2015 IL App (2d) 140842-U
No. 2-14-0842
Order filed December 23, 2015

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS, Plaintiff-Appellee, v. ANTHONY J.C. ANDERSON, Defendant-Appellant.	))))))))))	Appeal from the Circuit Court of Boone County. No. 13-CM-86 Honorable Philip J. Nicolosi, Judge, Presiding.

PRESIDING JUSTICE SCHOSTOK delivered the judgment of the court.
Justices Zenoff and Birkett concurred in the judgment.

ORDER

¶ 1 *Held*: (1) Defendant showed no first-prong plain error or ineffective assistance of counsel as to the introduction of the substance of a prior consistent statement: the alleged error caused no prejudice, as the trial court presumably and actually did not rely on the statement in finding defendant guilty; (2) the State proved defendant guilty beyond a reasonable doubt of domestic battery: despite the weaknesses in the victim's testimony, the court was entitled to credit it over defendant's also-weak testimony, especially given that the victim's testimony was supported by other evidence.

¶ 2 Defendant, Anthony J.C. Anderson, appeals his conviction of domestic battery (720 ILCS 5/12-3.2(a)(2) (West 2012)). He contends that plain error or ineffective assistance of counsel occurred when the State bolstered a witness's credibility through references to a prior consistent

statement and that the evidence was insufficient to prove him guilty beyond a reasonable doubt. We affirm.

¶ 3 I. BACKGROUND

¶ 4 Defendant was charged by complaint with domestic battery, in that, in February 2013, he hit his 17-year-old girlfriend, L.H., in the face with his fist. On August 11, 2014, a bench trial was held.

¶ 5 L.H. testified that she met defendant while they were in high school and that they dated for three years without any previous conflicts. In February 2013, L.H. received information that led her to ask defendant if he had cheated on her, and he denied it. On February 5, 2013, L.H. was given additional information. Feeling horrible and sad, she called her mother and lied that she was sick in order to get out of school. She then left school and went to defendant's apartment around 2 p.m.

¶ 6 L.H. confronted defendant in his living room and believed that the information she had received was true because defendant was acting indifferent and looking at his phone instead of at her. She was angry and yelling and then started crying. Defendant tried to make amends, but she told him that she did not want anything to do with him.

¶ 7 L.H. testified that, when she got up to put her boots on, defendant took one of them from her. She told him that she wanted to leave, but he did not let her. L.H. testified that she tried to reach to grab her boot and that defendant "grabbed the hood of my jacket and he threw me inside the apartment and that's when he punched me in the face." Upon further questioning, she added that the apartment door was opened, that she was already outside, and she repeated that defendant "grabbed me by the hood and he threw me inside the apartment and that's when he punched me in the face." When asked again what happened, L.H. stated that she was almost

outside, but defendant had her other boot, so she was trying to reach for it. She said that "instead he grabbed the hood of my jacket, he threw me inside of the apartment, and on this—like around the same time, he punched me in the face." She also stated that he struck her at around the same time that she landed on the floor and that "he threw me and then punched me right away." When asked if he had to bend or lean down, L.H. stated, "all I remember is when he threw me in the living room, he punched me at the same time."

¶ 8 On cross-examination, defense counsel questioned how defendant could punch L.H. as she was falling. L.H. stated that she was not already falling when he punched her, and defense counsel then asked, "[s]o the statement you gave police, that while he threw me on the floor he punched me on the face, that's not accurate?" L.H asked if counsel wanted her to explain it again, and shortly after stated, "[a]t the same time that he was throwing me on the floor, he punched me." On redirect, she again repeated that defendant threw her and punched her at the same time.

¶ 9 After defendant hit her, L.H. was on the floor. Defendant repeatedly told her that he was sorry and he got a wet cloth that he tried to put on her chin. L.H. told him that she was going to go home and tell her parents what happened. Defendant was angry but he let her leave. He later called her and apologized again.

¶ 10 L.H. did not tell her parents what happened until the afternoon of the next day. She then went to the police station and met with Officer David Ellingson. L.H. identified photos taken by Ellingson that depicted a bruise on the left side of her chin. L.H. also provided a written statement to Ellingson. She identified it at trial without stating anything about its contents, and the State told the court that it was not asking to have it admitted into evidence and that it was for purposes of impeachment if needed.

¶ 11 Ellingson testified that he observed the bruise on L.H.'s face and that she identified defendant as the person who hit her. He said that L.H. also provided a written statement. Ellingson gave no testimony concerning what L.H. said in the written statement, nor did he testify about any specific statements that she made to him.

