2012 IL App (2d) 110672-U
No. 2-11-0672
Order filed December 10, 2012

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS, Plaintiff-Appellee, v. MAURICE BOWEN, Defendant-Appellant.	))))))))))	Appeal from the Circuit Court of Winnebago County. No. 09-CF-2252 Honorable Gary V. Pumilia, Judge, Presiding.

JUSTICE JORGENSEN delivered the judgment of the court.
Presiding Justice Burke and Justice Schostok concurred in the judgment.

ORDER

¶ 1 *Held*: (1) Defense counsel was not ineffective for failing to more extensively impeach the victim with her prior statement, as the inconsistencies were minor, the trial court was already aware of inconsistency, and the victim's testimony, unlike defendant's, was supported by physical evidence; (2) defense counsel was not ineffective for failing to seek the admission of the prior statement as substantive evidence, as the inconsistencies were so minor that they would not have qualified for admission under section 115-10.1 and, in any event, would not have affected the outcome of the trial.

¶ 2 Following a bench trial, defendant, Maurice Bowen, was convicted of home invasion (720 ILCS 5/12-11(a)(2) (West 2008)) and aggravated criminal sexual assault (720 ILCS 5/12-14(a)(l) (West 2008)). He was sentenced to consecutive terms of 15 years for home invasion and 25 years

for aggravated criminal sexual assault. This timely appeal followed. On appeal, defendant argues that his trial counsel was ineffective for failing to (1) impeach the complaining witness with the written statement she gave to the police and (2) use the complaining witness's written statement to the police as substantive evidence to corroborate defendant's testimony and defense of consent. For the reasons that follow, we affirm.

¶ 3 The facts relevant to resolving this appeal are as follows. D.L. testified that, on July 9, 2009, at approximately 10:30 or 11 p.m., she was returning to her apartment after being out with friends. The light illuminating the outer door of D.L.'s apartment was burned out, so she unlocked that door and left it open while she unlocked the inner door leading into her apartment. D.L. left the second door open, walked into the apartment to set down some food she was carrying, and was returning to lock the first door when she saw defendant standing halfway through the first door. D.L., who did not know defendant, believed that she might have asked defendant something like, "[W]hat do you want?" Defendant did not say anything. Rather, D.L. testified, defendant punched her in the nose, blackening both of her eyes, and, as a result of the punch, blood "threw out everywhere."

¶ 4 After defendant punched her in the nose, defendant grabbed D.L. by the hair and dragged her into her bedroom. Defendant punched D.L. in the face again, causing D.L. to fall over on to the bed face down. While D.L. was in this position, defendant attempted to pull her pants down.

¶ 5 When D.L. fell on to the bed, the cell phone she was carrying in her bra fell out. D.L. grabbed that phone and used it to call 911 twice. As D.L. was attempting to give the 911 operator her address, defendant saw that D.L. was on the phone, grabbed the phone, and broke it. In the process of breaking the phone, the phone fell on to the floor in the bedroom.

¶ 6 Defendant then dragged D.L., who still had her pants on, across the bed, got on top of her with his knees on her shoulders, and told her to fellate him. D.L. threw defendant off of her, grabbed a glass heart-shaped jewelry box she kept on her headboard, and began hitting defendant on the head with it. Defendant, who was throwing D.L. against the bedroom wall as she was trying to hit defendant with the jewelry box, took the jewelry box away from D.L. and began hitting her with it.

¶ 7 Thereafter, D.L. got on to her bed. Defendant ran his fingers through his hair, discovering that he was bleeding. Defendant turned to D.L. and said," 'Bitch, you made me bleed.' " Enraged because D.L. had injured him, defendant took D.L.'s pants off and attempted to have anal sex with her. While D.L. was trying to fight, defendant rolled D.L. over on to her back and defendant had vaginal sex with her. As that was happening, defendant demanded that D.L. " '[act] like it[was] the best [she'd] ever had' " and that she " '[l]ay there and enjoy it.' "

¶ 8 After defendant ejaculated, he left to get a bottle of water from D.L.'s refrigerator. While defendant was out of the room, D.L. attempted to open the window in her bedroom and escape. Defendant returned to the bedroom, saw what D.L. was trying to do, and ripped the shade as he was trying to prevent D.L. from leaving. Defendant then grabbed the jewelry box and told D.L., who was sitting on the bed, to lie face down on the bed with a pillow over her head. Afraid that defendant was going to kill her, D.L. refused to do so, opting instead to sit on the floor near the closet. D.L. asked defendant if she could go to the bathroom, and defendant denied her request, saying "piss on [yourself]."

