2018 IL App (5th) 170262-U

NO. 5-17-0262

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellant,	)	St. Clair County.
	)	
v.	)	No. 16-CF-8
	)	
THOMAS J. BROWN,	)	Honorable
	)	Randall W. Kelley,
Defendant-Appellee.	)	Judge, presiding.

JUSTICE MOORE delivered the judgment of the court.
Justices Welch and Goldenhersh concurred in the judgment.

ORDER

¶ 1 *Held*: We affirm the order of the circuit court of St. Clair County that denied the State's notice of intent to introduce other crimes evidence, because although the court misapprehended and misapplied the law related thereto, the court's ultimate ruling was supported by the evidence before it, as well as relevant case law. Accordingly, the ruling did not constitute an abuse of discretion and reversal is not warranted.

¶ 2 The State appeals the ruling of the circuit court of St. Clair County that denied the State's notice of intent to introduce other crimes evidence in the then-upcoming first degree murder trial of the defendant, Thomas J. Brown. For the following reasons, we affirm.

¶ 3 FACTS

¶ 4 On January 15, 2016, a criminal indictment was filed in the circuit court of St. Clair County that charged the defendant with one count of first degree murder, alleging that "on or about the 1st day of January, 2016," the defendant committed first degree murder when "without lawful justification and with the intent to kill or do great bodily harm to Lenear McKissick," he "inflicted injuries causing blunt force trauma to the head of Lenear McKissick," thereby causing her death. As the parties prepared the case for trial, the defense raised a *bona fide* doubt as to the defendant's fitness to stand trial. Ultimately, forensic clinical psychologist Dr. Daniel J. Cuneo found the defendant fit to stand trial, although he noted the defendant's low intelligence, history of strokes that caused speech and memory problems, and long history of substance abuse that included drinking and drug use on the night of the murder that Dr. Cuneo opined permanently limited the defendant's ability to recall the events of that night. Dr. Cuneo noted that the defendant told him that "somebody" gave the defendant a pill on the night of the murder.

¶ 5 On June 23, 2017, the State filed a notice of intent to introduce other crimes evidence. Therein, the State noted that it intended "to present evidence of other crimes committed by the defendant at trial in this matter under two separate legal theories," with the State first introducing "evidence of other sex crimes to show the defendant's propensity to commit sex offenses pursuant to 725 ILCS 5/115-7.3," and with the State next introducing "evidence of other crimes committed by the defendant as to the issue of intent, identity, as well as absence of mistake or lack of accident pursuant to Illinois Rule of Evidence 404(b)." In support of its position, the State contended that the victim was

found lying on her back on the floor, nude from the waist down, and with her legs spread "in such a manner to suggest sexual activity had occurred." The State conceded that the autopsy did not indicate any recent trauma to the victim's genitalia, and that the victim tested positive for cocaine/metabolites. The State noted, however, that the defendant's DNA profile was located under the victim's right fingernail clippings, although the defendant was excluded as the source of the male DNA profile on the vaginal swab.

¶ 6 The State noted that two witnesses indicated that on "December 31, 2016," they were in the victim's apartment, along with the victim and the defendant, and that after the witnesses left, only the victim and the defendant remained in the apartment. At that time, the victim had not been injured. The State also noted that in interviews with authorities, the defendant had admitted that he "smoked dope" with the victim earlier on "December 31, 2016," and "engaged in sexual relations, including oral sex," with the victim at his apartment, but did not ejaculate.[1] According to the State, the defendant also admitted that he smoked crack with the victim at the victim's apartment on the night of her death, although the State conceded that later in the interview the defendant denied this, and denied that he had sexual relations with the victim at her apartment. He admitted, however, that he was alone with the victim in her apartment after the two witnesses left and that she was uninjured at that time. Video camera surveillance footage confirmed that the defendant was the last person to leave the victim's apartment before her body was discovered.

[1]Although the State's notice of intent to introduce other crimes evidence indicated that these events took place on "December 31, 2016," we believe this to be a scrivener's error and that these events took place on December 31, 2015.

