FIRST DIVISION
FILED: JANUARY 28, 2013

No. 1-10-1921

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County.
	)	
v.	)	No. 09 CR 2543
	)	
JUAN VALDEZ,	)	Honorable
	)	Jorge Alonso,
Defendant-Appellant.	)	Judge Presiding.

PRESIDING JUSTICE HOFFMAN delivered the judgment of the court.
Justices Cunningham and Rochford concurred in the judgment.

O R D E R

¶ 1 Held: The trial court did not err in admitting the defendant's confession into evidence or in allowing hearsay testimony, and the State presented sufficient evidence to prove the defendant's guilt beyond a reasonable doubt.

¶ 2 The defendant, Juan Valdez, appeals from his bench trial convictions and 6-year prison sentence for predatory criminal sexual assault, criminal sexual assault, and sexual relations within families. On appeal, the defendant argues that (1) the trial court erred in allowing his confession into evidence; (2) the trial court relied on improper hearsay evidence to find him guilty; and (3) the State failed to prove him guilty beyond a reasonable doubt. For the reasons that follow, we affirm the judgment of the trial court.

¶ 3 Before trial, the defendant filed a motion to suppress a confession he made to police, on the

ground that he gave it without validly waiving his Miranda rights. The State's first witness at the hearing on that motion, Officer Chavez, testified that he was brought to the scene of the defendant's arrest to serve as an English-Spanish translator for the defendant. Chavez recalled that he advised the defendant, in Spanish, of the defendant's Miranda rights and that the defendant indicated that he understood those rights. Chavez said that, at the conclusion of the Miranda warnings, the defendant indicated that he did not wish to speak with police.

¶ 4 Detective Emily Bellomy testified that she encountered the defendant at the police station and had a conversation with him in Spanish after noticing his broken English. She said the conversation began with her partner advising the defendant, in Spanish, of his Miranda rights and the defendant indicating that he understood the rights. Bellomy recalled that, after hearing his rights, the defendant agreed to talk to police and thereafter gave an oral confession. After the defendant's oral confession, police summoned prosecutor Ericka Graunke, who again advised him of his Miranda rights, through Bellomy's translation. Bellomy testified that the defendant again indicated that he understood his rights, again agreed to speak, and gave Graunke essentially the same confession he had already given. Bellomy said that the defendant was given an option as to how he wanted to memorialize his confession, and he stated that he wanted to give a written statement. According to Bellomy, Graunke then typed out a written statement. The defendant's Miranda rights appeared again on the first page of the typewritten statement, which Bellomy said was read to the defendant in Spanish. Bellomy recalled that the defendant once more indicated his understanding of his Miranda rights. Bellomy stated that the defendant was never told that he would be allowed to go home if he signed a confession. The written statement, which the defendant signed on every page, itself includes a passage stating, "[the defendant] states that he was not threatened and was not promised anything to give this and he is giving statement [sic] freely and voluntarily because he wants to." Detective Bellomy's partner, Detective Manuel de la Torre, also testified that the defendant was read his Miranda rights and indicated that he understood them.

¶ 5 In his testimony at the hearing on the motion to suppress, the defendant claimed that none

of the testifying police officers informed him of his Miranda rights before his confession, and they did not translate the typewritten summary of his Miranda rights on his statement before he signed it. The defendant also said that he was told that, if he signed the written statement, he would be allowed to go home. He said the document was never translated for him. He also testified that he and the police did not discuss the accusations against him, but instead made only small talk.

¶ 6 At the conclusion of the hearing, the trial court stated that the motion to suppress distilled to "basically a matter of credibility," and the judge found the State's witnesses to be more credible than the defendant. In so ruling, the judge made particular note of the defendant's incredible assertion that police confined their interrogation of the defendant to small talk. For those reasons, the judge found that the defendant had understood his Miranda rights and validly waived them, and she denied the defendant's motion to suppress.

¶ 7 Still before trial, the State moved for a hearing on its motion to introduce hearsay testimony from two witnesses–Deanne Korycki and Razyia Lumpkins–pursuant to section 115-10 of the Code of Criminal Procedure (Code) (725 ILCS 5/115-10 (West 2008)). At the hearing, Korycki, a nurse, testified that she treated the victim on the morning of January 12, 2009. Korycki testified that, in the presence of the victim's mother, the victim tearfully recalled that her father (the defendant) sexually assaulted her. Lumpkins, a forensic interviewer, testified that she interviewed the victim on January 12. Lumpkins recalled determining that the victim could distinguish between the truth and a lie, then asking the victim what had brought her to the interview. According to Lumpkins, the victim then described the defendant's sexually assaulting her. The defendant presented the victim's mother, B.V., to testify. B.V. testified that, approximately one week after her interviews, the victim asked whether she would get into trouble if she had lied. B.V. further recalled that, on March 4, the victim recanted her accusations and explained that she had raised them because she was upset with the defendant. At the conclusion of the hearing, the court found that the two witnesses' testimony was sufficiently reliable to be admitted into evidence at trial. The court noted that the defense could raise the recantation issue to discredit the testimony at trial.

