

No. 1-07-1712

NOTICE: This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

FOURTH DIVISION
February 3, 2011

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

In re APRIL S., A MINOR, (THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the
	Circuit Court of
Petitioner-Appellee,)	Cook County.
)
v.)	No. 06 JD 706
)
APRIL S, A MINOR,)	Honorable
	Carol A. Kelly,
Respondent-Appellant).)	Judge Presiding.

JUSTICE LAVIN delivered the judgment of the court.
Presiding Justice Gallagher and Justice Pucinski concurred in the judgment.

O R D E R

HELD: Respondent was denied her sixth amendment right to counsel where Rule 711 law students were permitted to conduct the trial without respondent's consent or acquiescence, even though a supervising attorney was present.

Following a bench trial, respondent April S. was found delinquent based on her commission of aggravated battery and sentenced to five years' probation. On appeal, respondent contends that her case should be remanded for a new trial because she was denied her sixth amendment right to counsel when she was represented at trial by law students without her written

consent.

Prior to trial, attorneys Monica Llorente and Simmie Baer filed an appearance on respondent's behalf. At a status hearing, the attorneys noted that students would be working with them on the case. At the start of each trial date, three Northwestern Law School students introduced themselves and informed the court that they were practicing pursuant to Supreme Court Rule 711. 210 Ill. 2d R. 711. Although attorney Baer was present throughout the trial, the students made opening and closing statements and examined witnesses. The record does not contain a written consent for the students' legal services.

Because respondent does not challenge the sufficiency of the evidence to find her delinquent, we briefly summarize the evidence adduced at trial. According to the State's theory of the case, respondent was temporarily living in the same apartment with the victim Keenan Jenkins on February 2, 2006. At that time, Jenkins was 12 years old; respondent was 15 years old and eight months' pregnant. The two began arguing over a chair in one of the bedrooms, and respondent threatened Keenan with a golf club. Keenan wrestled the golf club away from respondent. Keenan testified that when respondent acted "like she was fixing to hit me with her fist," he punched her in the face. Respondent called the police, but Keenan picked up another phone in the apartment and talked to the operator. Respondent went into the kitchen, picked up a knife, and came towards Keenan while saying "I am fixing to kill you." Respondent stabbed Keenan twice. Paramedics took Keenan to the University of Chicago hospital, where he stayed for three or four days.

After hearing all the evidence, the trial court found respondent guilty of aggravated battery. The trial court adjudged respondent delinquent for that offense and sentenced her to five years' probation, 30 hours of community service, and several other conditions. Respondent timely appealed.

On appeal, respondent contends that her case should be remanded for a new trial because law students represented her at trial without her written consent, violating Supreme Court Rule 711 and denying her sixth amendment right to counsel.

The State responds that respondent forfeited this claim by failing to object at trial or raise the issue before the trial court. Generally, a respondent is required to raise an issue before the trial court to preserve it for review. *In re Ricardo A.*, 356 Ill. App. 3d 980, 994 (2005), citing *In re W.C.*, 167 Ill. 2d 307, 327 (1995). However, courts may still consider forfeited errors if either the evidence was so closely balanced that the error may have affected the outcome or the error was so serious that it denied the respondent's substantial rights. *In re Ricardo A.*, 356 Ill. App. 3d at 994; *People v. Herron*, 215 Ill. 2d 167, 179 (2005). The constitutional right to counsel is a fundamental one, and deprivation of that right will trigger the second prong of the plain error rule. *People v. Ogurek*, 356 Ill. App. 3d 429, 433 (2005). We therefore reach the merits of respondent's claim, since it concerns the denial of her sixth amendment right to counsel.

We note first that the students represented respondent at trial in violation of Supreme Court Rule 711. That rule permits eligible law students to render legal services only "[u]nder the supervision of a member of the bar of this State, and with the written consent of the person on

whose behalf he/she is acting." 210 Ill. 2d R. 711(c). Although a supervising attorney was present throughout the trial, the record does not contain any evidence of respondent's written consent to representation by students pursuant to Rule 711. Although the State alludes to respondent's acquiescence to that representation, written consent is required to comply with the rule. 210 Ill. 2d R. 711(c); *People v. Schlaiss*, 174 Ill. App. 3d 78, 81 (1988) (requiring written consent under Rule 711). The student's services were therefore provided in violation of Rule 711.

We must therefore consider whether that violation requires reversal. Defendant does not allege, and the record does not reflect, that the law students' services fell below an objectively reasonable level of performance or prejudiced respondent, as respondent would be required to demonstrate under the two-part test for ineffective assistance of counsel delineated in *Strickland v. Washington*, 466 U.S. 668, 690, 80 L. Ed. 2d 674, 695, 104 S. Ct. 2052, 2066 (1984). However, Illinois courts have consistently eschewed the traditional *Strickland* analysis when considering Rule 711 violations (see *People v. Smith*, 384 Ill. App. 3d 489 (2008); *People v. Truly*, 230 Ill. App. 3d 948 (1992); *Schlaiss*, 174 Ill. App. 3d at 78), and we do not apply that test here. Illinois courts instead consider whether a Rule 711 violation constitutes a denial of counsel as guaranteed under the sixth amendment. *Smith*, 384 Ill. App. 3d at 494; *Schlaiss*, 174 Ill. App. 3d at 81. A court must consider "the unique set of facts of [each] case" (*Smith*, 384 Ill. App. 3d at 494), which "may not easily be analogized" to other situations (*Truly*, 230 Ill. App. 3d at 956), to determine if sixth amendment counsel has effectively been denied.