¶ 7 With regard to the other crimes evidence the State intended to present, the State noted that it believed that one of the two aforementioned witnesses, V.L., "would testify that on two occasions the defendant beat her about her head and demanded sex after the two of them consumed illegal substances," with one occasion being "approximately 10 to 15 years before" the murder of the victim, and the second occasion being "approximately one year" before the murder. On the first occasion, the State alleged, the defendant told V.L. she owed him because she smoked his dope, and the defendant beat V.L. "in the head with a stick," then forced her to perform oral sex. On the second occasion, the State alleged, the defendant and V.L. were doing drugs together in the defendant's apartment when the defendant demanded sex from V.L., then "began to beat her about her head with his fists, leaving 'knots' on her head." The State added that "[a]n audio-video recorded interview with V.L. has been tendered to the defense in discovery." The defendant did not file a written response to the State's notice of intent.

¶ 8 A hearing was held on June 26, 2017, at which the State argued consistently with its notice of intent, and specifically mentioned that V.L. had given an audio-video recorded statement. The State did not seek to introduce into evidence the audio-video recorded statement. In paraphrasing V.L.'s recounting, during the statement, of the second incident alleged in the State's notice of intent, the State claimed that after the defendant "demanded sex" from V.L., V.L. "refused to comply or said 'okay, yeah, let's do it,' and he then proceeded to beat her about the head and face."

¶ 9 The defendant countered by first presenting what defense counsel deemed "a brief overview of the facts of the case." Counsel claimed that although the defendant was

excluded as the source of the male DNA profile on the vaginal swab, the State had not "bothered to test" the other male (who, along with V.L., was one of the two aforementioned witnesses) who was present at the victim's apartment on the night of the murder. Counsel noted that there was nothing in the indictment to indicate that the alleged murder of the victim by the defendant "was sexually motivated" or that the defendant "sexually penetrated her in any way." Counsel believed that the defendant had been charged with the murder "because he's the last person to leave the apartment." Counsel contended that the State "did no follow-up" on V.L.'s claim that approximately one year prior to the murder, the defendant beat her, and that therefore, counsel had "nothing further trying to substantiate her claim," including no police report of the alleged incident, no medical record, and no reports about third-party witnesses who "may or may not exist." Counsel therefore argued that any evidence V.L. might provide would be "inherently unreliable." Counsel claimed that V.L. was "a suspect in this case" who, "although not charged by the State," nevertheless "would have great reason to craft these things." Counsel contended that the State's proposed evidence was "extremely prejudicial." With regard to the second alleged incident and V.L.'s audio-video recorded statement about it, counsel claimed that V.L. "stated that the year before or some point prior, she had been smoking crack with [the defendant] and that she feared for herself and ran from the apartment naked."

¶ 10 The circuit court asked the State if the fact that video camera surveillance footage confirmed that the defendant was the last person to leave the victim's apartment before her body was discovered was "probative enough on its own." The State answered that it

was, but that the other crimes evidence was still admissible as well. When the circuit court questioned the State about the relevance of sexual conduct when such was not "included as an allegation in the charge of first degree murder," the State responded that it did not think "it's a legal requirement that we identify that in the charging document," in light of the State's subsequent notice of intent, which "puts the defense on notice." The circuit court asked the State if it acknowledged that even after V.L.'s audio-video recorded interview with police, "there was no police investigation, report, charges[,] or anything of either of these allegations made at this time by this witness." The State answered, "That's correct, Your Honor," but added that V.L. stated in the interview with authorities that "[s]he did not report them because she didn't think anyone would believe her." At the conclusion of the hearing, the circuit court took the notice of intent under advisement, noting that the court had just received the "motion" that morning and wanted to review the relevant case law.

¶ 11 Four days later, on June 30, 2017, the circuit court issued a one-paragraph handwritten order on a fill-in-the-blank form. Therein, the circuit court noted that it had reviewed the "argument of counsel and case law." The court's order, in its entirety, was as follows: "People's intent to introduce other crime[s] evidence would be more prejudicial than probative as there is no evidence of injury to victim of a sexual nature or penetration or DNA. People's intent is denied." Thereafter, the State filed a notice of appeal and a certificate of impairment. On the same day, the circuit court entered an order in which it noted that a crime scene photograph of the victim had been admitted into evidence during the June 26, 2017, hearing, and withdrawn at the conclusion of the

hearing, and that, by agreement of the parties, the photograph was "readmitted into evidence for the purposes of the" State's appeal. This timely appeal followed.

