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2011 IL App (3d) 100096-U

Order filed October 28, 2011

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IN THE  
APPELLATE COURT OF ILLINOIS  
THIRD DISTRICT

A.D., 2011

|                                      |                                 |
|--------------------------------------|---------------------------------|
| THE PEOPLE OF THE STATE OF ILLINOIS, | ) Appeal from the Circuit Court |
|                                      | ) of the 12th Judicial Circuit, |
| Plaintiff-Appellee,                  | ) Will County, Illinois,        |
|                                      | )                               |
| v.                                   | ) Appeal No. 3-10-0096          |
|                                      | ) Circuit No. 08-CF-2120        |
| FERLIMO L. MORRIS,                   | )                               |
|                                      | ) Honorable                     |
| Defendant-Appellant.                 | ) Carla Policandriotes,         |
|                                      | ) Judge, Presiding.             |

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JUSTICE LYTTON delivered the judgment of the court.  
Justices McDade and Wright concurred in the judgment.

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**ORDER**

¶ 1 *Held:* The trial court committed harmless error when it admitted and played a recording of a 911 call three times for the jury; defendant's *pro se* posttrial claim did not warrant any inquiry by the trial court; and defendant's convictions for criminal sexual assault and unlawful restraint are vacated under the one-act-one crime doctrine.

¶ 2 Following a jury trial, defendant, Ferlimo L. Morris, was found guilty of aggravated criminal sexual assault (720 ILCS 5/12-14(a)(1) (West 2008)), criminal sexual assault (720 ILCS 5/12-13(a)(1) (West 2008)), and unlawful restraint (720 ILCS 5/10-3(a) (West 2008)). Defendant appeals, arguing that: (1) the trial court erred by admitting a recording of a 911 call and allowing

it to be played three times for the jury; (2) the cause should be remanded for inquiry by the trial court regarding defendant's *pro se* claim of ineffective assistance of counsel; (3) defendant's convictions for criminal sexual assault and unlawful restraint should be vacated under the one-act, one-crime doctrine, and the cause should be remanded for resentencing; and (4) the extended-term sentences for criminal sexual assault and unlawful restraint should be vacated. We vacate defendant's convictions for criminal sexual assault and unlawful restraint and otherwise affirm.

¶ 3

### FACTS

¶ 4 On September 3, 2008, defendant was charged with aggravated criminal sexual assault (720 ILCS 5/12-14(a)(1) (West 2008)), criminal sexual assault (720 ILCS 5/12-13(a)(1) (West 2008)), and unlawful restraint (720 ILCS 5/10-3(a) (West 2008)). The charges arose from a single incident which occurred on August 30, 2008. The three charges alleged that defendant: (1) by use of force knowingly placed his penis in the mouth of J.S. (aggravated criminal sexual assault); (2) knowingly placed his penis in the mouth of J.S. (criminal sexual assault); and (3) detained J.S. and would not let her leave her house (unlawful restraint).

¶ 5 Prior to trial, the State filed a motion to admit a recorded 911 call. The call was placed by J.S.'s neighbor, Nicole Champ, on August 30, 2008, after J.S. escaped from defendant. In the recording, J.S. can be heard in the background answering questions about the incident, which Champ then relayed to the operator. At times, J.S. can also be heard crying and vomiting. The trial court allowed use of the recording at trial after finding that the statements contained therein were trustworthy spontaneous declarations.

¶ 6 At trial, J.S. testified that approximately one to two months prior to August 30, 2008, she had agreed to let defendant live with her and her boyfriend because he needed a place to stay. On the

night of August 30, J.S. and defendant were alone in the house. After falling asleep, J.S. was awoken when defendant struck her in the face. He then jumped on top of her and covered her mouth. For the next few hours defendant repeatedly dragged J.S. by her hair and wrists from room to room. He forced her to perform oral sex on him numerous times. Defendant continued to restrain J.S. even when she used the bathroom. After one failed attempt to escape, J.S. was finally able to get away from defendant while he was in the bathroom. At that point, she ran to Champ's house and pounded on the door. Champ eventually answered, and they called the police.

¶ 7 Champ testified that J.S. came to her house on August 30, 2008, and frantically rang the doorbell several times. When she let her in, J.S. sank down to the floor and started crying. Champ asked her what was wrong, and J.S. said that defendant had raped her. Champ then called 911.

¶ 8 Officer John Tuttle testified that he responded to the 911 call placed by Champ on August 30, 2008. After searching J.S.'s residence for defendant, Tuttle went to Champ's house. He found J.S. crying uncontrollably while sitting on the floor of a bathroom with her knees pulled to her chest. J.S. told Tuttle that defendant had held her by her wrists all night and made her perform oral sex on him while he smoked crack.

¶ 9 The State also offered the testimony of Officer Matthew Gorman, who stated that he arrested defendant after the incident. The first thing defendant said, without any prompting, was "I did not do it." Officer David Turngren testified that the deoxyribonucleic acid (DNA) of a bloodstain found on defendant's shirt matched J.S.'s DNA. Finally, Officer Henry Cunningham testified that he interviewed J.S. at the hospital approximately two hours after the 911 call, and he witnessed a bruise on her upper lip and some discoloration around her wrists. He further testified that he interviewed defendant, who initially denied having sex with J.S. Defendant then claimed that she did perform

oral sex on him but that it was consensual. Defendant's story also changed a number of times regarding how J.S. sustained her injuries.

