

No. 1-10-3008

**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(3)(1).

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IN THE  
APPELLATE COURT OF ILLINOIS  
FIRST JUDICIAL DISTRICT

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THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County.
	)	
v.	)	07 CR 24218
	)	
JESUS RAMIREZ,	)	Honorable
	)	Clayton J. Crane,
Defendant-Appellant.	)	Judge Presiding.

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JUSTICE NEVILLE delivered the judgment of the court.  
Presiding Justice Salone and Justice Sterba concurred in the judgment.

**ORDER**

¶ 1 *Held:* The failure to file a futile motion to suppress statements does not show ineffective assistance of counsel.

¶ 2 The trial court, in a bench trial, found Jesus Ramirez guilty of murdering his step-daughter, Deena David. On appeal, Jesus argues that his trial counsel provided ineffective assistance because counsel did not file a motion to suppress Jesus's confession. We find that the failure to file a futile motion does not show ineffective assistance of counsel.

Accordingly, we affirm the trial court's judgment.

¶ 3

### BACKGROUND

¶ 4

On July 18, 2007, Deena and her half-sister, Maria Ramirez, had some drinks with friends. They decided to go to a night club in Chicago, but Deena did not have her I.D. card with her. Ronald Jacobson dropped Maria and some of her friends at the club, and he drove Deena to Jesus's home, where Deena kept some of her belongings while she was in the process of moving. When Deena did not return to the car after 15 minutes, Jacobson left. That night Jesus strangled Deena.

¶ 5

Maria did not have a key to the apartment she shared with her father, Jesus. When she came home around midnight, she knocked on the door for more than 20 minutes before Jesus let her in. She left the apartment the next day and stayed overnight with a friend because no one answered the door when she tried to return to Jesus's apartment. On July 20, Maria came back to Jesus's apartment and Jesus let her in. She stayed overnight. In the morning, she went into Jesus's bedroom, which smelled bad. That night she could not find Jesus, so she could not get into his apartment. She started to worry because no one she knew had seen Deena for three days.

¶ 6

On July 22, 2007, Maria and some friends went to Jesus's apartment. A bad odor met them before they reached the locked door. They broke down the front door, and after a brief search, they found Deena's body, badly decomposed, in a garbage bag in Jesus's bedroom closet. Maria called police.

¶ 7

Police officers found Jesus at O'Hare Airport, with a one-way ticket to Mexico. The

officers took Jesus into custody.

¶ 8 At the police station, officers made a video recording of the interrogation room where they brought Jesus for questioning. At the start of the interview, an officer asked Jesus if he understood English. Jesus said, "Not much but so-so." The interview proceeded:

"Q: \*\*\* [Y]ou understand what I'm saying right now, right?

A: Right.

Q: You speak English correct?

A: Little bit.

Q: Okay you got to do me this if I'm talking to you and you don't understand me you have to tell me that.

A: Okay.

\* \* \*

Q: So for some reason you don't – I don't understand this you have to tell me that so I understand that you don't understand. So I can try to explain it a different way, go a little bit slower you know any way - I can bring someone that speaks Spanish to help out okay."

¶ 9 The officer then read Jesus his *Miranda* rights in English. For each right, when the officer asked whether Jesus understood that right, Jesus said, "Yes."

¶ 10 The officer asked if Jesus knew why police arrested him. Jesus said, "Because I put my – my girl away." He identified Deena as his girl. The officers let Jesus explain what happened in his own words. Jesus said:

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"We start like be friends before.

\*\*\*

\*\*\* Later I fell in love with her and \*\*\* she always come and see me or – everyday.

\*\*\*

\*\*\* Sometimes she lives with me a month, two months."

¶ 11 Jesus lived with Deena's mother on and off from 1982 until Deena's mother died of diabetes in 2002. About the incident that led to Deena's death, Jesus said:

"[We] start fighting 'cause she want money to buy drugs.

\* \* \*

\*\*\* I say I don't have no money 'cause – I have a little bit but I need it for my bills.

\* \* \*

\*\*\* She start pushing me and –

\*\*\*

\*\*\* – I told her stop it don't do this \*\*\*.

\*\*\*

\*\*\* She punched me and she started fighting – biting my finger.

\* \* \*

\*\*\* I be mad and I punch her right here. [Indicating the neck.]

