

NOTICE  
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2011 IL App (4th) 100598-U

Filed 11/2/11

NO. 4-10-0598

IN THE APPELLATE COURT  
OF ILLINOIS

FOURTH DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from
Plaintiff-Appellee,	)	Circuit Court of
v.	)	McLean County
NANCY J. SEEFELDT,	)	No. 08CM2760
Defendant-Appellant.	)	
	)	Honorable
	)	John C. Costigan,
	)	Judge Presiding.

JUSTICE APPLETON delivered the judgment of the court.  
Justices Steigmann and McCullough concurred in the judgment.

**ORDER**

- ¶ 1 *Held:* Because it would be impossible to make any reasonable argument in support of this appeal, appellate defense counsel's motion to withdraw from representing the defendant is granted, and the trial court's judgment is affirmed.
- ¶ 2 On May 4, 2010, in a bench trial, the trial court found defendant, Nancy J. Seefeldt, guilty of criminal damage to property (720 ILCS 5/21-1(1)(a) (West 2008)). For this offense, the court sentenced her to conditional discharge for 18 months. She also was assessed with fines and fees totaling \$385.
- ¶ 3 Defendant appeals, and, pursuant to *Anders v. California*, 386 U.S. 738 (1967), the office of the State Appellate Defender (OSAD) has filed a motion to withdraw from representing her, because, in OSAD's opinion, the appeal is devoid of any arguable merit. We notified defendant of her right to respond to OSAD's motion with additional points and authorities, but she has not done

so. We conclude that OSAD is correct in its assessment of the merits of this appeal. Therefore, we grant OSAD's motion to withdraw, and we affirm the trial court's judgment.

¶ 4

## I. BACKGROUND

¶ 5

### A. The Charges and the Successive Waivers of a Jury

¶ 6

On December 26, 2008, the State filed an information alleging that defendant committed two offenses in McLean County on December 25, 2008. Count I charged her with battery (720 ILCS 5/12-3(a)(2) (West 2008)) in that she hit Megan Seefeldt. Count II charged her with criminal damage to property (720 ILCS 5/21-1(1)(a) (West 2008)) in that she smashed Megan's DVD player against a wall.

¶ 7

On December 26, 2008, the same day the State filed these charges, the trial court released defendant on her own recognizance.

¶ 8

On March 5, 2009, the State filed an additional count against defendant, count III, which charged her with domestic battery (720 ILCS 5/12-3.2(a)(2) (West 2008)) in that on December 25, 2008, she hit Megan, "a family or household member."

¶ 9

On April 20, 2009, defendant signed a form in which she pleaded not guilty to count II (criminal damage to property) and in which she waived a jury. On the same date, the State filed a "Motion To Dismiss," in which it *nolle prosequed* counts I and III. In the portion of the preprinted motion pertaining to the "reason(s)" for the *nolle prosequi*, the prosecutor wrote "per open plea to ct 2"—even though defendant pleaded *not* guilty to count II.

¶ 10

On July 8, 2009, the State filed count IV, again charging defendant with battery (720 ILCS 5/12-3(a)(2) (West 2008)) in that she hit Megan on December 25, 2008, and count V, again charging defendant with domestic battery (720 ILCS 5/12-3.2(a)(2) (West 2008)) in that she hit

Megan, "a family or household member," on December 25, 2008. It is unclear whether counts IV and V refer to the same hitting previously alleged in counts I and III or to a different hitting (theoretically, more than one blow could have been delivered on December 25, 2008). See *People v. Morris*, 214 Ill. 2d 92, 104 (2005) ("[W]hen a *nolle prosequi* is entered before jeopardy attaches, the State is entitled to refile the charges against the defendant. [Citation.] The State is not barred from proceeding on a refiled charge absent a showing of harassment, bad faith, or fundamental unfairness. [Citation.]" (Internal quotation marks omitted).)

¶ 11 B. The Quashing of a Subpoena

¶ 12 On October 22, 2009, defense counsel obtained the issuance of a subpoena requiring the police department of Normal to produce "all reports pertaining to Nancy Seefeldt DOB: 8/11/67 and Megan Seefeldt DOB: 6/1/92."

¶ 13 On November 9, 2009, Normal moved to quash the subpoena, and for an *in-camera* inspection of the police reports that the subpoena demanded, because 18 of these reports pertained to Megan Seefeldt as a juvenile and section 5-905(5) of the Juvenile Court Act of 1987 (705 ILCS 405/5-905(5) (West 2008)) protected the confidentiality of police records involving juveniles. Also, the motion said, some of the police reports involved the sexual assault of a child and the indecent solicitation of a child, and the Privacy of Child Victims of Criminal Sexual Offenses Act (725 ILCS 190/1 through 3 (West 2008)) prohibited the disclosure of such records absent a court order to do so.

