

2015 IL App (2d) 131275-U  
No. 2-13-1275  
Order filed October 5, 2015

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IN THE  
APPELLATE COURT OF ILLINOIS  
SECOND DISTRICT

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THE PEOPLE OF THE STATE	)	Appeal from the Circuit Court
OF ILLINOIS,	)	of Winnebago County.
	)	
Plaintiff-Appellee,	)	
	)	
v.	)	No. 12-CF-658
	)	
VICTOR LAVELL PARKS,	)	Honorable
	)	Fernando L. Engelsma,
Defendant-Appellant.	)	Judge, Presiding.

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JUSTICE McLAREN delivered the judgment of the court.  
Justices Jorgensen and Birkett concurred in the judgment.

**ORDER**

¶ 1 *Held:* Trial counsel was not ineffective for failing to introduce (or avoid the exclusion of) impeaching evidence: defendant suffered no prejudice, as the impeaching evidence pertained to a tangential point (the nature of the relationship between defendant and the victim), while the evidence against defendant on the ultimate issue (whether the sex at issue was consensual) was very strong.

¶ 2 Defendant, Victor Lavell Parks, appeals from his conviction in the circuit court of Winnebago County of one count of aggravated criminal sexual assault (720 ILCS 5/11-1.30(a)(2) (West 2010)), contending that his trial counsel was ineffective for failing to challenge properly at trial the credibility of the victim, that his trial counsel was ineffective for failing to

raise in his posttrial motion an issue related to the victim's credibility, and that posttrial counsel was ineffective for failing to raise trial counsel's ineffectiveness as to those issues. Because no prejudice resulted from any deficiencies in either counsel's performance, we affirm.

¶ 3

### I. BACKGROUND

¶ 4 Defendant was indicted on one count of aggravated criminal sexual assault and one count of aggravated battery (720 ILCS 5/12-4(a) (West 2010)). Following a jury trial, defendant was convicted of both counts, and the trial court merged the two convictions. Defendant was sentenced to 20 years' imprisonment on the conviction of aggravated criminal sexual assault.

¶ 5 The following facts are taken from the jury trial. Defendant and the victim, E.E., both of whom lived in Rockford, met in June or July 2011. They began a relationship that included having sex, defendant staying overnight at E.E.'s house, and defendant keeping personal belongings at the house. E.E. gave defendant a key to her house, ostensibly so that defendant could let her dogs out.

¶ 6 On August 18, 2011, E.E. planned to celebrate her 21st birthday at a bar. E.E. invited defendant, but he declined, as he was planning on driving to Chicago that evening to pick up his daughter.

¶ 7 E.E. went to the bar where she drank with friends, including Alonzo House. She left the bar with House, her friend, and House's friend. House drove E.E.'s car, because she was intoxicated.

¶ 8 After leaving the bar, the quartet stopped for gas. At the gas station, E.E. saw some of defendant's friends. One of defendant's friends told E.E. that he was talking with defendant on his cell phone and handed the phone to E.E. Because defendant and E.E. argued on the phone, E.E. hung up.

¶ 9 After House dropped off his friend and E.E.'s friend at their respective homes, he drove E.E. to her house. He helped E.E. into bed, they talked, and then they had consensual sex. They both fell asleep naked in the bed.

¶ 10 House awoke to defendant telling him to leave. House, who left quickly, saw defendant hit E.E. in the face several times. According to E.E., when she tried to escape the house, defendant pulled her back in and kept hitting her. Defendant then told her to take off her clothes and get in bed on her hands and knees. Defendant put on a condom and placed his penis in her anus. After about 15 minutes, defendant removed his penis, told E.E., who was now sitting on the toilet, to remain there, and left. E.E. then called 911 and went outside to wait for the police. E.E. suffered a fractured jaw and cheekbone.

¶ 11 Defendant admitted that he was upset and angry about finding E.E. in bed with another man. According to defendant, he merely tapped E.E. on the head, to wake her. Although he denied punching E.E., he admitted to slapping her in the face several times, but only after they had anal sex.

