

NOTICE

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2018 IL App (4th) 160152-U

NO. 4-16-0152

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED

July 18, 2018

Carla Bender

4th District Appellate Court, IL

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the
Plaintiff-Appellee,)	Circuit Court of
v.)	McLean County
CAROL A. MUSSELMAN,)	No. 15CM665
Defendant-Appellant.)	
)	Honorable
)	William A. Yoder,
)	Judge Presiding.

JUSTICE CAVANAGH delivered the judgment of the court.
Presiding Justice Harris and Justice Knecht concurred in the judgment.

ORDER

¶ 1 *Held:* The trial court erred by allowing the State to present evidence of other crimes without proving such acts were indeed criminal or fraudulent.

¶ 2 Defendant, Carol A. Musselman, appeals her conviction of one count of insurance fraud on the basis that the trial court erred in granting the State’s motion *in limine* allowing the jury to consider evidence of defendant’s claim history without evidence that the claims constituted prior bad acts. The State concedes error, and we accept the State’s concession. We reverse defendant’s conviction and remand for a new trial.

¶ 3 I. BACKGROUND

¶ 4 In April 2015, the State charged defendant with one count of insurance fraud (720 ILCS 5/17-10.5(a)(1) (West 2014)), a Class A misdemeanor, alleging that on February 28, 2014, she knowingly “attempted to obtain control over United States currency from Target

Corporation, a self-insured entity, by making a false claim to Target Corporation, intending to deprive the Target Corporation permanently of the use or benefit of that property.” The State filed a motion *in limine* requesting the trial court allow the State to introduce evidence of defendant’s “extensive” history of filing insurance claims. Although it did not plan to present details of each claim, the State asserted that it intended to introduce evidence that defendant had filed 32 insurance claims between January 2006 and March 2014 in which she alleged various accidents and sought monetary payouts. The State argued the evidence of defendant’s history constituted prior bad acts and would (1) be directly relevant to her knowledge and intent to commit the charged offense, (2) demonstrate her plan or common scheme in committing the charged offense, and (3) show absence of mistake.

¶ 5 On the day scheduled for jury trial, the trial court conducted a hearing on the State’s motion. The court admonished the State about the late filing of the motion, stating the court should have been afforded a better opportunity to consider the merits. Nevertheless, the court granted the motion in part, allowing the State to elicit testimony from Michael Cabnet, an insurance investigator who personally investigated the claims filed by defendant.

¶ 6 Defendant’s jury trial began with testimony from Kris Dempsey, the store manager at Target in Normal. Dempsey said on March 4, 2014, he received a telephone call from defendant reporting she had tripped and hurt herself on the store’s cart corral in the parking lot at 7:30 p.m. on February 28, 2014. Dempsey requested defendant come into the store to complete an incident report, but defendant refused. She also refused to give any more detailed information regarding a time she had been inside the store, what items she had purchased, or what kind of vehicle she was driving. Dempsey said he received a photograph of a broken cart corral from the neighboring Shoppes at College Hills, who had received the photograph from defendant.

¶ 7 Andrew James Debolt, the assets protection manager at Target, participated in Dempsey's telephone interview of defendant. He too said they were unable to gather much information from defendant. Once he learned of the date of the alleged accident, he began reviewing surveillance video of the parking lot. The State published the video for the jury. The video, which was played for 60 minutes, showed surveillance of the parking lot between 7 and 8 p.m. on February 28, 2014. There was no evidence of anyone falling or any other incident occurring in the parking lot during that hour.

¶ 8 Michael Cabnet, senior consultant in the special investigation unit of Sedgwick Claims Management Services, testified as the State's expert witness in the field of fraud investigation. He said Sedgwick, Target's third-party administrator, received Dempsey's incident report in this case. It was assigned to a claims adjuster. According to Cabnet, defendant told the adjuster, she had sought treatment for her injuries and was seeking compensation from Target. At that point, the incident report evolved into an insurance claim.

