

2015 IL App (1st) 132665-U
No. 1-13-2665
December 22, 2015

SECOND DIVISION

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).

IN THE
APPELLATE COURT OF ILLINOIS
FIRST DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the Circuit Court
)	Of Cook County.
Plaintiff-Appellee,)	
)	
v.)	No. 02 CR 10939
)	
STEVEN JACKSON,)	The Honorable
)	Joseph Kazmierski,
Defendant-Appellant.)	Judge Presiding.

JUSTICE NEVILLE delivered the judgment of the court.
Presiding Justice Pierce and Justice Hyman concurred in the judgment.

ORDER

¶ 1 *Held:* Where the defendant failed to present evidence sufficient to overcome the presumption that counsel had strategic reasons for not filing a motion to suppress the defendant's statements and for not objecting to evidence that a codefendant raped the murder victim, the trial court correctly dismissed the defendant's postconviction petition without holding an evidentiary hearing.

¶ 2 This case arises on appeal from a second stage dismissal of Stephen Jackson's postconviction petition. A jury found Stephen guilty of home invasion and murder. In his postconviction petition, Stephen argued that his trial counsel provided ineffective assistance

when counsel chose not to file a motion to suppress Stephen's video recorded confession, and when counsel did not object to evidence that a codefendant raped the murder victim. We find that the evidence Stephen has presented does not overcome the presumption that sound trial strategy led to both of the decisions challenged on appeal. Accordingly, we affirm the dismissal of the postconviction petition.

¶ 3

BACKGROUND

¶ 4

On April 1, 2002, four men entered Tonette Waters's apartment and ransacked it. One of the men shot Waters. Police responding to a call about the shooting found Waters's naked corpse on her bathroom floor. The pathologist took a vaginal swab and sent the swab to a DNA lab.

¶ 5

On April 2, 2002, James Chatman, who lived near Waters, brought a gun to the home of a police officer who lived in the same neighborhood. Chatman told the officer that Chatman believed the gun may have discharged the bullet that killed Waters. Forensic tests confirmed Chatman's belief. The following investigation led police to arrest Bishara Thomas and to look for Stephen. Police spoke to Stephen's sister, Tiffany Jackson, who told them about a conversation she had with Stephen on April 1, 2002. She called Stephen and persuaded him to turn himself in to the police.

¶ 6

Police officers video recorded their interview with Stephen. A grand jury charged Stephen with home invasion and murder.

¶ 7 Defense counsel set a date for a hearing on a motion to suppress Stephen's statements to police. However, on the date set for hearing, counsel said that he had spoken with Stephen, and he no longer sought to file a motion to suppress the statements.

¶ 8 At the trial, Chatman testified that on April 1, 2002, Thomas came to Chatman's home and went to the basement. Chatman saw Stephen outside, standing next to Stephen's car, where Stephen already had two other passengers. Thomas left in Stephen's car. He returned alone to Chatman's home about 25 minutes later, and threw Chatman's gun onto Chatman's couch. Thomas said, "We just did something with this." Thomas told Chatman to hide the gun. When Chatman heard that someone shot Waters, he decided instead to give the gun to a police officer he knew.

¶ 9 A witness testified that the swab of Waters's vagina held Thomas's semen, and showed no traces of DNA from anyone other than Thomas and Waters.

¶ 10 Tiffany testified that she saw Stephen with two other men in his car on April 1, 2002. Later that night, their mother told Stephen and Tiffany that someone had killed Waters. Stephen and Tiffany went to another room where they had a ten minute conversation. The prosecutor did not ask Tiffany what Stephen said. Tiffany testified that she and Stephen went to Waters's apartment building, which police had surrounded. Thomas called her cellphone and asked to speak to Stephen. After Stephen spoke with Thomas, he had another conversation with Tiffany. Again, the prosecutor did not ask Tiffany what Stephen said.

¶ 11 At the conclusion of Tiffany's direct testimony, defense counsel asked for a sidebar. Counsel said,

"The State didn't bring out any other contents of the conversation that [Tiffany] had with Ste[ph]en. Ste[ph]en made admissions, which I believe are admissible, as far as planning and what happened in this case.