¶ 9 Defendant then left the room, returning a short time later to ask D.L. for the keys to her car. D.L. pointed to where her keys were, defendant left the apartment with the keys, D.L. put on her son's jacket, and she ran next door to the neighbor's apartment.

¶ 10 During her testimony, D.L. was shown numerous exhibits. For example, D.L. was shown People's Exhibit No. 11, which was a picture of blood on the floor. When D.L. was asked to identify it, she stated that it was blood from "either" the "bedroom or the front hallway." D.L. was also shown People's Exhibit No. 16, which was a picture of the window in her bedroom. The window is closed, locked, and several feet above the floor. In addition, D.L. was shown a photograph of her broken phone. The phone is shown on the floor in the bedroom, by the corner of D.L.'s bed.

¶ 11 At various times when D.L. was asked on cross-examination about what happened that night, she indicated that she could not remember all of the details, as the incident occurred "a year ago." She also stated at one point that "[w]hen something like that happens, you're not thinking of anything."

¶ 12 The fact that D.L. could not remember all of the details of what happened that night was made more clear when D.L. was shown Defendant's Exhibit No. 1, which was the letter she wrote to the police a few days after the incident. In the letter, D.L. first described how defendant pushed the door open, knocked her down, dragged her into the bedroom, and punched her in the face. As noted, D.L. indicated at trial that, when she first saw defendant, he punched her in the face. When D.L. was asked about this inconsistency, she became defensive and finally admitted that she could not remember whether defendant punched her first or whether she was knocked down by the door first.[1]

¶ 13 Then, after describing her initial encounter with defendant, D.L. described in the letter how she used her cell phone to call 911. D.L. then stated, "[b]ut before that," defendant took her pants off and started having sex with her. Defendant then climbed on top of her and tried to force her to

[1]This was the only time at trial that D.L. was impeached with the letter.

fellate him. D.L. threw defendant off of her, grabbed the jewelry box, and started hitting defendant with it. Defendant got the jewelry box away from defendant, began hitting D.L. with it, and forced D.L. to have vaginal sex with him. In the letter, as she did at trial, D.L. indicated that defendant instructed her to act like she was enjoying herself. D.L. stated in the letter that she complied "[be]cause rite [sic] before that" defendant had tried to have anal sex with her. Defendant then got off of D.L., retrieved a bottle of water from the kitchen, returned to the bedroom to see D.L. trying to escape, grabbed the jewelry box, and began hitting D.L. with it again. D.L. then stated in the letter, "[b]ut at some point after I [(D.L.)] had hit him [(defendant)]," defendant noticed that D.L. had injured his head. As she indicated at trial, D.L. stated in the letter that defendant said to her, "[B]itch you made me bleed." D.L. then indicated that she asked defendant if she could go to the bathroom, that defendant refused to let her, and that defendant told D.L. to "piss on [herself]." D.L. stated in the letter that defendant then left the room, returned a short time later, and asked D.L. for the keys to her car. Defendant took the keys, he left D.L.'s apartment, and D.L. ran to her neighbor's home.

¶ 14 Defendant testified that, on July 9, 2009, he was walking home from visiting his cousin and some friends when a red car pulled up alongside him. D.L., whom he had never seen before, was driving that car. D.L. asked defendant if he had any drugs to sell her, and defendant, who used to sell drugs, responded that he did not. Defendant then asked D.L. if she wanted to make some money. Specifically, defendant asked D.L. if he could pay her to have sex with him. D.L. agreed, telling defendant that they could have sex at her home. Defendant agreed to this arrangement and got into D.L.'s car. After traveling approximately 20 blocks, defendant asked D.L. if she could give him a ride home afterward. D.L. said that she would.

¶ 15 Once at D.L.'s apartment, defendant used his cell phone to illuminate the area around the apartment door, as the light above that door was burned out. D.L. invited defendant into the apartment and then went to "freshen up" and put on makeup while defendant sat in the living room waiting for her. While D.L. was in the bathroom, defendant asked her if he could get something to drink. D.L. told defendant that there was water in the refrigerator. Defendant retrieved two bottles of water, one for him and one for D.L.

