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2018 IL App (3d) 150805-U

Order filed March 1, 2018

IN THE

APPELLATE COURT OF ILLINOIS

THIRD DISTRICT

2018

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the Circuit Court
	)	of the 12th Judicial Circuit,
	)	Will County, Illinois,
Plaintiff-Appellee,	)	
	)	Appeal No. 3-15-0805
v.	)	Circuit No. 15-CF-1192
	)	
JAROB K. GRINNAGE,	)	Honorable
	)	Carmen Goodman,
Defendant-Appellant.	)	Judge, Presiding.

JUSTICE LYTTON delivered the judgment of the court.
Justices McDade and Wright concurred in the judgment.

ORDER

¶ 1 *Held*: The court did not abuse its discretion in allowing the State to present his prior conviction.

¶ 2 Defendant, Jarob K. Grinnage, appeals his conviction for unlawful possession of a controlled substance with intent to deliver, arguing that the circuit court erred in admitting evidence of his prior conviction for unlawful delivery of a controlled substance. We affirm.

¶ 3 FACTS

¶ 4 Defendant was charged with unlawful possession of a controlled substance (720 ILCS 570/402(c) (West 2014)) and unlawful possession of a controlled substance with intent to deliver (*Id.* § 401(c)(2)). Prior to trial, the State filed a motion *in limine* seeking to introduce defendant's 2008 conviction for unlawful delivery of a controlled substance (720 ILCS 570/401(d)(i) (West 2006)) "for the purpose of establishing the defendant's knowledge that the substance possessed was cocaine, the defendant's intent to deliver the cocaine and to demonstrate the absence of mistaken or accidental possession." The State sought to introduce evidence that would established that defendant, on two previous occasions, sold approximately 0.5 grams of cocaine to undercover police officers and was sentenced to 10½ years' imprisonment. The State said it would call the undercover officer to testify regarding the prior crimes. The State also noted that in both instances defendant went by the nickname of Shorty. The State argued that the two crimes were similar because cocaine was involved in both instances, defendant used the nickname Shorty, and the cocaine was similarly packaged as a large chunk of the substance. Defendant objected to the motion, arguing that it was extremely prejudicial, the difference in time was too great, and the instances were not similar. The court discussed the case of *People v. Watkins*, 2015 IL App (3d) 120882, and compared it with defendant's case. The court noted the need to weigh the prejudicial effect with the probative value. The court stated that it was concerned about the prejudicial effect of the evidence and took the matter under advisement to consider it further. Ultimately, the court allowed the motion for the purpose of showing intent.

¶ 5 The case proceeded to a jury trial. Detective Nathan Prasun testified that he was a police officer with the Will County Sheriff's Department. On June 11, 2015, he was on patrol and stopped at a gas station in Diamond to use the restroom. He walked into the restroom and

noticed the stall was occupied. Instead of the individual's feet facing the door of the stall, Prasun noticed that his feet were facing the wall. Stated another way, Prasun noticed that the individual was sitting backwards on the toilet. While Prasun used the urinal, he saw the reflection of the man sitting on the toilet. He observed that the man was holding the bottom of an aluminum can. The man pulled a syringe out of his pocket, put the syringe in the can, and "jabbed the syringe into his arm." Prasun waited for everyone else to exit the restroom, and then exited the restroom and waited outside the door for the man. He made contact with the man inside the gas station and then walked out with him. The man's name was Ryne Klinger. Klinger admitted to shooting heroin into his arm and said that he still had the syringe and can in his pocket.

¶ 6 Prasun asked Klinger where his vehicle was located, and Klinger pointed to a Ford Escape. They walked up to the driver's side of the vehicle and Prasun saw defendant sitting in the back, right behind the driver's seat. Prasun noticed defendant "moving around considerably." He then asked defendant to open the door. When defendant opened the door, Prasun asked him to stop moving around while he talked to Klinger. Defendant did not stop moving, and Prasun had to tell him to stop at least three more times. "The last time he moved, he reached—he had a shirt over his hands, at which point he reached to the right rear floorboard, so the rear passenger floorboard."

