same transaction, that the offenses were both proximate in time and location, and that the defendant used a common methodology in perpetrating the offenses. The trial court severed the charge against the second victim finding that the alleged crimes committed against the two victims were not part of the same comprehensive transaction.

¶ 6 Motion to Allow Other-Crimes Evidence and Hearing

¶ 7 The State filed a motion seeking to introduce other-crimes evidence at trial. The other-crimes evidence that the State wanted to introduce at trial involved the allegations by the second victim, R.B. The defendant asked the court to bar this evidence, arguing that the evidence would be overly prejudicial. At the July 2012 hearing, both victims testified.

¶ 8 *Testimony of C.K.*

¶ 9 C.K. testified that she was 31 years old and had known the defendant since she was 17 or 18 years of age. She met the defendant at work. C.K. started out as a cashier and the defendant was a security guard. The defendant and C.K. last worked together in 2002, 10 years before the hearing. Throughout the years that they knew each other, C.K. testified that she did not have a romantic or sexual relationship with the defendant.

¶ 10 On June 6, 2009, C.K. met the defendant at the Brew Haus in Troy at about 9 p.m. She, the defendant, and his friend, Angela, stayed at the Brew Haus until it closed at 1 a.m. While at the bar, C.K. testified that she limited her alcohol consumption to one beer per hour, as she was concerned about driving home.

¶ 11 Upon leaving the bar, C.K. and the defendant decided to drive to his house in order to play cards. The defendant's house was about one-half mile from the bar. They drove separately. C.K. testified that she drank one beer during the half hour she and the defendant were in his house. The defendant was unable to locate a deck of cards, and so the two decided to drive to C.K.'s house in Glen Carbon because she had a hot tub. Again, they drove separately. C.K. testified that she put on a swimsuit and got in her hot tub. The defendant arrived 30 to 45 minutes later, at about 2 a.m., and told C.K. that he got lost. She was in the hot tub when the defendant arrived. The defendant brought beer and a bottle of rum. C.K. drank a beer while the defendant prepared a mixed drink for her. C.K. drank the mixed drink the defendant prepared. The defendant began to remove his clothing to get into the hot tub. C.K. testified that after the defendant got into the hot tub, she has little recollection of what followed. She believes that she only drank the one

mixed drink. C.K. has a vague memory of being out of the hot tub and trying to dry off with a towel, but that she was unable to lift her arms and the towel fell from her arms.

¶ 12 C.K. regained consciousness on her bed. She was naked. C.K. testified that when she regained consciousness, the defendant was digitally penetrating her vagina. The defendant told her that they had engaged in sexual intercourse and that he had not used a condom. She testified that the defendant seemed nervous in answering her questions, and quickly dressed and left her house.

¶ 13 The State showed C.K. photographs and asked her if she could identify them. C.K. identified herself in these photographs. The photographs depicted her nude body lying on her bed. She testified that she did not know that the defendant took these photos and did not give him permission to take them.

¶ 14 C.K. testified that she did not know R.B. before this case.

¶ 15 *Testimony of R.B.*

¶ 16 R.B. also testified at this hearing. She was 23 at the time of the hearing. R.B. and the defendant met in May 2008 at work. She was a cashier, while the defendant was a loss prevention specialist. R.B. and the defendant did not have a romantic or sexual relationship.

¶ 17 In June 2008, R.B. went to the defendant's house in Troy to talk and to have drinks. This was the first time R.B. had been to the defendant's house. R.B. consumed no alcohol before she arrived at the defendant's home. She stayed outside of the defendant's house because she was smoking cigarettes, and did not want to smoke inside the defendant's house. The defendant went inside to make R.B. a drink, and he brought

the drinks outside. While there, she drank three vodka drinks mixed with Coca-Cola. The defendant prepared all three drinks. R.B. testified that after the third drink, she felt "more drunk than normal" and was very tired. She did not want to drive home because she was intoxicated, and she was not of legal drinking age.

¶ 18 R.B. testified that she did not remember going to sleep, but remembers waking up inside the defendant's house and feeling disoriented. She testified that she remembered getting dressed, but cannot remember if she was completely nude when she regained consciousness. The defendant was awake at this time and getting ready to go to work.

¶ 19 R.B. identified photographs the defendant took of her. In those photographs, she was nude. R.B. testified that she did not give the defendant permission to take those photographs.

¶ 20 She testified that she did not know C.K. before her involvement in this case.

¶ 21 *Testimony of Detective David Zarr*

¶ 22 Detective David Zarr of the Glen Carbon police department testified that he was assigned to this case. He testified that he interviewed the defendant. The defendant identified the nude photographs of R.B. during this interview. The defendant told Detective Zarr that he took the photographs with his cell phone while in his bedroom. In a second interview with the defendant, Detective Zarr showed the defendant the photographs of C.K. Detective Zarr testified that the defendant admitted taking the photographs of C.K. and that he took the photographs with his cell phone while at C.K.'s house in Glen Carbon.