¶ 16 D.L. came out of the bathroom and waved defendant into the bedroom. Once in the bedroom, defendant gave D.L. $20, which was the price they had agreed upon for vaginal sex. Both of them took off their clothes, but D.L. kept her bra on. D.L. then gave defendant oral sex for three or four minutes. After that, D.L. knelt on her bed, defendant stood behind her, and, by accident, his penis went into her anus. After defendant apologized, D.L. helped defendant insert his penis into her vagina, and the two had sex in this position for 10 minutes. At that point, D.L. rolled over on to her back, and defendant got on top of her. The two had sex in this position until defendant ejaculated. Defendant stated that at no point prior to having sex with D.L. did D.L. indicate that she did not want to have sex with him.

¶ 17 After defendant ejaculated, defendant asked D.L. if she was going to give him a ride home. D.L. said that she would if defendant gave her an additional $10, as her car did not have a lot of gas in it. Defendant told D.L. that he did not have gas money to give to her, D.L. refused to give defendant a ride home, and defendant took D.L.'s car keys so that he could drive himself home.

¶ 18 D.L. told defendant that she was going to call the police, and defendant encouraged her to do so, as he claimed that he would be gone when the police finally arrived. D.L. threw her phone at defendant, who was standing at the front door, and then began hitting him. Defendant turned

around and punched D.L. in the face. D.L. stumbled backward while defendant again tried to open the door. D.L. got up, went to the door, and began punching defendant. As the fight continued, D.L. grabbed the glass jewelry box and began hitting defendant with it. After feeling something tricking down his back, defendant grabbed a towel, wiped his head, and discovered that he was bleeding. At this point, defendant "really went mad," called D.L. a "bitch," and "went out the bedroom window."

¶ 19 After leaving D.L.'s apartment, defendant went to D.L.'s car, wanting to use it to drive himself home. When defendant saw that D.L.'s car had a manual transmission, which defendant knew he could not drive, he began running from the scene.

¶ 20 On cross-examination, defendant admitted that many things that he testified to were not in the statement he gave to the police, as he put in his statement only the things about which the police asked him. The police who interviewed defendant testified that an officer typed up the statement after defendant discussed the incident with them and that defendant always had the opportunity to add to or change any part of the statement.

¶ 21 Before the parties began their closing arguments, the court recounted what evidence had been admitted. In doing so, the court stated that it "received Defendant's 1[, which was the letter D.L. wrote,] on the issue of perfection of impeachment."

¶ 22 In defendant's closing argument, counsel noted that D.L.'s testimony was "either" "inconsistent" or "vague." Counsel observed that "when [D.L.] was approached by [counsel], [D.L.] became rather hostile when [counsel] was attempting to gain the truth from her." Moreover, counsel asserted that "[D.L.'s] statements today on the stand versus the letter that is an exhibit are vastly different."

¶ 23 In finding defendant guilty, the court determined that the only differences between D.L.'s and defendant's testimony were on the manner in which defendant gained entry into D.L.'s apartment and whether the sexual acts engaged in were consensual. In assessing these differences, the court first observed that "defendant's arguments are excellent" and that "[t]he examination of the witnesses was first rate." The court then noted that "[t]here were in fact inconsistencies in [D.L.'s] testimony." The court found that, given the fact that the incident occurred over a year ago, the court would be suspicious if her testimony were "perfect."

¶ 24 The court then remarked that the physical evidence, including the photographs of D.L.'s phone and the window in D.L.'s bedroom, was important. With regard to the photograph of D.L.'s phone, the court observed, among other things, that the photograph revealed that the phone was found in D.L.'s bedroom, which was consistent with her testimony and not with defendant's. Concerning the photograph of the window, the court noted that, because it was locked, no one could have escaped from it, which was contrary to defendant's testimony.

¶ 25 The court then commented that it found D.L. more credible than defendant, because, among other things, defendant lied about going out the window, his demeanor on the witness stand was "calm" and "cool," and he remembered things about that night that "no one would expect him to remember." In contrast, the court observed that "when you looked at [D.L.'s] face and you saw how her body reacted, there was no doubt that she was reliving an event and that when she was testifying she was recalling actually what happened." Thus, the court found D.L.'s testimony "exceptionably believable and credible." The court remarked that it made that finding "even with inconsistencies and things [D.L. had] forgotten."

