2017 IL App (4th) 160685-U

NO. 4-16-0685

FILED
October 31, 2017
Carla Bender
4th District Appellate
Court, IL

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from
Plaintiff-Appellee,	)	Circuit Court of
v.	)	McLean County
HARLAN MOHR,	)	No. 13CF1720
Defendant-Appellant.	)	
	)	Honorable
	)	J. Casey Costigan,
	)	Judge Presiding.

PRESIDING JUSTICE TURNER delivered the judgment of the court.
Justices Knecht and DeArmond concurred in the judgment.

ORDER

¶ 1 *Held*: The appellate court affirmed defendant's conviction, finding the trial court did not err in admitting other-crimes evidence at his trial.

¶ 2 In January 2016, a jury found defendant, Harlan Mohr, guilty on four counts of aggravated criminal sexual abuse. In August 2016, the trial court sentenced him to concurrent terms of 3 1/2 years in prison on each count.

¶ 3 On appeal, defendant argues the trial court erred in admitting other-crimes evidence. We affirm.

¶ 4 I. BACKGROUND

¶ 5 In April 2014, a grand jury indicted defendant on four counts of aggravated criminal sexual abuse of family members under the age of 18 (720 ILCS 5/12-16(b) (West 2014)). The charges alleged defendant knowingly committed an act of sexual conduct for the

purpose of his own sexual gratification or arousal by using his hand to touch C.T.'s breast (count I), C.T.'s vagina (count II), J.T.'s breast (count III), and E.T.'s breast (count IV). Count I alleged the conduct occurred between May 1, 2004, and May 31, 2009. Count II alleged the conduct occurred between January 5, 2004, and January 5, 2009. Count III alleged the conduct occurred between January 1, 2003, and December 31, 2009. Count IV alleged the conduct occurred between May 1, 2004, and May 31, 2004. In June 2015, the grand jury indicted defendant on the offense of aggravated criminal sexual abuse (count V) (A.T.'s vagina), alleging the conduct occurred between May 1, 2009, and May 31, 2009. In September 2015, the State moved to dismiss count II. Defendant pleaded not guilty.

¶ 6 In February 2015, the State filed a motion to allow evidence under section 115-7.3 of the Code of Criminal Procedure of 1963 (Code) (725 ILCS 5/115-7.3 (West 2014)). The State alleged defendant committed similar acts of sexual conduct on C.T., J.T., E.T., A.T., and M.T. in Iowa and Missouri and the acts were admissible as propensity evidence. Defendant filed a response, arguing "the cumulative effect of thousands of instances of alleged uncharged conduct is excessive and prejudicial." In March 2015, the trial court conducted a hearing on the State's motion. At that time, the court noted it had "very little detail" as to "what the State wants to introduce," and it allowed the State to file an amended motion.

¶ 7 In May 2015, the State filed its amended motion under section 115-7.3. Therein, the State alleged the witnesses would testify that defendant (1) touched their breasts and/or vaginas in Iowa and Missouri; (2) would pay them for chores or give them gifts of money by putting the money in their underwear or bras; (3) would touch their breasts and/or vaginas when giving them good-bye hugs; (4) would warm up his hand using their breasts and/or vaginas after collecting firewood; (5) touched J.T.'s breasts as a morning wake-up routine; (6) touched the

vaginas of J.T., C.T., and A.T. and commented he "liked it shaved"; (7) got in bed with A.T. and M.T., laid on top of them, and kissed them while touching their breasts and vaginas; (8) commented to E.T. and M.T. about growing pubic hair while touching their vaginas; (9) put a vibrating tool between the legs of A.T. and M.T. and asked them if it felt good; (10) touched A.T.'s vagina while watching a movie in defendant's home; (11) fondled C.T.'s breasts under her clothing and kissed the back of her neck while she was washing dishes in May 2013 in Missouri; (12) fondled M.T. in February 2013 in Iowa when she was playing with her older sister's small child; and (13) touched A.T.'s vagina and breasts after she turned 18 after delivering a car to her in Bloomington.

