2016 IL App (1st) 143251-U

SIXTH DIVISION
October 14, 2016

No. 1-14-3251

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. 12 CR 21314
	)	
JERRY STEVENSON,	)	Honorable
	)	Carol Howard,
Defendant-Appellant.	)	Judge Presiding.

JUSTICE ROCHFORD delivered the judgment of the court.
Presiding Justice Hoffman and Justice Delort concurred in the judgment.

ORDER

¶ 1 *Held:* We affirmed the trial court where: defendant failed to establish error in the admission of other-crimes evidence at trial; and the evidence was sufficient to sustain defendant's convictions of aggravated domestic battery and unlawful use of a weapon by a felon.

¶ 2 Following a bench trial, defendant Jerry Stevenson was convicted of unlawful use of a weapon by a felon (UUWF) (720 ILCS 5/24-1.1(a) (West 2012)), and aggravated domestic battery (720 ILCS 5/12-3.3(a-5) (West 2012)). Defendant was sentenced to 7 years' imprisonment for the UUWF charge, 11 years' imprisonment for the aggravated domestic battery charge, and 4 years of mandatory supervised release (MSR). On appeal, defendant argues that

the trial court abused its discretion by admitting other-crimes evidence and that the evidence, as a whole, was insufficient to prove him guilty of both charges beyond a reasonable doubt. We affirm.

¶ 3 Defendant was initially charged with one count of attempted murder, one count of aggravated domestic battery, four counts of UUWF, one count of aggravated battery, and two counts of domestic battery. Ultimately, the State elected to proceed to trial only on the attempted murder charge, the aggravated domestic battery charge, one count of UUWF, and one count of domestic battery. Prior to trial, the State moved to admit the evidence of eight prior acts of domestic violence that defendant committed against the victim, Valencia Shelton, defendant's ex-wife, C.B., and defendant's ex-girlfriend, Soraya Foote. The trial court, after hearing argument, ruled that four of the eight prior domestic violence incidents were admissible, including two acts against the victim, one prior conviction for aggravated sexual assault against C.B., and one act against defendant's ex-girlfriend, Ms. Foote.

¶ 4 At trial, the victim testified that she was in a dating relationship from June 2012 through October 2012 with defendant and had lived with him for four months. Defendant rented a room in the victim's house for $250 and helped her in the payment of various bills while she was unemployed. On October 25, 2015, while in the car with defendant, the victim received a phone call from a friend but did not answer the call. This led to an argument between defendant and the victim. When they returned home, the victim noticed a shotgun on the kitchen table that defendant had purchased two days earlier. She feared for her life after seeing the shotgun, but did not call 9-1-1.

¶ 5 The victim watched television until defendant called her into the kitchen. Defendant asked the victim to write a letter stating that he was purchasing her vehicle and that she was

transferring the title to him. The shotgun was on the table between the victim and defendant, and the victim felt coerced into writing the letter which detailed the car purchase and title transfer. After writing the letter, the victim, and defendant who was not armed at this point, drove to a currency exchange to have the document notarized. Although there was a security guard on duty at the currency exchange, the victim did not tell him nor the woman who was working there that she feared for her life.

¶ 6 Defendant and the victim continued to argue. It was decided that defendant would move out of the victim's residence. While the victim helped defendant gather his belongings, defendant's friend, Cliff Manning, briefly stopped by the residence. The victim did not tell Mr. Manning that she feared for her life while he was there.

¶ 7 Defendant subsequently instructed the victim to sit on the floor in the kitchen, and she complied. Defendant sat at the kitchen table and proceeded to load and unload the shotgun with two shotgun shells. Defendant told the victim: "I am going to kill you. I am going to kill your children and then kill myself." Defendant then told the victim: "If you love your family, I want you to do something for me. *** I want you to go in the drawer and get a knife and cut your right ear off." Defendant also told the victim that she was a "dirty b****" and, "I let my first wife live, but I am going to kill you."

¶ 8 As defendant continued to load and unload the shotgun, the victim ran through the front door. Defendant grabbed the back of the victim's t-shirt in an attempt to pull her back inside the residence. She screamed for help, and defendant attempted to cover her mouth and choke her from behind. The victim said that defendant was squeezing her throat and that she believed defendant was going to kill her.

¶ 9 At some point, defendant's finger entered the victim's mouth. She bit down on defendant's finger and he released her. Part of defendant's finger "came off" in the victim's mouth, and she spit it on the porch. Defendant ran back into the house, and the victim ran to her neighbor's house. The victim told her neighbor to call the police. When the police arrived, she told them what had happened. The court admitted several photographs from October 25, 2012, one of which depicted a scratch on the victim's arm.