¶ 12 ANALYSIS

¶ 13 On appeal, the State contends the circuit court erred when it denied the State's notice of intent to introduce other crimes evidence. The State puts forward several bases that it suggests mandate reversal of the circuit court's ruling: (1) the "court's order indicates the court believed in order for the propensity statute to apply, the State must allege an injury to the victim of a sexual nature, or penetration, or DNA in the murder case as charged," a misapprehension of the law that merits *de novo* review by this court and that rendered the order "legally erroneous," (2) the State established the requirements of the propensity statute, and therefore the court was required to weigh the factors contained therein, which the court failed to do, (3) the court erred as a matter of law when it concluded that for the propensity statute to apply, "the State must allege the occurrence of a sex crime in the indictment charging [the] defendant with first degree murder," (4) even if the court did not misapprehend and misapply the law, the court abused its discretion when it denied the notice of intent to introduce other crimes evidence, because the evidence was admissible under the propensity statute, (5) the evidence was also admissible under Rule of Evidence 404(b), and (6) as this case proceeds to trial, the risk of undue prejudice can be mitigated sufficiently via proper instruction of the jury.

¶ 14 We begin with the State's contention that the circuit "court's order indicates the court believed in order for the propensity statute to apply, the State must allege an injury to the victim of a sexual nature, or penetration, or DNA in the murder case as charged," a

misapprehension of the law that merits *de novo* review by this court and that rendered the order "legally erroneous." The State suggests that although it believes the crime scene photograph of the victim (which, as noted above, was readmitted into evidence and is part of the record on appeal) "leave[s] little doubt she was the victim of a fatal crime of a sexual nature," the circuit court's factual disagreement is essentially irrelevant because the State did not have "to establish *any* of these factors in order for the statute to apply." (Emphasis in original.) In support of this proposition, the State notes the general propositions of law relevant to other crimes evidence and embodied in Illinois Rule of Evidence 404(b) (eff. Jan. 1, 2011) and in the "propensity statute" found at 725 ILCS 5/115-7.3 (West 2014). Ultimately, the State posits that "in addition to sexual penetration, sexual conduct committed in a first degree murder case falls squarely under the propensity statute."

¶ 15 The defendant does not attempt to directly refute, on a point-by-point basis, the State's argument that the circuit court's order was erroneous as a matter of law. Instead, the defendant urges this court to employ an abuse of discretion standard of review and to affirm because the defendant believes the circuit court did not abuse its discretion in excluding the other crimes evidence "because the circuit court properly concluded that the prejudicial effect of V.L.'s two allegations outweighed the probative value of that evidence." The defendant asks this court to interpret the circuit court's ruling that the other crimes evidence, in the words of the circuit court, "would be more prejudicial than probative as there is no evidence of injury to victim of a sexual nature or penetration or DNA" to mean simply that the evidence "would be more prejudicial than probative." The

defendant's appellate counsel repeats trial counsel's claim that V.L. was "a suspect" with a motive "to fabricate her allegations," and that as a result, "V.L.'s claims were unreliable and overly prejudicial." The defendant concedes that other crimes evidence may be admissible, after a proper balancing of factors, in a first degree murder case under the propensity statute (725 ILCS 5/115-7.3 (West 2014)) when the murder involves only sexual conduct (rather than requiring injury of a sexual nature, sexual penetration, or DNA evidence), but posits that the State's argument is irrelevant because the circuit court "denied the admission of V.L.'s allegations[ ] because they were too prejudicial, not because the crime did not involve sex."

¶ 16 Moreover, in support of his contention that there was no abuse of discretion by the circuit court, the defendant argues that the relevant factors under the propensity statute—proximity in time to charged offense, degree of factual similarity to charged offense, and other relevant facts and circumstances—support the conclusion that the circuit court did not abuse its discretion when it ruled that the other crimes evidence in this case would be more prejudicial than probative. The defendant also contends the other crimes evidence was not admissible under Illinois Rule of Evidence 404(b), and that jury instructions would not have remedied the prejudice brought about by allowing introduction of the evidence.

¶ 17 We agree with the State that a misapprehension of the law is the only reasonable explanation for the wording the circuit court chose to use in its order: that the evidence "would be more prejudicial than probative as there is no evidence of injury to victim of a sexual nature or penetration or DNA." Had the circuit court wished, as the defendant

would have us believe on appeal, to state only that the evidence "would be more prejudicial than probative," the court certainly would have done so. After all, the circuit court was no stranger to brevity in its order. Instead, the court chose to directly tie its legal ruling to its factual conclusion that "there is no evidence of injury to victim of a sexual nature or penetration or DNA" by using the word "as"—a word that is commonly understood in contexts such as this to be employed as a conjunction, meaning "because" or "since" or "for the reason that." See, *e.g.*, https://www.merriam-webster.com/dictionary/as. The State is correct that, in so doing, the circuit court erred in its understanding and application of the law.