¶ 8 At the May 2015 hearing on the amended motion, the trial court heard arguments from the prosecutor and defense counsel. The court noted the specific instances set forth in the State's amended motion but expressed uncertainty as to what was being alleged in the charged counts. The prosecutor mentioned the "recurring" themes involving, *inter alia*, hugs good-bye, which occurred in McLean County, and involved defendant's hands touching the breasts or vaginal area.

¶ 9 In its June 2015 written order, the court noted it had to consider whether the prejudicial effect of allowing the propensity evidence was outweighed by its probative value. The court stated the bill of indictment made general allegations against defendant, while the State's amended motion alleged specific acts over a long period of time. The court found it difficult to compare the similarity of the acts and noted the hearing "provided little to no specifics as to the charged offenses." The court also found as follows:

> "While the court finds that the amended motion makes fairly specific allegations[,] *i.e.* – collecting firewood and alleged

touching taking place; using a vibrating tool for alleged sexual purposes – there is nothing to show any similarity between these instances and the charged offenses in the present case. The Court finds that these alleged incidents are highly prejudicial to defendant when they are not charged and do not have a sufficient factual similarity to the charged offenses to outweigh this prejudicial impact. The Court does however find a sufficient degree of similarity that when these alleged victims were leaving defendant's residence he would frequently touch their breast and/or vaginas with his hand. The alleged victims CT, KT, and ET as well as [AT] and MT will be allowed to testify they would visit defendant at his residence in Keokuk, Iowa[,] or at the family properties in Missouri and as they would leave defendant's residence he would frequently touch their breasts and/or vagina with his hand. The Court finds that these allegations show enough similarity to the general allegations of the Bill of Indictment to allow their admission for propensity purposes. The Court further finds that defendant will not be overly prejudiced by an inability to prepare a defense for lack of [specificity.] Defendant will be able to present evidence and cross-examine as to who generally was present when the alleged victims were leaving and whether anything was ever seen."

¶ 10 In January 2016, defendant's jury trial commenced. Given the dismissal of the

original count II, the State renumbered the remaining charges to be count I (C.T.), count II (J.T.), count III (E.T.), and count IV (A.T.). E.T. testified she was 22 years old. When she was in second grade, E.T. and her family began visiting defendant, her maternal grandfather, at his property in Keokuk, Iowa, and a farm in Missouri. At the conclusion of visits with defendant, "he would reach his hands up our shirt or down our pants and touch us while he said good[-]bye to us." As she and her sisters grew, defendant "would slip money down our pants or tuck it into our bra when he was touching" them.

¶ 11 E.T. testified defendant would visit Bloomington on special occasions, including the graduation of her half-sister, L.L., in May 2004. On that particular occasion, E.T. and her sisters were playing with dolls in the basement. Defendant came downstairs, kneeled behind E.T., asked her about her doll, and then put his hands under her shirt and touched her breasts.

¶ 12 C.T. testified she was 18 years old and the youngest of her five sisters. She stated visits with defendant would end with him touching her breasts and vagina inside and outside her clothing. Defendant would also give her money by slipping it in her underwear or bra. C.T. stated defendant would engage in similar touching during good-bye hugs when he visited the family in Bloomington. During one instance in Bloomington, defendant came up behind C.T., hugged her, touched her breasts, and told her she was "just growing up so fast."

¶ 13 J.T. testified she was 20 years old. When defendant said good-bye at the conclusion of visits, he would give J.T. a hug and put his hands on her breasts or down her pants. J.T. testified defendant continued touching her in this manner after she reached puberty. J.T. also stated defendant would tuck money in her underwear or bra. J.T. testified to an incident in Bloomington when defendant pulled her into a hug and touched her breasts underneath her swimsuit.

¶ 14 A.T. testified she was 24 years old. When defendant said good-bye at the end of visits, he would "put his hand either down the front of your pants or he would touch your breasts." A.T. stated the touching was under and over her bra and underwear. As she grew older, defendant would slip money in her bra or underwear when saying good-bye.

