2019 IL App (1st) 161679-U

No. 1-16-1679

SIXTH DIVISION
MARCH 1, 2019

IN THE

APPELLATE COURT OF ILLINOIS

FIRST DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County.
	)	
v.	)	No. 15 CR 507
	)	
RAVON TERRELL,	)	Honorable
	)	Thaddeus L. Wilson,
Defendant-Appellant.	)	Judge Presiding.

JUSTICE CUNNINGHAM delivered the judgment of the court.
Presiding Justice Delort and Justice Connors concurred in the judgment.

ORDER

¶ 1 *Held*: The trial court did not abuse its discretion in admitting, for impeachment purposes, defendant's three prior felony convictions where the court balanced the probative value and prejudicial effect of the convictions.

¶ 2 Following a bench trial, defendant Ravon Terrell was found guilty on eight counts of felony driving with a suspended or revoked license and sentenced to four years' imprisonment. On appeal, defendant contends that the trial court committed reversible error in allowing the

State to impeach him with three prior felony convictions for driving with a suspended or revoked license. We affirm the judgment of the circuit court of Cook County.

¶ 3 Defendant was charged by information with eight counts of driving with a suspended or revoked license in violation of section 6-303(a) of the Illinois Vehicle Code (Code) (625 ILCS 5/6-303(a) (West 2014)) based on an incident in Chicago on December 22, 2014. On counts I and II, the State sought to sentence defendant as a Class 3 offender pursuant to section 6-303(d-4) of the Code, which applies only to a defendant convicted of a tenth, eleventh, twelfth, thirteenth, or fourteenth violation of the Code. 625 ILCS 5/6-303(d-4) (West 2014). On counts III through VIII, the State sought to sentence defendant as a Class 4 offender pursuant to sections 6-303(d), (d-2), and (d-3), which apply only to a defendant convicted of a third, fourth, fifth, sixth, seventh, eighth, or ninth violation. 625 ILCS 5/6-303(d), (d-2), (d-3) (West 2014). Each count further alleged that defendant's license had been suspended or revoked for driving under the influence of drugs or alcohol in violation of section 11-501 or 11-501.1 of the Code (625 ILCS 5/11-501 (West 2014), 11-501.1 (West Supp. 2013)).

¶ 4 Prior to trial, the State made an oral motion *in limine* pursuant to *People v. Montgomery*, 47 Ill. 2d 510 (1971), seeking permission to introduce several of defendant's prior felony convictions for impeachment purposes if he chose to testify at trial. Defense counsel responded that, "Defendant won't be testifying," and asked the court not to consider the motion. In light of defendant's request, the court postponed hearing the motion. On the day of trial, the court addressed the State's motion again, and defense counsel told the court that he still wished to delay arguing the motion because "defendant doesn't really intend to testify." Defense counsel added, "not that you can't segregate it, but he would like it so that you don't hear his background

prior to trial and let that influence you in any way. I know you won't, but you're human like everybody else." The court agreed to refrain from hearing the motion "unless and until" defendant chose to testify.

¶ 5 At trial, Chicago police officer Boyer testified that he was on duty driving a marked squad car with Officers Rho and Raso[1] on December 22, 2014. Around 11:30 a.m., Boyer saw a red Jeep Cherokee "blow through" a stop sign at the intersection of Potomac Avenue and Long Avenue. He followed the Jeep and searched the license plate number in a Secretary of State database, which informed him that it was a rental car. When the Jeep turned onto LeMoyne Street about two blocks later, he activated his lights and pulled it over near 5420 West LeMoyne Street. Boyer did not lose sight of the car after he saw it bypass the stop sign. He identified defendant in court as the driver, and stated there were no other people inside the Jeep. Boyer asked defendant for his driver's license and proof of insurance, but he produced only an Illinois identification card. Boyer handcuffed defendant and found a key fob in his jacket pocket. After entering defendant's information into a Secretary of State database, Boyer learned that his driver's license was suspended. He informed defendant that he was under arrest and asked him if he wanted any items from the Jeep before it was impounded. At defendant's request, Boyer removed approximately 40 Visa gift cards from the center console. Shaquita Ceaser, who identified herself to Boyer as defendant's girlfriend, exited a nearby building and asked what was going on. Boyer let her retrieve several items from the Jeep, before she went back inside the building.