¶ 18 It is nevertheless true that this court may affirm the circuit court on any basis in the record. See, *e.g.*, *Evans v. Lima Lima Flight Team, Inc.*, 373 Ill. App. 3d 407, 418 (2007); see also, *e.g.*, *People v. Johnson*, 208 Ill. 2d 118, 134 (2003). We may do so because the question before us on appeal is the correctness of the result reached by the lower court, rather than the correctness of the reasoning upon which that result was reached. See, *e.g.*, *Johnson*, 208 Ill. 2d at 128. Accordingly, we consider whether there exists a basis in the record for us to affirm the order of the circuit court.

¶ 19 We begin with Illinois Rule of Evidence 404(b) (eff. Jan. 1, 2011), which codifies, and is consistent with, a long common law tradition in Illinois under which other crimes evidence may be admissible for purposes other than propensity. Indeed, the Illinois Supreme Court "has repeatedly held that evidence of other crimes is admissible if it is relevant for *any purpose* other than to show the defendant's propensity to commit crimes." (Emphasis added.) *People v. Wilson*, 214 Ill. 2d 127, 135 (2005). Such purposes

include, but are not limited to, showing *modus operandi*, intent, identity, motive, or absence of mistake, and showing, "by similar acts or incidents, that the act in question was not performed inadvertently, accidently, involuntarily, or without guilty knowledge." *Id*. at 135-36. In cases in which the State offers such other crimes evidence, "it is admissible so long as it bears some threshold similarity to the crime charged." *Id*. at 136. Of course, the evidence also must meet general standards of relevance, meaning it "is evidence that 'has any tendency to make the existence of any fact that is of consequence to the determination of the action more or less probable than it would be without the evidence.' " *People v. Haley*, 2011 IL App (1st) 093585, ¶ 55 (quoting *People v. Illgen*, 145 Ill. 2d 353, 365-366 (1991)).

¶ 20 When deciding whether to allow other crimes evidence offered by the State, the circuit court "must weigh the probative value of the other crimes evidence against its prejudicial effect." *Id*. ¶ 57. If, after this weighing, the circuit court concludes that "the probative value of the evidence is outweighed by its prejudicial effect," the circuit court should not allow the offered evidence to be admitted. *Id*. We review the admissibility of other crimes evidence for "a clear abuse of discretion," which " 'occurs when the ruling is arbitrary, fanciful, unreasonable, or when no reasonable person would adopt the trial court's view.' " *Id*. We are mindful that it is not the role of this court to "substitute our judgment for that of the circuit court when determining a decision within its discretion." *Id*.

¶ 21 The defendant contends the other crimes evidence was not admissible under Illinois Rule of Evidence 404(b) because it does not fit into any of the exceptions listed

above, pursuant to either Rule 404(b) or the common law history that preceded it. The defendant also points out that in its opening brief, "the State does not provide *any explanation* on appeal as to how V.L.'s allegations might actually establish intent, identity, or absence of mistake based on the facts of this case." (Emphasis in original.) The defendant is correct. Indeed, even in its reply brief, the State provides no analysis in support of its argument. Thus, we could easily find the State has forfeited consideration of this issue. See Ill. S. Ct. R. 341(h)(7) (eff. May 25, 2018) (argument must contain the contentions of the appellant, the reasons therefor, and the citation of authorities; points not argued in an opening brief are forfeited and shall not be raised in the reply brief, in oral argument, or in a petition for a rehearing). Nevertheless, in the interests of justice and because both parties in this case deserve, as they prepare for the defendant's murder trial, a complete resolution of the issues raised in this appeal, we have conducted our own independent review of the applicability of Rule 404(b) to the other crimes evidence offered by the State in its notice of intent. As of result thereof, we find no basis, on the record before us and at this point in the proceedings, to conclude that the circuit court clearly abused its discretion in denying the admissibility of the offered evidence under Rule 404(b). We take no position with regard to how that might change depending on the evidence and/or argument adduced by the parties in the future, as we trust the circuit court will examine any subsequent developments as needed and will rule in accordance with the law with regard thereto.

