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IN THE
APPELLATE COURT OF ILLINOIS
SECOND DISTRICT

THE PEOPLE OF THE STATE)	Appeal from the Circuit Court
OF ILLINOIS,)	of Lake County.
)	
Plaintiff-Appellee,)	
)	
v.)	No. 12-CF-783
)	
DERRICK TAYLOR,)	Honorable
)	Mark L. Levitt,
Defendant-Appellant.)	Judge, Presiding.

JUSTICE McLAREN delivered the judgment of the court.
Justices Zenoff and Hudson concurred in the judgment.

ORDER

- ¶ 1 *Held:* Defense counsel was not ineffective for stipulating to a transcript of the recording of defendant's interrogation, which transcript stated that defendant confessed to the offense where no such confession was audible on the recording: although counsel was deficient, the error caused no prejudice, as the jury was instructed to credit the recording itself over the transcript of its contents (and thus, implicitly, to credit it over an officer's testimony as to its contents), and, in any event, the other evidence of defendant's guilt, though circumstantial, was overwhelming.
- ¶ 2 Defendant, Derrick Taylor, appeals from a conviction of first-degree murder (720 ILCS 5/9-1(a)(1) (West 2012)), contending that his trial counsel was ineffective for stipulating to a

transcript of his recorded interrogation, which inaccurately stated that he admitted to killing the victim. Because counsel's purported error did not prejudice defendant, we affirm.

¶ 3

I. BACKGROUND

¶ 4 Defendant was indicted on five counts of first-degree murder (720 ILCS 5/9-1(a)(1), (a)(2) (West 2012)) arising out of the death of Joy Lee. Defendant was tried by jury.

¶ 5 The following evidence is from the jury trial. On March 11, 2012, at about 9 p.m., a security officer discovered the victim's body lying next to her parked, but running car, in an industrial area of Zion. She had been severely beaten and had her throat cut.

¶ 6 According to the forensic pathologist who autopsied the victim, she had blunt-force injuries to her head, torso, and extremities. The laceration on her neck was 10 inches long and went to the spinal column, severing her carotid artery and causing high-velocity blood spattering. There was a mark on the victim's breast that could have been caused by blunt-force trauma or by a bite.

¶ 7 The victim's cell phone indicated that defendant had contacted her shortly before her death. According to phone records, the victim had texted defendant at 3:43 p.m. on March 11, 2012, regarding drugs that she was going to sell him. At 5:51 p.m. that same day, defendant texted that they needed to meet at 7:30 p.m. At 6:46 p.m., defendant texted that they would meet at 8 p.m. At 7:34 p.m., the victim texted that she was ahead of schedule and that she would wait if defendant was not ready. At 7:51 p.m., when the victim asked defendant where he would like to meet, defendant responded by asking her if she was alone. At 7:54 p.m., the victim responded "yes" and that she was at Wadsworth and Green Bay. There were no more texts between the victim and defendant until defendant texted at 9:58 p.m., "Where the fuck r u ... Fuck it I'm done with you." At 8:32 p.m. on March 11, defendant had texted the victim's teenage daughter,

asking, “Where is your mom? Tell her I said to fuck it.” According to the victim’s daughter, it was unusual for defendant to text her.

¶ 8 The police investigation focused on defendant. At approximately 4 a.m. on March 12, 2012, several officers from the Lake County major crimes task force went to defendant’s trailer located at unit 91 of a trailer park. The officers loudly knocked and announced their presence for about 15 minutes but received no response. About 60 to 90 minutes later, defendant emerged and yelled “What is going on?” When an officer handcuffed defendant, defendant stated that they could “look inside” but that they would not “find any evidence.”

¶ 9 The police discovered a Chevy Blazer, belonging to defendant’s father, in the garage at unit 19 of the trailer park. An evidence technician tested the vehicle, which showed presumptive indications of human blood on the steering wheel, driver’s seat, center console, gas pedal, and gear shift. The victim’s DNA profile was found on the steering wheel and the driver’s seat. As for the gas pedal, the partial profiles were of an unknown female and another unknown person. The victim could not be excluded as the contributor of the unknown-female profile.

¶ 10 When the police searched defendant’s trailer, there was blood found in the kitchen sink, which produced a DNA profile matching the victim. The DNA profile of blood found in defendant’s washing machine excluded defendant but could not exclude the victim. Although there was a presumptive indication of blood on the shower drain, a DNA profile could not be ascertained.

