

FILED: March 27, 2013

IN THE COURT OF APPEALS OF THE STATE OF OREGON

STATE OF OREGON,
Plaintiff-Respondent,

v.

JERRY DOUGLAS JONES,
aka Gerald Douglas Jones,
Defendant-Appellant.

Marion County Circuit Court
10C47080

A147758

John B. Wilson, Judge.

Argued and submitted on February 21, 2013.

Robin A. Jones, Senior Deputy Public Defender, argued the cause for appellant. With her on the brief was Peter Gartlan, Chief Defender, Office of Public Defense Services.

Shannon T. Reel, Assistant Attorney General, argued the cause for respondent. With her on the brief were John R. Kroger, Attorney General, and Anna M. Joyce, Solicitor General.

Before Ortega, Presiding Judge, and Sercombe, Judge, and De Muniz, Senior Judge.

ORTEGA, P. J.

Affirmed.

1 ORTEGA, P. J.

2 Following a trial to the court, defendant was convicted of two counts of
3 first-degree sodomy, ORS 163.405, and one count of first-degree sexual abuse, ORS
4 163.427. He asserts on appeal that the trial court erred in admitting evidence of prior bad
5 acts. In particular, defendant contends that the trial court improperly admitted evidence
6 that he had previously sexually abused three other children and that he had engaged in
7 "prior conduct concerning urolagnia." As explained below, we conclude that any error in
8 admitting the evidence in question was harmless and, therefore, affirm.

9 Defendant was charged with a number of crimes arising from allegations
10 that he had sexually abused two young girls. Both of the children testified at trial about
11 the sexual abuse. One of the children, J. F., described in her testimony that defendant had
12 also attempted to engage her in certain urine-related activities. As part of its case, over
13 defendant's objection, the state also presented evidence that defendant had previously
14 engaged in similar conduct with other children. Specifically, it presented the testimony
15 of three women that defendant had sexually abused them and engaged in urine-related
16 activities with them when they were children. Ultimately, the court acquitted defendant
17 on all charges relating to one child. As to the charges relating to the other child, J. F., the
18 court acquitted defendant of two charges and convicted him on three.

19 On appeal, defendant asserts that the court erred in admitting the evidence
20 relating to the prior acts. *See* OEC 404(3) ("Evidence of other crimes, wrongs or acts is
21 not admissible to prove the character of a person in order to show that the person acted in

1 conformity therewith. It may, however, be admissible for other purposes, such as proof
2 of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of
3 mistake or accident."); *State v. Johns*, 301 Or 535, 548, 725 P2d 312 (1986) (OEC 404(3))
4 prohibits the admission of other crimes evidence if the evidence is offered to show the
5 character of a person and that the person acted in conformity therewith); *see also State v.*
6 *Leistiko*, 352 Or 172, 282 P3d 857, *adh'd to as modified on recons*, 352 Or 622, 292 P3d
7 522 (2012) (prior bad acts evidence is not admissible to prove intent unless the defendant
8 concedes the charged act itself or the jury is instructed not to consider the prior bad acts
9 evidence unless it finds that the defendant committed the charged act). The state
10 responds, in part, that, even if the evidence was erroneously admitted, any error was
11 harmless. We agree with the state.

12 "We will affirm a judgment of conviction notwithstanding the erroneous
13 admission of evidence if there is little likelihood that the admission of the evidence
14 affected the verdict." *State v. Vargas-Samado*, 223 Or App 15, 19, 195 P3d 464 (2008).
15 Here, in responding to defendant's objection to certain evidence relating to urine-related
16 activities, the trial court noted that it was "extremely unlikely" that it would hear anything
17 that would "prejudice me * * * based on my 34 years of being in this building and
18 listening to these types of cases[.]"

19 Later, in discussing its verdict, the trial court explained that it "believe[d]
20 [J. F.]" and that it reached its "verdict based on her testimony." The court specifically
21 stated that the testimony of the other victims "didn't have a big impact" in terms of the

1 verdict and whether it believed J. F. Instead, it emphasized that it was "basing [its]
2 decision on her testimony. And [it] believe[d] her testimony." Nothing in the record
3 demonstrates that the trial court gave an inaccurate description of the basis for its verdict.
4 Given the court's express statement that the prior acts evidence did not have a significant
5 effect on the outcome and that the court had relied on J. F.'s testimony, which it believed,
6 in reaching the verdict, we conclude that there is little likelihood that the admission of the
7 evidence in question affected the trial court's verdict. *See State v. Brooks*, 247 Or App
8 676, 683, 270 P3d 388, *rev den*, 352 Or 265 (2012) (in a bench trial, error in admitting
9 evidence was harmless where "the trial court expressly disclaimed reliance" on that
10 evidence and "nothing in the record demonstrate[d] otherwise"); *State v. Hunter*, 141 Or
11 App 73, 77, 918 P2d 104, *rev den*, 324 Or 78 (1996) (in a bench trial, admission of
12 challenged evidence was harmless where the trial court "relied primarily" on other
13 evidence in reaching its verdict). Accordingly, even assuming that the admission of the
14 evidence was erroneous, the judgment must be affirmed.

15 Affirmed.