¶ 10 Additionally, the victim testified regarding two prior incidents involving defendant. The first incident occurred in September 2012, when defendant attempted to choke the victim because a male friend had called her. The second incident occurred a few weeks prior to the October 25, 2012, incident where defendant forcefully slapped the victim in the face.

¶ 11 On cross-examination, the victim acknowledged that she did not call the police after the September 2012, and the October 2012 incidents involving defendant. The victim also acknowledged that, at the preliminary hearing, she had testified that, on October 25, defendant choked her from the front and told her to lie on the kitchen floor. She also gave a statement to the police shortly after the October 25 incident that she was on her back in the grass, defendant had his hands around her neck, and she spit defendant's finger in the grass. She stated: "I can't remember everything that happened. It happened so fast."

¶ 12 On redirect, the victim stated that she did not seek help at the currency exchange or from Mr. Manning because defendant had not yet threatened her or her children.

¶ 13 The victim's neighbor, Myrna Greenway, testified that at 11:30 p.m. on October 25, 2012, she awoke to screams from outside. Through her window, Ms. Greenway saw "something white" moving in the yard next door and then realized it was her neighbor moving around on the ground, flailing her arms. She could hear her scream: "Help, call 911, he is going to kill me.

Help, somebody call 911." The victim ran to Ms. Greenway's house disheveled and panicked with blood on her shirt. She told Ms. Greenway she was not hurt, but that "he" was going to kill her and that she bit off "his" finger. Ms. Greenway called the police. She did not witness the victim being attacked because the awning on the victim's house obscured her view. Ms. Greenway did not observe any injuries on the victim.

¶ 14 Chicago police officer Mark Palazzolo testified that he was dispatched to Ms. Greenway's residence on the date in question. There, he spoke with Ms. Greenway and the victim. The victim was crying and trembling during the interview. Officer Palazzolo did not observe any injuries on the victim. Although she did complain of neck pain, the officer did not mention the victim's neck pain in his report. After speaking with the victim, he and several other officers searched the victim's residence for defendant. Officer Palazzolo observed a blood trail in the "living room, kitchen, et cetera, the back of the laundry room, doorway, out the back door leading to the garage and then down the alley," but did not recover the shotgun or shells from the victim's residence or surrounding area. He also found a severed finger on the victim's front porch.

¶ 15 Defendant's ex-wife, C.B., testified that she was in a relationship with defendant from 1998 until 2000. In April 2000, C.B. and defendant were separated but still married. On April 10, 2000, defendant came to C.B.'s residence to drop off a child support check and attempted to talk to C.B. about reconciling. C.B. noticed defendant had a gun. When C.B. refused to discuss reconciliation, he hit her with the gun, breaking her jaw and knocking her unconscious.

¶ 16 C.B.'s son attempted to call 9-1-1, but defendant took the phone and threatened to kill C.B. and her children. Defendant took C.B. to her living room and told her that if she did not allow him to have sex with her, he would rape C.B. in front of her son. Defendant tried to force

C.B. to perform oral sex on him, but she was unable to comply because her jaw was broken. Defendant, thereafter, penetrated her vaginally and anally, while holding a gun to her head. Eventually, the police were called, but defendant refused to release C.B. and her children for several hours.

¶ 17 The State also introduced into evidence a certified copy of defendant's prior conviction for aggravated criminal sexual assault.

¶ 18 Defendant called Cliff Manning as his only witness. Mr. Manning testified that, on October 25, 2012, he drove to the victim's residence to pick defendant up to go to the Oak Leaf Pine Bar in River Forest. While at the victim's residence Mr. Manning did not observe a gun or shells on the kitchen table. The victim was not crying and did not ask Mr. Manning for help. After Mr. Manning used the restroom, he heard defendant and the victim discussing something which occurred prior to his arrival. While defendant and the victim were not screaming at each other, Mr. Manning was not comfortable being present for the conversation, and decided to wait in his vehicle. Mr. Manning eventually returned to the house and knocked on the door, and defendant said he was not going out. On cross-examination Mr. Manning acknowledged that he previously spoke with the State's investigator Cassie Russo, and that he might have told her that he was going to a bar in Forest Park rather than River Forest.

¶ 19 Investigator Cassie Russo testified in rebuttal that she interviewed Mr. Manning at his home for ten to fifteen minutes on May 29, 2014. Mr. Manning told Mr. Russo that, on October 25, 2012, he had plans with defendant to go to the Pine Bar in Forest Park. Mr. Manning stated that, after waiting in his vehicle for ten minutes, he called defendant from his cell phone, rather than knocking on the door.

