

NOTICE
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2012 IL App (4th) 110946-U

Filed 7/18/12

NO. 4-11-0946

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from
Plaintiff-Appellee,)	Circuit Court of
v.)	Macon County
STANLEY W. MANSON,)	No. 09CF1126
Defendant-Appellant.)	
)	Honorable
)	Lisa Holder White,
)	Judge Presiding.

JUSTICE COOK delivered the judgment of the court.

Justice Pope concurred in the judgment.

Justice Steigmann specially concurred.

ORDER

¶ 1 *Held:* The trial court did not abuse its discretion in denying the State's motion to admit other-crimes evidence under section 115-7.3 of the Code of Criminal Procedure of 1963 (725 ILCS 5/115-7.3 (West 2010)), where the trial court found the other-crimes evidence could become the focal point of the trial and its probative value was substantially outweighed by its prejudicial effect.

¶ 2 In July 2009, the State charged defendant, Stanley W. Manson, with aggravated criminal sexual abuse and attempt (predatory criminal sexual assault of a child) against C.C. In September 2011, the State moved to admit evidence of defendant's sexual misconduct against D.B., C.C.'s cousin, pursuant to section 115-7.3 of the Code of Criminal Procedure of 1963 (Criminal Procedure Code) (725 ILCS 5/115-7.3 (West 2010)). Following an October 2011 hearing on the motion, the trial court denied the State's motion to admit evidence of defendant's misconduct against D.B. The State appeals, arguing the trial court reached an unreasonable

decision in weighing the probative value and prejudicial effect of D.B.'s allegations. We affirm.

¶ 3

I. BACKGROUND

¶ 4

In July 2009, C.C told police that she was sleeping on the floor when defendant, C.C.'s grandfather, came into the room and began rubbing his genitals against her buttocks. Defendant left the room but returned a few minutes later, lay down next to C.C, and attempted to pry her legs apart. C.C. was 10 years old at the time. C.C. told her mother about the alleged incidents right away.

¶ 5

While police were investigating C.C's allegations, D.B., C.C's cousin, came forward. She reported to the police that, from February 2004 to February 2007, defendant had sexually assaulted her on multiple occasions. She was approximately 12 years old when the incidents began.

¶ 6

The State charged defendant with (1) aggravated criminal sexual abuse against C.C. based on defendant knowingly rubbing the back and buttocks of C.C. with his sex organ, for the purpose of the sexual arousal of defendant (720 ILCS 5/12-16(c)(1)(I) (West 2008)), and (2) attempt (predatory criminal sexual assault of child) against C.C. based on prying apart C.C.'s leg, with the intent of committing an act of sexual penetration upon C.C. (720 ILCS 5/8-4(a), 12-14.1 (West 2008)). The State also charged defendant with two counts of aggravated criminal sexual abuse against D.B. based on (1) placing his sex organ in the mouth of D.B., and (2) placing his mouth on the sex organ of D.B. (720 ILCS 5/12-16(d) (West 2008)). Defense counsel moved to sever charges so the offenses against C.C. would be tried separately from the offenses against D.B. The trial court granted severance without objection by the State.

¶ 7

In September 2011, the State moved to admit evidence of defendant's prior sexual

conduct with D.B., pursuant to section 115-7.3 of the Criminal Procedure Code (725 ILCS 5/115-7.3 (West 2010)), in the trial on the allegations concerning C.C. In its motion, the State argued that defendant's conduct with D.B. was factually similar to his conduct with C.C., and the prior incidents with D.B. were relevant to the defendant's state of mind, intent, and propensity toward the commission of sexual offenses.

¶ 8 In October 2011, the trial court held a hearing on the motion. D.B. testified that sexual encounters with defendant began in 2004 when she was 12 years old and continued "at random" until she was approximately 16 or 17 years old. Defendant was married to D.B.'s aunt. During these encounters, defendant would touch D.B.'s breasts and vagina with his hands and mouth. D.B. testified that she did not know how many times this type of touching occurred, but acknowledged that she remembered telling a police officer that it happened over 30 times. D.B. also recalled defendant placing his penis in her mouth. Although D.B. testified that defendant did this more than once, she could not remember how many times in total defendant did this. In D.B.'s July 2009 statement to the police, she said defendant placed his penis in her mouth once.