¶ 12 Defendant testified and denied that he struck L.H. He said that L.H. came to his apartment and was yelling. He said that he became fed up and told her to calm down because it was early in the morning and the neighbors could hear through the walls. He said that he asked her to leave and that, while they were at the door, with L.H. outside of the apartment, L.H. turned and hit him. He said that he pulled on her hoodie and pulled her into the apartment to talk, and she fell inside the apartment, but he never hit her. He said that he went and got a rag because she hit her face when she fell. However, he later said that she fell on her butt when she fell to the floor, that she never went to her back, and that he got the rag to attend to her needs. The State specifically asked on cross-examination, "[d]idn't hit her face, did she?" Defendant answered "no." Defendant stated that he was right-handed and that he pulled L.H. into the apartment with his left hand.

¶ 13 During closing arguments, the State, arguing that L.H.'s testimony was credible, stated, "she told you in a manner consistent with what she testified to—I'm sorry—what she had told Officer Ellingson, what she told her parents, and what occurred that day." There was no objection. Defense counsel argued that L.H.'s story was not logical or consistent. The court inquired about exhibits, and the State said that it was not offering L.H.'s written statement into evidence.

¶ 14 The court found defendant guilty. In doing so, it discussed the evidence at length. The court noted L.H.'s age and stated a belief that her age accounted for her testimony seeming "a

little bit disjointed" or inconsistent. The court noted that the bruise in the photo was consistent with being struck once on the chin by a right-handed person. The court found that defendant's testimony was inconsistent between his direct examination and cross-examination and that defendant's testimony that the incident took place during early morning hours did not make sense and was not credible. The court also found defendant's testimony inconsistent in terms of his statements that he first asked L.H. to leave, but he then pulled her back into the apartment. It also noted the inconsistency between defendant's statement that L.H. hit her face on the floor and his later testimony that she fell on her butt, and it expressed doubt that he would have gotten a rag to attend to L.H.'s needs unless she had been struck. Thus, the court did not find him to be as credible a witness as L.H. The court's only reference to the statement L.H. made to Ellingson was that, when it was reciting the facts of the case, the court stated that Ellingson allowed L.H. to make a written statement. Defendant was sentenced to one year of probation. He appeals.

¶ 15 II. ANALYSIS

¶ 16 Defendant contends that it was plain error for the State to bolster L.H.'s testimony with her prior consistent statement given to Ellingson. In the alternative, he contends that his counsel was ineffective for failing to object.

¶ 17 Defendant concedes that he forfeited his argument by failing to object at trial, but argues that the plain-error doctrine applies. The plain-error doctrine permits a court of review to consider a forfeited error when either (1) the evidence is close, regardless of the seriousness of the error, or (2) the error is serious, regardless of the closeness of the evidence. Here, defendant argues only the first prong, contending that the evidence was closely balanced. Under that prong, the defendant must prove prejudicial error by showing both that there was clear error and that the evidence was so closely balanced that the error alone severely threatened to tip the scales

of justice against him. *People v. Adams*, 2012 IL 111168, ¶ 21. In determining whether the closely-balanced prong has been met, we make a commonsense assessment of the evidence within the context of the circumstances of the individual case. *Id*. ¶ 22.

¶ 18 In determining whether a defendant was denied effective assistance of counsel, we apply the two-pronged test set forth in *Strickland v. Washington*, 466 U.S. 668 (1984). To prevail on a claim of ineffective assistance of counsel, a defendant must show that counsel's performance was deficient and that the deficient performance resulted in prejudice to the defendant. *Id*. at 687; *People v. Patterson*, 217 Ill. 2d 407, 438 (2005). To establish deficient performance, the defendant must show that his attorney's performance fell below an objective standard of reasonableness. *People v. Evans*, 209 Ill. 2d 194, 219 (2004). Prejudice is established when a reasonable probability exists that, but for counsel's unprofessional errors, the result of the proceeding would have been different. *Id*. at 219-20. The failure to satisfy either prong of the *Strickland* test precludes a finding of ineffective assistance of counsel. *People v. Brown*, 236 Ill. 2d 175, 185 (2010).

¶ 19 Hearsay is an out-of-court statement that is offered to prove the truth of the matter asserted. Ill. R. Evid. 801(c) (eff. Jan. 1, 2011); *People v. Moss*, 205 Ill. 2d 139, 159 (2001). "Evidence of a prior consistent statement is inadmissible hearsay unless it has been suggested that a witness recently fabricated testimony or has a motive to testify falsely and the prior statement was made before the motive arose." *People v. Henderson*, 142 Ill. 2d 258, 310 (1990). Prior consistent statements are generally not admissible for the purpose of corroborating the testimony of a witness, because they can be used to unfairly enhance the credibility of the witness. *People v. Richter*, 2012 IL App (4th) 101025, ¶ 108. However, an out-of-court statement used for purposes other than to prove the truth of the matter asserted is not hearsay.