¶ 14 On January 27, 2010, after an *in-camera* inspection of the police reports in question, the trial court granted Normal's motion to quash the subpoena. The court reasoned as follows: "The records requested by defendant are covered by 705 ILCS 405/5-905. The Court does not find any

exception that would apply to provide for release of these records. No authority has been provided to the Court to allow for the release of these records and the Court has not independently found any authority to authorize the release of these records."

¶ 15 C. The Bench Trial

¶ 16 On May 4, 2010, the trial court held a bench trial, in which the court found defendant guilty of count II, criminal damage to property, and not guilty of counts IV and V, the counts of battery and domestic battery.

¶ 17 The trial was not recorded. The parties have stipulated, however, to Judge Costigan's written recollection of the evidence as set forth in a letter he sent to counsel on December 8, 2010. Judge Costigan wrote:

"My notes and recollection reveal that Ms. Seefeldt and her daughter Megan had a long history of family violence against one another. On December 25, 2008 Ms. Seefeldt and her daughter Megan had another argument that turned physical. During the course of this altercation Ms. Seefeldt ripped a phone jack out of the wall. Megan had received as a gift that morning a DVD player that was going to be kept in her room. Megan testified that her mother slammed the DVD box on the ground causing it to break. Megan testified that the DVD player was broken and remained broken at the time of the trial. Officer Evan Easter testified that he investigated the incident where Ms. Seefeldt admitted breaking the DVD player. Officer Jacob Hodges testified that he likewise was involved in the

investigation and observed the DVD box. He said the DVD player was clearly broken. He said when he picked up the box he could hear loose parts moving around in the box. Ms. Seefeldt did not deny slamming the DVD box. She did however state that it did not break. She stated that she had watched a movie from it the week before trial.

Based on this evidence I found that Megan was the owner of the DVD player. That Ms. Seefeldt damaged the DVD player without Megan's consent. I did not find Ms. Seefeldt creditable that the DVD was not damaged."

¶ 18

## II. ANALYSIS

¶ 19

### A. The Sufficiency of the Evidence

¶ 20

Defendant did not deny picking up the box containing the DVD player and slamming it on the floor. Likewise, it apparently was undisputed that the DVD player belonged to Megan. The pivotal issue in the bench trial was, Did the DVD player break when defendant slammed it on the floor? Defendant insisted it did not break. Megan, on the other hand, testified it broke, and Hodges thought it was broken because he heard parts rattling around when he shook the box.

¶ 21

As OSAD correctly observes in its *Anders* motion, a reviewing court should not secondguess the trial court's assessment of the credibility of witnesses. *People v. Kolartz*, 193 Ill. 2d 272, 298 (2000). The trial court believed Megan when she testified that the DVD player broke when her mother slammed it on the floor. The court did not believe defendant when she testified that the DVD player was undamaged. DVD players do not like getting slammed on the floor. A broken DVD player is not an inherently improbable outcome. See *People v. Maggette*, 195 Ill. 2d

336, 353 (2001). We agree with OSAD that challenging the sufficiency of the evidence in this case would be a hopeless enterprise.

¶ 22 B. The Quashing of the Subpoena

¶ 23 The police reports demanded by the subpoena have no imaginable relevance to the issues in this case. Section 5-905(5) of the Juvenile Court Act of 1987 (705 ILCS 405/5-905(5) (West 2008)) and section 3 of the Privacy of Child Victims of Criminal Sexual Offenses Act (725 ILCS 190/3 (West 2008)) express a public policy that these records be kept confidential absent a compelling reason to disclose them. Quashing the subpoena was the indisputably correct decision, and challenging that decision would be irrational, as OSAD correctly perceives.

¶ 24 C. The Sentence

¶ 25 The offense of criminal damage to property (720 ILCS 5/21-1(a) (West 2008)) was a Class A misdemeanor (720 ILCS 5/12-1(2) (West 2008)). Conditional discharge was an authorized sentence for a misdemeanor. 730 ILCS 5/5-5-3(b)(3) (2008). The duration of conditional discharge that the trial court imposed, 18 months, was within the permissible range of 2 years. 730 ILCS 5/5-6-2(b)(3) (West 2008).

¶ 26 As for the "fees," some of them actually are fines, as OSAD observes: specifically, the "Children's Advocacy Center Fee" and the "Drug Court Fee," since these did not reimburse the State for any cost it had incurred in the prosecution. See *People v. Sulton*, 395 Ill. App. 3d 186, 192 (2009). These two fines appear to have been imposed by the circuit clerk instead of by a judge, and, strictly speaking, only a judge could impose them. *People v. Rohlf*s, 322 Ill. App. 3d 965, 972 (2001). Nevertheless, as OSAD realizes, it would be a futile exercise to appeal on that basis, because probably all we would do is remand the case with directions that the appropriate entity, the

judge, impose the fines in an amended sentencing order. See *People v. Isaacson*, 409 Ill. App. 3d 1079, 1086 (2011).

¶ 27

### III. CONCLUSION

¶ 28 For the foregoing reasons, we grant OSAD's motion to withdraw from representing defendant in this appeal, and we affirm the trial court's judgment.

¶ 29 Affirmed.