¶ 12 According to defendant, he was placing his belongings in plastic garbage bags and attempting to leave when E.E. told him that she had not had sex with House. E.E. did not want him to leave and came on to him. She performed oral sex on him in the shower, and then they had vaginal sex in the bed. During vaginal sex, defendant concluded that E.E. had in fact had sex with House, which further angered defendant. After he withdrew his penis from E.E.'s vagina, E.E. then initiated anal sex with defendant. Because he was still angry after the anal sex, defendant slapped E.E. six or seven times. According to defendant, he and E.E. had engaged in anal sex before that night and she had initiated it the first time.

¶ 13 Detective Brad Shelton of the Rockford police department interviewed defendant. Defendant initially denied hitting E.E. or having sex with her. After Detective Shelton swabbed defendant for a DNA sample, defendant admitted that he and E.E. had consensual sex.

¶ 14 According to defendant, Detective Shelton asked him if he “punched” E.E., which he denied. He denied telling Detective Shelton that he “raped” E.E. Defendant testified that in his written statement he admitted to having both vaginal and anal sex with E.E. However, he testified that he did not physically force E.E. to have sex.

¶ 15 On rebuttal, Detective Shelton testified that defendant denied hitting E.E., other than pushing her in the face to move her out of the doorway. He clarified that he asked defendant whether he had sex with, as opposed to raped, E.E., to which defendant initially said no. It was only after he discussed the DNA swab that defendant admitted that he had consensual sex with E.E. According to Detective Shelton, defendant admitted in his written statement that he had both vaginal and anal sex with E.E.

¶ 16 Although E.E. testified that defendant spent some nights at her house and kept some belongings there and that they regularly had sex, she denied that he lived with her or that they were dating. Defendant, on the other hand, testified that he did not stay anywhere else while he was in a relationship with E.E.

¶ 17 Defendant’s brother, Jeff Tyus, testified that E.E. was introduced to him as defendant’s girlfriend. According to Tyus, he stayed at E.E.’s house for a week or two near the end of July and beginning of August 2011. When defense counsel asked him if defendant was living with E.E., Tyus answered yes, but the court sustained the State’s objection and ordered that Tyus “[j]ust say what he observed.” Defense counsel asked no more questions in that regard.

¶ 18 The jury found defendant guilty of both offenses. Defense counsel filed a posttrial motion in which he did not raise any issue regarding the trial court's having sustained the objection to Tyus's testimony that defendant was living with E.E. The trial court thereafter granted trial counsel leave to withdraw and appointed new counsel (posttrial counsel) who filed an amended posttrial motion. Although posttrial counsel raised issues of ineffective assistance of trial counsel, he did not raise any claims of ineffectiveness regarding the failure to introduce E.E.'s prior statement to the police that she lived with defendant, the failure to lay a proper foundation for the admission of E.E.'s prior statement to House that defendant was her boyfriend, or the failure to raise in the original posttrial motion an issue regarding the court's having sustained the objection to Tyus's testimony that defendant was living with E.E. Following the denial of the amended posttrial motion and sentencing, defendant filed this timely appeal.

¶ 19

## II. ANALYSIS

¶ 20 On appeal, defendant contends the following: (1) that his trial counsel was ineffective for failing to introduce E.E.'s prior inconsistent statement to the police to impeach her testimony that defendant did not live with her; (2) that trial counsel was ineffective for failing to lay a proper foundation for the admission of E.E.'s prior inconsistent statement to House that defendant was her boyfriend; and (3) that trial counsel was ineffective for failing to raise in the original posttrial motion the trial court's having sustained the objection to Tyus's testimony that defendant was living with E.E. Defendant further asserts that his posttrial counsel was ineffective for failing to raise any of those issues in the amended posttrial motion.

¶ 21 To succeed on a claim of ineffective assistance of counsel, a defendant must satisfy the two-part test of *Strickland v. Washington*, 466 U.S. 688 (1984). To satisfy the first prong, the

defendant must show that his counsel's performance was deficient because it fell below an objective standard of reasonableness. *People v. Harris*, 206 Ill. 2d 1, 16 (2002). To meet the second prong, the defendant must demonstrate prejudice by showing that, but for counsel's deficiencies, the result of the proceeding would have been different. *Harris*, 206 Ill. 2d at 16. If such a claim can be disposed of because the defendant suffered no prejudice, then a court should not decide whether counsel's performance was deficient. *People v. Villanueva*, 382 Ill. App. 3d 301, 308 (2008).

