

No. 1-11-0709

**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).

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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.	)	No. 09 MC1 257638
	)	
MARVELL NELSON,	)	Honorable
	)	Clarence Burch,
Defendant-Appellant.	)	Judge Presiding.

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JUSTICE NEVILLE delivered the judgment of the court.  
Justices Steele and Sterba concurred in the judgment.

**ORDER**

¶ 1 *Held:* Defendant's conviction for disorderly conduct for filing a false police report is affirmed where the State established the *corpus delicti* of the offense by providing additional evidence to corroborate defendant's admission, and trial counsel's failure to file a motion to suppress defendant's non-custodial statement to police was not ineffective assistance.

¶ 2 Following a bench trial, Marvell Nelson, the defendant, was found guilty of the Class A misdemeanor of disorderly conduct for filing a false police report claiming his car had been stolen. The trial court sentenced defendant to two days in the Cook County Department of Corrections, time considered served. On appeal, defendant contends the State failed to prove the *corpus delicti* of

disorderly conduct because the only evidence that defendant reported his car stolen was his admission to police. Defendant also contends his trial counsel rendered ineffective assistance because counsel failed to file a motion to suppress defendant's statement to police where defendant was not advised of his *Miranda* rights and made the statement while in custody at the police station. We affirm.

¶ 3 At trial, Chicago police officer Clifford Russell testified that on October 9, 2009, he was on patrol when he received a radio call directing him to the area of 64th Street and King Drive to look for a maroon Pontiac G6 that had been reported stolen. Officer Russell could not find the car, and then called OnStar, which had placed the call to 911. An OnStar representative gave the officer the car's location, and Officer Russell transmitted that information over his radio for other officers to assist with finding the car. Officer Russell drove to 59th Street and saw three squad cars surrounding the maroon Pontiac G6. He approached the Pontiac and verified that the license plate on that car matched the plate number he was given for the stolen vehicle. The three people inside the Pontiac were detained and taken to the police station for further investigation. One of them, Jacqueline Nelson, was arrested. Officer Russell then called defendant and told him his car had been found with people inside it, and defendant needed to come to the police station to recover his car and answer some questions.

¶ 4 When defendant arrived at the police station, Officer Russell asked him what his relationship was with Jacqueline Nelson. Defendant said there was no relationship and they were not married. Officer Russell then brought defendant into an interview room to ask him some questions to clarify inconsistencies in the information he had before he returned the car to defendant. Officer Russell testified that defendant was not under arrest at this time. Defendant reiterated that the woman who had been arrested, Jacqueline Nelson, was not his wife. Officer Russell pointed out that the woman had the same last name as defendant, her address was the same as defendant's and the same address

the car was registered to, and the other two passengers in the car said she was defendant's wife. Defendant then admitted that Jacqueline was his wife. Officer Russell tried to determine why defendant reported his car stolen knowing that his wife had the vehicle. The officer testified that he was further investigating the situation at this time, and that defendant was still not under arrest.

¶ 5 Defendant explained to Officer Russell that he called OnStar, but the representative would not tell him where his car was unless he had a police report. Defendant said that when he awoke that morning, his keys, car and house telephone were missing. He explained that he and his wife were going through a divorce, and she left the house earlier that day with the car. Defendant called her, but she refused to come home. Defendant said he filed the police report to track his wife's whereabouts. He also said he wanted his wife arrested to better his case in the divorce proceedings. Defendant initially called the Waukegan police department to report his car stolen, but they told him there was nothing they could do. Defendant told Officer Russell that he then called the Chicago police at 311 to report his vehicle stolen. Officer Russell testified that he had a verified active police report that defendant called the police and reported his car stolen. He also had information from the police radio call, which was initiated by defendant's call to OnStar, which called 911. Officer Russell testified that he relied on the information he received from OnStar and from the police radio call to determine that defendant had reported his car as stolen. The officer denied that defendant told him his wife had been drinking.

¶ 6 On cross-examination, Officer Russell testified that prior to locating the vehicle, he spoke with defendant on his cell phone. Pursuant to defense counsel's questioning, Officer Russell acknowledged that defendant gave him a description of the vehicle, and defendant told him that he had called OnStar to try to locate the car. Officer Russell further testified that during this call, defendant emphasized that he was not married and wanted to press charges against whomever was in his car.