¶ 9 Cabnet said the adjuster identified multiple red flags and gave him the file to investigate. The red flags identified by the adjuster included defendant's late reporting, her failure to provide a recorded statement, the lack of medical records, and the lack of video evidence of the incident. Cabnet agreed with the adjuster's observations and also noticed that defendant had failed to provide personal information or to discuss her claims history. During his investigation, Cabnet said he found that between 2011 and 2013, defendant had filed nine prior commercial liability claims, "several of them were Sedgwick claims." In Cabnet's opinion, he believed the claim at issue was false. As a result, he filed a police report. The State rested.

¶ 10 Defendant moved for a directed verdict at the close of the State's case. The State argued the evidence showed defendant requested compensation but, according to the video

surveillance, she had not fallen in the parking lot as claimed. The trial court denied the motion. Defendant did not present any evidence.

¶ 11 During closing argument, the prosecutor stated:

“Also, Mr. Cabnet told you about her claims history. He told you that [defendant] had nine prior claims within a two-year period, all of them against a business entity, all of them alleging injury. Ladies and gentlemen, those prior claims show that [defendant] knew what she was doing when she called Target, that she had this common scheme or this plan that she had been engaging in.”

¶ 12 Defense counsel argued the nine prior claims were not shown to be fraudulent. He pointed out that Cabnet “knew nothing about them” and argued there were many possible explanations for the number of claims filed.

¶ 13 The jury found defendant guilty. The trial court denied defendant’s posttrial motion and sentenced defendant to 18 months’ court supervision, 50 hours’ community service, and a \$300 fine. This appeal followed.

¶ 14 II. ANALYSIS

¶ 15 Defendant contends the trial court erred by allowing the State to present evidence of defendant’s nine prior insurance claims without presenting further evidence that the claims could be considered “prior bad acts.” She contends the State presented no evidence to suggest those claims were fraudulent. The State agrees and concedes error.

¶ 16 We review a trial court’s decision in granting a motion *in limine* on whether to admit or exclude evidence for an abuse of discretion. *Cundiff v. Patel*, 2012 IL App (4th) 120031, ¶ 18. Generally, evidence of other conduct committed by the defendant, independent of the crime for which she is being tried, is inadmissible. *People v. Brown*, 319 Ill. App. 3d 89, 99

(2001). The reason being is the law distrusts the inference that, because a person committed other crimes or bad conduct, she is more likely to have committed the crime charged. *Id.* While other-conduct evidence is admitted to prove *modus operandi*, intent, identity, motive, or absence of mistake, the inference is still a major concern. *Id.* Other-conduct evidence is also admissible if it is relevant to prove that the crime charged was part of a common design, scheme, or plan. *People v. Lehman*, 5 Ill. 2d 337, 343 (1955).

¶ 17 By filing its motion *in limine*, the State sought to introduce evidence of defendant's history of filing fraudulent insurance claims to show her common design, scheme, or plan. Indeed, such evidence could have convinced the jury that her most recent Target claim was part of a larger fraudulent or criminal scheme. The problem here though is the State presented no evidence to indicate defendant's prior claims were indeed fraudulent or criminal as is required before the prior bad acts are admissible. *People v. Thingvold*, 145 Ill. 2d 441, 456 (1991) (the State must prove the defendant committed the uncharged crime by "more than a mere suspicion.").

¶ 18 Cabnet's testimony on the subject revealed only that his investigation uncovered the fact that defendant had filed nine other commercial liability claims between 2011 and 2013. He did not testify that he was able to ascertain the veracity, legitimacy, or validity of any of those prior claims. He did not testify as to the outcome of any of those prior claims that would otherwise indicate defendant wrongfully received compensation or intended to do so fraudulently. Without more, evidence of defendant's prior claims should not have been admitted and presented to the jury. We accept the State's concession and find the trial court erred in allowing the State to introduce such evidence. We decline to address defendant's other contentions of error as moot.

¶ 19

III. CONCLUSION

¶ 20 For the reasons stated, we accept the State's concession of error, reverse defendant's conviction, and remand for a new trial.

¶ 21 Reversed and remanded.