¶ 23 Trial Court's Order

¶ 24 The trial court entered a written order on July 6, 2012, granting the State's motion to introduce evidence about the alleged assault upon R.B. The court noted that the two events occurred almost one year apart, which the court considered a minimal amount of time in light of other factual similarities and witness credibility. The court found the factual similarities to be significant, stating:

> "Both of the alleged victims met the defendant while working as a cashier and he a security guard or loss prevention officer. Each woman became friends with the defendant and socialized with the defendant, but maintained a platonic relationship. Each woman was alone with the defendant when he made drinks for her. After consuming the drinks provided by the defendant, the women described feeling incredibly tired, unable to move and ultimately losing consciousness. Each woman awoke either nude or mostly nude. Neither woman had any recollection of how she became nude or unclothed nor did either given the defendant permission to unclothe them. Neither woman consented to sexual intercourse. Pictures were found of each woman naked and lying with their eyes closed. Neither woman recalls the pictures being taken nor did either consent to said pictures being taken."

¶ 25 The court found that although there were some factual differences between the two incidents, those differences did not defeat admissibility. Finally, the court noted that in weighing and considering the probative value of allowing other-crimes evidence versus prejudice to the defendant, the probative value outweighed the prejudicial impact of introduction of the evidence.

¶ 26 Trial and Sentence

¶ 27 At trial, C.K. testified about the physical aftermath of the evening with the defendant. She described the feeling as similar to a hangover, but far worse. She testified that she was sick for the next two days. When she woke up the second day and remained ill, she decided that she needed to go to a hospital emergency room. At the hospital, hospital personnel collected a specimen of C.K.'s urine. The State called a toxicologist, Dr. Christopher Long, to testify about the testing he performed on C.K.'s urine sample. The Glen Carbon police department asked Dr. Long to test the urine specimen for gamma-hyroxybutyric (GHB). Dr. Long testified that GHB is a chemical that would be tasteless if mixed with alcohol. He explained that GHB acts to stimulate libido, acts as a sedative, and causes amnesia. He testified that C.K.'s urine specimen tested negative for GHB. However, he explained that GHB only lasts in a person's urine for two to three hours. Because C.K. did not provide a urine specimen until 21 hours after she regained consciousness, there was no possibility that even trace amounts would have still been present in her urine.

¶ 28 At trial, R.B. also testified about her experience with the defendant. The court did not allow the prosecutors to inform the jury that the State also charged the defendant with R.B.'s sexual assault.

¶ 29 The jury returned not-guilty verdicts on two of the criminal sexual assault charges (penile and oral penetration), a guilty verdict on one criminal sexual assault charge (digital penetration), and a guilty verdict on the unauthorized video recording charge. The court subsequently sentenced the defendant to a period of seven years for criminal

sexual assault and two years for unauthorized video recording, to be served consecutively.

¶ 30 LAW AND ANALYSIS

¶ 31 In Illinois, courts generally do not allow the use of other-crimes evidence to show the defendant's propensity to commit a charged offense. *People v. Donoho*, 204 Ill. 2d 159, 170, 788 N.E.2d 707, 714 (2003). This is because showing a pattern of criminal behavior results in prejudice and may result in the loss of a fair trial on the crime charged. *People v. Conners*, 82 Ill. App. 3d 312, 319, 402 N.E.2d 773, 778 (1980). "Such evidence overpersuades 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, 402 N.E.2d 238, 242 (1980).

¶ 32 However, section 115-7.3 of the Code of Criminal Procedure of 1963 permits the admission of other-crimes evidence to show propensity to commit specified sex offenses. 725 ILCS 5/115-7.3(a) (West 2006). The Illinois Supreme Court has upheld the constitutionality of section 115-7.3. *Donoho*, 204 Ill. 2d at 182, 788 N.E.2d at 721. Section 115-7.3 provides that if the defendant is accused of criminal sexual assault, evidence that the defendant committed another offense "may be considered for its bearing on any matter to which it is relevant." 725 ILCS 5/115-7.3(a)(1), (b) (West 2006). The court must weigh the probative value of the evidence against undue prejudice to the defendant, and may consider the proximity in time, the degree of factual similarity, and all other relevant facts and circumstances. 725 ILCS 5/115-7.3(c) (West 2006); *People v. Illgen*, 145 Ill. 2d 353, 364-65, 583 N.E.2d 515, 519 (1991).

¶ 33 On appeal, we review the admission of other-crimes evidence under an abuse of discretion standard. *Donoho*, 204 Ill. 2d at 182, 788 N.E.2d at 721; *People v. Robinson*, 167 Ill. 2d 53, 63, 656 N.E.2d 1090, 1094 (1995). The reviewing court owes some deference to the trial court's ability to evaluate the impact of the other-crimes evidence on the jury. *Donoho*, 204 Ill. 2d at 186, 788 N.E.2d at 723. Furthermore, reasonable minds may disagree about admissibility of other-crimes evidence without mandating reversal of the trial court's ruling. *Id.* We will not reverse the trial court unless the trial court's decision is arbitrary or unreasonable. *Id.* at 182, 788 N.E.2d at 721.