\* \* \*

\*\*\* She hit \*\*\* her head on the table.

\* \* \*

\*\*\* Then we go in my room and sitting down and lay down  
and talking. We – we started be nice.

\* \* \*

\*\*\* She punched me \*\*\* in the bed so I fell.

\* \* \*

\*\*\* So I get up and I punch her again in throat.

\* \* \*

\*\*\* She say \*\*\* why can't we never be happy \*\*\*.

\* \* \*

\*\*\* And she get up and she went by the \*\*\* closet \*\*\*.

\*\*\*

\*\*\* She's standing up like this and she fell \*\*\*.

\* \* \*

\*\*\* She (inaudible) like she fell asleep or something she go  
like this (inaudible) fell right here.

\* \* \*

\*\*\* So I just pick it up and put it in the bed.

\* \* \*

\*\*\* [S]he wake up again right away \*\*\* and I go like this \*\*\*  
because I hear my daughter knocks \*\*\*.

\* \* \*

\*\*\* She say kill me – kill me I don't want to suffer."

¶ 12 Jesus showed police how he put his fingers on Deena's throat and "push[ed] it in." In response to police questions, Jesus said he may have hit Deena more than five times, and "one time [he] put [his] foot in the face." He said he stepped on her neck for "like thirty seconds maybe." Jesus told the corpse, "I'm sorry I love you," and "I don't want you to go nowhere." He left her body on the bed for almost two days. Maria, who did not see Deena's body, said something smelled funny, so he put Deena's body in a garbage bag and put the bag in his closet.

¶ 13 A grand jury indicted Jesus for the murder of Deena, alleging that he intentionally or knowingly strangled her. Three months later, prosecutors persuaded the grand jury to indict Jesus on a second count of murder, alleging that Jesus strangled Deena while knowing that his acts created a strong probability of death or great bodily harm. Jesus moved to dismiss the second count, arguing that the addition of the new count violated his right to a speedy trial. See 725 ILCS 5/103-5(a) (West 2006). The trial court denied the motion.

¶ 14 At the bench trial, the medical examiner testified that he found multiple bruises and strangulation marks on Deena's neck. The pressure on Deena's neck broke a bone in her neck, and caused the muscles of her neck to hemorrhage. The medical examiner estimated that the killer applied at least six pounds of pressure to Deena's neck for at least ten seconds.

¶ 15 A neighbor testified that on July 16, 2007, two days before Jesus killed Deena, the neighbor heard Deena yell at Jesus, "[W]hat are you doing with my daughter's panties on your pillow." The neighbor saw Jesus, who looked visibly upset. The neighbor took Deena into the neighbor's home.

¶ 16 Maria recounted the events from July 18 through July 22, when she discovered Deena's body. The trial court watched the video recordings of Jesus's confession.

¶ 17 Defense counsel argued that Jesus's confession showed that he acted unthinkingly, with intense passion. Counsel asked the court to find Jesus guilty of involuntary manslaughter. The court found Jesus guilty on both counts of murder. In its ruling, the court expressly relied mostly on the medical examiner's testimony and the confession.

¶ 18 According to the presentence investigation report, Jesus had no prior convictions. Police officers testified that they had arrested Jesus for domestic violence in 2004 and 2006. The court sentenced Jesus to 33 years in prison on count I, and found that the conviction on count II merged into the conviction on count I. Jesus now appeals.

¶ 19 ANALYSIS

¶ 20 Ineffective Assistance of Counsel

¶ 21 Jesus argues on appeal first that his trial counsel provided ineffective assistance, because counsel failed to move to suppress Jesus's confession. Jesus claims that a motion to suppress might have succeeded because he does not speak or understand English very well, and therefore the prosecution did not adequately prove that he understood his *Miranda* rights.

¶ 22 To show ineffective assistance of counsel, the defendant must show both that his counsel committed unprofessional errors, and that the errors prejudiced the defendant. *People v. Little*, 322 Ill. App. 3d 607, 610 (2001). Courts usually view the question of whether to move to suppress evidence as a matter of trial strategy. *Little*, 322 Ill. App. 3d at 611. The courts presume that counsel had a legitimate strategic purpose for filing or deciding not to file a motion to suppress evidence. *Little*, 322 Ill. App. 3d at 611. "To overcome these presumptions and prevail on a claim of ineffectiveness based on counsel's failure to file a motion to quash and suppress, the defendant must show, first, a reasonable probability that the motion would have been granted and, second, that the outcome of the trial would have been different if the motion had been granted." *Little*, 322 Ill. App. 3d at 611.

