

2019 IL App (2d) 170521-U  
No. 2-17-0521  
Order filed August 21, 2019

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IN THE  
APPELLATE COURT OF ILLINOIS  
SECOND DISTRICT

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THE PEOPLE OF THE STATE	)	Appeal from the Circuit Court
OF ILLINOIS,	)	of Lee County.
	)	
Plaintiff-Appellee,	)	
	)	
v.	)	No. 11-CF-13
	)	
NIKOS M. KASTRINSIOS,	)	Honorable
	)	Ronald M. Jacobson,
Defendant-Appellant.	)	Judge, Presiding.

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JUSTICE HUDSON delivered the judgment of the court.  
Justices Hutchinson and Schostok concurred in the judgment.

**ORDER**

¶ 1 *Held:* The trial court did not err in admitting other-crimes evidence, as the evidence was invited by defendant and, in any event, its strong probative value was not substantially outweighed by its limited prejudicial effect.

¶ 2 Defendant, Nikos M. Kastrinsios, appeals from his conviction in the circuit court of Lee County of knowingly possessing child pornography (720 ILCS 5/11-20.1(a)(6) (West 2010)), contending that the trial court erred in admitting, as other-crimes evidence, testimony about his sexual involvement with a 15-year-old boy. Because defendant invited the testimony, and

because, in any event, the court did not abuse its discretion in admitting the other-crimes evidence, we affirm.

¶ 3

### I. BACKGROUND

¶ 4 Defendant was charged by information with one count of aggravated criminal sexual abuse involving a victim who was at least 13 years old but under 17 years old (720 ILCS 5/12-16(d) (West 2010)) and one count of knowingly possessing child pornography (720 ILCS 5/11-20.1(a)(6) (West 2010)). The charges were severed, and defendant was tried first on the child-pornography charge. He opted for a jury trial.

¶ 5 Before trial, the State moved *in limine* to have admitted the testimony of Marcia Ervin regarding statements that defendant made to her about being attracted to young boys and about posing online as a teenage girl to get young boys to send him photos of themselves naked. The State also sought to have admitted the testimony of Jodi Remmers that she believed that defendant had engaged in sexual conduct with a 15-year-old male. The State sought to admit the other-crimes evidence to prove defendant's intent, knowledge, and absence of mistake as to his possession of child pornography. Defendant objected to the admission of the other-crimes evidence. The trial court, ruling that the probative value of the evidence far outweighed the prejudicial effect, granted the State's motion.

¶ 6 The following facts were established at trial. Ervin testified that she met defendant through a neighbor. She frequented his restaurant, communicated with him on Facebook, and talked with him regularly.

¶ 7 At one point, defendant told Ervin that he was gay. He also commented about young boys being cute and that he was attracted to 15- and 16-year-old boys.

¶ 8 In December 2010, Ervin was in defendant's restaurant to pick up food. Defendant, who was seated at his laptop computer, called Ervin over and showed her an online photo of a 19-year-old male whom he said he was going to marry. He then told Ervin that he posed online as a 14-year-old girl to obtain photos of naked young boys. Ervin admitted on cross-examination that, after she kidded him about pretending to be a 14-year-old girl, defendant said that he was only joking.

¶ 9 On cross-examination, Ervin was asked several questions about why she waited to report defendant's comments to the police. On re-direct examination, she explained that she did not go to the police until she had heard that defendant had been arrested for exchanging drugs for sex with a 15-year-old male. She added that, when she heard that defendant had been arrested for molesting a teenage boy, she blamed herself for having waited to go to the police.

¶ 10 Remmers testified that she had been a cook at defendant's restaurant. According to Remmers, defendant told her that he was gay. At one point, she learned that defendant was dating a 14- or 15-year-old boy. Defendant told her that the boy had been spending nights at defendant's home.

¶ 11 On cross-examination, Remmers was asked if she had initially reported to the police that the sexual contact between defendant and the boy was oral, to which she answered yes. She was also asked if later, when the police asked her about sex acts other than oral sex, she told them that defendant had alluded to the fact that he and the boy had had "actual sex." Remmers could not recall having done so. On re-direct, Remmers explained that, after defendant alluded to having had actual sex with the boy, she walked away, because she did not want to hear about it.

¶ 12 Detective Nicholas Albert of the Dixon Police Department executed a search warrant at defendant's two-story home. The first floor had a kitchen, dining room, living room, bathroom, and bedroom. There were several rooms upstairs.

¶ 13 During the search, officers discovered several items in the living room that indicated that defendant resided in the house. For instance, they found an envelope addressed to defendant, correspondence from a bank addressed to defendant, and a business card for defendant's restaurant. According to Detective Albert, although they looked for it, they found no evidence that anyone else was living there.

¶ 14 In a cabinet, officers found several items of digital media, including three gold-colored CD-ROMS. A subsequent examination of those CD-ROMS revealed several still photos and videos of child pornography. One video was of a five-year-old-boy giving oral sex to an adult male. That video was the basis for the child-pornography charge. Fifteen additional photos and videos of child pornography were admitted.

¶ 15 During its initial closing argument, the State reminded the jury that Ervin testified that defendant told her that he pretended to be a 14-year-old girl to lure boys into sending him photos of themselves and that Remmers testified that defendant told her that he was in a relationship with a 15-year-old boy. During its rebuttal argument, the State referred to Remmers' testimony that defendant "apparently \*\*\* admitted having sexual contact with" a 15-year-old boy and Ervin's testimony that she did not come forward to the police until she learned that defendant had been arrested for "molesting another boy."