¶7 Defendant testified that the night before this incident, his wife had been drinking at home and was intoxicated. The couple argued that night, but defendant denied that they were having marital problems. When defendant awoke at 8 a.m. the next morning, he discovered that his wife and both sets of his keys were gone. Defendant called the car telephone, and his wife answered and said she was in Wisconsin. Her speech was very slurred. Defendant told her that if she did not stop the car, he was going to call the police and tell them she was drinking and driving. She hung up on him. Defendant then called the police in Waukegan, Illinois, where they lived. An officer came to the house and told defendant there was nothing he could do because his wife was in Chicago, which was outside their jurisdiction. The Waukegan officer advised defendant to call the Chicago police.

¶8 Defendant called his wife again and pleaded with her to stop the car, but she refused. He then called the Chicago police by dialing 311, and told Officer King that his wife was drinking and driving. Defendant denied telling Officer King that his car was stolen. Thereafter, defendant called OnStar. About 20 minutes later, Officer Russell called defendant. Defendant told the officer that his wife was drinking and driving. He denied telling Officer Russell that his car was stolen. Officer Russell said he could not find the car and asked defendant for the phone number for OnStar. Five minutes later, Officer Russell called defendant back saying he found the car and defendant's wife, and asked defendant to come to the police station to pick up his car and sign a complaint. Defendant testified that he did not know what the complaint was for, and denied that he was going to sign a complaint for criminal trespass to his vehicle.

¶9 When defendant arrived at the police station, he acknowledged that Jacqueline was his wife. He never denied she was his wife. Defendant had a conversation with Officer Russell and a sergeant, after which the officers left the room. Officer Russell returned to the room and then handcuffed defendant. Defendant asked why he was being arrested, and Officer Russell told him he was under arrest for making a false police report. Defendant denied ever telling Officer Russell or the sergeant

that he was reporting his car as stolen. He also denied saying he wanted to press charges against whomever was in the car, and denied that he wanted to press charges against his wife for taking his car.

¶ 10 The trial court found defendant guilty of disorderly conduct for filing a false police report claiming his car had been stolen. The court sentenced defendant to two days in the Cook County Department of Corrections, time considered served.

¶ 11 On appeal, defendant first contends that the State failed to prove the *corpus delicti* of disorderly conduct because the only evidence that defendant reported his car stolen was his own admission to police. Defendant argues that the State failed to present any evidence to corroborate his inculpatory statement, which is required to establish the *corpus delicti*. He further notes that he disavowed his statement when he testified at trial.

¶ 12 To prove defendant guilty of disorderly conduct, as charged in this case, the State was required to show that defendant knowingly transmitted, or caused to be transmitted, "a false report to any public safety agency without the reasonable grounds necessary to believe that transmitting such a report [wa]s necessary for the safety and welfare of the public." 720 ILCS 5/26-1(a)(11) (West 2008).

¶ 13 The *corpus delicti* is the fact that a crime occurred. *People v. Lara*, 2012 IL 112370, ¶ 17. It is well established that proof of the *corpus delicti* cannot rest solely on a defendant's extrajudicial admission, confession, or other statement. *Lara*, 2012 IL 112370, ¶ 17; *People v. Furby*, 138 Ill. 2d 434, 446 (1990). Although a defendant's confession may be integral to proving the *corpus delicti*, the State must also present corroborating evidence independent of the defendant's own statement. *Lara*, 2012 IL 112370, ¶ 17. Where a defendant's confession is not corroborated by other evidence, a conviction based exclusively on that confession cannot be sustained. *People v. Willingham*, 89 Ill. 2d 352, 358-59 (1982).

¶ 14 Pursuant to the *corpus delicti* rule, the independent evidence need only *tend to show* the crime occurred. (Emphasis in original.) *Lara*, 2012 IL 112370, ¶ 18. Our supreme court recently explained that the independent evidence:

"need not be so strong that it *alone* proves the commission of the charged offense beyond a reasonable doubt. If the corroborating evidence is sufficient, it may be considered, *together with the defendant's confession*, to determine if the State has sufficiently established the *corpus delicti* to support a conviction." (Emphasis added.)

*Lara*, 2012 IL 112370, ¶ 18.

