

No. 1-12-2197

NOTICE: This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

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. 11 CR 5129
)	
REGINALD RATCLIFF,)	Honorable
)	Thomas J. Hennelly,
Ratcliff-Appellant.)	Judge Presiding.

JUSTICE MASON delivered the judgment of the court.
Presiding Justice Hyman and Justice Neville concurred in the judgment.

O R D E R

- ¶ 1 *Held:* The trial court erred when it re-characterized the State's proffered other crimes evidence as an admission by defendant and allowed the State to present defendant's statement as evidence; however, that error was harmless where the evidence overwhelmingly established that defendant delivered a controlled substance to an undercover police officer.
- ¶ 2 Following a jury trial, defendant, Reginald Ratcliff, was convicted of delivery of a controlled substance, then sentenced to 16 years' imprisonment as a Class X offender (730 ILCS 5/5-5-3(c)(8) (West 2010)). On appeal, Ratcliff contends that the trial court abused its discretion

when it allowed the State to introduce a statement he made during the offense because it constituted improper other crimes evidence that was more prejudicial than probative, and the court erroneously re-characterized the statement as an admission. Alternatively, Ratcliff argues that if the statement was admissible evidence of other crimes, the trial court abused its discretion when it precluded him from introducing evidence that he was acquitted of the prior offense.

¶ 3 The record shows that in two separate cases, Ratcliff was charged with delivery of a controlled substance for selling cocaine to undercover Chicago police officer Bridget Herlehy. In case number 11-CR-5130, Ratcliff was charged with committing the offense on March 15, 2011. In the case giving rise to this appeal, Ratcliff was charged with committing a second offense on March 17, 2011. The State elected to prosecute the March 15, 2011 offense first, and a jury found Ratcliff not guilty in that case.

¶ 4 Two months later, trial commenced in this case for the March 17, 2011 offense. Before trial, the State filed a motion to admit proof of Ratcliff's other crimes, particularly evidence of his March 15 encounter with Officer Herlehy. The State argued that Ratcliff's identity was the central issue in this case, and that Officer Herlehy should be allowed to testify that she recognized Ratcliff. In response, Ratcliff filed a motion *in limine* seeking to bar the State from mentioning the prior encounter, and specifically, that he allegedly told the officer on March 17, "I know you remember me. I just got you two the other day." Ratcliff argued that such evidence was unduly prejudicial.

¶ 5 At the hearing on these motions, the State argued that Ratcliff's identity was crucial to this case, and it was therefore imperative that the jury know that he met with Officer Herlehy two days earlier. The State said it only wanted to introduce Ratcliff's statement, and it did not need to

mention the prior offense. Defense counsel maintained that the prior contact was irrelevant to the March 17, 2011 offense and that any mention of it would prejudice Ratcliff. Alternatively, counsel argued that if the prior offense was mentioned, the defense should be allowed to inform the jury that Ratcliff was acquitted of that charge.

¶ 6 The trial court found that Ratcliff's statement "I know you remember me. I just got you two the other day" was not proof of other crimes or wrong acts, but instead, was an admission that was independently admissible.¹ The court found that the statement was "proof of the current crime" because it was "an inducement or incentive" for Officer Herlehy to buy the drugs from Ratcliff. The court stated that it was the jury's duty to determine whether or not the statement was made by Ratcliff, and what weight to give the statement.

¶ 7 Defense counsel maintained that Ratcliff's statement revealed a prior crime, and that he should therefore be allowed to inform the jury that Ratcliff was acquitted of the previous charge, in accordance with *People v. Ward*, 2011 IL 108690. The court stated that it was not going to allow any other evidence regarding the prior incident, and thus, *Ward* did not apply to this case. The court then clarified that it was not going to allow Officer Herlehy to testify that she recognized Ratcliff from the prior incident, or that she nodded her head in recognition following his statement to her.

¶ 8 At trial, Officer Herlehy testified that about 4 p.m. on March 17, 2011, she was working as an undercover purchasing officer with a narcotics investigation team. As she drove down the street in an unmarked vehicle, she saw Earnest Ratcliff ("Earnest"—defendant's brother) standing

¹ The trial court interchangeably referred to Ratcliff's statement both as an admission and as an admission "against penal interest." The latter exception to the hearsay rule applies only to out-of-court declarations by third parties. See *People v. Ward*, 154 Ill. 2d 272, 313 (1992). Thus, we will examine only whether Ratcliff's statement constituted an admission.

on the corner. Officer Herlehy made eye contact with Earnest, and he motioned for her to pull over. After she stopped at the curb, Earnest approached her passenger side window and asked her what she needed. She told him she wanted four rocks. Earnest replied "I got you" and directed her to drive around the block and into the alley. There, Earnest approached the driver's side window of her vehicle and told her to drive further into the alley. As she did so, Officer Herlehy noticed Earnest repeatedly looking back down the alley, then looked in her mirror and saw Ratcliff behind her vehicle. As Ratcliff approached the driver's side of Officer Herlehy's vehicle, Earnest walked away, and Ratcliff said to Officer Herlehy, "I know you remember me. I just got you two the other day."

