

2019 IL App (2d) 170409-U
No. 2-17-0409
Order filed July 23, 2019

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IN THE
APPELLATE COURT OF ILLINOIS
SECOND DISTRICT

THE PEOPLE OF THE STATE)	Appeal from the Circuit Court
OF ILLINOIS,)	of Kane County.
)	
Plaintiff-Appellee,)	
)	
v.)	No. 12-CF-2515
)	
RUMALDO ANZALDUA,)	Honorable
)	Linda S. Abrahamson,
Defendant-Appellant.)	Judge, Presiding.

JUSTICE BURKE delivered the judgment of the court.
Justices McLaren and Jorgensen concurred in the judgment.

ORDER

¶ 1 *Held:* Although the trial court erred in admitting other-crimes evidence to show defendant's intent, which was not at issue, the error was harmless, as the evidence of his guilt was overwhelming.

¶ 2 Defendant, Rumaldo Anzaldua, appeals from his conviction in the circuit court of Kane County of delivering cocaine (720 ILCS 570/401(a)(2)(B) (West 2012)), contending that the trial court abused its discretion in admitting evidence of his involvement in two prior drug sales. Although the evidence of the two prior drug sales was improperly admitted to prove defendant's intent, the error was harmless beyond a reasonable doubt. Thus, we affirm.

¶ 3

I. BACKGROUND

¶ 4 Defendant was indicted on one count of unlawfully delivering at least 100 grams but less than 400 grams of a controlled substance (cocaine) (720 ILCS 570/401(a)(2)(B) (West 2012)) and one count of possessing at least 100 grams but less than 400 grams of a controlled substance (cocaine) (720 ILCS 570/402(a)(2)(B) (West 2012)). Defendant opted for a jury trial.

¶ 5 Before trial, the State filed a motion *in limine* seeking to have admitted at trial evidence of two prior deliveries of cocaine by defendant in October 2012. At the hearing on that motion, the State contended that the other-crimes evidence was admissible to prove identity, absence of mistake, and intent. The trial court ruled that the other-crimes evidence was not admissible to show either identity or absence of mistake. However, the court, finding that intent to deliver was an issue,¹ granted the State's motion to admit the other-crimes evidence for the purpose of proving defendant's intent.

¶ 6 The following evidence was established at the trial. Sergeant Melissa Isley of the Illinois State Police was assigned to the North Central Narcotics Task Force. On October 11, 2012, acting in an undercover capacity, she met with Felix Arrendondo at his home in Aurora to purchase cocaine. Sergeant Isley parked her vehicle in Arrendondo's driveway. Arrendondo walked up to Isley's vehicle and told her that he was going to get the cocaine. He then walked

¹ We note that intent to deliver was not an issue. Although the text of count I of the indictment stated that defendant "knowingly and unlawfully possessed with the intent to deliver" cocaine, count I was entitled "UNLAWFUL DELIVERY OF CONTROLLED SUBSTANCE." Further, the trial court instructed the jury on the elements of, and entered a judgment for, unlawful delivery, as opposed to possession with intent to deliver.

behind his house. About that time, a white GMC Envoy arrived and parked in the street in front of Arrendondo's house.

¶ 7 Arrendondo walked from behind his house and entered the front passenger seat of the Envoy. He then left the Envoy and entered the front passenger seat of Sergeant Isley's vehicle and delivered 4.7 grams of cocaine to Sergeant Isley. Neither Arrendondo nor anyone in the Envoy was arrested. The trial court, without objection, admitted the cocaine.

¶ 8 On October 18, 2012, Sergeant Isley again purchased cocaine from Arrendondo at his home. She parked in the street, and there was a black Jeep Liberty parked in Arrendondo's driveway. Sergeant Isley saw figures in the Jeep, and moments later Arrendondo exited the passenger side of the Jeep. He then entered Sergeant Isley's vehicle and gave her 4.2 grams of cocaine. Arrendondo then returned to the Jeep, and Sergeant Isley left. No one was arrested. The trial court, without objection, admitted the cocaine.

¶ 9 In October 2012, Myrna Galvan lived with defendant. She owned a white GMC Envoy and a white Hyundai Tiburon. According to Galvan, defendant would drive those vehicles. When asked if defendant also drove a black Jeep Liberty, Galvan answered that maybe he did.