¶ 26 At issue in this appeal is whether defense counsel was ineffective. Specifically, defendant argues that counsel was ineffective because she failed to (1) impeach D.L. with the statement she gave to the police and (2) use D.L.'s statement to the police as substantive evidence to corroborate defendant's testimony and defense of consent.

¶ 27 In considering whether defendant was denied the effective assistance of counsel, we are guided by the following propositions:

> "In determining whether a defendant has been denied his right to the effective assistance of counsel, the [United States Supreme] Court has adopted a 'fact-sensitive analysis' which seeks to measure the 'quality and impact of counsel's representation under the circumstances of the individual case.' [Citation.] Thus, in alleging ineffectiveness, a defendant must prove that 'counsel's representation fell below an objective standard of reasonableness' and that 'there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceedings would have been different.' [Citations.] A reasonable probability is 'a probability sufficient to undermine confidence in the outcome,' and [the] defendant bears the burden of showing that, absent counsel's errors, 'the factfinder would have had a reasonable doubt respecting guilt.' [Citation.] In determining whether there has been ineffective assistance, a court must consider 'the totality of the [circumstances]' and determine 'whether counsel's assistance was reasonable considering all the circumstances.' [Citation.]" *People v. Garza*, 180 Ill. App. 3d 263, 268 (1989).

¶ 28 Turning to the specific arguments defendant makes on appeal, we first consider whether defense counsel was ineffective for failing to impeach D.L. more fully with the written statement she gave to the police. "An attorney's decision as to how or whether to cross-examine a particular

witness is generally a matter of trial strategy or tactics, which, by itself, will not support a claim of ineffective assistance." *People v. Hooker*, 253 Ill. App. 3d 1075, 1083 (1993). However, there are exceptions to this rule. *People v. Salgado*, 263 Ill. App. 3d 238, 246-47 (1994). For example, "the complete failure to impeach the sole eyewitness when significant impeachment is available is not trial strategy and, thus, may support an ineffective assistance claim." *Id.* Thus, in assessing whether counsel's failure to impeach a witness amounted to ineffective assistance, " '[t]he value of the potentially impeaching material must be placed in perspective.' " *Id.* at 247 (quoting *People v. Jimerson*, 127 Ill. 2d 12, 33 (1989)).

¶ 29 Here, as an initial matter, we observe that counsel did impeach D.L. with the written statement on one point. That is, counsel, after a laborious and confrontational exchange with D.L., got D.L. to admit that her letter differed from her written statement with regard to whether defendant punched her in the face in the entryway of her apartment or in the bedroom.

¶ 30 What defendant argues on appeal is that counsel should have sought to impeach D.L.'s testimony with more of her written statement. In considering that issue, we first note that the inconsistencies between D.L.'s written statement and her trial testimony to which defendant alerts us concern the sequence of events that D.L. described. For example, defendant indicates in his brief that D.L. testified that she hit defendant with the jewelry box before they had sex, but, in her statement, she, according to defendant, indicated that she hit defendant on the head while she was attempting to climb out the window. Defendant also asserts in his brief that, at trial, D.L. indicated that, after the phone broke, defendant climbed on top of her and ordered her to fellate him. On cross-examination, D.L., according to defendant, stated that defendant's attempt to force D.L. to perform oral sex on him occurred before she called 911. Defendant asserts that both of these

statements are contrary to D.L.'s written statement, wherein she indicated that defendant broke her phone, had vaginal sex with her, and then ordered her to fellate him.

¶ 31 As a preliminary matter, we cannot conclude that D.L.'s statements are necessarily as contradictory as defendant claims. First, in considering D.L.'s statements about the phone and the sequence of the sex acts, we note that, on direct, D.L. indicated that, after defendant dragged her into the bedroom, he forced her to fellate him. Consistent with this statement, D.L. stated on cross that, when she fell on to the bed after defendant dragged her into the bedroom, she noticed that her phone fell out of her bra. In testifying that she was unsure whether she pulled the phone out of her bra or whether it fell out, she stated, "I'm not—I just know that I called 911." Nothing in this statement indicates that, at that very moment, she called 911. Defense counsel then asked D.L. whether the first sex act she had with defendant was vaginal or anal. In response, D.L. stated, as she did on direct, that it was oral. Then, after counsel asked, "[W]ere you laying down," D.L. responded, "That was after the phone, and then I don't know how I ended up laying down, but I came up off the side of the bed, and he got on top of me with his knees in my shoulders." In our view, in contrast to defendant's assertions, the phrase "after the phone" could quite possibly refer to the phone falling out of D.L.'s bra, not necessarily making the 911 calls. Like her trial testimony, D.L.'s written statement suffers from simultaneously describing many different acts. That is, in her written statement D.L. describes making the phone call, but then states that "[b]ut before that" defendant started having sex with her and then ordered her to fellate him. Although the last part of this part of her written statement differs from her testimony, the rest of it is consistent.