¶ 9 D.B. stated that the encounters with defendant took place while she was at defendant's home on Bon Air Court, either in her cousin's room or in the basement, on the floor or in a bed. Her cousins were either not present or were sleeping when these incidents took place. To her knowledge, her cousins never saw or woke up during the incidents. She also said two or three of the encounters took place in defendant's car. D.B. was not sure whether defendant had been drinking during the encounters, although she "knew for a fact" that he was definitely sober "a lot of times" and could not remember whether she could smell alcohol any of the times. On cross-examination, D.B. acknowledged that she told a police officer that defendant

would buy her alcohol. She clarified that although defendant bought her alcohol, she was never drinking alcohol during the incidents. D.B. did not remember telling the police that defendant gave her alcohol at his house. She testified that he gave her alcohol if, for example, they "would go late to parties cause he was a DJ."

¶ 10 D.B. described two specific sexual encounters with defendant. On one occasion, when she was about 15 or 16, she was in her aunt's basement looking for music with defendant, who was a disc jockey. Defendant grabbed D.B. and laid her on the floor, but she slapped him and pushed him until he "finally got up and ran upstairs." On another occasion, D.B. was sleeping in her cousin's room and her cousin was sleeping next to her. Defendant "had [D.B.] kind of sort of on the edge of the bed," and placed his mouth on her vagina. She did not know how old she was at that time.

¶ 11 D.B. said that defendant told her not to say anything about the encounters because he did not want to break up the family or hurt her cousins. D.B. testified that she believed defendant and did not tell. She ultimately came forward after her mom told her about C.C.'s report because she "felt the need to. It was already out there. So [she] needed to finally tell someone." On cross-examination, defense counsel asked the court to take judicial notice of the State's response to defendant's motion for bill of particulars, wherein the State said that "D.B. made the decision not to tell on her own because she did not want to hurt her aunt or to be separated from her cousins."

¶ 12 Defense counsel called D.B.'s aunt and defendant's ex-wife, Gina Manson, to testify that she and defendant did not live at her residence on Bon Air Court from December 2005 until approximately July 2007 because of a fire.

¶ 13 The hearing then proceeded to arguments. The State argued that sufficient factual similarity existed between D.B.'s and C.C.'s allegations to admit D.B.'s testimony in the trial on C.C.'s allegations. Specifically, the State noted that D.B. and C.C. were both female, they were approximately the same age during these encounters, and they were both part of defendant's family such that defendant had routine contact with them. The State proposed calling D.B. to testify at trial and allowing the trier of fact to evaluate her credibility, arguing that the potential prejudice of admitting D.B.'s testimony could be counteracted by the court giving a limiting instruction to the jury.

¶ 14 Defense counsel pointed out that the alleged incidents with D.B. stopped approximately two years before the alleged incidents with C.C. began, and thus, "proximity of time" did not exist between the two alleged victims' encounters. Counsel also noted that C.C.'s case differed in that defendant did not place his penis in C.C.'s mouth, and defendant did not offer C.C. alcohol. Further, counsel argued that allowing D.B.'s testimony would result in a "trial within a trial" because D.B.'s testimony at the hearing differed from statements D.B. previously made to police officers. Counsel would thus have to call police officers as witnesses to point out these inconsistencies. Overall, counsel argued, the prejudicial effect of allowing D.B.'s testimony outweighed its probative value, as admitting D.B.'s testimony would cause confusion and compel the jury to convict defendant on the incidents involving C.C. based on the evidence of incidents involving D.B.

¶ 15 Based on the foregoing, the trial court denied the State's motion to admit the evidence concerning D.B.'s allegations. In its order, the court noted that the other-crimes evidence in this case was significant and extensive and could become the focal point of the trial

and entice the jury to find defendant guilty. The court found the probative value of the evidence was substantially outweighed by its prejudicial effect. This interlocutory appeal followed.

¶ 16

II. ANALYSIS

¶ 17 On appeal, the State argues the trial court abused its discretion by making unreasonable judgments about (1) the extent of the evidence that would be presented regarding D.B.'s allegations, and (2) the likelihood of unfair prejudice arising from admitting D.B.'s testimony. We disagree.