¶ 10 Officer Christopher Converse of the Aurora Police Department was assigned to the task force. On October 11, 2012, he conducted surveillance during the cocaine purchase involving Sergeant Isley and Arrendondo. He identified the registration for the Envoy as belonging to Galvan. The trial court, without objection, admitted the registration document.

¶ 11 On October 18, 2012, Officer Converse again conducted surveillance regarding the drug deal between Sergeant Isley and Arrendondo. He observed an unknown Hispanic male driving the black Jeep Liberty. The Jeep was registered to Luis Gonzalez at Galvan's address. The trial court, without objection, admitted the registration document.

¶ 12 Arrendondo testified that he recalled meeting defendant at Arrendondo's house on October 11, 2012, and October 18, 2012. According to Arrendondo, on both dates defendant arrived in a white Chevy Trailblazer. On those dates, Arrendondo received cocaine from defendant and sold it to Sergeant Isley.

¶ 13 Between October 18, 2012, and December 12, 2012, Sergeant Isley arranged to buy four ounces of cocaine from Arrendondo. On December 12, 2012, she parked in the street in front of Arrendondo's house. She texted Arrendondo that she had arrived. He then appeared on the front porch and held up his index finger to indicate to Sergeant Isley that he would be a minute. He then walked around his house and out of sight. He then texted Sergeant Isley that he would be a minute. He then reappeared and entered the front passenger seat of Sergeant Isley's vehicle.

¶ 14 Arrendondo and Sergeant Isley talked for several minutes. Then a white Hyundai arrived and parked in the driveway. After Sergeant Isley showed Arrendondo the money for the purchase, he exited her vehicle and walked up to the driver's window of the Hyundai. About a minute later, Arrendondo walked away from the Hyundai with his left hand cupped at his side. He then reentered Sergeant Isley's vehicle and gave her four ounces of cocaine. After receiving the cocaine, Sergeant Isley signaled nearby officers who then arrested both Arrendondo and the driver of the Hyundai. The driver, who was the sole occupant of the Hyundai, was identified as defendant.

¶ 15 Sergeant Virgil Schroeder of the Illinois State Police was assigned to the task force. When the arrest signal was given, he parked his vehicle behind the Hyundai. Defendant then exited the Hyundai. After Sergeant Schroeder arrested defendant, he discovered a Samsung phone in defendant's pocket.

¶ 16 Officer Scott Torkelson of the Crystal Lake Police Department was also assigned to the task force. After defendant's arrest, Officer Torkelson searched the Hyundai. He found two cell phones on the front passenger seat. One of the cell phones was a white Huawei5 and the other was a Blackberry Curve. The Huawei belonged to defendant, and the Blackberry belonged to Arrendondo.

¶ 17 Jessica Guinn of the McHenry County Sheriff's Department, who was also assigned to the task force, used a program to extract data from the Huawei and Blackberry phones. The Blackberry's contacts included a person named Juan Carlos. The Huawei had a contact number for the Blackberry. According to Guinn, on December 12, 2012, there were several calls from the Blackberry to the Huawei.

¶ 18 According to Arrendondo, he knew defendant as Juan Carlos. He had Carlos as a contact in his Blackberry. He identified as his the Blackberry found in the Hyundai.

¶ 19 Arrendondo testified that he had arranged to sell Sergeant Isley four ounces of cocaine for \$3500. On December 12, 2012, Arrendondo met with Sergeant Isley in her vehicle in front of his house. At one point, defendant arrived in a white Hyundai Tiburon and parked in the driveway. Arrendondo then walked up to the driver's window of the Hyundai. According to Arrendondo, defendant handed him the cocaine. Arrendondo then gave defendant his Blackberry to ensure that he would return with the \$3500. Arrendondo then returned to Sergeant Isley's vehicle. After he gave her the cocaine, he was arrested. Arrendondo admitted that he received a lesser sentence in exchange for testifying. He added that there were pending charges and that he was expected to testify truthfully. He also admitted to having a 2009 felony conviction.

¶ 20 The jury was instructed that it could consider evidence that defendant was involved in the two October 2012 drug sales for the limited purpose of defendant's intent to commit the charged offense. The jury found defendant guilty of both offenses.