¶ 32 Second, D.L.'s statements about the jewelry box are not necessarily inconsistent. At trial, D.L. stated that she began hitting defendant over the head with the jewelry box after she threw

defendant off of her when defendant ordered her to fellate him. This is consistent with her written statement, where D.L. first described trying to call 911 and then stated "[b]ut before that" defendant ordered her to fellate him, D.L. threw defendant off her, and then D.L. grabbed the jewelry box and began hitting defendant with it.

¶ 33 However, even if D.L.'s written statement contradicted her trial testimony, we cannot conclude that the contradictions were of such a quality that defense counsel was ineffective for failing to cross-examine D.L. on them. Minor inconsistences between a witness's testimony at trial and prior statements that the witness made are not the type of inconsistencies that would detract from the witness's positive testimony. See *People v. Morgan*, 28 Ill. 2d 55, 61 (1963) (officer's prior statement regarding whether contraband was thrown or placed under table was so insignificant that it did not detract from the officer's positive trial testimony). In our opinion, the chronology of the sex acts was a minor detail that counsel cannot be deemed ineffective for failing to highlight, especially when the record reflects that D.L. was "hostile" when counsel questioned her and that the details D.L. gave about the individual sex acts was consistent. Given all of that, we fail to see what counsel could possibly have gained by reemphasizing the acts to the trier of fact in an attempt to point out that the sequence of events may have been different. In our view, it was reasonable trial strategy to tread lightly on these acts when defendant's defense was consent and the sequence of the events had nothing to do with whether the acts were consensual. See *People v. Smith*, 2012 IL App (1st) 102354, ¶ 67 (counsel's failure to impeach officer with deposition testimony constituted trial strategy, and not ineffective assistance, where impeachment would have been on minor discrepancies that would not have advanced defendant's case).

¶ 34 Moreover, the court was well aware of the fact that D.L. provided inconsistent testimony. In fact, the court remarked that it would have been suspect if D.L.'s testimony were a verbatim recitation of what was contained in her written statement. Given that fact and the insignificance of the contradictions, we cannot conclude that counsel's failure to impeach D.L. more with her written statement might have affected the outcome of the trial.

¶ 35 Further, we note that several things in defendant's testimony did not make sense. For example, as the court noted, defendant claimed that he escaped through the window with D.L.'s keys after the two fought over whether D.L. would drive him home. The photograph taken of that window by the police soon after the incident occurred revealed that the window was closed and locked, which defendant could not have done from outside the window and which D.L., who even according to defendant was in hot pursuit of him, most likely would not have done before running out of her apartment. Likewise, the photograph of D.L.'s cell phone reveals that it was broken and found on the bedroom floor next to D.L.'s bed. This was consistent with D.L.'s testimony and inconsistent with defendant's claim that D.L. threw the phone at him when he was at the front door, trying to get out of the apartment. Also, despite the fact that, according to defendant, he spent a great deal of time in D.L.'s car before they got to her apartment and would have realized that her car had a manual transmission, defendant took the keys to her car to drive himself home even though he knew that he could not drive a car with a manual transmission and made no attempt to. Given that the physical evidence, among other things, supported D.L.'s account and discredited defendant's, we cannot conclude that defendant was prejudiced when counsel failed to impeach D.L. more with her prior written statement. See *Jimerson*, 127 Ill. 2d at 35.

¶ 36 Having concluded that counsel was not ineffective for failing to impeach D.L. more fully with her prior written statement, we next consider whether counsel was ineffective for failing to seek admission of D.L.'s statement as substantive evidence. Defendant essentially claims that the prior statement would have bolstered defendant's claim that (1) D.L. invited defendant into her home to have sex for money, as she had done with other men earlier that evening; and (2) the violence took place after the sex acts.