¶ 8 At trial, Bellomy testified as the State's first witness. After describing the defendant's waiving his Miranda rights, Bellomy said that the defendant claimed early in their conversation that he had been trying to teach his daughter sex education by placing his finger in her vagina. Bellomy also described reading the defendant's typewritten statement to him (in Spanish) after Graunke typed it out, and she said that the defendant signed the statement. Bellomy added that the written statement reflected what the defendant had been saying in Spanish. The statement, which was admitted into evidence and published to the jury, indicated that the defendant laid down in the victim's bed and, soon after, placed his finger in the victim's vagina. The statement further describes the victim's leaving her bedroom and going to her mother's room. According to the statement, the victim's mother then angrily confronted the defendant.

¶ 9 The victim testified that, at the time of the alleged assault, the defendant lived with her, her mother, and her sisters. She recalled that, on the night of the alleged assault in January, she had gone to sleep in her room at approximately 7:00 p.m. She said that her father did not come into her room and wake her up that night. The victim agreed that she told a nurse and a forensic interviewer that her father had sexually assaulted her. She also acknowledged having signed an affidavit stating that, on the morning of January 12, the defendant climbed into her bed and put his finger in her vagina. However, the victim testified that, in truth, the defendant never actually assaulted her. The victim recalled that she met with prosecutors in March to recant her allegations, which she said she had raised because she was upset with her father and did not want him to live in her house. She agreed that, during that conversation with prosecutors, she vacillated once more and repeated her allegations against the defendant, but she testified that she did so only because the prosecutors became angry and coerced her compliance.

¶ 10 Edith Cruz, a victim witness specialist for the Cook County State's Attorney, testified that she met with the victim on March 12, 2009. Cruz recalled that the victim initially said that "nothing happened between [her] and her dad" and that she felt "guilty" for the situation. After the victim's recantation, Cruz told her "that it was ok to talk" and that "it was not her fault." According to Cruz,

the victim then began to cry and stated that her father had, in fact, touched her. Cruz testified that the victim further explained that she had tried to recant her allegations because she worried about the jail conditions the defendant would have to endure. Cruz said that the victim then repeated her allegations against the defendant, by describing the defendant's entering her bedroom, telling her to take off her pants, and putting his finger in her vagina. Cruz testified that she did not "yell" at the victim at any point in the conversation.

¶ 11 Detective de la Torre testified that, after waiving his Miranda rights, the defendant said that he had put his hand in the victim's vagina in order to "teach her about sex education." After de la Torre's testimony, the parties entered into a stipulation that, if called to testify, Korycki and Lumpkins would testify exactly as they had at the pretrial hearing.

¶ 12 Recalled as witness in the defendant's case-in-chief, the victim reiterated her recantation of the allegations against the defendant, as well as her reasons for recanting and for raising the allegations in the first place. The victim also repeated that prosecutors screamed at her in their March meeting.

¶ 13 The victim's mother, who was still the defendant's wife at the time of trial, testified that, on the morning of January 12, 2009, the victim came to her bedroom and told her that the defendant had touched her. The mother recalled reacting angrily and calling police, who arrested the defendant. She said that, less than two weeks later, the victim approached her and asked if she would be in trouble if she had lied. According to the mother, in March the victim initiated another conversation in which she admitted having fabricated her allegations against the defendant. During cross-examination, the mother denied having told Cruz and an assistant state's attorney that, when she initially confronted the defendant on January 12, he responded by admitting his guilt and daring her to call the police.

¶ 14 As a witness in his own defense, the defendant testified that he had a rocky relationship with the victim near the time of the alleged assault. He admitted that he signed a statement for the police, but he claimed not to have been apprised of its contents, which were written in English. The

defendant denied having confessed to police, and he in fact denied having touched the victim inappropriately. Instead, he agreed that he had laid down in the victim's bed, but he said he did not touch her and did not know why she left and went to her mother's room. He said that he signed the statement for police because he was told he would be allowed to go home if he did so.