See *People v. Banks*, 237 Ill. 2d 154, 181 (2010) (out-of-court statements offered to explain the investigatory procedure police followed are not hearsay). Further, "the general rule that witnesses may not testify as to statements made out of court to corroborate their testimony given at trial does not apply to statements of identification." *People v. Shum*, 117 Ill. 2d 317, 342 (1987).

¶ 20 Several factors may minimize the prejudicial effect of a prior consistent statement, such that it will not constitute plain error. For example, when the evidence of a prior consistent statement is provided by the witness herself, her credibility is not truly enhanced, because she is merely corroborating herself. *Henderson*, 142 Ill. 2d at 311. In addition, prejudice is minimized when the testimony is general instead of specific and no portion of the actual statement is admitted into evidence. *Id*. at 312.

¶ 21 Here, the actual statement L.H. gave to Ellingson concerning how the incident occurred was never admitted into evidence. However, both parties introduced the substance of the statement. Defense counsel during cross-examination asked L.H., "[s]o the statement you gave police, that while he threw me on the floor he punched me on the face, that's not accurate?" Then, the State mentioned in closing that L.H. consistently told her parents and the police what happened. Nevertheless, we decline to find plain error or ineffective assistance, as defendant has not shown prejudice.

¶ 22 The record does not support the conclusion that the alleged error affected the outcome of the trial in any manner. The only mention the trial court made of the statement was in its recitation of facts, during which it simply noted its existence. The trial court did not state that it relied on the substance of it. Instead, it gave specific independent reasons as to why it found L.H. to be the more credible witness. "[A] trial judge in a bench trial is presumed to know the

law and to follow it and 'this presumption may only be rebutted when the record affirmatively shows otherwise.' " *People v. Thorne*, 352 Ill. App. 3d 1062, 1078 (2004) (quoting *People v. Mandic*, 325 Ill. App. 3d 544, 546 (2001)). Here, we presume that the trial court followed the law and did not consider the statement to bolster L.H.'s credibility. Accordingly, defendant has not shown plain error or ineffective assistance of counsel.

¶ 23 Defendant next contends that the evidence was insufficient to prove him guilty beyond a reasonable doubt. A reviewing court will not set aside a criminal conviction unless the evidence is so improbable or unsatisfactory that it creates a reasonable doubt of the defendant's guilt. *People v. Collins*, 106 Ill. 2d 237, 261 (1985). On a challenge to the sufficiency of the evidence, " 'the relevant question is whether, after viewing the evidence in the light most favorable to the prosecution, *any* rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.' " (Emphasis in original.) *Id*. (quoting *Jackson v. Virginia*, 443 U.S. 307, 319 (1979)).

¶ 24 Defendant contends that L.H.'s testimony was inconsistent and that it would be impossible for defendant to punch L.H. as she was falling away from him. But L.H. testified repeatedly that defendant's actions were all part of one event during which defendant grabbed her hood with his left hand, pulled her into the apartment, and punched her with his right hand. She specifically stated that all she could remember was that he punched her at the same time, which the court was entitled to believe, especially given the evidence that she had a bruise on her chin consistent with being punched by a right-handed person and that defendant got a rag to tend to her and apologized. Further, while there were some conflicts in L.H.'s testimony, the trial court found greater conflicts in defendant's testimony. The mere existence of conflicts in the evidence does not by itself require reversal, and the resolution of the conflicts in the evidence

and the credibility of the witnesses is the province of the trier of fact. *People v. Ellzey*, 96 Ill. App. 2d 356, 358-59 (1968). Here, the court was entitled to give greater weight to L.H.'s testimony. Accordingly, the evidence was sufficient to prove defendant guilty beyond a reasonable doubt.

¶ 25 III. CONCLUSION

¶ 26 References to a prior consistent statement were not plain error or ineffective assistance and the evidence was sufficient to prove defendant guilty beyond a reasonable doubt. Accordingly, the judgment of the circuit court of Boone County is affirmed. As part of our judgment, we grant the State's request that defendant be assessed $50 as costs for this appeal. 55 ILCS 5/4-2002(a) (West 2014); see also *People v. Nicholls*, 71 Ill. 2d 166, 179 (1978).

¶ 27 Affirmed.