¶ 9 Officer Herlehy handed Ratcliff \$40 in prerecorded money consisting of one \$20 bill and two \$10 bills. In return, Ratcliff handed the officer four small black tinted Ziploc bags with gold skulls each of which contained suspect crack cocaine. Officer Herlehy drove away from the area and notified the other officers on her team that she had made a narcotics purchase. Ten minutes later, an enforcement officer notified her that he had detained one of the men at a nearby corner. Officer Herlehy drove past that location and identified Earnest as one of the men involved in the narcotics transaction. Shortly thereafter, the enforcement officers contacted her again, and Officer Herlehy drove past the corner where she initially saw Ratcliff and identified Ratcliff as the other man involved in the narcotics transaction. Ratcliff and Earnest were both arrested. At the police station, Officer Ramirez, one of the enforcement officers on the team, gave Officer Herlehy the same \$40 in prerecorded money that she had given to Ratcliff during the drug transaction.

¶ 10 Chicago police officer David Torres testified that he was the primary surveillance officer during the narcotics transaction in this case. He arrived in the area before Officer Herlehy and

parked his car on the street facing the alley. From inside his vehicle, Officer Torres saw Officer Herlehy arrive at the location and pull her vehicle over to the curb. Earnest then approached the passenger side of Officer Herlehy's vehicle and briefly conversed with her. Following that, Officer Herlehy drove away, and a minute later, she reappeared and turned into the alley.

¶ 11 Officer Torres then saw Earnest approach the driver's window of Officer Herlehy's vehicle, and after a brief conversation, Officer Herlehy drove further into the alley. At that point, Ratcliff walked into the alley, and Earnest motioned for Ratcliff to approach Officer Herlehy's vehicle before leaving and walking down the street. Ratcliff stood at the driver's window of Officer Herlehy's vehicle, and Officer Torres saw Officer Herlehy hand Ratcliff some green paper, and Ratcliff handed Officer Herlehy some small items in return. Officer Herlehy then drove out of the alley and Ratcliff walked back to the street.

¶ 12 Chicago police officer Joseph Watson testified that he was also working as a surveillance officer during the narcotics transaction and was parked on the street where he could see the mouth of the alley. Officer Watson testified to substantially the same sequence of events as Officer Torres regarding Officer Herlehy's arrival at the scene, her interaction with Earnest, her driving into the alley and Ratcliff's approach to the rear of her car. Officer Watson also saw Ratcliff walk toward the front of Officer Herlehy's car, but then could no longer see Ratcliff from his location. Moments later, Officer Watson saw Officer Herlehy drive out of the alley, and Ratcliff walked out of the alley and down the street.

¶ 13 Chicago police officer Ramirez testified that he and Officer Mata were working as the enforcement officers during this narcotics transaction. They first arrested Earnest, and a minute later, arrested Ratcliff. During a search of Ratcliff, Officer Ramirez recovered \$40 in prerecorded

1-12-2197

money from Ratcliff's left pants pocket which consisted of one \$20 bill and two \$10 bills. Officer Ramirez later gave that money to Officer Herlehy.

¶ 14 Chicago police officer Ricardo Mata's testimony was similar to the testimony of Officer Ramirez. Officer Mata added he observed Officer Ramirez recovering the \$40 in prerecorded money from Ratcliff's left front pants pocket. Forensic scientist Penny Weinstein testified that she tested one of the packets Officer Herlehy received from Ratcliff and found it positive for 0.068 gram of cocaine.

¶ 15 Earnest testified for the defense that on March 17, 2011, he was standing on the street selling drugs when Ratcliff approached him. While the brothers conversed, a woman in a vehicle approached. Earnest told his brother he was going to sell the woman drugs, and Ratcliff then left and walked up the street. Earnest told the woman to park in the alley and he followed behind her. Earnest asked the woman what she needed, and she said she wanted four bags of crack cocaine. The woman handed Earnest money, which he put in his pocket, and he handed her four bags of cocaine. As she drove away, Earnest walked back to the street, and a few minutes later, he was arrested by detectives. Earnest testified that the detectives took \$45 from him, which consisted of \$39 the woman gave him and \$6 of his own money. Earnest was placed in a police car, and as they drove down the street, he saw that other detectives had detained his brother.