¶ 15 In rebuttal, the State recalled Cruz to discuss her interaction with the victim's mother on March 12. According to Cruz, the mother stated that she learned from the victim that the defendant had touched her inappropriately. Cruz said that the mother then "confronted him and told him, 'Did you do that,' and he said, 'Yes, I did, so what are you going to do about it, are you going to call the police,' and handed his phone to her."

¶ 16 After hearing closing arguments, the trial court noted the victim's recantations but found them not to be credible. The judge also found the defendant's testimony, which was based on the notion that he did not know why police were interrogating him despite the earlier confrontation with his wife, to be incredible. Instead, the court found that the defendant admitted his crimes to his wife and to police and that his admissions were corroborated by the victim's initial outcry as well as her later statements to Korycki and Lumpkins. Based on that evidence, the court found the defendant guilty of predatory criminal sexual assault, criminal sexual assault, and sexual relations within families. The defendant was sentenced to 6 years' imprisonment. He now appeals.

¶ 17 At the outset, we note both parties' observation that the defense did not raise many of his current contentions of error via timely objections and a post-judgment motion. Normally, such omissions would preclude our consideration of the defendant's arguments. See People v. Enoch, 122 Ill. 2d 176, 186, 522 N.E.2d 1124 (1988). However, the defendant asserts that, to the extent he failed to preserve his arguments properly for appeal, we should consider them either under the plain-error doctrine or as instances of ineffective assistance of counsel. "[T]he plain-error doctrine allows a reviewing court to consider unpreserved error when (1) a clear or obvious error occurred and the evidence is so closely balanced that the error alone threatened to tip the scales of justice against the defendant, regardless of the seriousness of the error, or (2) a clear or obvious error occurred and that

error is so serious that it affected the fairness of the defendant's trial and challenged the integrity of the judicial process, regardless of the closeness of the evidence." People v. Piatkowski, 225 Ill.2d 551, 565, 870 N.E.2d 403 (2007). An ineffective-assistance-of-counsel argument, on the other hand, is presented to vindicate an accused's constitutional right to capable legal representation at trial. People v. Wiley, 165 Ill.2d 259, 284, 651 N.E. 2d 189 (1995). Under the two-part test articulated in Strickland v. Washington, 466 U.S. 668 (1984), a defendant alleging ineffective assistance of counsel will prevail only where he is able to show that (1) counsel's performance fell below an objective standard of reasonableness; and (2) there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different. People v. Albanese, 104 Ill.2d 504, 525, 473 N.E. 2d 1246 (1984) (adopting Strickland). To succeed under either test, the defendant must demonstrate that he suffered some prejudicial error. That is, to establish plain error, the defendant must first demonstrate error (Piatkowski, 225 Ill.2d at 565), and, in this context, to establish ineffective assistance of counsel, a defendant must demonstrate that counsel's timely objection would have changed the result of his trial (see Albanese, 104 Ill. 2d at 525). We find no such error here, and so, even through the lenses of plain error or ineffective assistance of counsel, we see no grounds for reversing the defendant's convictions.

¶ 18 Although the defendant presents his appeal as seven discrete arguments, each with several sub-arguments, we divide his objections into three for clarity of analysis. Under that division, the defendant's first argument on appeal is that the trial court erred in declining to suppress his written confession.

¶ 19 To that end, the defendant first contends that his confession should have been suppressed as a violation of his Miranda rights. "A court of review will accord great deference to the trial court's factual findings, and will reverse those findings only if they are against the manifest weight of the evidence; however, the court will review de novo the ultimate question posed by the legal challenge to a trial court's ruling on a motion to suppress." People v. Braggs, 209 Ill. 2d 492, 505, 810 N.E.2d 472 (2003). "Where a defendant challenges the admissibility of his confession through a motion to

suppress, the State has the burden of proving the confession was voluntary by a preponderance of the evidence." Braggs, 209 Ill. 2d at 505 (citing 725 ILCS 5/114–11(d) (West 2000)). The concept of voluntariness includes proof that the defendant made a knowing and intelligent waiver of his privilege against self-incrimination and his right to counsel. Braggs, 209 Ill. 2d at 505; see Miranda v. Arizona, 384 U.S. 436 (1966). In order to be valid, defendant's waiver of Miranda rights must be made knowingly and intelligently, i.e., reflect an intentional relinquishment or abandonment of a known right or privilege. People v. Daniels, 391 Ill. App. 3d 750, 781, 908 N.E.2d 1104 (2009).