¶ 20 Following closing arguments, the trial court found defendant guilty of aggravated domestic battery and UUWF (involving possession of a firearm), but not guilty of attempted murder. The court merged the domestic battery count into the aggravated domestic battery count.

¶ 21 In his posttrial motion, defendant challenged the sufficiency of the evidence for both UUWF and aggravated domestic battery. The court denied the motion following arguments, reiterating that the victim's testimony and Ms. Greenway's corroborating testimony were sufficient to convict. The trial court sentenced defendant to 11 years' imprisonment for aggravated domestic battery and 7 years' imprisonment for UUWF, along with 4 years of MSR. This appeal followed.

¶ 22 On appeal, defendant first argues that the trial court erred by admitting evidence relating to defendant's prior conviction involving his ex-wife, C.B.[1] Defendant claims that the evidence of the prior offense was inadmissible because the State failed to demonstrate a common plan or design between the prior offense and the charged offense. Defendant further argues the prior-offense evidence was unduly prejudicial, as the incident was factually distinguishable and not proximate because it occurred 12 years prior to the present case.

¶ 23 Initially, we note that defendant failed to raise this argument in his posttrial motion. Further, defendant failed to argue that the alleged error amounted to plain error until his reply brief, and instead initially argued the alleged error was not harmless. Therefore, we find this issue is forfeited. See *People v. Breedlove*, 213 Ill. 2d 509, 517 (2004) ("failure to object at trial and include the issue in a written posttrial motion results in waiver of the alleged error on

[1] In his opening brief, defendant argues the trial court erroneously admitted other-crimes evidence concerning his ex-girlfriend, Soraya Foote. However, in his reply defendant, concedes the State did not introduce evidence of that crime at trial, although the court ruled it admissible. Accordingly, we decline to address the un-introduced other-crimes evidence as we presume the court did not consider it. See *People v. Deenadayalu*, 331 Ill. App. 3d 442, 450 (2002).

review"). Nevertheless, we review defendant's claim for plain error. See *People v. Ramsey*, 239 Ill. 2d 342, 412 (2010) (noting that a reviewing court may consider a plain-error argument raised for the first time in a defendant's reply brief).

¶ 24 The plain-error doctrine permits a reviewing court to consider unpreserved errors when " '(1) the evidence in a criminal case is closely balanced or (2) where the error is so fundamental and of such magnitude that the accused was denied a right to a fair trial.' " *People v. Hestand*, 362 Ill. App. 3d 272, 279 (2005) (quoting *People v. Harvey*, 211 Ill. 2d 368, 387 (2004)). Defendant argues that the evidence was closely balanced because no witness corroborated the victim's "key assertions." However, we must first determine whether any error occurred. *People v. Herron*, 215 Ill. 2d 167, 187 (2005).

¶ 25 We review a trial court's admission of evidence for an abuse of discretion. *People v. Illgen*, 145 Ill. 2d 353, 364 (1991). A trial court abuses its discretion when its decision is " 'arbitrary, fanciful, unreasonable, or where no reasonable person would take the view adopted by the trial court.' " *People v. Jackson*, 2014 IL App (1st) 123258, ¶ 39 (quoting *People v. Wheeler*, 226 Ill. 2d 92, 133 (2007)). When applying this deferential standard, we must uphold the trial court's decision even if "reasonable minds [can] differ" about whether such evidence is admissible. *Illgen*, 145 Ill. 2d at 375-76.

¶ 26 "As a common law rule of evidence in Illinois, it is well settled that evidence of other crimes is admissible if relevant for any purpose other than to show a defendant's propensity to commit crimes." *People v. Dabbs*, 239 Ill. 2d 277, 283 (2010). However, in domestic violence prosecutions, section 115-7.4 of the Code of Criminal Procedure (725 ILCS 5/115-7.4 (West 2012)), abrogates the common law rule and expressly permits the State to introduce evidence that the defendant previously committed other crimes of domestic violence. *Dabbs*, 239 Ill. 2d at

284-85. In such cases, evidence of prior acts of domestic violence is admissible for any relevant purpose, including to establish the defendant's propensity to commit crimes of domestic violence. 725 ILCS 5/115-7.4(a) (West 2012). Prior to admitting the other-crimes evidence, however, the trial court must weigh the probative value of the evidence against its undue prejudice. 725 ILCS 5/115-7.4(b) (West 2012); see *Dabbs*, 239 Ill. 2d at 290-91. In weighing the probative value against undue prejudice of prior domestic violence cases, the court may consider: (1) the proximity in time between offenses; (2) the factual similarities between offenses; or (3) any other relevant facts. 725 ILCS 5/115-7.4(b) (West 2012).