[1] The transcript does not include Boyer, Rho, or Raso's first names.

¶ 6 On cross-examination, Boyer acknowledged that he testified at a preliminary hearing that he activated his lights as defendant began exiting the Jeep. He explained that the squad car he was driving was older and therefore not equipped with a camera or microphone. He denied calling Ceaser and telling her to come outside, though he did not know if either of his partners did. However, Rho spoke on the phone with "Felony Review," which instructed the officers to arrest defendant for aggravated DUI in addition to driving with a suspended license. Boyer also acknowledged that his police report did not mention finding a key fob in defendant's jacket, but he stated that he returned the Jeep key to defendant at the police station because "according to everyone on the scene" defendant and Ceaser were either dating or married, and he assumed that defendant would return the key to her. On redirect examination, Boyer acknowledged that he did not conduct a DUI investigation, but followed Felony Review's instructions because defendant "has been convicted on DUI suspensions already, so that's how we took it as the charge for a Class 2 or second DUI, or whatever."

¶ 7 The State informed the court that the parties had a stipulation. Defense counsel stated that he was prepared to stipulate that defendant's license was suspended for a DUI and that he had "a prior 6-303 violation" that would allow the State to prosecute him as felon, but argued that the court did not need to hear the exact number of defendant's prior convictions until sentencing. The court and the State agreed. The record does not contain a print copy of the stipulation. However, according to the transcript, the prosecutor stated that "on December 22, 2014, the defendant's license was suspended for a statutory summary suspension under 11-501.1, and revoked or rather issued under 11-501, than present quick sit subsequent convictions were there."

¶ 8 The State rested and defendant moved for a directed verdict, which the court denied.

¶ 9 The defense called Ceaser, who testified that she was not dating defendant and did not see him often, but that they were friends who once shared a cell phone plan. On December 22, 2014, she was in her home at 5418 West LeMoyne Street at 11:34 a.m. when defendant called and told her that he needed to retrieve something from her car. Ceaser explained that she and defendant had gone Christmas shopping the day before, and that he left some gift cards in the red Jeep Cherokee that she was renting. After speaking to defendant, Ceaser went into her bedroom and used a key fob to unlock the Jeep. She did not leave the house or look outside before unlocking the car. The fob that she used was the only one that she had, and she never gave it to defendant. The Jeep could not start unless the fob was nearby.

¶ 10 Ceaser received a second phone call from defendant's cell phone at 11:44 a.m. On the other end was a police officer who told her to come outside with the key. She went outside in her bathrobe, saw defendant handcuffed in the back of a police car, and gave the key to one of the three officers present. The officers did not ask her if she wanted to remove anything from the Jeep, and she did not take any items out of it. Ceaser went back inside to put on warmer clothes, but the Jeep, defendant, and the police were gone when she returned.

¶ 11 On cross-examination, Ceaser testified that she returned "within ten seconds" after going back inside. She acknowledged that, at a previous hearing, she claimed that she was inside for "[a]bout five to ten minutes" before returning. On redirect examination, Ceaser reiterated that she went back outside immediately after getting dressed, and that the street was empty when she returned.

¶ 12 Defense counsel then purported to rest. The court admonished defendant on his right to testify and asked him if he wanted to do so. Defendant requested an opportunity to confer with

his attorney, and defense counsel stated, "he'll testify if you don't let the State use his background against him within the scope of Montgomery. If you let them use the background, then he doesn't want to testify." Defense counsel requested that "the State's Montgomery motion be heard at this time."

¶ 13 In its motion, the State sought to impeach defendant with five of his prior felonies: a 2007 conviction for cannabis possession; a 2007 conviction for possession of a controlled substance with intent to deliver; and three 2010 convictions for driving with a suspended license. In response, defense counsel stated:

> "I know you're going to segregate it and only use it to decide what weight to give to the defendant's testimony, but I would still argue that three 6-303's from 2010, the probative value is outweighed by the level of prejudice and we would ask you not to consider those."

The court stated that, weighing the probative value and prejudicial effect of the convictions, it would allow the State to impeach defendant with his conviction for possession of a controlled substance with intent to deliver, and his three convictions for driving with a suspended license.