¶ 16 The trial court instructed the jury that it was to consider the other-crimes evidence only for the purpose of determining defendant's intent, motive, knowledge, or absence of mistake or accident in possessing the charged video. The jury found defendant guilty. Following the denial

of his motion for a new trial, in which he challenged the admission of the other-crimes evidence, the court sentenced defendant to five years in prison. Defendant, in turn, filed a timely notice of appeal.

¶ 17

## II. ANALYSIS

¶ 18 On appeal, defendant contends that the trial court abused its discretion in allowing, as other-crimes evidence, Remmers' testimony that defendant had had sex with a 15-year-old boy and Ervin's testimony that she had heard that defendant had exchanged drugs for sex with a 15-year-old boy. Recognizing that the testimony had some probative value, defendant asserts that its prejudicial effect substantially outweighed its probative value.

¶ 19 We initially note that, although the State does not raise this point, defendant invited the testimony. When a party procures, invites, or acquiesces in the admission of evidence, even though the admission is improper, that party cannot contest on appeal the admission of that evidence. *People v. Holmes*, 2016 IL App (1st) 132357, ¶ 91 (citing *People v. Caffey*, 205 Ill. 2d 52, 114 (2001)). Here, although Remmers testified on direct examination that defendant was dating a 14- or 15-year-old boy, she never testified on direct examination that defendant had sex with the boy. Rather, it was defendant who first asked Remmers on cross-examination whether she had told the police that defendant had had oral sex with the boy. Defendant also asked Remmers whether she had told the police that defendant had alluded to having had "actual sex" with the boy. Remmers answered that she could not recall doing so. Although Remmers testified on re-direct examination that defendant had alluded to having had sex with the boy, that was only after defendant had already broached that issue during cross-examination. Because defendant first elicited during cross-examination Remmers' testimony about his having had sex with a minor, he cannot now complain about that testimony.

¶ 20 The same can be said for Ervin's testimony that defendant had exchanged drugs for sex with a 15-year-old boy. Ervin did not testify on direct examination that defendant had exchanged drugs for sex with the 15-year-old boy. It was only after defendant questioned her on cross-examination about why she waited to report defendant's comments to the police that, on re-direct examination, she explained that she made the report once she heard that defendant had exchanged drugs for sex. Because defendant invited Ervin's testimony about his having traded drugs for sex with a minor, he cannot complain about that testimony on appeal.

¶ 21 In any event, the trial court did not err in admitting the testimony. Other-crimes evidence is admissible to prove any fact relevant to the case, but it is inadmissible if it is relevant to demonstrate only the defendant's propensity to engage in criminal activity. *People v. Johnson*, 2013 IL App (2d) 110535, ¶ 61. Such evidence is admissible to prove a fact in issue, rebut an alibi defense, demonstrate consciousness of guilt, or establish motive, intent, absence of mistake or accident, identity, *modus operandi*, or a common design or scheme. *People v. Ingram*, 389 Ill. App. 3d 897, 901-02 (2009). However, relevant other-crimes evidence may be excluded if its prejudicial effect substantially outweighs its probative value. *Johnson*, 2013 IL App (2d) 110535, ¶ 61. The admissibility of other-crimes evidence is committed to the sound discretion of the trial court, and its decision will not be disturbed absent a clear abuse of discretion. *People v. Gregory*, 2016 IL App (2d) 140294, ¶ 24. An abuse of discretion occurs when the trial court's ruling is arbitrary, fanciful, or unreasonable. *People v. Null*, 2013 IL App (2d) 110189, ¶ 43.

¶ 22 Here, defendant recognizes that Remmers' and Ervin's testimony was relevant, but he asserts that its prejudicial effect substantially outweighed its probative value. We disagree.

¶ 23 The trial court instructed the jury that it was to consider any evidence of defendant's uncharged criminal conduct only for the limited purpose of his intent, motive, knowledge, or

absence of mistake or accident in possessing the charged video. That instruction substantially reduced any prejudicial effect created by the admission of the other-crimes evidence. See *People v. Hayes*, 319 Ill. App. 3d 810, 820 (2001) (citing *People v. Illgen*, 145 Ill. 2d 353, 376 (1991)).

¶ 24 On the other hand, the probative value of the other-crimes evidence was significant. Defendant denied knowingly possessing the video of a five-year-old boy giving oral sex to an adult male. Indeed, defendant's knowledge of whether the video contained child pornography was a key issue at trial. Because the testimony that he had sex with a 15-year-old boy, or that he had traded drugs for sex with the 15-year-old, showed his sexual preference for young boys, it, in turn, showed that he knew the nature of the video. Because the prejudicial effect of Remmers' and Ervin's testimony was limited, and because its probative value was strong, the trial court did not abuse its discretion in admitting that testimony.<sup>1</sup>

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<sup>1</sup> To the extent defendant complains about Ervin's and Remmers' testimony about things that defendant told them regarding his sexual interest in young boys, including that a 15-year-old boy had spent nights at his home, that testimony was admissible for a reason other than as other-crimes evidence. If offered against him, a defendant's statements are generally admissible. See Ill. R. Evid. 801(d)(2)(A) (eff. Oct. 15, 2015); see also *People v. Garcia*, 2017 IL App (1st) 133398, ¶ 68 (a defendant's statement is admissible if it is offered against him, it is relevant, and its probative value is not substantially outweighed by its prejudicial effect). Here, defendant's statements were offered against him. Because those statements showed his sexual interest in young boys, they were relevant to prove that he knowingly possessed child pornography. Given the import of the knowledge issue, any prejudice from the testimony about defendant's statements did not substantially outweigh the probative value. Thus, the admission of the testimony about defendant's expressed sexual interest in young boys was proper under Rule of

¶ 25

III. CONCLUSION

¶ 26 For the reasons stated, we affirm the judgment of the circuit court of Lee County.

¶ 27 Affirmed.

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Evidence 801(d)(2)(A).