Of the previous cases dealing with the consequences of Rule 711 violations, we find *Schlaiss* the most closely analogous. In *Schlaiss*, the defendant was represented during trial and at sentencing by a law student practicing pursuant to Rule 711 with a supervising attorney present. *Schlaiss*, 174 Ill. App. 3d at 79. The student conducted all portions of the trial and presented motions to the court. *Schlaiss*, 174 Ill. App. 3d at 79. The student did not obtain written consent from the defendant, and the record did not otherwise indicate "that [the] defendant acquiesced in such representation, or that anyone informed [the] defendant that [the student] was not a licensed attorney." *Schlaiss*, 174 Ill. App. 3d at 81. The court held that the defendant was denied his sixth amendment right to counsel and reversed and remanded for a new trial. *Schlaiss*, 174 Ill. App. 3d at 81-82. The court reasoned that the student did not literally comply with Rule 711 because no written consent was obtained, and the student did not substantially comply with the rule because there was no evidence that the defendant was even aware that the student was not a licensed attorney. *Schlaiss*, 174 Ill. App. 3d at 81. Because the student was not constitutional counsel under those facts, reversal was required. *Schlaiss*, 174 Ill. App. 3d at 81.

As in *Schlaiss*, respondent was represented by law students without her written consent or any other indication of her acquiescence. Although a supervising attorney was present in each case, students were permitted to conduct the trial, including examining witnesses and presenting motions. Because the record reflected no indication of the client's consent, the students did not substantially comply with Rule 711. *Schlaiss*, 174 Ill. App. 3d at 81. Given that this violation

occurred during significant portions of respondent's trial, she was denied her sixth amendment right to counsel, and reversal is required. *Schlaiss*, 174 Ill. App. 3d at 81.

Truly and *Smith*, upon which the State relies, are factually distinct from the case at bar. In those cases, the defendant was provided legal counsel by a student without the defendant's written consent. *Smith*, 384 Ill. App. 3d at 492; *Truly*, 230 Ill. App. 3d at 957. However, in neither case was that legal counsel furnished during the defendant's trial; in *Smith*, a law student argued a portion of the defendant's pretrial motion to quash (*Smith*, 384 Ill. App. 3d at 490-91), while in *Truly*, a law student merely assisted in the preparation of the defendant's case prior to trial (*Truly*, 230 Ill. App. 3d at 957). In each case, the defendant was represented by a licensed attorney throughout trial, and students did not examine witnesses or present arguments at trial. *Smith*, 384 Ill. App. 3d at 491; *Truly*, 230 Ill. App. 3d at 949-51. The reviewing courts held that, under the specific facts of those cases, neither of which included student representation during trial, the defendants' sixth amendment rights were not violated. *Smith*, 384 Ill. App. 3d at 494; *Truly*, 230 Ill. App. 3d at 956-57.

In *In re Denzel W.*, 237 Ill. 2d 285 (2010), our supreme court addressed the precise issue which defendant raises here. The *Denzel W.* court held that the absence of the required written consent of a defendant under Rule 711 does not mandate reversal of a verdict against defendant on the basis that her sixth amendment right to counsel was violated. *Denzel W.*, 237 Ill. 2d at 299. There, our supreme court considered two consolidated cases which both involved situations where portions of the underlying trial were performed by 711 students while under the

supervision of a licensed attorney. *Denzel W.* involved the defendants' claim that the trial court improperly refused to allow the licensed attorney to perform redirect examination on a witness whom had been questioned on direct examination by the 711 law student. *Denzel W.*, 237 Ill. 2d at 299.

In this matter, it is apparent from the record and the briefs of the parties that the 711 students gave the opening statement, examined all of the witnesses and gave the closing argument to the trial court. Thus, it appears that the "supervising" licensed attorney did not do any of the courtroom legal work on his client's behalf and delegated all of the work to the 711 students. Thus, the issue of written consent is not the sole basis for respondent's claim that her constitutional rights were violated, while it was the sole basis in *Denzel W.* The fact that the licensed public defender was in the courtroom while the 711 students examined all of the witnesses and performed the opening statement and closing arguments does not, in and of itself, provide any comfort that the students were adequately supervised or that their representation was not ineffective.

Furthermore, while the parties here agree that there was no written consent, there is also no evidence in the record that respondent was specifically aware that all of the legal work on her behalf in this matter would be performed by the 711 law students and that the licensed public defender would not examine a single witness or give an argument to the court on her behalf. As a result, we are persuaded that this matter should be reversed and remanded for a new trial.

Reversed and remanded for a new trial.