¶ 14 Defendant testified that he was just friends with Ceaser, and that they shared a cell phone plan because she had better credit. They went Christmas shopping on December 21, 2014, and, in a rush, he left approximately 30 gift cards in her car. The next day, defendant's friend, Mike, dropped him off at Ceaser's house so that he could retrieve the gift cards. Defendant did not have a key to Ceaser's car, so he called her shortly before arriving and asked her to unlock it for him. He opened the car door and lifted the lid on the center console, but the police pulled up behind

him before he was able to grab his gift cards. Defendant gave the officers his identification, and they handcuffed him and put him in the back of the police car. Defendant explained "whose car it was, and what [he] was doing there." An officer called Ceaser from defendant's cell phone after he showed him where her number was saved on his phone. As the police searched the car, Ceaser came outside in a bathrobe and spoke briefly with the officers. Defendant testified that the police never gave him a key to the Jeep. He concluded his direct examination by acknowledging that he had been convicted three times in 2010 of felony driving on a suspended license and once in 2007 of possession of a controlled substance with intent to deliver. The State declined to cross-examine defendant, and the defense rested.

¶ 15 After closing arguments, the court found defendant guilty on all eight counts of driving with a suspended or revoked license. In announcing its finding, the court stated:

> "Chicago police officers on patrol, see a vehicle run a stop sign. They follow the vehicle. And as they were preparing and activating to pull over the vehicle, the vehicle pulled over, parked, and they saw the defendant getting out of the vehicle. The defendant was the only person in that vehicle. The officers asked for a driver's license and insurance. The defendant was unable to provide the driver's license.
>
> Officers ran the defendant's name and information and learned that the defendant's license was suspended and/or revoked. The defendant was arrested. There will be a finding of guilty as to each Count 1 through 8."

¶ 16 Defendant filed a motion for a new trial, asserting in relevant part that the State failed to prove his guilt beyond a reasonable doubt and that the court erred in allowing him to be impeached with his prior convictions. The court denied the motion. Following a sentencing hearing, the court merged all counts into count I, and sentenced defendant to four years in prison.

¶ 17 On appeal, defendant contends that the trial court committed reversible error by allowing the State to impeach him with three prior convictions for driving with a suspended or revoked license. Defendant does not challenge the admission of his 2007 conviction for possession of a controlled substance with intent to deliver, but argues that admission of his prior convictions for driving with a suspended or revoked license, were highly prejudicial because they tend to show his propensity to commit a crime. The State maintains that defendant acquiesced to the admission of his prior convictions by acknowledging them during direct examination. Additionally, the State argues that it was within the trial court's discretion to allow the admission of the convictions for impeachment, and in the alternative, the overwhelming evidence against defendant rendered any error harmless.

¶ 18 Evidence of a prior conviction is admissible to impeach a defendant's credibility if (1) the crime was punishable by death or imprisonment for more than one year, or involved dishonesty or a false statement; (2) less than 10 years has elapsed since the defendant was convicted or released from confinement, whichever is later; and (3) the risk of unfair prejudice does not substantially outweigh the probative value of admitting the convictions. Ill. R. Evid. 609 (eff. Jan. 1, 2011); *People v. Montgomery*, 47 Ill. 2d 510, 516 (1971). The third factor is a balancing test of probative value and prejudicial effect. *People v. Cox*, 195 Ill. 2d 378, 383 (2001). Evaluating the balance is within the sound discretion of a trial court, and we will not

reverse the trial court's ruling absent an abuse of discretion. *People v. Melton*, 2013 IL App (1st) 060039, ¶ 17. A trial court abuses its discretion when it acts arbitrarily or when it substantially prejudices a defendant by exceeding the bounds of reason and ignoring recognized principles of law. *Id.* ¶ 18.

¶ 19 The probative value of a felony conviction with respect to a witness's credibility springs from " 'the common-sense proposition that a person who has flouted society's most fundamental norms, as embodied in its felony statutes, is less likely than other members of society to be deterred from lying under oath in a trial.' " *People v. Atkinson*, 186 Ill. 2d 450, 458-59 (1999) (quoting *Campbell v. Greer*, 831 F.2d 700, 707 (7th Cir. 1987)). In balancing probative value and danger of unfair prejudice, a trial court should consider factors such as the nature of the conviction, the remoteness of the conviction, the length of defendant's criminal record, the similarity between the conviction and the present offense, and other circumstances surrounding the conviction. *Atkinson*, 186 Ill. 2d at 456. Although evidence of prior convictions for the same crime as presently charged may create a danger of unfair prejudice, similarity alone does not require exclusion, especially where the trier of fact knows to consider the convictions for the limited purpose of impeachment. *Id.* at 463. Indeed, in the context of a bench trial, we must presume that the court considered the defendant's prior convictions only for the proper purposes, unless the record affirmatively shows otherwise. *People v. Naylor*, 229 Ill. 2d 584, 665-66 (2008). Although the trial court is required to conduct a balancing test, it need not articulate the factors it considered or the weight it assigned them. *Atkinson*, 186 Ill. 2d at 463.