¶ 20 The defendant argues that he could not have knowingly and intelligently waived his Miranda rights, because the written form that memorializes his waiver is written in English, a language he cannot read. However, at the hearing on the defendant's motion to suppress, several witnesses testified that he was informed of his Miranda rights several times orally and in Spanish and that he agreed to speak with police after indicating an understanding of those rights. The defendant also overlooks testimony that he did not sign the written form until after it was read aloud to him in Spanish. Although the defendant himself testified that his rights were never explained to him, the trial court found his testimony to be incredible. Given this preponderance of evidence indicating that the defendant was informed of his rights, we cannot say the trial court's finding on that fact was against the manifest weight of the evidence.

¶ 21 The defendant further asserts that his waiver could not have been valid because it was induced by a promise that he would be released. However, again, although this assertion matches the defendant's testimony, it contradicts the remaining testimony, which the trial court found to be more credible. Based on this record, we see no reason to question the court's credibility finding. Also based on the evidence that the defendant understood his rights and waived them, we reject his argument that his waiver was invalid because he believed Graunke to be his attorney and not a prosecutor.

¶ 22 The defendant also contends that his confession should not have been admitted into evidence because it was not attributable to him and that it was inadmissible hearsay. To support the former

point, the defendant relies on his assertion that the confession did not accurately represent his conversation with police. That assertion, however, goes to the credibility and weight of the confession evidence, not its admissibility; even if the defendant did not adopt the contents of the confession as his own statement at trial, the State produced testimony to say that it matched his confession. Further, the defendant admitted that he signed the confession.

¶ 23 As for the hearsay argument, the confession very clearly constitutes a party admission, which becomes admissible even if it is hearsay. See People v. Donegan, 2012 IL App (1st) 102325, ¶ 67. The defendant points out that the proponent of such evidence must make a foundational showing that the declarant read and understood the statement (see People v. Nance, 100 Ill. App. 3d 1117, 1122, 427 N.E.2d 630 (1981) (discussing prior inconsistent statements)), but, for the reasons just discussed, the State made a very strong foundational showing here. As a result, we reject the defendant's argument that his confession should have been suppressed from evidence.

¶ 24 The defendant's second argument on appeal is that his trial was rendered unfair by the admission of several pieces of improper hearsay evidence. The defendant first identifies a written statement prepared by the victim on March 12. However, as the State observes, that statement was not admitted into evidence. Since the document was not admitted into evidence at all, we must reject the defendant's contention that it was admitted improperly. Further, to the extent the defendant argues that the trial court improperly relied on the written statement to find him guilty, we conclude that the error is harmless beyond a reasonable doubt. The exclusion of admissible evidence will not result in reversal of a conviction unless the evidence reasonably could have affected the verdict. *People v. Sipp*, 378 Ill. App. 3d 157, 171 (2007). Here, the victim's written statement could have, at most, helped establish that the victim was vacillating between accusing and vindicating the defendant. That point, however, was very clearly established by testimony from several witnesses (including the victim), and it is assumed by both parties. Thus, the admission of additional evidence to prove that point hardly could have affected the verdict in this case.

¶ 25 The defendant also takes issue with the admission of Cruz's testimony regarding the victim's

statements to her on March 12. According to the defendant, that testimony, which the trial court seemingly relied on in noting the victim's changing recollection of events, should not have been considered as substantive evidence. However, we disagree with the defendant that this portion of Cruz's testimony constituted hearsay. Hearsay is testimony in court, or written evidence, of an out-of-court statement offered as proof of its own truth. See People v. Carpenter, 28 Ill. 2d 116, 121, 190 N.E.2d 738 (1963). Cruz's testimony was not offered to show the truth of the victim's allegations directly; rather, it was presented after the victim's testimony as a demonstration of her lack of fealty to her recantation. As the State observes, such prior inconsistent statements are admissible to help impeach a witness even if they would otherwise be considered hearsay. See People v. McCarter, 385 Ill. App. 3d 919, 932, 897 N.E.2d 265 (2008). Although the defendant argues that the trial court considered Cruz's testimony for something other than impeachment, our reading of the trial court's ultimate ruling leaves us with the opposite impression: the court mentioned the victim's changing story as part of a discussion of the credibility of the witnesses. For these reasons, we reject the defendant's contention that Cruz's testimony was admitted improperly.

¶ 26 The defendant also takes issue with Cruz's testimony that the victim's mother told her that the defendant admitted having assaulted the victim. Again, the defendant argues that this testimony constituted inadmissible hearsay. However, this testimony from Cruz, which was offered in the State's rebuttal case, followed the mother's testimony denying that the defendant had made the admission. Thus, it served to impeach the mother's testimony and was admissible for that purpose.