¶ 23 After viewing the video recordings of the confession, we find no reasonable probability that the court would have granted a motion to suppress the confessions. While the recording shows that Jesus spoke English somewhat awkwardly, his answers show that he understood the officers' questions readily. He did not need them to repeat or rephrase any questions, and he gave no inappropriate responses indicative of an inability to understand English.

¶ 24 In *People v. Ayala*, 386 Ill. App. 3d 912 (2008), the defendant sought reversal of his conviction because his trial counsel failed to move to suppress his confession. In *Ayala*, as here, the defendant pointed out that police questioned him in English, although he spoke Spanish as his primary language. The appellate court held that the record as a whole,

including indications of the defendant's conduct at trial, showed that he knew English well enough to understand his *Miranda* warnings in English. The court held that defense counsel's failure to file a motion to suppress the confession did not show ineffective assistance of counsel. *Ayala*, 386 Ill. App. 3d at 918-19.

¶ 25 We find that here, as in *Ayala*, the court had sufficient evidence from the defendant's own words that he knew English well enough to understand his *Miranda* rights, and the record showed that he confessed voluntarily. In this case, the failure to file a motion to suppress does not show ineffective assistance of counsel.

¶ 26 We note that counsel may have had a strategic purpose, apart from the apparent futility of filing a motion to suppress, for not opposing the admission of the confession into evidence. Without the confession, the evidence showed that a friend dropped Deena at Jesus's apartment on July 18, 2007, and she died that night from strangulation after a beating that left her with multiple bruises and a broken bone in her neck. Maria saw Jesus in his apartment several times over the following days as the smell from Jesus's room got worse. Maria and other witnesses found Deena's body in a garbage bag in Jesus's closet a few days after Deena died, shortly before police found Jesus at the airport with a one-way ticket to Mexico. Unless Jesus could testify in a way that explained all this evidence, the evidence without the confession would almost certainly lead the court to find Jesus guilty of first degree murder. In the confession, Jesus said Deena provoked him by hitting him repeatedly when he refused to give her money she intended to use to buy drugs. Thus, the confession included some evidence counsel could use to argue that the court should find Jesus guilty of

an offense lesser than first degree murder. Counsel could have seen the account Jesus gave in the recorded confession as his best chance for reducing the conviction to a lesser charge.

¶ 27 Speedy Trial

¶ 28 Next, Jesus argues that the trial court erred when it denied his motion to dismiss count II of the indictment due to the violation of his right to a speedy trial. Because the trial court entered no sentence on count II, we find the issue moot. See *People v. Hemphill*, 230 Ill. App. 3d 453, 468 (1992). Jesus argues that a ruling on the issue would help him if a court overturns his conviction on count I and remands the case for a new trial. The court that vacates the conviction on count I should address the issue concerning whether the State violated Jesus's right to a speedy trial on count II. We will not here address the moot issue, as no exception to the mootness doctrine applies. See *In re Marriage of Peters-Farrell*, 216 Ill. 2d 287, 293 (2005).

¶ 29 Mittimus

¶ 30 Finally, Jesus points out that the trial court gave him credit for only 1123 days of presentence custody, although he spent an additional 34 days in custody prior to the sentencing hearing. The State agrees that we should allow Jesus the additional credit he seeks. Accordingly, we direct the clerk of the circuit court to correct the mittimus to show a credit for 1157 days of presentence custody. See *People v. Butler*, 354 Ill. App. 3d 57, 69 (2004).

¶ 31 CONCLUSION

¶ 32 Jesus has not shown that his counsel provided ineffective assistance when counsel

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chose not to file a futile motion to suppress Jesus's confession. Because the trial court did not sentence Jesus on count II, we do not address the moot issue of whether the State violated Jesus's right to a speedy trial on count II. Accordingly, we affirm the conviction and sentence, and we direct the clerk of the circuit court to correct the mittimus to reflect proper credit for all of the time Jesus spent in custody before sentencing.

¶ 33            Affirmed; mittimus corrected.