¶ 7 Klinger consented to a search of the vehicle. In doing so, Klinger told Prasun that there might be cocaine in the vehicle, but that it belonged to defendant. Prasun found a cellophane wrapper with a small amount of cannabis under the driver's seat. He then found a hollow pipe in the center console. Klinger admitted that the pipe belonged to him and said he was going to use it to smoke cannabis. Prasun searched under the back of the passenger seat and found a clear, plastic baggie with what appeared to be a chunk of rock cocaine in it. There was also a large

amount of trash under the seat on the floorboard, "[e]nough that some—if you would put something on the front passenger side floorboard, the front right floorboard, and kicked it backwards, it would not have [gone] all the way through." Prasun asked defendant if the cocaine was his, and defendant stated that it was not. Prasun then arrested defendant. He conducted field sobriety tests on Klinger, and when Klinger was not found to be impaired, Prasun released him.

¶ 8 Gina Romano was a forensic scientist with the Northeastern Illinois Regional Crime Lab and was qualified as an expert. She testified that she ran tests on the suspected cocaine found in Klinger's vehicle and determined it was 12.71 grams of cocaine.

¶ 9 Klinger was offered immunity for his testimony. He testified that he was a drug addict. He met defendant about a month before the incident, and knew defendant by the nickname Shorty. Defendant had asked Klinger for a ride to Chicago that day. Klinger and his girlfriend, Sandra Grant, picked defendant up that morning in Peoria. Klinger drove, Grant sat in the front passenger seat, and defendant sat in the back. When they arrived in Chicago, Klinger and defendant switched places as Klinger was not familiar with the area. They drove to a business area. Defendant exited the vehicle for approximately 15 minutes before he returned. Then they drove to Walgreens. Klinger and Grant went into Walgreens. When they exited Walgreens about five minutes later, defendant was sitting in a different vehicle. Klinger entered the driver's seat of his vehicle and a short while later, defendant entered the backseat. Klinger began to return home when they stopped at the gas station. He and Grant exited the vehicle. Defendant remained in the backseat of the vehicle. He then went into the bathroom at the gas station to use heroin and Grant went to Dairy Queen. Klinger was then caught by Prasun using heroin and consented to the search of his vehicle. All the drug paraphernalia in the vehicle belonged to Klinger, but he stated that the cannabis and cocaine were not his. Klinger testified that when he

bought cocaine he would purchase $20-50 at a time because he was not employed and did not have a steady source of income. When he bought cocaine, he kept it in his pocket.

¶ 10 Officer Steven Jahnke testified that he had been a police officer for the Bolingbrook Police Department for 13 years and worked for the Joliet Metro Area Narcotics Squad. He had participated in over 150 undercover drug deals, done surveillance or backup work in over 400 drug cases, been involved in over 400 traffic stops involving drugs, executed over 300 search warrants, and worked with confidential informants over 200 times. He was qualified as an expert in narcotics. Jahnke testified that "[s]treet level deals usually occur car-to-car, hand-to-hand" and that users usually purchase $20-50 worth of narcotics, which is 0.2 to 0.5 grams. He said he reviewed this case and noted that Chicago is a source for narcotics in Illinois and that "[m]ost dealers travel to Chicago to pick up large amounts of narcotics and transport them back to their city of origin to cut up their narcotics for sale." Business parking lots, according to Jahnke, are favorite places to transact drug deals. He further stated that most drug addicts and dealers keep their drugs on their person and he had been in the situation where people "remove the drugs from their pocket and attempt to conceal it within the vehicle or something like that." Based on his training and experience, he determined that the 12.71 grams of cocaine in this case was for sale, not personal use, stating,

> "12.71 grams of crack cocaine is a large amount of crack cocaine on the streets. There's no way one person will be able to use that in an amount of time, and at that point, the consistency with the dealers that we have dealt with in the past, you could turn 12.71 grams legitimately—I mean, it's $1,271 on the street. You could probably cut that up into 60-plus hits of crack cocaine for sale at $20.00 a piece."