¶ 11 Sondra McIsaac, defendant’s girlfriend, and her children lived with defendant in unit 91 from November 2010 until October 2011. Because of disagreements with defendant, McIsaac and her children moved into unit 19.

¶ 12 On March 11, 2012, McIsaac dropped her children off with their father and went to defendant's trailer. She helped defendant work on his father's Chevy Blazer until almost dark. After finishing, she and defendant cleaned the interior of the trailer, including washing the floors and walls with bleach.

¶ 13 Later that evening, defendant told McIsaac that he was going to visit a neighbor. At about 8:30 p.m., McIsaac texted defendant that she was about to leave to pick up her children. Before she left, McIsaac put on her shoes and got a drink of water. While she was drinking, defendant, who appeared surprised to see her still there, came in and commented that she was not supposed to be there.

¶ 14 Defendant was dressed in a Carhart jacket, black sweatpants, gym shoes, and work gloves. He asked McIsaac for a plastic garbage bag to put his clothes in. McIsaac saw a brownish-red stain on defendant's wrist that might have been blood. Defendant stated that he was going to take a shower. As McIsaac left, she told defendant that, pursuant to his request, she would put the Chevy Blazer in the garage at unit 19 and bring the owner's truck from that garage to unit 91.

¶ 15 After dropping her children off at unit 19, McIsaac returned to defendant's trailer. When McIsaac returned, defendant was talking with his cousin. Defendant stated that he was hungry so McIsaac went to McDonald's to pick up food. After returning, McIsaac noticed that defendant's hand was cut. Defendant told her that he had cut it while working on the Chevy Blazer earlier in the day. However, defendant also told her that, if anyone asked about the injury, she should say that he had recently punched a door. According to McIsaac, there was a crack in a door of defendant's trailer that defendant caused when he punched it during the summer of 2011.

¶ 16 After defendant's cousin left, defendant and McIsaac sat on the bed eating. Defendant told her that he loved her and "seemed more serious than usual." McIsaac described him as getting "teary-eyed."

¶ 17 They fell asleep, and around 4:30 a.m. a pounding noise awakened McIsaac. When she woke defendant and asked him about the noise, he answered that it was probably at the neighbors'. After McIsaac fell back to sleep, a similar noise reawakened her. Defendant said he would check on the noise, and told McIsaac to make coffee. As she was making coffee, several police officers entered the trailer. The officers removed McIsaac, transported her to the police station, and interviewed her.

¶ 18 Detective Chad Roszkowiak, who was assigned to the task force, interviewed defendant at the Zion police department. Defendant was advised of, and waived, his *Miranda* rights. The interview was recorded on four DVDs, which were transcribed.

¶ 19 Detective Roszkowiak compared the DVDs to the accompanying transcript. According to Detective Roszkowiak, the transcript was substantially accurate when compared with the DVDs. The parties stipulated to the foundation for admission of the DVDs and the transcript. The jury was given the transcript to follow along when the DVDs were played.

¶ 20 Before the DVDs were played, the trial court read Illinois Pattern Jury Instructions, Criminal, No. 3.20 (4th ed. Supp. 2011) (hereinafter IPI 3.20) to the jury. That instruction provided, in pertinent part, that a transcript "only represents what the transcriber believes was said on the recording and merely serves as an aid when [the jury] listens to the recording. The recording and not the transcript is the evidence. If [the jury] perceive[s] a conflict between the recording and the transcript, the recording controls." See IPI 3.20. The DVDs were then played for the jury.

¶ 21 Detective Roszkowiak testified regarding the interview and the content of the DVDs. During Detective Roszkowiak's testimony, defense counsel advised the trial court that defendant had "pointed out that the transcript [was] inaccurate" when it stated that defendant said "I'm not the only person who killed her."¹ The court responded that, because the parties had stipulated to the accuracy of the transcript, it had allowed the jury to read it during the playing of the DVDs. The court stated that it would allow defendant to cross-examine Detective Roszkowiak regarding his recollection of what defendant said and the accuracy of the transcript. The court added that it would decide later whether to give the jury the transcript for their deliberations.

¶ 22 Detective Roszkowiak was asked whether during the interview he could hear what defendant said regarding who killed the victim. Detective Roszkowiak testified that, although defendant whispered, he was close enough to hear him say, "I'm not the only one person that killed her."