¶ 34 The defendant argues that the trial court abused its discretion in allowing R.B.'s testimony in that the probative value of her testimony did not outweigh the prejudice to him. The defendant argues that the facts of the allegations made by C.K. and R.B. are too dissimilar to be admissible. He distinguishes the two situations by the ages of the women on the date of the assaults. C.K. was 27 years old, while R.B. was 19 years old. The defendant contends that the duration of the women's acquaintance with him was dissimilar. He had known C.K. for 10 years, but met R.B. only 6 months before the incident. He also distinguishes the reason for his interaction with the women. He states that he and C.K. used a hot tub, while he and R.B. drank alcohol. The defendant additionally distinguishes the two occurrences arguing that C.K. did not drink as much alcohol as R.B.

¶ 35 We turn to the trial court's analysis in order to determine if the court abused its discretion. The court correctly cited to the statutory foundation for introduction of other-crimes evidence. 725 ILCS 5/115-7.3(a)(1) (West 2006). The court noted that the State

charged the defendant with one of the enumerated offenses listed in that section of the statute. *Id.* The court correctly noted that there is no designated proximity in time mandated for introduction of other-crimes evidence and that courts must decide cases on an individual basis. *Illgen*, 145 Ill. 2d at 370, 583 N.E.2d at 522; see also *Donoho*, 204 Ill. 2d at 183-84, 788 N.E.2d at 721-22 (passage of 12 to 15 years may lessen probative value of other-crimes evidence, but does not render the evidence inadmissible); *People v. Butler*, 377 Ill. App. 3d 1050, 1066, 882 N.E.2d 636, 648-49 (2007) (separation of two offenses by 17 months did not render the other-crimes evidence inadmissible).

¶ 36 We agree with the trial court's conclusion that the one-year span of time between the allegations of C.K. and R.B. does not defeat admissibility.

¶ 37 We next turn to the court's analysis of the similarities between the allegations of C.K. and R.B. The other-crimes evidence will not be admissible unless it bears a threshold similarity to the crime charged. *People v. Wilson*, 214 Ill. 2d 127, 136, 824 N.E.2d 191, 196-97 (2005); *Donoho*, 204 Ill. 2d at 184, 788 N.E.2d at 722. The court noted that there were factual differences between the cases of C.K. and R.B., but stated that these differences did not defeat admissibility, as no two crimes will be identical. *Illgen*, 145 Ill. 2d at 373, 583 N.E.2d at 523-24.

¶ 38 We agree with the trial court's thorough analysis of the similarities between the two cases. In both cases, the defendant engaged the two women in conversation and friendship at their places of employment. He was their coworker and became their friend. Both of these workplace friendships led to one-on-one social activities involving the consumption of alcohol. While C.K.'s experience was different in that she first met the

defendant at a bar, eventually the evening shifted to the defendant's house. R.B.'s social interaction with the defendant on the night in question began and ended at his house. In both cases, alcohol was central to the events that followed. Not only was alcohol involved, but the defendant became the bartender and served both women cocktails of his design. C.K. consumed alcohol before the defendant prepared the cocktail. R.B. only consumed the defendant's cocktails. While these facts are not perfectly accordant with each other, the experiences that followed were. Both women testified that something was different about the defendant's cocktails in that they both felt "more drunk," tired, and had issues in which their limbs felt "loose" and were not fully functional. Both women lost consciousness. Both women regained consciousness while in bed with the defendant. Both women woke up and were nude or partially nude. The defendant, after apparently removing the women's clothing, took photographs of them. The defendant did not obtain permission to take nude photographs of C.K. and R.B.

¶ 39 We conclude that the trial court did not abuse its discretion in admitting other-crimes evidence. We defer to the trial judge who had the ability to determine the effect that the other-crimes evidence involving R.B. would have on the jury. *Illgen*, 145 Ill. 2d at 376, 583 N.E.2d at 525. Although evidence of this type is inherently somewhat prejudicial, we find that the overwhelming similarities between the two cases, coupled with the proximity in time, result in the evidence being far more probative than prejudicial. Specifically, we note that the manner and method of the assaults were incredibly similar. We find that these similarities reveal the opportunistic method of the defendant's socialization with his coworkers. We conclude that the other-crimes evidence

bears more than a threshold similarity to the crime charged (*Donoho*, 204 Ill. 2d at 184, 788 N.E.2d at 722) and was probative on the issue of the defendant's propensity to commit this type of sexual offense (*id.* at 176, 788 N.E.2d at 718).

¶ 40 CONCLUSION

¶ 41 For the foregoing reasons, we affirm the judgment of the Madison County circuit court.

¶ 42 Affirmed.