¶ 22 We first address defendant's contentions that his trial counsel was ineffective for failing to introduce E.E.'s prior inconsistent statements to the police and to House for the purposes of impeachment.<sup>1</sup> Although E.E.'s credibility was clearly at issue as to whether the anal sex was forced or consensual, the admission of her prior statements likely would not have affected the outcome of the trial. Even had the jury found E.E. incredible as to her description of the relationship, that would not have likely resulted in the jury finding that defendant did not force E.E. to have anal sex. That is so because there was sufficient independent evidence to support a finding that defendant forced E.E. to have anal sex. In that regard, House testified that before he left he saw defendant strike E.E. in the face. According to defendant, the anal sex did not take place until after House had left. Therefore, the jury could have concluded reasonably that defendant struck E.E. in the face before they had anal sex. Thus, the jury had a proper basis to find defendant guilty, notwithstanding E.E.'s credibility regarding the nature of the relationship.

¶ 23 Further, the undisputed evidence established that E.E. suffered a fractured jaw and cheekbone. That evidence belied defendant's testimony that he merely slapped E.E. In light of

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<sup>1</sup> Although the statements were hearsay, they were potentially admissible for the limited purpose of impeaching E.E.'s credibility. See *People v. Wilson*, 2012 IL App (1st) 101038, ¶ 38.

the extent of her injuries, combined with House's testimony as to when defendant struck E.E., the jury likely would have found defendant incredible as to not only how much force he used but when he used it. That would have been further support for the jury to find defendant guilty, irrespective of the truthfulness of E.E.'s characterization of her relationship with defendant.

¶ 24 Additionally, the issue of whether E.E. truthfully testified that defendant did not live with, or date, her was inconsequential, considering the other evidence regarding the nature of the relationship. The evidence established that defendant regularly had sex with E.E., spent many nights at E.E.'s house, kept personal belongings there, and had been trusted with a house key. That evidence provided a sufficient basis for the jury to conclude that defendant and E.E. had an ongoing and intimate relationship and that it was meaningful to E.E. That she characterized some aspects of the relationship one way at trial and a different way to the police or House would not have been likely to change the jury's perception of the nature of the relationship and its significance to E.E. On the more direct question of whether E.E. had consented to the anal sex, the evidence against defendant was very strong. Thus, defendant did not suffer any prejudice by trial counsel's failing to impeach E.E. on the nature of the relationship.

¶ 25 Because the jury was not likely to have reached a different conclusion regarding the ultimate issue of whether defendant forced E.E. to have anal sex, there was no prejudice that resulted from the failure of trial counsel to introduce either of E.E.'s prior inconsistent statements that defendant lived with her and that they were dating. Thus, defendant failed to establish a claim of ineffective assistance of trial counsel in that regard.

¶ 26 That leaves defendant's contention that trial counsel was ineffective for failing to preserve, by raising it in the original posttrial motion, a claim that the trial court erred in sustaining the objection to Tyus's testimony that he believed that defendant lived with E.E. For

the reasons already discussed, such testimony likely would not have produced a different outcome. Because there was no prejudice from any error in sustaining the objection, counsel was not ineffective for failing to raise the issue in the posttrial motion.

¶ 27 Because defendant has failed to establish ineffective assistance of trial counsel as to any of his claims, posttrial counsel was not ineffective for failing to raise any of those claims in the amended posttrial motion.

¶ 28 III. CONCLUSION

¶ 29 For the reasons stated, we affirm the judgment of the circuit court of Winnebago County. As part of our judgment, we grant the State's request that defendant be assessed \$50 as costs for this appeal. See 55 ILCS 5/4-2002(a) (West 2014); see also *People v. Nicholls*, 71 Ill. 2d 166, 179 (1978).

¶ 30 Affirmed.