¶ 22 We turn next to the propensity statute. Section 115-7.3 of the Code of Criminal Procedure of 1963 (725 ILCS 5/115-7.3 (West 2014)), commonly known as the

propensity statute, applies by its own terms to criminal cases wherein the defendant is accused of, *inter alia*, first degree murder "when the commission of the offense involves sexual penetration or sexual conduct," and provides that in such cases, certain other crimes evidence may be admissible "and may be considered for its bearing on any matter to which it is relevant." The parties agree that the statute is applicable in this case, with the defendant specifically conceding on appeal that the circuit court "denied the admission of V.L.'s allegations[ ] because they were too prejudicial, not because the crime did not involve sex." Section 115-7.3(c) states that "[i]n 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." *Id.* § 115-7.3(c). A decision by the circuit court to admit or not admit other crimes evidence pursuant to section 115-7.3 will not be reversed unless the circuit court has abused its discretion. See, *e.g.*, *People v. Donoho*, 204 Ill. 2d 159, 182 (2003). An abuse of discretion occurs if the circuit court's ruling is arbitrary, fanciful, or unreasonable, or if no reasonable person would take the view adopted by the circuit court. *Id*.

¶ 23 We therefore turn to the factors listed in section 115-7.3(c) to determine whether the circuit court abused its discretion in its ruling in this case. With regard to the proximity in time of the other crimes to the charged offense, the Illinois Supreme Court has held that "courts should evaluate this issue on a case-by-case basis," because " 'admissibility of other[ ]crimes evidence should not, and indeed cannot, be controlled

solely by the number of years that have elapsed between the prior offense and the crime charged.' " *Id*. at 183 (quoting *Illgen*, 145 Ill. 2d at 370). The *Donoho* court noted that this court "has affirmed admission of other[ ]crimes evidence over 20 years old under the exceptions because the court found it to be sufficiently credible and probative," and reasoned therefore that in the case before it, "while the passage of 12 to 15 years since the prior offense may lessen its probative value, standing alone it is insufficient to compel a finding that the trial court abused its discretion by admitting evidence about it." *Id*. at 184. As the defendant points out, and as the immediately preceding citation demonstrates, in *Donoho* and other relevant cases, a factor to be considered with regard to proximity in time is how credible the other crimes evidence is.

¶ 24 The State contends that in this case V.L.'s statements satisfy the proximity-in-time factor and are sufficiently credible. Not surprisingly, the defendant disagrees. As described above, in its notice of intent the State contended that V.L. "would testify that on two occasions the defendant beat her about her head and demanded sex after the two of them consumed illegal substances," with one occasion being "approximately 10 to 15 years before" the murder of the victim, and the second occasion being "approximately one year" before the murder. On the first occasion, the State alleged, the defendant told V.L. she owed him because she smoked his dope, and the defendant beat V.L. "in the head with a stick," then forced her to perform oral sex. On the second occasion, the State alleged, the defendant and V.L. were doing drugs together in the defendant's apartment when the defendant demanded sex from V.L., then "began to beat her about her head with his fists, leaving 'knots' on her head."

¶ 25 At the June 26, 2017, hearing at the trial-court level, the State conceded that the first incident attested to by V.L. was "somewhat dated," having occurred, V.L. stated, "approximately 10 to 15 years before" the murder of which the defendant now stands accused. On appeal, the defendant points out that not only is V.L.'s statement as to when the alleged incident occurred quite vague, including within it a five-year possible variance in time, but that V.L.'s credibility is questionable as well. The defendant concedes that the second incident—having allegedly occurred "approximately one year" before the murder—is less problematic with regard to the proximity factor, but the defendant claims that the same credibility problems exist with it as exist with the first incident. The defendant repeats the trial-court level claim that V.L. was "a potential suspect" because she "was one of the last three people to see [the victim] alive."