¶ 27 Finally, the defendant argues that the hearsay testimony of Korycki and Lumpkins should not have been admitted, because there were insufficient indicia of the reliability of the statements they repeated. The disputed testimony was admitted pursuant to section 115-10 of the Code, which allows hearsay evidence of a child-victim's out of court statement describing the assault if "[t]he court finds in a hearing *** that the time, content, and circumstances of the statement provide sufficient safeguards of reliability." 725 ILCS 5/115-10(b) (West 2008). A reviewing court will reverse a trial court's determination on this point only when the record demonstrates that the court

abused its discretion. People v. Sharp, 391 Ill. App. 3d 947, 956, 909 N.E.2d 971 (2009). An abuse of discretion occurs when the court's ruling is arbitrary, fanciful, or unreasonable, or when no reasonable person would take the same view. Sharp, 391 Ill. App. 3d at 956 (quoting People v. Robertson, 312 Ill. App. 3d 467, 469, 727 N.E.2d 404 (2000)).

¶ 28 The defendant contends that Korycki's and Lumpkins's testimonies were not reliable because of the "multiple contradictory recantations by the complainant." However, there were several circumstances to indicate that the victim's statements to those two witnesses were reliable, indeed even more reliable than her later recantations. The victim's statements to those two witnesses came soon after the alleged assault, and they described it in some detail. Further, the victim was clearly distraught when she reported her allegations to Korycki. Based on these circumstances, we cannot say that the trial court's assessment–that the statements were reliable even in light of the recantations–was an abuse of discretion.

¶ 29 The defendant's final argument on appeal is that the State presented insufficient evidence to prove him guilty beyond a reasonable doubt. When a defendant challenges the sufficiency of the evidence, the appellate court must determine "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." Jackson v. Virginia, 443 U.S. 307, 319 (1979); People v. Cunningham, 212 Ill. 2d 274, 278, 818 N.E.2d 304 (2004). In such a case, it is not the role of the reviewing court to retry the defendant. People v. Sutherland, 223 Ill.2d 187, 242, 860 N.E.2d 178 (2006). A criminal conviction will not be set aside on the grounds of insufficient evidence unless the evidence is so unreasonable, improbable, or unsatisfactory as to justify a reasonable doubt of the defendant's guilt. People v. Brown, 169 Ill. 2d 132, 152, 661 N.E.2d 287 (1996). In reviewing the evidence we will not substitute our judgment for that of the trier of fact. Sutherland, 223 Ill. 2d at 242; People v. Collins, 214 Ill. 2d 206, 217, 824 N.E.2d 262 (2005). The determination of the weight to be given the witnesses' testimony, their credibility, resolution of inconsistencies and conflicts in the evidence, and reasonable inferences to be drawn from the testimony are the responsibility of the

trier of fact. Sutherland, 223 Ill. 2d at 242.

¶ 30 The evidence against the defendant was quite strong in this case. The centerpiece of the State's case was, of course, the defendant's written confession. The defendant observes that, in Illinois, the rule exists that "proof of the corpus delicti may not rest exclusively on a defendant's extrajudicial confession, admission, or other statement." People v. Furby, 138 Ill. 2d 434, 446, 563 N.E.2d 421 (1990). Instead, "the prosecution must present evidence aliunde the defendant's confession that tends to show the commission of the offense and is corroborative of the circumstances related in the statement." Furby, 138 Ill. 2d at 446. Once the State has presented such evidence, the court may "consider the independent evidence together with the *** confession[] in determining whether the corpus delicti has been established." Furby, 138 Ill. 2d at 453. "To avoid running afoul of the corpus delicti rule, the independent evidence need only tend to show the commission of a crime. It need not be so strong that it alone proves the commission of the charged offense beyond a reasonable doubt." People v. Lara, 2012 IL 112370, ¶ 18.

¶ 31 Here, the State offered several pieces of evidence to establish that the victim accused the defendant of committing the very acts to which he confessed. This evidence satisfies the relatively low requirement that it "tend" to corroborate his confession. Thus, we may consider that evidence alongside his confession to evaluate his guilt. Taken together, that evidence lends overwhelming support to the trial court's finding that the defendant committed the crimes of which he was accused. Accordingly, we reject the defendant's argument that the State failed to prove him guilty beyond a reasonable doubt.

¶ 32 For the foregoing reasons, we affirm the judgment of the circuit court.

¶ 33 Affirmed.