

IN THE UTAH COURT OF APPEALS

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State of Utah,)	MEMORANDUM DECISION
)	(Not For Official Publication)
Plaintiff and Appellee,)	
)	Case No. 20060500-CA
v.)	
)	F I L E D
Al Coggeshell,)	(June 21, 2007)
)	
Defendant and Appellant.)	2007 UT App 210

Seventh District, Moab Department, 051700127
The Honorable Lyle R. Anderson

Attorneys: Keith Andrew Fitzgerald, Moab, for Appellant
Mark L. Shurtleff and Jeffrey S. Gray, Salt Lake
City, for Appellee

Before Judges Greenwood, Billings, and McHugh.

BILLINGS, Judge:

Defendant Al Coggeshell appeals his jury convictions of rape, a first degree felony, see Utah Code Ann. § 76-5-402 (2003); four counts of aggravated sexual assault, all first degree felonies, see id. § 76-5-405 (2003); and two counts of aggravated assault, both third degree felonies, see id. § 76-5-103 (2003). On appeal, Defendant claims that the trial court abused its discretion in admitting evidence of Defendant's prior assault conviction. Specifically, Defendant asserts that in determining whether the evidence was admissible, the trial court erred in considering Utah Rule of Evidence 404(a)(1) and in failing to consider and follow the appropriate procedure for determining whether the evidence was admissible under Utah Rule of Evidence 404(b). See Utah R. Evid. 404(a)(1), (b).

We decline to reach the issue of whether the trial court abused its discretion in admitting evidence of Defendant's prior assault conviction because even if we assume, without deciding, that the evidence was improperly admitted, such error was harmless. See State v. Hamilton, 827 P.2d 232, 240 (Utah 1992) (stating that "we can make an examination of the correctness of the trial court's [evidentiary] ruling unnecessary by finding

that any error was harmless"). That is, "'an erroneous decision by [the] trial court cannot result in reversible error unless the error is harmful.'" State v. Honie, 2002 UT 4, ¶54, 57 P.3d 977 (quoting State v. Lafferty, 2001 UT 19, ¶35, 20 P.3d 342) (additional quotations and citation omitted). "An error is harmful if it is such that absent the error, there is a sufficiently high likelihood of a different outcome, undermining our confidence in the result." Id. (emphasis added). "[T]he burden of showing a sufficiently high likelihood of a different outcome rests on the complaining party." Id.

After a detailed and complete review of the record, we are not convinced that there was a "sufficiently high likelihood" that had the jury not heard the prior assault conviction evidence, it would have acquitted Defendant. Id. The prosecution charged Defendant with one count of rape and six counts of aggravated sexual assault following a violent sexual encounter with the victim that lasted an entire night. At trial, Defendant admitted that he had sex with the victim and did in fact hit her, but claimed that the sex was consensual and that the assault occurred after the sex. In contrast, the victim testified that all sexual incidents that occurred on the night of the crime were nonconsensual and that she feared for her life. The victim's testimony described a night of humiliating and degrading sexual assaults. Vaughn Sagg, who was also present during the night and who was also physically beaten by Defendant, corroborated the victim's testimony that she did not consent to any of the incidents in which Sagg either witnessed or participated. During trial, the jury saw the photographs Defendant and Sagg took on the night of the crime and heard testimony from various parties, including the responding and investigating officers, the EMT, the examining nurse and doctor, and the victim's neighbor. All testimony supported the victim and Sagg's version of events.

In sum, the jury heard an overwhelming amount of testimony from both the victim and Sagg that supported Defendant's convictions. Further, this testimony was buttressed by objective physical evidence and testimony from various witnesses. Finally, evidence of Defendant's prior assault conviction was cumulative because Defendant himself testified that he hit both the victim and Sagg, and hit each of them more than once. Defendant's testimony therefore makes it extremely unlikely that evidence of an additional assault, in a nonrelated case, had a significant impact on the jury's evaluation of Defendant's credibility.

Accordingly, we conclude that even if the trial court erred in admitting evidence of Defendant's prior assault conviction,

such error was harmless. We therefore affirm Defendant's convictions.

Judith M. Billings, Judge

WE CONCUR:

Pamela T. Greenwood,
Associate Presiding Judge

Carolyn B. McHugh, Judge