See also *Furby*, 138 Ill. 2d at 446, citing *Willingham*, 89 Ill. 2d at 361. Whether there is sufficient independent evidence of the *corpus delicti* will be determined by the particular circumstances of the case. *Furby*, 138 Ill. 2d at 450. It is not necessary that the independent evidence and the details of the defendant's confession correspond in every way. *Furby*, 138 Ill. 2d at 451. What is required is that the facts or circumstances independent of the confession are consistent with the defendant's statement, and tend to confirm and strengthen his confession. *Furby*, 138 Ill. 2d at 452.

¶ 15 In *Lara*, our supreme court thoroughly analyzed the precedents establishing the *corpus delicti* rule and held:

"the *corpus delicti* rule requires only that the corroborating evidence correspond with the circumstances recited in the confession and tend to connect the defendant with the crime. The independent evidence need not precisely align with the details of the confession on each element of the charged offense, or indeed to any particular element of the charged offense." *Lara*, 2012 IL 112370, ¶ 51.

¶ 16 Here, we find that the State presented sufficient corroborating evidence independent of defendant's admission to establish the *corpus delicti* in this case. Officer Russell testified that defendant confessed to him that defendant called the Chicago police and reported his car stolen,

knowing his wife had his car, because he wanted to track his wife's whereabouts and have her arrested to better his case in their divorce proceedings. Defendant's statement, however, was not the only evidence that defendant falsely reported his car stolen. Officer Russell testified that he received a police radio call directing him to look for a maroon Pontiac G6 that had been reported stolen. This radio call was initiated by defendant's call to OnStar, which then called 911 and reported the car as stolen. The officer further testified that after the Pontiac was stopped by police, he verified that the license plate on that car matched the plate number he was given for the stolen vehicle. The police detained the three people inside the vehicle and took them to the police station for questioning. In addition, pursuant to defense counsel's questioning on cross-examination, Officer Russell testified that defendant told him over the phone that he called OnStar to locate his car, he was not married, and he wanted to press charges against whomever was in his car. Officer Russell expressly testified that he relied on the information he received from OnStar and from the police radio call to determine that defendant had reported his car stolen. Moreover, defendant himself testified that Officer Russell asked him to come to the police station to recover his car and sign a complaint. We find that this evidence, which was independent of defendant's statement, was sufficient to allow the trial court, sitting as the trier of fact, to reasonably conclude that defendant reported his vehicle as stolen. It therefore follows that the court was able to find that defendant knowingly transmitted, or caused to be transmitted, a false report to a public safety agency, and thus, was guilty of disorderly conduct. Accordingly, we conclude that the *corpus delicti* was established in this case.

¶ 17 Defendant next contends that his trial counsel rendered ineffective assistance because counsel failed to file a motion to suppress defendant's statement to police where defendant was not advised of his *Miranda* rights and made the statement while being interrogated in custody at the police station. Defendant acknowledges that Officer Russell testified that defendant was not under arrest at the time of the questioning. He argues, however, that the facts show otherwise where he was

questioned by two police officers inside the police station about his involvement in a crime, which elicited a confession. He further notes that he was left inside an interview room and not told whether or not he could leave. Defendant claims these facts show he was subjected to a custodial interrogation that required *Miranda* warnings, and a motion to suppress his statement would have been granted, changing the outcome of the trial.

¶ 18 The State argues that counsel did not render ineffective assistance because a motion to suppress defendant's statement would not have been granted. The State argues that defendant was not in custody for the purposes of *Miranda*. The State asserts that defendant was not interrogated, but instead, the police needed to clarify inconsistencies in their information with him before they could return his car. The State also notes that Officer Russell testified that defendant was not under arrest until after he admitted he filed a false report with the police.

¶ 19 Claims of ineffective assistance of counsel are evaluated under the two-prong test handed down by the United States Supreme Court in *Strickland v. Washington*, 466 U.S. 668 (1984). *People v. Givens*, 237 Ill. 2d 311, 330-31 (2010). To support a claim of ineffective assistance of trial counsel, defendant must demonstrate that counsel's representation was deficient, and as a result, he suffered prejudice that deprived him of a fair trial. *Strickland*, 466 U.S. at 687; *Givens*, 237 Ill. 2d at 331. If defendant cannot prove that he suffered prejudice, this court need not determine whether counsel's performance was deficient. *Givens*, 237 Ill. 2d at 331.