¶ 18 Under section 115-7.3 of the Criminal Procedure Code (725 ILCS 5/115-7.3 (West 2010)), evidence of an uncharged sex offense is admissible to prove the defendant's propensity to commit the charged sex offense. 725 ILCS 5/115-7.3(b) (West 2010); *People v. Reed*, 361 Ill. App. 3d 995, 999, 838 N.E.2d 328, 331-32 (2005). The probative value of the evidence must outweigh its undue prejudice. 725 ILCS 5/115-7.3(c) (West 2010); *Reed*, 361 Ill. App. 3d at 999, 838 N.E.2d at 332. In weighing the probative value of such evidence against undue prejudice to the defendant, the court may consider (1) the proximity in time to the charged or predicate offense; (2) the degree of factual similarity to the charged or predicate offense; or (3) other relevant facts and circumstances. 725 ILCS 5/115-7.3(c) (West 2010).

¶ 19 This court will not disturb a trial court's decision on whether to admit other-crimes evidence under section 115-7.3 absent an abuse of discretion. *People v. Donoho*, 204 Ill. 2d 159, 182, 788 N.E.2d 707, 721 (2003). A court abuses its discretion only when its decision is arbitrary, unreasonable, or fanciful or where no reasonable person would take the trial court's view. *People v. Pelo*, 404 Ill. App. 3d 839, 864, 942 N.E.2d 463, 485 (2010). We "may not simply substitute [our] judgment for that of the trial court." *People v. Illgen*, 145 Ill. 2d 353, 371,

583 N.E.2d 515, 522 (1991).

¶ 20 In this case, the trial court found the evidence was admissible and relevant to the issues of defendant's state of mind, intent, and propensity toward the commission of sexual offenses. The court's order noted that (1) proximity in time between the alleged incidents involving D.B. and the alleged incidents involving C.C. was not so great as to diminish the relevance of the evidence, and (2) general similarities between the alleged crimes would suffice when the evidence involving D.B. was not being offered to show *modus operandi*. However, the court found that the alleged other-crimes evidence was extensive, could become the focal point of the trial, and the evidence's probative value was substantially outweighed by the prejudicial effect of the evidence.

¶ 21 We cannot say that the trial court's decision was so "arbitrary, unreasonable, or fanciful" as to constitute an abuse of discretion. A reasonable person could find that, given that D.B.'s allegations spanned three years and over 30 incidents of abuse, they could become the focal point of the trial on C.C.'s allegations, which involved only two incidents of abuse in one night. Moreover, as defense counsel pointed out, inconsistencies were shown between D.B.'s testimony at the hearing and her prior statements to police; thus, defense counsel would have had to call officers to impeach D.B.'s testimony. Finally, D.B. alleged that defendant engaged in multiple incidents of oral sex with her, while C.C. alleged two incidents wherein defendant rubbed his genitals against her buttocks and later tried to pry her legs apart. All of the foregoing support the court's finding that D.B.'s allegations could become the focal point of the trial on C.C.'s allegations.

¶ 22 The State cites *People v. Taylor*, 383 Ill. App. 3d 591, 890 N.E.2d 1108 (2008), a

First District case, as an example of an appellate court decision that overturned a trial court's suppression of other-crimes evidence where the appellate court concluded the probative value of defendant's conviction outweighed any undue prejudice. *Taylor* is not persuasive in our case, however, because in *Taylor*, the State sought to introduce evidence of a prior *conviction*, not an uncharged prior offense. *Taylor*, 383 Ill. App. 3d at 592, 890 N.E.2d at 1109. Thus, in *Taylor*, the evidence was far less extensive than the evidence in our case, where the State would have to call D.B. to testify and defense counsel would have to call police officers to show inconsistencies between D.B.'s testimony and her prior statements.