¶ 23 During cross-examination, Detective Roszkowiak acknowledged that one of the purposes of his interview was to get defendant to admit that he killed the victim. Although he testified that he could hear everything defendant was saying, he admitted that, at those places where the transcript indicated that the recording was "inaudible," he could not hear what defendant said. When asked whether there was any other part of the recording where he could hear what otherwise could not be heard, Detective Roszkowiak said no and that he could hear on the recording defendant say that he was not the only person who killed the victim. When he heard defendant say that he was not the only person who killed the victim, he considered that an admission of guilt. When asked why, after defendant admitted the crime, he merely told defendant that "he would work with him," and continued the interview, Detective Roszkowiak

¹ The transcript actually said "I'm not the only one person who killed her."

answered that he had missed what defendant said. When asked why he ignored defendant's admission, Detective Roszkowiak said that it had "slipped by [him]." Detective Roszkowiak explained that the reason why he would not let defendant talk, even though defendant kept telling him that he had something to say, was that he was afraid that defendant would "clamp up."

¶ 24 According to defendant, he knew the victim since 2003. They were friends who also had a sexual relationship. Defendant bought illegal drugs from the victim and would resell them.

¶ 25 On March 11, 2012, defendant was supposed to meet the victim in the location where she was found. They had met there several times before.

¶ 26 When defendant arrived, he saw the victim lying in the road next to her car. He leaned down next to the victim, then looked around to see what was going on or if anyone else was there. When he saw that he had blood on his hands, he got in his car, "ran like hell," and drove straight home.

¶ 27 When he arrived at home, he was "scared [and] confused" and did not know what to do. According to defendant, McIsaac left to pick up her children and he talked with his cousin. He said that his eyes teared up when he talked with McIsaac because he might have sent her to meet the victim.

¶ 28 Eventually, defendant fell asleep. He was awakened by noise outside that he thought might be the police looking for his neighbor. After he looked outside and saw no police around his home, he fell back asleep. When he reawoke from the same sound, he got up, looked outside, and saw a police car in front of his trailer. After he went outside, he was taken into custody, consented to a search of his home, and was transported to the Zion police department.

¶ 29 When asked what he said during the interview about who killed the victim, defendant answered that he said, "I'm not the person that killed her." He denied killing the victim.

¶ 30 On cross-examination, defendant admitted that he nicknamed the victim “dumb bitch” on his cell phone contact list. He gave her that nickname several years earlier, because he was mad at her. When asked to explain why he asked the victim if she was alone before meeting with her, defendant answered that he always asked her that before they met.

¶ 31 When asked why he texted the victim’s daughter after discovering the victim’s body, rather than calling for help, defendant answered that he “did not make the right decisions that night,” because he was afraid, but that this did not make him a killer. When asked why he sent the victim a text after he had found her, he explained that, because he assumed the police would want to talk with him, he was going to deny that he was there.

¶ 32 During closing argument, although the State discussed Detective Roszkowiak’s interview of defendant, it never mentioned defendant’s purported admission that he killed the victim. Defense counsel, however, in referring to the interview during closing, stated that defendant denied confessing and that the DVDs did not show that he confessed. He further argued that Detective Roszkowiak “put words in [defendant’s] mouth” and lied about hearing defendant admit to the killing. In rebuttal, the State again never mentioned defendant’s purported admission.

¶ 33 The trial court reread IPI 3.20 to the jury before deliberations. The court sustained defendant’s objection and prohibited the transcript from being given to the jury.

¶ 34 The jury found defendant guilty of all counts. Defendant filed a post-trial motion in which he contended, among other things, that it was improper to have allowed the jury to read the transcript during trial and to have permitted Detective Roszkowiak to testify to what defendant said on the recording regarding who killed the victim. In denying the post-trial motion, the trial court noted that the jury had the opportunity to watch the DVDs and to evaluate

Detective Roszkowiak's testimony in light of defendant's unrestricted cross-examination. The court sentenced defendant to 46 years' imprisonment, and defendant then filed this timely appeal.

¶ 35

II. ANALYSIS

¶ 36 On appeal, defendant contends that his trial counsel was ineffective for failing to challenge the foundation for the accuracy of the transcript and Detective Roszkowiak's testimony regarding his purported admission that he killed the victim. The State concedes that counsel was deficient in that regard but argues that defendant was not prejudiced.

¶ 37 To succeed on a claim of ineffective assistance of trial counsel, a defendant must establish both that counsel's representation fell below an objective standard of reasonableness and that there was a reasonable probability that, but for counsel's error, the outcome of the proceeding would have been different. *People v. Little*, 335 Ill. App. 3d 1046, 1052 (2003). A reasonable probability is one that is sufficient to undermine confidence in the outcome. *People v. Simpson*, 2015 IL 116512, ¶ 35. A reviewing court may dispose of an ineffectiveness claim on the prejudice prong alone. *People v. Munson*, 171 Ill. 2d 158, 184 (1996).

