

NOTICE
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2018 IL App (4th) 160340-U

No. 4-16-0340

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the
Plaintiff-Appellee,)	Circuit Court of
v.)	Champaign County
DONOVAN R. LEE-NEWMAN,)	No. 16CF47
Defendant-Appellant.)	
)	Honorable
)	Thomas J. Difanis,
)	Judge Presiding.

JUSTICE KNECHT delivered the judgment of the court.
Justices DeArmond and Cavanagh concurred in the judgment.

ORDER

¶ 1 *Held:* The appellate court granted the office of the State Appellate Defender’s motion to withdraw as appellate counsel and affirmed defendant’s convictions and sentence as no meritorious issue could be raised on appeal.

¶ 2 This appeal comes to us on a motion from the office of the State Appellate Defender (OSAD) to withdraw as appellate counsel on the ground no meritorious issue could be raised on appeal. We grant OSAD’s motion and affirm.

¶ 3 I. BACKGROUND

¶ 4 On January 8, 2016, the State charged defendant, Donovan R. Lee-Newman, by information with two counts of unlawful restraint (720 ILCS 5/10-3(a) (West 2014) (counts I and II)), both Class 4 felonies, and one count of domestic battery (720 ILCS 5/12-3.2(a)(1) (West

2014) (count III)), a Class A misdemeanor, based on his conduct earlier that day. Counts I and II alleged defendant knowingly and without legal authority detained Tanisha Walker and Chaquera Cross by preventing them from exiting a bathroom. Count III alleged defendant knowingly caused bodily harm to Cross, a family or household member of defendant, by striking her body.

¶ 5 On January 22, 2016, the State charged defendant by information with an additional count of domestic battery (720 ILCS 5/12-3.2(a)(1) (West 2014) (count IV)) based on the same conduct alleged in count III. The additional count, however, enhanced the offense to a Class 4 felony on the ground defendant had previously been convicted of domestic battery in Champaign County case No. 15-CF-1267. See 720 ILCS 5/12-3.2(b) (West 2014).

¶ 6 On January 29, 2016, the State filed a notice and motion to present evidence of five other domestic violence incidents at trial. Following a hearing, the trial court indicated it would allow the State to present evidence of three of the five domestic violence incidents.

¶ 7 In February 2016, the State dismissed count III and the matter proceeded to a jury trial on the remaining counts. The evidence at trial showed the following. In January 2016, Cross and defendant were in a dating relationship and had been for the previous 18 months. On January 8, 2016, Cross and her half-sister, Walker, were watching television at home. When defendant returned to the home, an argument commenced between defendant and Cross concerning defendant's infidelity. The argument included shouting, profanity, and defendant throwing a soda at Cross's face. At one point, defendant punched Cross in the face with a closed fist. At another point, defendant would not let Cross and Walker out of a bathroom. Walker eventually got out of the bathroom and went outside to call the police. Cross then got out of the bathroom and also went outside. Defendant dragged Cross back into the house. Cross again went back outside.

Defendant pushed Cross to the ground and repeatedly told her to go back into the house. An officer arrived while Cross and defendant were arguing outside in the street. Walker gave a full account of the events to the officer. Cross was evasive with the officer because defendant told her to tell the officer nothing happened. Defendant denied placing his hands on Cross and asserted Cross called the police to intimidate him. Cross testified about prior incidents where defendant committed physical abuse against her in March and August 2015. Based on this evidence, the jury found defendant guilty of unlawful restraint and domestic battery of Cross and not guilty of unlawful restraint of Walker.

¶ 8 In March 2016, defendant filed a motion for acquittal or, in the alternative, a new trial. At a hearing that same month, the trial court denied defendant's motion and proceeded to sentencing. In aggravation, the State presented evidence detailing defendant's history of domestic abuse. The State also presented evidence showing defendant, while awaiting trial, violated an order to stay at least 500 feet away from Cross's residence. In mitigation, defendant presented evidence showing his family would support him if he was released on probation and he had never struck his now-fiancée during their six-month relationship. Defendant also made a statement in allocution, requesting probation to allow him to better himself and his relationships with others. After hearing the evidence and recommendations and considering the statutory factors in aggravation and mitigation and a possible community-based sentence, the court sentenced defendant to two concurrent terms of three years' imprisonment.

¶ 9 In May 2016, defendant filed a motion to reconsider his sentence. Following a hearing, the trial court denied defendant's motion. Defendant filed a notice of appeal, and the court appointed OSAD to represent defendant on appeal.

¶ 10 On March 27, 2018, OSAD filed a motion for leave to withdraw as counsel, asserting no meritorious claim could be raised on appeal. This court allowed defendant leave to file a response to OSAD’s motion by May 1, 2018. Defendant has not done so.

¶ 11 II. ANALYSIS

¶ 12 OSAD contends it thoroughly reviewed the record and considered raising three issues but concluded those issues would be without arguable merit.