I am sorry that I didn't bring this up sooner. I thought the State was going to elicit [Stephen's] statements from Ms. Jackson.

Before I do something in front of the jury that is going to be objected to, I would just like a ruling from the Court allowing me to go into those conversations. And if you do, I think I am entitled to go into all of the conversations, including the parts where she says, I know Bishara went back in. It wasn't supposed to go that way; *** [Waters] wasn't supposed to be injured in any way."

¶ 12 The court did not allow defense counsel to elicit from Tiffany the testimony he sought about Stephen's statements to Tiffany.

¶ 13 The prosecution then played for the jury Stephen's video recorded statement. Stephen said that Thomas called him and asked him to join in a robbery. Stephen agreed. Thomas picked up a gun from Chatman's home, and Stephen took Thomas and two other men in Stephen's car to Waters's apartment. When Waters answered her door, all four men rushed in and started searching for drugs and money. To intimidate her, Stephen told Waters to take off her clothes. When they found no drugs and no money, Stephen said they should leave. All four left. Thomas turned around with a "crazy look" on his face and went back into the apartment. Stephen and the two other men waited at the car, and when Thomas did not come

out, they drove off. Stephen told Tiffany about the attempted burglary after their mother told them that someone had killed Waters. Stephen said to Tiffany that he believed Thomas had shot Waters.

¶ 14 Defense counsel argued in closing that Stephen committed a home invasion, but not murder, because Thomas separately, after the completion of the home invasion, went to the apartment and raped and murdered Waters. The jury found Stephen guilty on both counts. The trial court sentenced Stephen to consecutive terms of 60 years for murder and 30 years for home invasion. This court affirmed the convictions and sentence. *People v. Jackson*, No. 1-05-3927 (2008) (unpublished order under Supreme Court Rule 23).

¶ 15 Stephen filed his postconviction petition on July 14, 2010. The extensive petition includes many factual allegations and much legal argument, but his argument for this appeal focuses on a few specific allegations. He claimed that his trial counsel provided ineffective assistance when he failed to file a motion to suppress Stephen's statements as coerced, and when he failed to file a motion to bar testimony concerning the discovery of Thomas's semen in Waters's vagina. Stephen specifically alleged that police kept Tiffany at the police station while they questioned Stephen, "sending her into the interrogation room to tell [Stephen] that if he confessed to the home invasion, he would not be charged with murder and that [Tiffany] could go home." In an affidavit attached to the postconviction petition, Tiffany said,

"[T]he detectives told me that if I got my brother to admit that he had committed a home invasion, that he would not be charged with murder, and *** I could then go home.

*** When I talked to my brother in the interrogation room, I was crying and told my brother that he should tell the detectives that he was involved in the home invasion, so they won't charge him with the murder of Tonette Waters, and that if he did so, the detectives will also let me go home."

¶ 16 Stephen's affidavit corroborated Tiffany's account of their conversation at the police station. Stephen also said that a detective told him that if he did not confess to home invasion, the detective would charge Tiffany as an accomplice. Stephen told his attorney about the coercion the police used to get him to make the video recorded statement, and he asked the attorney to file a motion to suppress the statement. The attorney promised to file the motion, but finally failed to file it.

¶ 17 The circuit court advanced the postconviction petition to the second stage of postconviction proceedings, appointing an attorney to assist Stephen with the petition. The attorney filed a certificate stating that after consulting with Stephen and examining the trial transcript, he found that the postconviction petition adequately presented Stephen's claims.

¶ 18 The trial court granted the State's motion to dismiss the postconviction petition. Stephen now appeals.

¶ 19 ANALYSIS

¶ 20 At the second stage of postconviction proceedings, the court must accept as true all facts well pleaded in the petition or stated in supporting affidavits, unless the record rebuts the assertions. *People v. Pendleton*, 223 Ill. 2d 458, 473 (2006). The circuit court should grant

an evidentiary hearing only if the postconviction petitioner makes a substantial showing of a violation of his constitutional rights. *People v. Harris*, 206 Ill. 2d 293, 299-300 (2002). We review *de novo* the dismissal of a postconviction petition at the second stage of postconviction proceedings. *People v. Simpson*, 204 Ill. 2d 536, 547 (2001).