¶ 15 A.T. testified her grandparents drove to Illinois when she was 18 to give her a car. Defendant gave her the keys and pulled A.T. into a hug. He then put his hands down her pants and touched her breasts. She also stated defendant came to Bloomington in 2009 for her graduation, and he sat next to her in the living room, put his hand down her pants, and touched her vagina.

¶ 16 M.T. testified she was 23 years old. She stated defendant would touch her breasts and vagina when he said good-bye at the end of a visit. Defendant would also put money in her bra or underwear.

¶ 17 Defendant testified he was 78 years old. He stated his granddaughters would visit with their parents and he had a good relationship with them. When visits would end, "everybody would gather around" and give him a hug. Defendant denied ever inappropriately touching his grandchildren. Defendant's daughter testified she never saw defendant touch her daughters inappropriately. L.L. testified her grandfather never touched her inappropriately, and her sisters never mentioned any abuse to her.

¶ 18 Following closing arguments, the jury found defendant guilty on all four counts. In February 2016, defendant filed a motion for judgment notwithstanding the verdict or, in the alternative, a new trial. In April 2016, the trial court denied defendant's request for judgment notwithstanding the verdict but took the request for a new trial under advisement. In May 2016, the court denied the request for a new trial. In August 2016, the court sentenced defendant to

concurrent terms of 3 1/2 years in prison on each count. This appeal followed.

¶ 19 II. ANALYSIS

¶ 20 Defendant argues the trial court erred in admitting other-crimes evidence, claiming the court failed to conduct a meaningful analysis of the evidence and the evidence was prejudicial. We disagree.

¶ 21 Evidence of other crimes is generally inadmissible to show a defendant's propensity to commit the charged criminal conduct. *People v. Donoho*, 204 Ill. 2d 159, 170, 788 N.E.2d 707, 714 (2003). Such evidence, while relevant, is excluded because it "has 'too much' probative value." *Donoho*, 204 Ill. 2d at 170, 788 N.E.2d at 714 (quoting *People v. Manning*, 182 Ill. 2d 193, 213, 695 N.E.2d 423, 432 (1998)).

¶ 22 "Evidence of other offenses may be admissible to demonstrate 'motive, intent, identity, absence of mistake, *modus operandi*, or any other relevant fact other than propensity.' " *People v. Smith*, 2015 IL App (4th) 130205, ¶ 21, 29 N.E.3d 674 (quoting *People v. Vannote*, 2012 IL App (4th) 100798, ¶ 37, 970 N.E.2d 72). However, other-crimes evidence demonstrating propensity may be admissible under section 115-7.3 of the Code when a defendant is charged with one of the enumerated sex offenses. *People v. Ward*, 2011 IL 108690, ¶ 25, 952 N.E.2d 601; 725 ILCS 5/115-7.3(a) (West 2014) (listing the offense of aggravated criminal sexual abuse). "The other offenses must have a threshold similarity to the charged conduct to be admissible." *Smith*, 2015 IL App (4th) 130205, ¶ 23, 29 N.E.3d 674.

¶ 23 " 'Where other-crimes evidence meets the initial statutory requirements, the evidence is admissible if it is relevant and its probative value is not substantially outweighed by its prejudicial effect.' " *Smith*, 2015 IL App (4th) 130205, ¶ 21, 29 N.E.3d 674 (quoting *Vannote*, 2012 IL App (4th) 100798, ¶ 38, 970 N.E.2d 72). When weighing the probative value

of the other-crimes evidence against any undue prejudice against the defendant, section 115-7.3(c) permits the trial court to consider (1) the proximity in time to the charged offense, (2) the degree of factual similarity to the charged offense, or (3) other relevant facts and circumstances. 725 ILCS 5/115-7.3(c) (West 2014). The trial court must, however, "engag[e] in a meaningful assessment of the probative value versus the prejudicial impact of the evidence." *Donoho*, 204 Ill. 2d at 186, 788 N.E.2d at 724.