¶ 23 Likewise, the State relies on *People v. Walston*, a Second District case, for the proposition that the danger of unfair prejudice from "mini-trials" on other sex crimes "is greatly diminished" compared to other-crimes evidence involving general offenses and therefore the trial court's fears of prejudice were unreasonable. *People v. Walston*, 386 Ill. App. 3d 598, 619, 900 N.E.2d 267, 288 (2008). This court has not adopted the *Walston* court's reasoning, however, and as this court noted in *People v. Stanbridge*, 348 Ill. App. 3d 351, 356, 810 N.E.2d 88, 94 (2004), we remain mindful of the Illinois Supreme Court's urging in *Donoho*, 204 Ill. 2d at 186, 788 N.E.2d at 724, for "trial judges to be cautious in considering the admissibility of other-crimes evidence to show propensity by engaging in a meaningful assessment of the probative value versus the prejudicial impact of the evidence." The record indicates the trial court engaged in such an assessment in this case, and it was within the court's discretion to conclude the prejudicial impact of the evidence substantially outweighed its probative value.

¶ 24 Finally, the State argues the trial court abused its discretion by failing to impose reasonable limits to the other-crimes evidence instead of barring the evidence altogether. The

State argues this could have been done by giving a limiting instruction to the jury or only allowing in the most probative instances of misconduct like the court did in *People v. Smith*, 406 Ill. App. 3d 747, 754-56, 941 N.E.2d 419, 426-27 (2010). However, we do not find an abuse of discretion in this case. In making its ruling, the court may have considered imposing reasonable limitations and decided the prejudicial effect would still have substantially outweighed the probative value. While reasonable minds may differ as to the trial court's findings, we do not find the court's findings were so unreasonable as to constitute an abuse of discretion.

¶ 25

III. CONCLUSION

¶ 26

For the reasons stated, we affirm the trial court's judgment.

¶ 27

Affirmed.

¶ 28 JUSTICE STEIGMANN, specially concurring:

¶ 29 We are confronted with a trial court decision that (1) the appellate court must review deferentially and (2) I believe to be clearly wrong. In my judgment, this is one of those cases. Giving the trial court's decision the deference it is due, I concur with the majority and affirm that decision. The purpose of this special concurrence is to (1) explain why I feel compelled to do so and (2) suggest reconsideration by the trial court upon remand.

¶ 30 In this case, the State has appealed the trial court's decision to deny the State's request to admit (pursuant to section 115-7.3 of the Criminal Procedure Code) evidence of uncharged sex offenses allegedly committed by defendant. The majority does a good job of describing the factual context of this appeal and the standard of review—namely, that this court will not disturb a trial court's decision on whether to admit the evidence in question absent an abuse of discretion (*supra* ¶19). The majority then correctly explains that standard by noting that a trial court abuses its discretion only when its decision is arbitrary, unreasonable, or fanciful or where no reasonable person would take the trial court's view. *Supra* ¶ 19.

¶ 31 The trial in this case has not yet been held, so one cannot know the extent of the evidence the State might have to support C.C.'s claims regarding how defendant, her grandfather, sexually abused her when she was 10 years old. Nonetheless, at this point, the record suggests that the State does not have much—if *any*—evidence available to corroborate C.C.'s allegations. This situation is hardly surprising, given that most persons who commit sexual offenses upon children do not seek out crowds in which to do so. Typically, as here, the jury will hear only the child's allegations under oath, minimal corroborating evidence of her testimony (such as how the defendant had access to the alleged child-victim), and the defendant's denial that any such

conduct occurred. The jury will then be called upon to decide whether the State had met its burden of proving the defendant guilty as charged beyond a reasonable doubt. Under the likely circumstances of this case, that burden will be heavy indeed.

¶ 32 Contrast this typical situation with one in which the jury is permitted to hear that the defendant on trial had committed similar sex offenses under similar circumstances. In this very case, if D.B.'s testimony is admitted about how defendant committed sex offenses upon her under circumstances similar to those about which C.C. testified, the posture of this case would be entirely different. And unless the jury found D.B. not worthy of belief, defendant would almost certainly be convicted. Yet, for whatever reason, the trial court, in the exercise of its discretion, denied the State's motion to admit the evidence in question regarding defendant's criminal sexual misconduct pertaining to D.B.

¶ 33 In deciding whether the trial court abused its discretion by this ruling—that is, whether it was "arbitrary, unreasonable, or fanciful" (supra ¶ 19)—I have considered the trial court's written decision denying the State's motion to admit evidence. In that decision, the trial court does an excellent job of describing both the context of the State's motion and the legal issues it presents. See supra ¶ 20. That the trial court did such a good job in this regard makes it all the more inexplicable that the court ultimately reached the wrong decision (in my judgment) when it concluded that the probative value of the proffered evidence is substantially outweighed by its prejudicial effect.