¶ 27 Here, contrary to defendant's assertion, the State was not required to demonstrate a common scheme or plan for prior-offense evidence to be admissible because both the prior and charged crimes were offenses of domestic violence. See 725 ILCS 5/115-7.4(a) (West 2012). Under section 115-7.4, the evidence of defendant's prior domestic violence offense against C.B. was admissible because it demonstrated defendant's propensity to commit crimes of domestic violence, provided its probative value outweighed its prejudicial effect. See 725 ILCS 5/115-7.4(b) (West 2012). A review of the record reflects that, in its admission of defendant's prior-offense evidence, the trial court properly weighed the probative value against its prejudicial effect and determined that it was admissible. Prior to trial, the court held a hearing on the State's motion to admit eight incidents of prior domestic violence. During the hearing, the court specifically addressed the prejudicial effect of admitting the prior offenses. See *Jackson,* 2014 IL App (1st) 123258, ¶¶ 42-45 (other-crimes evidence properly admitted under section 115-7.4, where the prior acts were proximate in time to the charged offense, the prior incidents were factually similar to the charged offense, and the trial court acknowledged that it undertook the weighing process in balancing the probative value against the prejudicial effect).

¶ 28 With regard to defendant's argument regarding proximity in time, our supreme court has previously held that admissibility of other-crimes evidence cannot "be controlled solely by the number of years that have elapsed between the prior offense and the crime charged." (Internal quotation marks omitted.) *People v. Donoho*, 204 Ill. 2d 159, 183 (2003) (quoting *Illgen*, 145 Ill. 2d at 370)). Here, the prior offense occurred 12 years before the charged offense, but defendant was incarcerated for 8 of those 12 years. Moreover, we note that our supreme court has expressly declined to delineate a bright line rule as to when other-crimes evidence is too remote in time to be probative. See *Illgen*, 145 Ill. 2d at 370; see also *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). Further, while the age of the prior offense with C.B. was a consideration, it was not dispositive because proximity in time is just one of several factors for the trial court to consider. See 725 ILCS 5/115-7.4(b) (West 2012). Therefore, we find that the age of the prior offense alone was insufficient to bar admissibility.

¶ 29 Turning to the factual similarities factor, while defendant relies on *People v. Allen*, 335 Ill. App. 3d 773 (2002), in arguing that the crimes are too dissimilar to warrant admission, we reject that contention. The court in *Allen* held that the other-crime evidence was not sufficiently similar to the charged offense to specifically establish *modus operandi* (*id*. at 781), and did not involve section 115-7.4 or prior crimes of domestic violence. See *Donoho*, 204 Ill. 2d at 184 ("Where such evidence is not being offered under the *modus operandi* exception, mere general areas of similarity will suffice to support admissibility."). (Internal quotation marks omitted.)

¶ 30 In this case, although the prior incident involved a sexual assault, rather than aggravated domestic battery, there were enough factual similarities for the trial court to conclude the other-

crimes evidence was more probative than prejudicial. See *id.* at 185 ("The existence of some differences between the prior offense and the current charge does not defeat admissibility because no two independent crimes are identical.") In the prior incident, defendant used a gun and threatened to kill his wife, C.B., and her children. Similarly, in the instant case, defendant used a shotgun to threaten to kill his girlfriend, the victim, and her children. Both incidents involved domestic disputes in which defendant used a firearm and threatened to kill a family or household member and their children. See *Jackson,* 2014 IL App (1st) 123258 ¶ 43 (upholding admission of other-crimes evidence where there was a general similarity between prior and current offenses). Under these circumstances, we cannot conclude that the trial court's ruling was arbitrary, fanciful, or unreasonable. Accordingly, we conclude that the trial court did not abuse its discretion in admitting evidence of defendant's prior offense of domestic violence. Because we conclude no error occurred, we further conclude plain error does not exist.

¶ 31 Defendant next argues that the evidence was insufficient to sustain his convictions for UUWF and aggravated domestic battery. Defendant claims that both convictions rely solely on the victim's testimony, which was biased and not credible. On a challenge to the sufficiency of the evidence, we inquire " 'whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.' " (Emphasis omitted.) *People v. Davison,* 233 Ill. 2d 30, 43 (2009) (quoting *Jackson v. Virginia,* 443 U.S. 307, 319 (1979)). In so doing, we draw all reasonable inferences in favor of the State (*id.* at 43), and we will not retry the defendant. *People v. Collins,* 106 Ill. 2d 237, 261 (1985). We will not overturn a criminal conviction "unless the evidence is so improbable or unsatisfactory that it creates a reasonable doubt of the defendant's guilt." *People v. Givens,* 237 Ill.2d 311, 334 (2010).