¶ 24 A trial court's decision to admit other-crimes evidence will not be reversed on appeal absent an abuse of discretion. *Donoho*, 204 Ill. 2d at 182, 788 N.E.2d at 721. "An abuse of discretion has occurred when the trial court's decision is arbitrary, fanciful, or unreasonable or when no reasonable person would take the position adopted by the trial court." *People v. Wilson*, 2015 IL App (4th) 130512, ¶ 75, 44 N.E.3d 632.

¶ 25 Defendant argues the trial court failed to conduct a meaningful analysis of the other-crimes evidence. After the State filed its initial motion under section 115-7.3, defendant filed a response. At the hearing on the motion, the court questioned the prosecutor about the statements he intended to introduce at trial. Because the court stated it had "very little detail" about the statements, it allowed the State to file an amended motion.

¶ 26 The State then filed an amended motion under section 115-7.3, detailing numerous instances of defendant's inappropriate touching of his granddaughters, including warming his hands using their breasts and/or vaginas after collecting firewood and putting a vibrating tool between the legs of A.T. and M.T. and asking them if it felt good. At the hearing on the amended motion, the trial court heard arguments from the prosecutor and defense counsel and questioned them both on the law and proposed evidence. In its June 2015 order, the court found the alleged incidents involving firewood and a vibrating tool were "highly prejudicial" and

did not have "a sufficient factual similarity to the charged offenses to outweigh this prejudicial impact." The court did, however, find a sufficient degree of similarity between the charged offenses and the evidence that defendant would touch the girls' breasts and/or vaginas at the end of visits. Thus, the court allowed the admission of this evidence for propensity purposes.

¶ 27 We find the trial court conducted the meaningful analysis necessary under section 115-7.3 for the admission of other-crimes evidence. The record indicates the court was well aware of the applicable law, considered the positions of the State and the defense, and issued a ruling wherein it prohibited the State from offering certain evidence of other crimes. We find no error in the analysis conducted by the court.

¶ 28 In the case *sub judice,* the evidence of defendant's inappropriate touching during good-bye hugs was highly relevant and probative as to whether he touched his granddaughters' breasts and/or vaginas when he was visiting Bloomington. The State charged defendant with fondling or touching the breasts and/or vaginas of four of defendant's granddaughters. The other-crimes evidence involved the same type of conduct, *i.e.*, fondling of the breasts and/or vaginas, took place in the same time frame as the charged offenses, and involved the same victims along with an additional granddaughter. "The probative value of prior-bad-acts evidence increases as the factual similarities increase." *Smith,* 2015 IL App (4th) 130205, ¶ 23, 29 N.E.3d 674. While the groping during hugs was not exactly the same as the specific incidents in Bloomington, such evidence was not rendered inadmissible since general similarity is sufficient. *Vannote*, 2012 IL App (4th) 100798, ¶ 41, 970 N.E.2d 72; see also *People v. Arze,* 2016 IL App (1st) 131959, ¶ 93, 52 N.E.3d 746 (stating "[n]o two crimes are identical and so the existence of some differences does not necessarily defeat admissibility").

¶ 29 Defendant argues the admission of other-crimes evidence caused undue prejudice.

He contends the testimony of "a minimum of 2,080 uncharged" instances weighed against the four charged offenses and was "clearly overly prejudicial." However, the victims only made general statements about other bad acts, not thousands of detailed events, and thus defendant's artificial number is not based on the evidence. Moreover, defendant's claim the jury was confused during deliberations based on its question, as to whether it mattered whether the abuse occurred in Iowa, Missouri, or Illinois, is pure speculation. The other-crimes evidence was relevant and probative to show propensity. Moreover, the evidence was similar to the charged conduct in this case. Thus, it was not unreasonable, fanciful, or arbitrary for the court to determine the prejudicial effect did not substantially outweigh its probative value.

¶ 30 III. CONCLUSION

¶ 31 For the reasons stated, we affirm the trial court's judgment. As part of our judgment, we award the State its $75 statutory assessment against defendant as costs of this appeal.

¶ 32 Affirmed.