¶ 21 Defendant filed a motion for a new trial, arguing, among other things, that the evidence of the two October drug sales was improper other-crimes evidence. The trial court denied the motion, merged the possession conviction into the delivery conviction, and sentenced defendant to 12 years in prison. Following the denial of his motion to reconsider the sentence, defendant filed this timely appeal.

¶ 22

II. ANALYSIS

¶ 23 On appeal, defendant contends that the trial court abused its discretion in admitting the other-crimes evidence, because it was not probative of, among other things, defendant's intent and because its prejudicial effect substantially outweighed its limited probative value. Defendant further asserts that the error was not harmless beyond a reasonable doubt. The State responds that the other-crimes evidence was admissible to show defendant's intent to deliver cocaine, that its probative value was not substantially outweighed by its prejudicial effect, and that any error in its admission was harmless.

¶ 24 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, 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 or no reasonable person would take the trial court's view. *People v. Null*, 2013 IL App (2d) 110189, ¶ 43.

¶ 25 In this case, the trial court admitted the other-crimes evidence for the limited purpose of proving defendant's intent to commit the charged offense. Further, the court instructed the jury that it was to consider the other-crimes evidence only on the issue of defendant's intent. However, as noted, defendant's intent was not an issue, as defendant was not charged with intent to deliver. Because defendant's intent was not an issue, the court erred in admitting the other-crimes evidence for that purpose.² See *People v. Lenley*, 345 Ill. App. 3d 399, 406-07 (2003) (evidence of prior burglaries not admissible to show intent where the defendant's intent was not at issue in current prosecution for burglary).

² We note that other-crimes evidence may be admitted to prove identity. See *People v. Martin*, 2012 IL App (1st) 093506, ¶ 35. Here, although there was no dispute that defendant was the driver of the white Hyundai during the charged incident, defendant denied that he supplied the cocaine. Thus, defendant's identity as the supplier was an issue, and the other-crimes evidence could have been admissible for that limited purpose. Although generally we may affirm an evidentiary ruling on any basis supported by the record (see *People v. Davis*, 2018 IL App (1st) 152413, ¶ 37), we cannot do so here, as the trial court instructed the jury that it was to consider the other-crimes evidence only on the issue of intent.

¶ 26 Although the trial court erred in admitting the other-crimes evidence, that error was harmless beyond a reasonable doubt. Although the erroneous admission of other-crimes evidence carries a high risk of prejudice and ordinarily calls for reversal, reversal is not required where the error is harmless beyond a reasonable doubt. *People v. Clark*, 2015 IL App (1st) 131678, ¶ 65. In deciding whether the admission of other-crimes evidence is harmless beyond a reasonable doubt, we must ask whether the other-crimes evidence was a material factor in the conviction such that without the evidence the verdict likely would have been different. *Clark*, 2015 IL App (1st) 131678, ¶ 65. If the error is unlikely to have influenced the jury, admission will not warrant reversal. *Clark*, 2015 IL App (1st) 131678, ¶ 65. Put another way, the erroneous admission of other-crimes evidence is harmless when a defendant is neither prejudiced nor denied a fair trial because of its admission. *People v. Johnson*, 406 Ill. App. 3d 805, 818 (2010).

¶ 27 Here, the verdict was not likely to have been different had the other-crimes evidence not been admitted. There was substantial evidence of defendant's guilt independent of the other-crimes evidence. Sergeant Isley testified that she had arranged to buy cocaine from Arrendondo on December 12, 2012. However, after she arrived, Arrendondo did not deliver the cocaine immediately. Instead, he signaled her to wait a minute. Shortly thereafter, defendant arrived in the Hyundai. Arrendondo then left Sergeant Isley's vehicle and walked up to the window of the Hyundai. Then, with his hand cupped next to his side, he walked directly back to her vehicle, entered, and gave her the cocaine. Defendant was the only occupant of the Hyundai. Further, Arrendondo testified that he had received the cocaine from defendant before giving it to Sergeant Isley. Arrendondo's testimony was further corroborated by the cell phone evidence presented during the State's case. There was clearly substantial evidence, irrespective of the other-crimes

evidence, that defendant committed the charged offense. Because the other-crimes evidence was not a material factor in defendant's conviction, the error in its admission was harmless.

¶ 28

III. CONCLUSION

¶ 29 For the reasons stated, we affirm the judgment of the circuit court of Kane County.

¶ 30 Affirmed.