¶ 20 As an initial matter, we reject the State's argument that defendant may not challenge the trial court's *Montgomery* ruling because, by acknowledging his convictions on direct examination, he invited or acquiesced to their admission. Our supreme court has held that the

rule barring a party from appealing the admission of evidence it introduced does not apply where, as here, the party first argued, unsuccessfully, to exclude the evidence. *People v. Williams*, 161 Ill. 2d 1, 34-35 (1994) (citing *People v. Spates*, 77 Ill. 2d 193, 198-200 (1979)). After the court rules that evidence is admissible, the way in which it is revealed is a matter of the defense's trial strategy, and does not affect defendant's ability to challenge the court's ruling on appeal. *Williams*, 161 Ill. 2d at 35.

¶ 21 Turning to the merits of defendant's claim, we find that the trial court did not abuse its discretion in allowing defendant to be impeached by his prior convictions for driving with a suspended or revoked license. It is undisputed that the convictions were all felonies and less than 10 years old at the time of trial. Accordingly, the only issue is the balancing test under the third *Montgomery* prong. It is evident from the record that the trial court engaged in the proper balancing test, as it explicitly stated that it weighed the probative value and prejudicial effect of the impeachment evidence. The exclusion of defendant's 2007 cannabis possession conviction is also evidence that the trial court carefully considered the appropriate factors instead of mechanically allowing evidence of defendant's entire criminal history. *People v. Mullins*, 242 Ill. 2d 1, 19 (2011). Further, we cannot say that the similarity between the prior convictions and the current offense increased the danger of unfair prejudice so as to substantially outweigh the probative value of the convictions in this case. See *Atkinson*, 186 Ill. 2d at 463 (finding that the trial court did not abuse its discretion by allowing a defendant on trial for burglary to be impeached by his two prior burglary convictions). Although the rules of admissibility are the same whether or not a defendant is tried by a jury, the risk of unfair prejudice is mitigated in a bench trial. *Naylor*, 229 Ill. 2d at 603 (the court in a bench trial is presumed to consider a

defendant's conviction only for competent purposes). Defense counsel multiple times expressed his confidence that the trial court would only consider the convictions for impeachment purposes, and defendant does not make an affirmative showing to overcome the presumption that the court did so.

¶ 22 Additionally, that defendant had multiple felony convictions, including the three relatively recent driving with a suspended license convictions, was probative of his credibility as a witness. See *Atkinson*, 186 Ill. 2d at 456 (remoteness of a prior conviction is an appropriate factor to consider when weighing its probative value). We also note that evidence of defendant's prior convictions is "crucial in measuring [his] credibility" where, as here, his testimony was a central part of his defense. *Id.* at 462 (admitting a defendant's conviction where his testimony was his entire defense); see also *Mullins*, 242 Ill. 2d at 16. Under these circumstances, defendant's reliance on *People v. Adams*, 281 Ill. App. 3d 339 (1996), is misplaced. In *Adams*, we found that the trial court erred in admitting defendant's two prior convictions for aggravated battery when defendant was charged with, *inter alia*, aggravated battery because "the probative value relating to credibility was minimal by comparison with the prejudice." *Id.* at 345. *Adams* involved a jury trial, and the opinion in that case did not address whether the jury was given a limiting instruction, and if so, how it was admonished. *Id.* Here, as explained above, we presume that the trial court, as the trier of fact, considered defendant's convictions only for proper purposes. Thus, unlike in *Adams*, any risk of prejudice was mitigated. Accordingly, we find that the trial court did not abuse its discretion by allowing into evidence, defendant's three prior convictions for driving with a suspended or revoked license.

¶ 23 For the foregoing reasons, we affirm the judgment of the circuit court of Cook County.

¶ 24 Affirmed.