¶ 34 In support of the State's argument that we should reverse the trial court's ruling, the State cites the Second District decision in *People v. Walston*, 386 Ill. App. 3d 598, 900 N.E.2d 267 (2008). The majority notes that this court has not yet adopted the Second District's

reasoning in *Walston* (see supra ¶23), but it seems to me that at least the following discussion from *Walston* is entirely correct:

"[T]he method of determining undue prejudice in a section 115-7.3 case is much different from the method in a typical other-crimes case. *** Unlike the rule for typical other-crimes cases, section 115-7.3 mandates explicitly that propensity evidence not be considered *per se* a source of undue prejudice. As for evidence of bad character, because the statute speaks in terms of allowing 'evidence of the defendant's commission of another *offense*' (emphasis added) (725 ILCS 5/115-7.3(b) (West 2004)), it is inevitable that the propensity evidence the section allows—evidence of a defendant's past similar offenses—will concurrently work as evidence of the defendant's bad character. *** Accordingly, although section 115-7.3 propensity evidence may not be admitted where the resulting undue prejudice outweighs its probative value, neither a showing of the defendant's bad character nor a showing of his propensity will tip the scales nearly so heavily in a section 115-7.3 case as in any other case. *Unlike typical other-crimes evidence, *** the undue prejudice that excludes evidence under section 115-7.3 must come from some source other than its tendency to show bad character or propensity. This fact drastically changes the measurement of*

undue prejudice in a section 115-7.3 case." (Emphasis added.)

Walston, 368 Ill. App. 3d at 614-15, 900 N.E.2d at 283-84.

¶ 35 As the majority notes in its last paragraph (supra ¶24), the trial court could have considered imposing reasonable limitations upon the extent of the other-crimes evidence to be admitted in this case and (technically) still have concluded that the probative value of the remaining other-crimes evidence is substantially outweighed by its prejudicial effect. The majority's observation is correct, but the trial court's thoughtful written decision does not in fact make reference to any such consideration.

¶ 36 In my judgment, this is the avenue the trial court should have taken, just as trial courts exercise their discretion when the State offers multiple prior felony convictions to impeach a defendant at trial. That is, the trial court has the discretion to admit some, all, or none of those prior convictions for purposes of impeachment (assuming that they otherwise meet evidentiary requirements). My two-decades review of trial court records dealing with this impeachment issue shows that trial courts routinely choose the option of some of the prior convictions but not all, thereby diminishing some of the prejudice the defendant might suffer if all of those felony convictions were revealed to the jury while nonetheless getting across to the jury the information which the court believes it should possess when the jury evaluates the defendant's credibility.

¶ 37 Here, the trial court found the evidence was admissible and relevant to the issues of defendant's state of mind, intent, and propensity toward commission of sexual offenses. Precisely because of this, the jury is entitled to hear some such evidence in order to evaluate the credibility of the witnesses. See, e.g., *People v. Armstrong*, 275 Ill. App. 3d 503, 507, 655 N.E.2d 1203, 1206 (1995).

¶ 38 Likewise, in the present case, the trial court did not need to grant the State's request to introduce *all* of the evidence of defendant's criminal sexual behavior regarding D.B. An appropriate balancing would be to admit perhaps a handful or fewer such incidents which, in the trial court's judgment, were most probative.

¶ 39 As I mentioned at the beginning of this special concurrence, one of the reasons for my writing it is to call these matters to the attention of the trial court for possible reconsideration upon remand. The matter before us is an interlocutory appeal from the trial court's denial of the State's motion *in limine* that sought to admit certain evidence. Upon remand, the trial court is free to reconsider the matter and change its mind. See *Cetera v. DiFilippo*, 404 Ill. App. 3d 20, 40, 934 N.E.2d 506, 524 (2010) (a ruling on a motion *in limine* is an interlocutory order and remains subject to reconsideration by the trial court throughout the trial). I hope the court will do so. And upon remand, the trial court might find helpful a recent case from the Second District, *People v. Perez*, 2012 IL App (2d) 100865, 2012 WL 1637823, decided May 8, 2012, dealing with issues similar to those in this case.