¶ 13 A. Did the Trial Court Abuse Its Discretion by Allowing Evidence of Prior Acts of Domestic Violence?

¶ 14 Section 115-7.4 of the Code of Criminal Procedure of 1963 (Code) (725 ILCS 5/115-7.4 (West 2014)) provides:

“(a) In a criminal prosecution in which the defendant is accused of an offense of domestic violence ***, evidence of the defendant’s commission of another offense or offenses of domestic violence is admissible, and may be considered for its bearing on any matter to which it is relevant.

(b) In weighing the probative value of the evidence against undue prejudice to the defendant, the court may consider:

(1) the proximity in time to the charged or predicate offense;

(2) the degree of factual similarity to the charged or predicate offense; or

(3) other relevant facts and circumstances.”

“To be admissible under section 115-7.4, the other-crimes evidence must bear merely ‘general similarity’ to the charged offense.” *People v. Heller*, 2017 IL App (4th) 140658, ¶ 44, 71 N.E.3d 1113 (quoting *People v. Jackson*, 2014 IL App (1st) 123258, ¶ 43, 23 N.E.3d 430). “The admissibility of other-crimes evidence is within the sound discretion of the trial court, and its decision on the matter will not be disturbed absent a clear abuse of that discretion.” *People v. Dabbs*, 239 Ill. 2d 277, 284, 940 N.E.2d 1088, 1093 (2010).

¶ 15 The State presented to the jury evidence of two prior incidents of domestic violence. These incidents happened within the year prior to the charged offense and involved allegations of physical abuse by defendant against Cross. Under these circumstances, we agree with OSAD and find no reasonable argument could be made suggesting the trial court abused its discretion in allowing evidence of these prior incidents of domestic violence.

¶ 16 B. Did the State Prove Defendant Guilty
Beyond a Reasonable Doubt?

¶ 17 “Due process requires that to sustain a conviction of a criminal offense, the State must prove a defendant guilty beyond a reasonable doubt of the existence of every element of the offense.” *People v. Lucas*, 231 Ill. 2d 169, 178, 897 N.E.2d 778, 784 (2008). When considering a challenge to the sufficiency of the evidence, a reviewing court must determine “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 offense beyond a reasonable doubt.” (Internal quotation marks omitted.) *People v. Hardman*, 2017 IL 121453, ¶ 37, 104 N.E.3d 372.

¶ 18 To prove defendant guilty of domestic battery, the State was required to establish defendant and Cross had a “dating *** relationship” and defendant “knowingly without legal

justification *** cause[d] bodily harm” to Cross. 720 ILCS 5/12-3.2(a) (West 2014); 725 ILCS 5/112A-3(3) (West 2014). The evidence showed defendant and Cross had been in a dating relationship for 18 months at the time of the incident and defendant punched Cross in the face with a closed fist. Based on this evidence, we agree with OSAD and find no reasonable argument could be made suggesting the State failed to prove defendant guilty of domestic battery beyond a reasonable doubt.

¶ 19 To prove defendant guilty of unlawful restraint, the State was required to establish defendant “knowingly without legal authority detain[ed]” Cross. 720 ILCS 5/10-3 (West 2014). The evidence showed defendant prevented Cross from leaving a bathroom. Based on this evidence, we agree with OSAD and find no reasonable argument could be made suggesting the State failed to prove defendant guilty of unlawful restraint beyond a reasonable doubt.

¶ 20 C. Is Defendant’s Sentence Excessive?

¶ 21 A trial court’s sentencing decision is entitled to great deference as that court is generally in a “better position than a court of review to determine an appropriate sentence based upon the particular facts and circumstances of each individual case.” (Internal quotation marks omitted.) *People v. Price*, 2011 IL App (4th) 100311, ¶ 36, 958 N.E.2d 341. We review a trial court’s sentencing decision for an abuse of discretion. *Id.* “If the sentence imposed is within the statutory range, it will not be deemed excessive unless it is greatly at variance with the spirit and purpose of the law or is manifestly disproportionate to the nature of the offense.” (Internal quotation marks omitted.) *Id.*

¶ 22 Defendant was convicted of two Class 4 felonies. Defendant faced a possible prison sentence between one and three years for each conviction. 730 ILCS 5/5-4.5-45 (West

2014). While defendant was sentenced to the maximum prison term on each conviction, the sentences were imposed concurrently and he had a history of domestic abuse. We also note defendant served less than two years of his sentence before being released on parole. See <http://www2.illinois.gov/idoc/Offender/Pages/InmateSearch.aspx> (last visited Sept. 28, 2018). Based on the evidence presented, we agree with OSAD and find no reasonable argument could be made suggesting the trial court abused its discretion in rendering its sentence.

¶ 23

III. CONCLUSION

¶ 24 We grant OSAD's motion to withdraw as counsel and affirm defendant's convictions and sentence.

¶ 25 Affirmed.