¶ 21 Stephen argues that he made a substantial showing that his trial counsel provided ineffective assistance when he failed to move to suppress Stephen's video recorded statement and when he did not move to bar the prosecution from presenting evidence that Waters's vagina held some of Thomas's semen.

¶ 22 Motion to Suppress

¶ 23 Generally, a decision as to whether to file a motion to suppress is "a matter of trial strategy which will be accorded great deference." *People v. Wilson*, 164 Ill. 2d 436, 454 (1994). Our supreme court further explained the need for deference in *People v. Fuller*, 205 Ill. 2d 308 (2002), where the court said:

"In recognition of the variety of factors that go into any determination of trial strategy, courts have held that such claims of ineffective assistance of counsel must be judged on a circumstance-specific basis, viewed not in hindsight, but from the time of counsel's conduct, and with great deference accorded counsel's decisions on review. [Citations.] A defendant is entitled to reasonable, not perfect, representation, and mistakes in strategy or in judgment do not, of themselves, render the representation incompetent. [Citation.] Counsel's strategic choices are virtually unchallengeable. Thus, the fact that another attorney might have pursued a

different strategy, or that the strategy chosen by counsel has ultimately proved unsuccessful, does not establish a denial of the effective assistance of counsel."

Fuller, 205 Ill. 2d at 330-31.

¶ 24

The record on appeal shows that counsel discussed with Stephen the coercive circumstances in which Stephen made the video recorded confession to police. The record also shows that counsel knew Stephen had talked to Tiffany about the burglary, and that what Stephen told her matched closely the account he gave to police. The record shows that counsel concluded that the court would find Stephen's statements to Tiffany admissible even if counsel could persuade the court to exclude from evidence the video recording of Stephen's confession to police. In light of the admissibility of Stephen's confession to Tiffany, counsel made a strategic choice not to contest the charge of home invasion. Instead, he emphasized the evidence, in Stephen's video recorded confession and in his statements to Tiffany, that all four of the home invaders left Waters's apartment, leaving her physically unharmed, and then Thomas, on his own, returned to Waters's home and raped and killed her. The strategic choice left Stephen in need of the evidence from the video confession, and led trial counsel not to move to suppress the confession. We cannot say that Stephen has overcome the presumption that sound trial strategy supported the decision not to file a motion to suppress the video recorded confession. See *People v. Snowden*, 2011 IL App (1st) 092117, ¶ 70. We agree with the trial court's finding that the failure to file a motion to suppress statements does not substantially show ineffective assistance of counsel.

¶ 25

Rape

¶ 26

Defense counsel also did not move to bar evidence that Thomas raped Waters before murdering her. In light of Stephen's admissible confession to Tiffany, counsel decided to pursue a strategy of distancing Stephen as much as possible from Thomas's decision to return to Waters's apartment alone, after all the men left. Without evidence of rape, Thomas's decision to return to the apartment and murder Waters might appear to complete the home invasion by killing the potential witness. See *People v. Johnson*, 55 Ill. 2d 62, 69 (1973). The rape, in which Stephen and the other men did not participate, offered a separate motive, and arguably made the murder solely Thomas's responsibility. We find that the evidence supporting the postconviction petition does not overcome the presumption that sound trial strategy led to the decision not to contest the evidence of rape. We find that the failure to object to the evidence that Waters's vagina held Thomas's semen does not substantially show ineffective assistance of counsel.

¶ 27

CONCLUSION

¶ 28

Trial counsel recognized that if the prosecution sought to use Stephen's confession to Tiffany, the trial court would admit it into evidence. In light of that confession, counsel apparently adopted a strategy of conceding Stephen's guilt for the home invasion, and arguing that the jury should not hold Stephen accountable for Thomas's separate act of returning to the apartment and raping and murdering Waters. Both Stephen's statement to the police and the evidence that Thomas raped Waters helped the defense with the strategy of distancing Stephen from the murder. Under the circumstances shown by the record in this

case, we find that the allegations of the postconviction petition do not overcome the presumption that sound trial strategy led to counsel's decisions. We hold that the circuit court properly dismissed Stephen's postconviction petition because Stephen failed to make a substantial showing of ineffective assistance of counsel.

¶ 29 Affirmed.