¶ 38 In this case, there is no doubt that, in light of the inconsistency between the recording and the transcript, counsel was deficient for stipulating to the accuracy of the transcript. Indeed, the State so concedes.

¶ 39 Nonetheless, we must decide whether that error was prejudicial. It was not. Although during trial the jury was permitted to read the transcript, the trial court first instructed the jury, pursuant to IPI 3.20, that if there were any conflicts between the recording and the transcript the recording controlled.² Moreover, the court instructed the jury immediately before deliberations,

² We note that there was a conflict between the two. Although the transcript states that

pursuant to IPI 3.20, that any conflict between the recording and the transcript was to be resolved in favor of the recording. Absent a showing otherwise, in light of those instructions, the jury would have accepted the recording over the transcript. See *People v. Nixon*, 2016 IL App (2d) 130514, ¶44 (there is a strong presumption that jurors follow a court's instructions). Additionally, the court did not allow the jury to have the transcript during deliberations, which further minimized its impact. Therefore, defendant suffered no prejudice from counsel's failure to challenge the accuracy of the transcript.

¶ 40 Defendant, however, contends that Detective Roszkowiak's testimony as to what defendant said on the recording aggravated the impact of allowing the jury to see the transcript. Detective Roszkowiak's testimony on this point was very weak. He stated that, at the interview, defendant's admission had "slipped by" him, but that he could hear it on the recording. That testimony, however, was refuted by the recording itself, which clearly showed that defendant's purported admission was inaudible. Just as we must presume that the jury credited the recording over the transcript, we must presume that the jury credited it over Detective Roszkowiak's testimony as to what it contained.

¶ 41 Even if the jury did find that defendant admitted during the interview to killing the victim, defendant suffered no prejudice in light of the overwhelming circumstantial evidence of his guilt. See *People v. Pollock*, 202 Ill. 2d 189, 217 (2002) (circumstantial evidence alone is sufficient to sustain a conviction). Defendant admitted to having been at the crime scene contemporaneously with the murder. The victim's blood was found in his home and vehicle. He failed to notify the police or seek any help for the victim, who was an intimate friend. When he

defendant said he was "not the only one person who killed [the victim]", the recording is inaudible at that point. That certainly creates a conflict within the meaning of IPI 3.20.

arrived home, he was surprised to see that McIsaac was still there. McIsaac observed a cut on defendant's hand and a stain that could have been blood on his wrist. Once defendant returned home, he took several steps to cover his tracks. For instance, he asked McIsaac for a plastic garbage bag in which to put his clothes, told her to put his vehicle in the garage at her residence, told her to tell anyone who asked that he hurt his hand punching a door, and took a shower. Even more incriminating, he texted the victim and her daughter after he had found the victim, as though he did not know that anything had happened. Defendant also ignored police efforts to contact him. All of the evidence of guilt, when viewed collectively, provided the jury with ample basis to find defendant guilty, irrespective of his purported admission.

¶ 42 Finally, we note that the State did not mention defendant's purported admission during closing argument or rebuttal. That further minimized any impact counsel's error had on the verdict. See *People v. Leger*, 149 Ill. 2d 355, 416 (1992) (State's failure to mention evidence introduced as a result of counsel's error minimizes any prejudice).

¶ 43 Defendant did not suffer any prejudice such that there was a reasonable probability that, but for counsel's error, the outcome of the trial would have been different. Thus, he has not established a claim of ineffective assistance of counsel.³

¶ 44

III. CONCLUSION

¶ 45 For the reasons stated, we affirm the judgment of the circuit court of Lake County. As part of our judgment, we grant the State's request that defendant be assessed \$50 as costs for this

³ We note that, after appellate counsel filed the opening brief, defendant filed a *pro se* motion seeking an order requiring appellate counsel to supplement the brief, which motion this court ordered taken with the case. We now deny the motion, as a party who is represented on appeal may not proceed *pro se*. *People v. Thompson*, 331 Ill. App. 3d 948, 951-52 (2002).

appeal. 55 ILCS 5/4-2002(a) (West 2014); see also *People v. Nicholls*, 71 Ill. 2d 166, 179 (1978).

¶ 46 Affirmed.