¶ 37 In addressing defendant's argument, we first turn to section 115-10.1 of the Code of Criminal Procedure of 1963 (Code) (725 ILCS 5/115-10.1 (West 2008)), which, for purposes of this appeal, provides for the substantive admissibility of prior inconsistent statements in criminal cases. Paragraphs (a) and (b) of that section require that the prior statement be inconsistent with the offered testimony and that the witness be subject to cross-examination. 725 ILCS 5/115-10.l(a), (b) (West 2008).

¶ 38 Once these requirements are satisfied, the court must determine if the statements fall within paragraph (c)(1) or (c)(2) of section 115-10.1. 725 ILCS 5/115-10.l(c)(l), (c)(2) (West 2008). A paragraph (c)(l) statement is a statement made under oath at a trial, hearing, or other proceeding. 725 ILCS 5/115-10.l(c)(1) (West 2008). A paragraph (c)(2) statement is a statement the witness wrote, signed, or acknowledged under oath that describes or explains an event or condition of which the witness had personal knowledge. 725 ILCS 5/115-10.1(c)(2) (West 2008).

¶ 39 Here, although the parties believe that each one of these subsections has been satisfied, we believe that they have not. Specifically, as noted above, we cannot conclude that D.L.'s written statement is inconsistent with her trial testimony. In making an assessment of whether a prior statement is inconsistent, neither a quantitative nor a mathematical approach need be taken. *People*

v. Salazar, 126 Ill. 2d 424, 456-58 (1988). However, the prior statement must be inconsistent with material facts at issue or dramatically different from what the witness stated at trial. See *People v. Morales*, 281 Ill. App. 3d 695, 700 (1996) (noting that prior statement is considered inconsistent when it is dramatically different from trial testimony); *Salgado*, 263 Ill. App. 3d at 241-42, 246-47 (prior statement of the one witness who implicated the defendant at trial was admissible because, among other things, the witness was equivocal in prior statement that the defendant was the shooter, but at trial witness stated that he was certain the defendant was the shooter).

¶ 40 In this case, the material facts at issue concerned whether defendant had permission to be in D.L.'s home and whether the sex acts were consensual. In contrast to defendant's position, D.L.'s written statement does not support defendant's contentions that he had permission to be in D.L.'s home and that the sex acts were consensual. First, nothing in D.L.'s written statement indicates that defendant was in any way invited into her home. Indeed, in her written statement, D.L. indicated that, when she returned to the first door to shut it, she saw defendant, someone she had never met before, standing in the doorway. Although D.L. mentioned in her written statement that, before her encounter with defendant, she was trying to make money to pay her rent and that she and her friend were driving around and had invited a man into D.L.'s apartment, nowhere in her statement did she indicate, as defendant claims, that she did this because she was prostituting herself. And, even if that could be inferred from her statement, the mere fact that she may have been engaged in such activities before she encountered defendant does not mean that defendant did not break into D.L.'s home and sexually assault her later that night, which is what D.L. said in her written statement.

¶ 41 Second, nothing in D.L.'s statement establishes that any of the sex acts engaged in were consensual. Rather, D.L. described in her statement how she attempted to fight defendant off and

how she eventually gave up because she did not have the strength to continue fighting. Further, given the fact that D.L.'s statement frequently uses terms such as "but before all that" when she is describing the events, we cannot conclude that her statement dramatically differed from her trial testimony in terms of the chronology of the events.

¶ 42 Similarly, even if D.L.'s prior statement was admissible under section 115-10.1 of the Code, we cannot conclude that defendant was prejudiced when counsel did not seek to admit D.L.'s prior statement as substantive evidence. Given that defendant claimed that he was invited into D.L.'s home, that the sex acts were consensual, and that D.L.'s statement does not support this, we fail to see how the substantive admission of D.L.'s statement, which was admitted for impeachment purposes, would have helped defendant advance his defense. Moreover, as indicated above, because the material facts at issue were the same in both D.L.'s prior statement and her trial testimony, and because her prior statement was not all that different from her testimony, we do not find that the outcome of defendant's trial might have been any different had D.L.'s prior statement been admitted as substantive evidence. This is especially true when we consider that D.L. admitted at trial that she could not remember all of the ancillary details of that night, as the assault took place over a year before defendant's trial, and that the trial court found D.L. credible despite the fact that there were inconsistencies between her prior statement and her testimony.

¶ 43 For all of these reasons, the judgment of the circuit court of Winnebago County is affirmed.

¶ 44 Affirmed.