¶ 16 Earnest acknowledged that he was also charged with delivery of a controlled substance in this case, and pleaded guilty to a reduced charge of simple possession of a controlled substance, for which he was serving a three-year prison sentence. Earnest further acknowledged that he had four prior convictions for possession of a controlled substance and that he was a professional drug

dealer. Earnest testified that he acted alone on March 17, 2011, and that Ratcliff was not involved in the drug sale to Officer Herlehy.

¶ 17 Following deliberations, the jury found Ratcliff guilty of delivery of a controlled substance. The trial court subsequently sentenced Ratcliff to a term of 16 years' imprisonment as a Class X offender based upon his seven prior felony convictions.

¶ 18 On appeal, Ratcliff first contends that the trial court abused its discretion when it allowed the State to present Officer Herlehy's testimony that Ratcliff allegedly told her "I know you remember me. I just got you two the other day." Ratcliff first argues that the trial court erroneously re-characterized the State's proffered other crimes evidence as an admission where the ambiguous statement did not imply that he was guilty of selling drugs that day. Ratcliff further argues that the statement was inadmissible hearsay and constituted improper other crimes evidence that was more prejudicial than probative because it suggested he engaged in a drug transaction on a prior occasion. As a result, Ratcliff claims that he was prejudiced because there is a reasonable probability the jury would have found him not guilty if the statement had been excluded.

¶ 19 The admission of evidence is within the sound discretion of the trial court and on review its ruling will not be disturbed absent an abuse of that discretion. *People v. Tenney*, 205 Ill. 2d 411, 436 (2002). An abuse of discretion occurs where the trial court's ruling is arbitrary, unreasonable or fanciful, or where no reasonable person would agree with the trial court's view. *People v. Ward*, 2011 IL 108690, ¶ 21.

¶ 20 " 'Hearsay evidence is an out-of-court statement offered to prove the truth of the matter asserted, and it is generally inadmissible due to its lack of reliability unless it falls within an exception to the hearsay rule.' " *Tenney*, 205 Ill. 2d at 432-33, quoting *People v. Olinger*, 176 Ill.

2d 326, 357 (1997). An admission by a party opponent, whether it consists of a statement or conduct, is admissible as an exception to the hearsay rule. *People v. Cruz*, 162 Ill. 2d 314, 374-75 (1994). Our supreme court has defined an admission as a statement or conduct " 'from which guilt may be inferred, when taken in connection with other facts, but from which guilt does not necessarily follow.' " *People v. Milka*, 336 Ill. App. 3d 206, 232 (2003), quoting *People v. Stewart*, 105 Ill. 2d 22, 57 (1984) (abrogated on other grounds by *People v. Gacho*, 122 Ill. 2d 221 (1988)). An admission proffered against a defendant is always admissible as substantive evidence to show his guilt of the offense charged. *People v. Burns*, 99 Ill. App. 3d 42, 45 (1981).

¶ 21 Here, we find that Ratcliff's statement, "I know you remember me. I just got you two the other day[.]" did not qualify as an admission under the definition set forth above. When considered with the other facts of this case, Ratcliff's statement was not one from which his guilt for the offense in this case could have been inferred. While the statement may have implied that Ratcliff engaged in another transaction with Officer Herlehy two days earlier, it was not an admission of his participation in the crime with which he was charged. *Id.* Further, although the trial court found that the statement was "an inducement or incentive" for Officer Herlehy to buy the drugs from Ratcliff, the record shows that before Ratcliff approached Officer Herlehy's car in the alley and made the statement, the officer had already stated to Earnest that she wanted to buy "four rocks," or bags of crack cocaine, and Earnest had told her that he would accommodate her. Consequently, Ratcliff's statement may not properly be construed as an inducement or incentive for the officer to buy the drugs from him because she had already indicated that she was a willing buyer. Accordingly, we find that Ratcliff's statement was not an admission, but inadmissible hearsay.