¶ 11 Defendant renewed his objection to the State's introduction of his prior conviction, particularly as it related to the testimony of the police officer from the 2008 case. The court revisited the *Watkins* case and noted that in *Watkins* the State presented only the certified copy of the conviction and the court gave a limiting instruction. The court allowed the State to present a certified copy of defendant's conviction, but did not allow the State to present testimony about the conviction, noting the prejudicial impact of the testimony and that defendant had already been tried in the prior case.

¶ 12 The court read the jury the limiting instruction, stating:

> "[E]vidence has been received that the defendant has been involved in offenses other than those charged in the indictment.
>
> This evidence has been received on the issues of a defendant's intent and knowledge and may be considered by you only for that limited purpose.
>
> It is for you to determine whether the defendant was involved in those offenses, and if so, what weight should be given to this evidence on the issues of intent and knowledge."

¶ 13 Defendant testified that he was not aware that there was cocaine in the vehicle and that it was not his. He did not possess any cocaine nor intend to sell or deliver cocaine that day. He had family in the city and lived there from the age of 2 to 13 years. He said he went to Chicago to purchase clothing because he had a death in the family and clothes were cheaper in Chicago.

¶ 14 The court again read the limiting instruction to the jury. The jury found defendant guilty of both charges. Defendant filed a motion for judgment notwithstanding the verdict or, in the alternative, for a new trial, alleging, *inter alia*, that the court erred in admitting defendant's prior

conviction. The court denied the motion. Defendant was sentenced to a term of six years' imprisonment on the merged counts.

¶ 15 ANALYSIS

¶ 16 On appeal defendant argues that the court erred in admitting evidence of defendant's prior conviction for unlawful delivery of a controlled substance. Specifically, defendant argues that there was not a threshold similarity between the prior conviction and the charged offense. We find that the court did not abuse its discretion in allowing the other-crimes evidence.

¶ 17 Other-crimes evidence is not admissible to show a defendant's propensity to commit crimes. Ill. R. Evid. 404(b) (eff. Jan. 1, 2011). However, other-crimes evidence may be admitted to show *modus operandi*, intent, identity, motive, absence of mistake, or to show the act was not performed inadvertently or without knowledge of guilt. *Id.*; *People v. Wilson*, 214 Ill. 2d 127, 136 (2005). Evidence of another offense may be used only when the other offense has some threshold similarity to the crime charged. *People v. Illgen*, 145 Ill. 2d 353, 372 (1991). "Where *** evidence of the defendant's involvement in another offense is offered to prove the absence of an innocent frame of mind or the presence of criminal intent, mere general areas of similarity will suffice." *Id.* at 373.

¶ 18 When a party seeks to introduce other-crimes evidence, the court must weigh the probative value of the evidence against its prejudicial effect, excluding the evidence if its prejudicial effect outweighs its probative value. *People v. Pikes*, 2013 IL 115171, ¶ 12.

> "Although the erroneous admission of other-crimes evidence carries a high risk of prejudice and will ordinarily require a reversal, the erroneously admitted evidence must be so prejudicial as to deny the defendant a fair trial; that is, the erroneously admitted evidence must have been a material factor in the defendant's conviction

> such that without the evidence the verdict likely would have been different. [Citation.] If the error was unlikely to have influenced the jury, the erroneous admission of other-crimes evidence will not warrant reversal." *Watkins*, 2015 IL App (3d) 120882, ¶ 45 (citing *People v. Cortes*, 181 Ill. 2d 249, 285 (1998)).

A determination of the admissibility of evidence is within the sound discretion of the circuit court and will not be reversed absent an abuse of discretion. *Pikes*, 2013 IL 115171, ¶ 12. We will only find an abuse of discretion if the ruling was arbitrary, fanciful, or unreasonable, or if no reasonable person would take the view adopted by the circuit court. *People v. Donoho*, 204 Ill. 2d 159, 182 (2003).