¶ 10 During trial, the State played the 911 recording twice, once during Champ's testimony and again at closing arguments. The recording was played a third time during deliberations after the jury requested to hear the tape again. Shortly after hearing the tape for the third time, and approximately six hours into deliberations, the jury returned its verdict. Defendant was found guilty of aggravated criminal sexual assault, criminal sexual assault, and unlawful restraint.

¶ 11 Following the trial, defendant filed a motion for a new trial. Subsequently, defendant filed a *pro se* amendment to the motion for new trial in which he made the following claim: "The fact that defendant is black and victim is white, the jury should have been questioned about their option [sic] on interracial crime." Defense counsel did not adopt the *pro se* amendment into the motion, and the trial court deemed it withdrawn.

¶ 12 Defendant was sentenced to concurrent terms of imprisonment of 60 years for aggravated criminal sexual assault, 30 years for criminal sexual assault, and 6 years for unlawful restraint. Defendant appeals.

¶ 13

## ANALYSIS

¶ 14

### I

¶ 15 Defendant first argues that the trial court committed reversible error by admitting a recording of a 911 call placed by the victim's neighbor and by playing the recording three times for the jury. Generally, relevant evidence is admissible so long as it is material and its probative value is not outweighed by its prejudicial effect. *Werner v. Nebal*, 377 Ill. App. 3d 447 (2007). Evidentiary rulings are within the sound discretion of the trial court and will not be disturbed absent an abuse

of discretion. *People v. Cruz*, 162 Ill. 2d 314 (1994). In exercising its discretion in granting or refusing a request by the jury to rehear a piece of evidence, the trial court must determine whether a review of the evidence would be helpful or harmful to the jury's deliberations. *People v. McKay*, 138 Ill. App. 3d 446 (1985). Even when the trial court abuses its discretion, any error is harmless where the properly admitted evidence is so overwhelming that no fair-minded juror could reasonably have voted to acquit defendant. *People v. Jackson*, 293 Ill. App. 3d 1009 (1997).

¶ 16 Here, although the trial court may have erred by playing the 911 recording three times for the jury, defendant's guilt was overwhelmingly established by the evidence. Any error in playing the recording could not reasonably have affected the verdict and, therefore, was harmless.

¶ 17

## II

¶ 18 Defendant next argues that the trial court did not conduct an adequate inquiry into his *pro se* claim of ineffective assistance of counsel. Defendants are generally prohibited from filing *pro se* motions when they are represented by counsel. *People v. Rucker*, 346 Ill. App. 3d 873 (2003). However, an exception exists that allows defendants to raise *pro se* claims of ineffective assistance of counsel even when they are represented. *Id.* If a defendant does raise a posttrial claim of ineffective assistance of counsel, the trial court is generally required to inquire into it. *People v. Moore*, 207 Ill. 2d 68 (2003).

¶ 19 Here, defendant filed a *pro se* amendment to his motion for a new trial which included the following allegation: "The fact that defendant is black and victim is white, the jury should have been questioned about their option [sic] on interracial crime." We find that defendant's claim does not fall within the exception for *pro se* motions alleging ineffective assistance of counsel because it fails to specifically raise any issue of ineffectiveness. Therefore, no inquiry was necessary by the trial

court.

¶ 20

### III

¶ 21 Defendant further contends that his convictions for criminal sexual assault and unlawful restraint should be vacated and the cause should be remanded for resentencing. Pursuant to the one-act, one-crime doctrine, when more than one offense arises from a series of incidental or closely related acts and the offenses are by definition lesser included offenses, multiple convictions cannot be entered on the lesser included offenses. *People v. King*, 66 Ill. 2d 551 (1977). Here, the State agrees with defendant that the convictions for criminal sexual assault and unlawful restraint should be vacated because they are lesser included offenses for aggravated criminal sexual assault. Based on the one-act, one-crime doctrine, we agree with the State and vacate defendant's convictions for criminal sexual assault and unlawful restraint.

¶ 22 Defendant also argues that if the convictions are vacated, the cause should be remanded for resentencing because the trial court took into account defendant's convictions on the two lesser included offenses when it sentenced defendant on the aggravated criminal sexual assault charge. Our review of the record reveals that the trial court did not take into consideration defendant's convictions on the lesser included offenses, and therefore, a remand is not warranted.

¶ 23

### IV

¶ 24 Finally, we note that defendant argued that the extended-term sentences for criminal sexual assault and unlawful restraint should be vacated. Because we have already vacated the convictions for these two offenses, this issue is moot.

¶ 25

### CONCLUSION

¶ 26 We vacate defendant's convictions for criminal sexual assault and unlawful restraint and

otherwise affirm the judgment of the circuit court of Will County.

¶ 27 Affirmed in part and vacated in part.