¶ 20 To establish that he was prejudiced by counsel's failure to file a motion to suppress his statement, defendant must show that a reasonable probability exists that: (1) the motion would have been granted, and (2) the outcome of the trial would have been different if the statement had been suppressed. *Givens*, 237 Ill. 2d at 331. If a motion to suppress would have been futile, then counsel's failure to file that motion does not constitute ineffective assistance. *Givens*, 237 Ill. 2d at 331. Determining whether or not to file a motion to suppress is a matter of trial strategy, and thus,

counsel's decision is given great deference and is generally immune from claims of ineffective assistance. *People v. Martinez*, 348 Ill. App. 3d 521, 537 (2004). Claims of ineffective assistance of counsel that question trial strategy must not be viewed in hindsight, but instead, must be reviewed on a circumstance-specific basis from the time of counsel's conduct, giving great deference to counsel's decisions. *People v. Fuller*, 205 Ill. 2d 308, 330-31 (2002). Defense counsel's strategic choices are virtually beyond challenge; therefore, the fact that another attorney may have pursued a different strategy, or that counsel's chosen strategy ultimately proved unsuccessful, does not establish that counsel's assistance was ineffective. *Fuller*, 205 Ill. 2d at 331.

¶ 21 To determine whether defendant was in custody, and thus, whether the police were required to advise him of his *Miranda* rights, the court must consider the circumstances surrounding the interrogation, and in light of those circumstances, whether a reasonable person would have felt he could terminate the interrogation and leave. *People v. Slater*, 228 Ill. 2d 137, 150 (2008). The factors relevant for determining whether a statement was made in a custodial setting include: (1) the location, time, length, mood and mode of the questioning; (2) the number of police officers present during the questioning; (3) whether there was any indicia of a formal arrest, such as the use of handcuffs, fingerprinting, or a show of weapons or force; (4) the manner in which defendant arrived at the place of questioning; (5) the defendant's age and intelligence; and (6) whether defendant's family or friends were present. *Slater*, 228 Ill. 2d at 150. A police officer's subjective view of whether the person being questioned is suspected of a crime, if undisclosed to that person, does not bear upon the question of whether the individual is in custody for the purposes of *Miranda*. *Slater*, 228 Ill. 2d at 153, citing *Stansbury v. California*, 511 U.S. 318, 324 (1994).

¶ 22 Here, we find that defendant was not subjected to a custodial interrogation when he made his admission to Officer Russell, and therefore, the police were not required to advise him of his *Miranda* rights. The record shows that Officer Russell asked defendant to come to the police station

to recover his car and to answer a few questions. Defendant testified that he was also told he would sign a complaint at the station. Defendant voluntarily went to the station to retrieve his car. When defendant arrived at the station, Officer Russell asked him what his relationship was with Jacqueline Nelson, and defendant denied they were married. Officer Russell then brought defendant to an interview room to ask him some questions to clarify the inconsistencies in the information he had before returning defendant's car. Defendant again denied that Jacqueline was his wife, until confronted with the fact that she shared his name and address, at which time he then admitted she was his wife. At this point, Officer Russell found it necessary to ask further questions to determine why defendant had reported his car stolen. Officer Russell twice testified that defendant was not under arrest during this questioning. Defendant testified that he was having a conversation with Officer Russell and the sergeant, and the officers left the room. Officer Russell then returned to the room and handcuffed defendant, and defendant asked him why he was being arrested.

¶ 23 Applying the factors to the circumstances in this case, we find that defendant was not in custody at the time of his admission, but was voluntarily at the police department to retrieve his vehicle and answer some questions to clarify what had occurred in this case. Defendant believed he was having a conversation with the officers about what had happened with his car. There is no indication that defendant did not feel he was free to leave. Defendant was not in custody until Officer Russell handcuffed him, placing him under arrest. Defendant's testimony shows he was surprised when this happened and questioned why he was being arrested. Because defendant was not in custody when he made his inculpatory statement, *Miranda* warnings were not required. Therefore, a motion to suppress defendant's statement would have been futile, and counsel's failure to file such a motion did not constitute ineffective assistance.

¶ 24 In addition, the record reveals that rather than attempting to suppress the statement, which would have been unsuccessful, counsel's strategy was to try to persuade the court that defendant

1-11-0709

never reported his car as stolen. Counsel tried to convince the court that defendant called the police to try and stop his wife from driving while intoxicated. We will not attempt to second-guess counsel's strategy. Based on the record before this court, we do not find that counsel rendered ineffective assistance.

¶ 25 For these reasons, we affirm the judgment of the circuit court of Cook County.

¶ 26 Affirmed.