¶ 32 It is well established that "[t]he testimony of a single witness, if it is positive and the witness credible, is sufficient to sustain a conviction." *People v. Smith*, 185 Ill. 2d 532, 541 (1999). Further, it is within the province of the trier of fact "to determine the credibility of witnesses, to weigh the evidence and draw reasonable inferences therefrom, and to resolve any conflicts in the evidence." *People v. Siguenza-Brito*, 235 Ill. 2d 213, 228 (2009). A defendant's claim that a witness was not credible, standing alone, is insufficient to reverse a conviction. *Id.*

¶ 33 Defendant contends that the evidence presented is insufficient to sustain his UUWF conviction because the police never recovered the shotgun, the victim's testimony was incredible, and there was no evidence to corroborate the victim's testimony that defendant was in possession of a shotgun. To prove UUWF, the State must show that a person, previously convicted of a felony, knowingly possessed a firearm or firearm ammunition. 720 ILCS 5/24-1.1(a) (West 2012). Defendant does not contest his prior felony conviction for aggravated criminal sexual assault. Therefore, the relevant inquiry is whether the State proved defendant knowingly possessed a firearm.

¶ 34 Here, because police never recovered the shotgun, defendant asks us to infer that he was never in possession of the weapon. However, as the trier of fact, the trial court heard the victim testify extensively regarding defendant's possession of the weapon. The victim testified that defendant purchased the shotgun two days before the incident and she observed the shotgun on the kitchen table a number of times on the date of the incident. The victim further testified that defendant forced her to sit on the floor while defendant was loading and unloading the shotgun and threatening to kill the victim, her children, and himself. Moreover, the State presented evidence of a blood trail that tended to show defendant, prior to fleeing the house through a back alley, was in the kitchen where the victim testified the gun was last located. Although defendant

claims that the victim's testimony was uncorroborated because there was no evidence of blood on the table where the gun was last located, the witness's failure to seek help was incredible, and that Cliff Manning did not observe a gun, the trial court found otherwise.

¶ 35 The trial court observed the testimony and evidence and was in the best position to determine whether that evidence proved defendant possessed the shotgun. The trier of fact is responsible for assessing witness credibility and resolving conflicts in the evidence. See *Siguenza-Brito,* 235 Ill. 2d at 228. Accordingly, taking the evidence in the light most favorable to the State, we conclude that a rational trier of fact could have found, beyond a reasonable doubt, that defendant possessed the shotgun.

¶ 36 Finally, defendant challenges the sufficiency of the evidence of his aggravated domestic battery conviction. Specifically, defendant asks us to conclude that the evidence was insufficient to sustain his conviction because other witnesses testified that they did not observe injuries to the victim's neck, there were no other witnesses to the strangulation, and the victim's testimony was not credible. To prove aggravated domestic battery, the State must show that defendant, "in committing a domestic battery, strangle[d] another individual." 720 ILCS 5/12-3.3(a-5) (West 2012). "Strangle" is defined as "intentionally impeding the normal breathing or circulation of the blood of an individual by applying pressure on the throat or neck of that individual or by blocking the nose or mouth of that individual." *Id.*

¶ 37 Here, the victim's testimony established that defendant choked the victim, causing the victim to fear for her life and experience shortness of breath. The victim's testimony also established that defendant had his hands over the victim's mouth and that she bit off defendant's finger to escape. Myrna Greenway, the victim's neighbor testified that the victim looked "disheveled" and was screaming that "he" was going to kill her. We note that the statute does not

require that the victim sustain an injury, and domestic violence cases often turn on the victim's testimony and the reasonable inferences drawn by the fact finder. See *Dabbs*, 396 Ill. App. 3d at 627 (noting domestic violence cases "typically become[] a credibility contest between the alleged abuser and victim.") Moreover, defendant's prior conviction for aggravated sexual assault against C.B. was admissible pursuant to section 115-7.4 of the Code of Criminal Procedure (725 ILCS 5/115-7.4 (West 2012)), to show defendant's propensity to commit crimes of domestic violence. Thus, taken altogether, it was not unreasonable for the trial court to conclude that defendant strangled the victim within the meaning of the statute. Although the victim's account of the strangulation varied slightly in the two years between the night of the crime and trial, the trial court, as fact finder, was in the best position to observe the witnesses' testimony and assess their credibility. See *Siguenza-Brito*, 235 Ill. 2d at 228. Considering the evidence in the light most favorable to the State, we conclude that the evidence was sufficient to permit the trial court to find the essential elements of aggravated domestic battery beyond a reasonable doubt.

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

¶ 39 Affirmed.