¶ 19 We find our recent decision in *Watkins* instructive. In *Watkins*, the defendant was charged with unlawful possession of a controlled substance with intent to deliver and unlawful possession of a controlled substance. *Watkins*, 2015 IL App (3d) 120882, ¶ 3. The controlled substance was cocaine. *Id.* ¶ 25. The State filed a motion *in limine* seeking to admit evidence of the defendant's four prior convictions for unlawful possession of cannabis and convictions for unlawful possession of a controlled substance and manufacture of delivery of cannabis (later determined to actually be a conviction for unlawful possession of cannabis with intent to deliver. *Id.* ¶ 3; n.1. The State did not present any facts regarding the prior conviction. *Id.* ¶ 42. The court took the matter under advisement, ultimately allowing the State "to admit as evidence of defendant's intent to deliver *** defendant's prior conviction for manufacture or delivery of cannabis." *Id.* ¶ 6. At trial the State presented a certified conviction showing that the defendant had been convicted of unlawful possession of cannabis with the intent to deliver. *Id.* ¶ 25.

¶ 20 On appeal, the defendant argued that the court erred in admitting the prior conviction because, *inter alia*, "the State presented no facts to the trial court to show that the prior offense

had a threshold similarity to the charged crimes." *Id.* ¶ 42. We found that the court did not commit an abuse of discretion in admitting the evidence of the prior conviction. *Id.* ¶ 46. In doing so, we cited 13 cases for the proposition that "Illinois courts have routinely allowed evidence of a defendant's prior or subsequent drug transactions to be admitted into evidence at trial to establish a defendant's intent to deliver the drug for which the defendant is currently charged or for any other relevant and permissible purpose." *Id.* ¶ 46. We determined that the necessary threshold similarity between the defendant's prior conviction and current case were met, stating:

> "[T]he trial court was presented with a situation where within the past three or four years prior to the current offense, defendant was convicted of another offense where he had been in possession of a drug with the intent to deliver it. There was no question about whether defendant had actually committed the prior offense because defendant had been convicted of it. The information that was provided, albeit the bare minimum, was sufficient for the trial court to determine, in its discretion, that a general threshold similarity existed between the facts of the prior offense and the facts of the current offense." *Id.* ¶ 47.

This was so even though a different drug was involved in the two cases. *Id* ¶¶ 47-48. We further noted that the court "[i]n determining whether the other-crimes evidence would be admitted, *** carefully exercised its discretion and excluded several other pieces of other-crimes evidence ***." *Id.* ¶ 50. Moreover, we stated:

> "The trial court also took care to minimize the prejudice to defendant by giving the jury a limiting instruction both at the time of admission and during the jury instructions prior to deliberations. The prejudice to defendant was further

minimized by the brief manner in which the other-crimes evidence was presented to the jury with no unnecessary information provided." *Id.*

¶ 21 Here, defendant was charged with unlawful possession of a controlled substance and unlawful possession of a controlled substance with intent to deliver. The court allowed the State to present a certified copy of defendant's prior conviction for unlawful delivery of a controlled substance. Both cases involved cocaine. Only two years had passed since defendant was paroled on the 2008 conviction before he was charged in this case. These similarities were enough to meet the threshold similarity requirement. See *id.* ¶ 47. Moreover, the record shows that the court spent a great deal of time considering whether to allow the prior conviction, both during the motion *in limine* and when the issue was renewed at trial. The court minimized the prejudice to defendant by limiting the evidence to only the certified copy of the conviction and barring the State from presenting any testimony regarding the prior conviction. The prejudice was further minimized by the court twice reading the limiting instruction. Therefore, we cannot say that the circuit court abused its discretion.

¶ 22 CONCLUSION

¶ 23 The judgment of the circuit court of Will County is affirmed.

¶ 24 Affirmed.