¶ 22 Ratcliff also contends that his statement constituted prejudicial evidence of other crimes. Evidence which suggests a defendant has engaged in prior criminal activity should not be admitted unless it is relevant to the offense for which he is being tried. *People v. Ingram*, 389 Ill. App. 3d 897, 901 (2009), citing *People v. Lewis*, 165 Ill. 2d 305, 345-46 (1995). Whether the statement, "I know you remember me. I just got you two the other day[.]" in fact constitutes evidence of other crimes is a close call. Although the statement is not explicit evidence of a prior drug transaction between Ratcliff and Officer Herlehy, it could be interpreted as suggesting a prior drug transaction when considered in the context of the circumstances in this case. That being the case, the statement's only relevance would be to show Ratcliff's propensity for engaging in drug transactions, an improper use of other crimes evidence. *People v. Richee*, 355 Ill. App. 3d 43, 50-51 (2005).

¶ 23 The State did not explicitly contend that Ratcliff's statement was admissible evidence of other crimes, but instead argued that it should be admitted on the issue of Officer Herlehy's ability to identify Ratcliff. But as Ratcliff points out, four witnesses, in addition to Officer Herlehy, identified Ratcliff as the person who engaged in the transaction and the trial court, in any event, refused to admit evidence that Officer Herlehy acknowledged that she recognized Ratcliff from their prior dealings. So it is not apparent that the statement was relevant or necessary for the purpose identified by the State. And given the other evidence tying Ratcliff to the crime, it is clear that the probative value of Ratcliff's statement was outweighed by its prejudicial effect.

¶ 24 But notwithstanding the error in admitting Ratcliff's statement under any theory, we find that in the context of the other admissible evidence against Ratcliff, the error was harmless. The admission of hearsay is not reversible error where there is no reasonable probability that the jury

would have found defendant not guilty if the hearsay testimony had been excluded, such as where the same matter was proved by properly admitted evidence, or the evidence of defendant's guilt was overwhelming. *People v. Rodriguez*, 291 Ill. App. 3d 55, 61 (1997). Likewise, as to improperly admitted evidence of other crimes, the evidence must be so prejudicial that defendant was denied a fair trial. *Ingram*, 389 Ill. App. 3d at 902. In other words, the challenged evidence must have been a material factor in defendant's conviction such that the jury's verdict would have been different without that evidence. *Id.* 389 Ill. App. 3d at 902. Where a defendant is not denied a fair trial and is not otherwise prejudiced by the improper evidence, its introduction is harmless error. *People v. Nieves*, 193 Ill. 2d 513, 530 (2000).

¶ 25 Here, the evidence establishing Ratcliff's guilt for selling cocaine to Officer Herlehy can fairly be characterized as overwhelming. Officer Herlehy testified that she handed Ratcliff \$40 in prerecorded money consisting of one \$20 bill and two \$10 bills, and Ratcliff then handed her four bags of suspect crack cocaine. Her testimony was corroborated by Officer Torres, who testified that he saw Officer Herlehy hand Ratcliff some green paper, and Ratcliff then handed Officer Herlehy some small items. Minutes later, Ratcliff was arrested, and Officer Ramirez recovered the same \$40 in prerecorded money from Ratcliff's left pants pocket. In addition, forensic scientist Penny Weinstein testified that one of the packets Officer Herlehy received from Ratcliff tested positive for cocaine. Based on this evidence, we find that, even if Ratcliff's statement had been excluded, the remaining evidence against him was so overwhelming that there is no reasonable probability that the jury would have found him not guilty.

¶ 26 Finally, we find no merit in Ratcliff's alternative argument that he should have been allowed to introduce evidence that he was acquitted of the prior offense, as was allowed in *Ward*,

2011 IL 108690. In *Ward*, the defendant was on trial for criminal sexual assault, and evidence that he had committed a prior criminal sexual assault against another woman, including graphic testimony of the attack from that alleged victim, was admitted to show his propensity to commit sex crimes and the victim's lack of consent. *Ward*, 2011 IL 108690, ¶¶ 43-45. Our supreme court found that the repeated references to the defendant's prior offense supported a jury inference that he had been charged, and perhaps convicted, in the prior attack, when, in fact, he had been acquitted. *Ward*, 2011 IL 108690, ¶ 45. Under the facts and circumstances in that case, the court found that the defendant should have been allowed to present evidence that he was acquitted of the prior offense. *Ward*, 2011 IL 108690, ¶ 48.

¶ 27 Here, unlike *Ward*, there was no evidence presented regarding the prior offense, other than Ratcliff's vague statement. Consequently, we find that there was no evidence in this case that would have led the jury to speculate that Ratcliff had been charged and tried in another case. It therefore follows that where there was no evidence of a prior prosecution, there was no need for Ratcliff to present evidence that he had been acquitted. Accordingly, we find no abuse of discretion by the trial court in barring Ratcliff from presenting the acquittal evidence.

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

¶ 29 Affirmed.