¶ 26 With regard to the degree of factual similarity between the other crimes and the charged offense, the defendant continues his attack on V.L.'s credibility, claiming that although, on the surface, there may appear to be similarities between the other crimes alleged by V.L. and the murder of the victim in this case, "if V.L. took part in bringing about [the victim's] death [in this case], she could have easily tailored her claims [regarding the two prior alleged incidents] to fit the facts of the" murder of the victim here. The defendant also notes that: (1) the defendant told Dr. Cuneo that "somebody" gave him a pill on the night of the murder, (2) he recalls nothing about that night, and (3) DNA that was not his was found on the vaginal swab and the State did not test the other male who was present at the victim's apartment on the night of the murder. When the case is viewed from this perspective, the defendant contends, the circuit court

"properly exercised its discretion in denying the admission" of the State's offered evidence, because that evidence was, *inter alia*, "unduly prejudicial, *** unreliable, [and] would confuse the issues."

¶ 27 With regard to the third factor—other relevant facts and circumstances—the defendant returns to the issue of V.L.'s credibility, reiterating the foregoing questioning of it and adding additional concerns. The defendant notes that when, at the June 26, 2017, hearing, the State paraphrased V.L.'s recounting of the second incident alleged in the State's notice of intent, the State claimed that after the defendant "demanded sex" from V.L., V.L. "refused to comply or said 'okay, yeah, let's do it,' and he then proceeded to beat her about the head and face." The defendant queries, "Why would he strike her if she agreed to comply?" The defendant also notes that during that alleged incident, "V.L. supposedly ran from [the defendant's ninth floor apartment] while naked" and yet no follow-up investigation was conducted by police once they were notified of the incident approximately one year later, "and from the record, it appears that the State made no efforts to obtain any surveillance footage or any statements from third-party witnesses *** to see if anyone had seen this naked woman running through the building." The defendant also wonders why, if V.L. previously had been physically and sexually attacked by the defendant on two separate occasions, she would attend, on the night of the murder, "a small party in [the victim's] apartment that [the defendant] was also attending."

¶ 28 We agree with the defendant that with regard to all three factors, and when taken as a whole, the multiple potential problems with V.L.'s credibility provide support for the

circuit court's ruling in this case. At the hearing on June 26, 2017, neither party asked to admit into evidence V.L.'s audio-video recorded statement, and therefore it was not so admitted. Accordingly, any determination by the circuit court of V.L.'s credibility could not have resulted from a viewing by the court of the statement. However, the circuit court specifically asked the State if it acknowledged that even after V.L.'s audio-video recorded interview with police, "there was no police investigation, report, charges[,] or anything of either of these allegations made at this time by this witness." The State answered, "That's correct, Your Honor," but added that V.L. stated in the interview with authorities that "[s]he did not report them because she didn't think anyone would believe her." The State's answer, of course, may explain why V.L. did not report the alleged incidents at the time they happened, but it does not explain why there was no follow-up investigation of either alleged incident after she reported them in her audio-video recorded interview, particularly with regard to the second incident, which allegedly occurred "approximately one year" before the murder and her audio-video recorded interview. The circuit court reasonably could have concluded that no follow-up investigation occurred because the authorities who interviewed her, and those who subsequently watched the interview, did not find V.L. to be a particularly credible witness. Moreover, the circuit court, having heard the arguments of the parties, could have independently arrived at the conclusion that, based upon the evidence and V.L.'s possible motive to fabricate, the other crimes evidence the State wished to offer would be more prejudicial than probative, in particular because it was not sufficiently credible.

¶ 29 In light of the foregoing facts, relevant case law, and the defendant's arguments related thereto, we find no basis to conclude that the circuit court's ruling to exclude the State's offered other crimes evidence pursuant to the propensity statute was arbitrary, fanciful, or unreasonable, nor do we conclude that no reasonable person would take the view adopted by the circuit court; accordingly, we find no abuse of discretion. See, *e.g.*, *Donoho*, 204 Ill. 2d at 182 (decision by circuit court to admit or not admit other crimes evidence pursuant to section 115-7.3 will not be reversed unless court has abused its discretion, which occurs if court's ruling is arbitrary, fanciful, or unreasonable, or if no reasonable person would take view adopted by it). Because we have determined that the circuit court did not err when it denied the State's notice of intent to introduce the other crimes evidence specified in the notice, we need not address the State's argument that, as this case proceeds to trial, the risk of undue prejudice to the defendant from that evidence can be mitigated sufficiently via proper instruction of the jury.

¶ 30 CONCLUSION

¶ 31 For the foregoing reasons, we affirm the order of the circuit court of St. Clair County that denied the State's notice of intent to introduce other crimes evidence.

¶ 32 Affirmed.