2016 IL App (2d) 140466-U
No. 2-14-0466
Order filed July 6, 2016

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IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS, Plaintiff-Appellee, v. CHARLES R. OLIVER, Defendant-Appellant.	))))))))))	Appeal from the Circuit Court of McHenry County. No. 13-CF-176 Honorable Sharon L. Prather, Judge, Presiding.

JUSTICE McLAREN delivered the judgment of the court.
Presiding Justice Schostok and Justice Spence concurred in the judgment.

ORDER

¶ 1 *Held*: Defendant showed no plain error or ineffective assistance of counsel as to the trial court's admission of a statement that there was "some truth" to the victims' accounts: to the extent that the statement could be attributed to defense counsel, it was undisputed that there was "some truth" to those accounts, such that the statement to that effect was not necessarily a statement of defendant's guilt.

¶ 2 Defendant, Charles R. Oliver, appeals from his conviction of two counts of criminal sexual assault (720 ILCS 5/11-1.20(a)(1) (West 2012)) and one count of unlawful restraint (720 ILCS 5/10-3(a) (West 2012)), arguing that he was denied a fair trial by the trial court's admission of a telephone call in which defendant purportedly referenced his attorney's statement

about the credibility of the complaining witnesses and, in the alternative, that he was denied the effective assistance of counsel where his attorney failed to seek redaction of the statement. For the reasons that follow, we affirm.

¶ 3 I. BACKGROUND

¶ 4 The following relevant testimony was presented at defendant's jury trial. L.B. testified that, in early November 2012, she responded to a Craigslist ad for a "no-strings-attached meet-up" with defendant, which meant "a meeting up to exchange monetary value for sexual intercourse." Defendant identified himself to her as "Steve Block." They communicated via e-mail and text and arranged to meet at the Rosemont CTA stop at 10 p.m. Defendant sent her a photo of himself so that she would recognize him. L.B. met defendant and rode with him in his car to his house. During the ride, defendant asked her to perform oral sex on him, and she did. When they arrived at defendant's house and entered the living room, defendant asked L.B. to remove her clothes. She complied. Defendant then asked L.B. to perform oral sex on him, and she complied. She testified that she was comfortable doing what defendant requested. Defendant was calm and agreeable.

¶ 5 According to L.B., defendant eventually asked L.B. to stop and to accompany him to the basement and into an unfurnished laundry room. Defendant did something with the door knob that she could not see. Then, "[defendant] turned around to [her] and told [her] that things were going to be going his way from that moment on, that [she] did not have any choice about what would be happening, and things were up to him at this point." She felt very scared. She attempted to exit the room, but the door was locked. She screamed for help, cried, and pleaded with defendant to let her go. She testified that the door knob "didn't seem to have a conventional

way of locking it. There was no lock on the knob. It just had a little hole in the middle." L.B. identified photographs taken of defendant's home, the basement, and the lock.

¶ 6 According to L.B., as she was trying to exit the room, defendant's demeanor changed. Defendant was "[v]ery forceful, aggressive, frightening." As she was trying to get out, "[defendant] grabbed the back of [her] hair and pulled [her] back to try to hold [her] still and eventually pushed [her] to a kneeling position where [she] couldn't move." Defendant told her to calm down and that there was no escape. She continued to beg him to let her go. He told her that he would not let her go until she calmed down and promised that she would not try to escape. She agreed, because she was afraid for her life. Defendant unlocked the door and led her up to the bedroom.

¶ 7 L.B. testified that when they entered the bedroom he told her to perform oral sex on him. He set up a camera at the foot of the bed facing the headboard. L.B. performed oral sex on defendant. She testified that it was different from when she performed oral sex on him in the living room, because "[i]t wasn't [her] choice, at all." While she was performing oral sex, defendant told her to stop. He told her to lie on the bed, and he had sexual intercourse with her. She testified that she "allow[ed] it to happen because [she] believed that if [she] didn't, that [she] would undergo physical harm[.]" She would not have had sex with him if she had not felt threatened. After defendant ejaculated, he allowed her to use the bathroom. She closed the door and cried. When she exited the bathroom, he asked that she have sex with him again. She pleaded with him not to have sex with her again, and he did not. L.B. identified a video that shows them having sex. She also identified photographs of herself naked that defendant had taken in his bedroom.

¶ 8 L.B. further testified that defendant took her identification from her clothing in the living room and scanned it into a computer located in his bedroom. He told her that he would know her real name and address in case she went to the authorities. He returned her identification to her when he was done. L.B. testified that defendant drove her back to the CTA blue line. He told her not to go to the police. He told her that he had done similar things to other women; there was one girl who had tried to run away, but because she did not have clothes on, she could not get very far. L.B. testified that, the next day, she bagged up her clothes and walked to Rush Hospital to report that she had been raped. She submitted to a sexual-assault examination and spoke with the police.

¶ 9 B.H. testified that, in October 2012, she placed an ad on Craigslist for the purpose of "[m]eeting someone new." Defendant, using the name "Craig," responded to her ad. She communicated with him via e-mail and telephone. She arranged to meet defendant at Walmart in Woodstock at around 4 or 5 p.m. on January 16, 2013. The purpose of the meeting was to "have some fun" and "[m]aybe have sex," and he was going to give her money. Defendant picked her up at Walmart and they drove to his house. When they entered the living room, he asked her to remove her clothes. Defendant's demeanor was "fine," "fun," and "cool." B.H. testified that, when they went downstairs, defendant's personality changed. He pushed her into a laundry room and told her that she was going to do what he said, that it was "his house, his rules." He told her that she "was going to do all the type of different things [she] didn't agree to." B.H. testified that she tried to get out of the room, but the door was closed and would not open. She explained that the door knob was not a regular door knob; it had a little hole in it. She identified a picture of the door knob. Defendant told her that the only way she would get out of there was if she did what he said. She saw a metal pole with black Velcro strips on it. B.H. identified a

photograph of the pole with the Velcro strips. Defendant told her that he would tie her up if she did not listen to him. B.H. was frightened and screaming. Defendant told her that she could leave the basement if she agreed to do whatever he said. Although she did not want to agree, she did so because she wanted to get out.

¶ 10 According to B.H., after they left the basement, they went upstairs to a bedroom. Defendant acted "[c]razy and mean" and tried to choke B.H. They argued, and she tried not to do what he said, but he told her that if she wanted to leave she had to comply. B.H. had oral sex and vaginal intercourse with defendant. Defendant called her "bitch[], whore[], prostitute." While performing oral sex on defendant, B.H. used her fingernail to cut defendant's scrotum, causing him to bleed. She later saw defendant "rambling" through her clothes. She could not locate her driver's license after her encounter with defendant. A DVD depicting B.H. and defendant in his bedroom was admitted and published to the jury.

¶ 11 B.H testified that she got dressed and they went to defendant's car. She thought that he was taking her back to her car. He yelled at her, and when she started talking back to him he got angry and changed direction. He told her that he was taking her to Rockford. She was "[s]cared and nervous." When he slowed the car to turn, she jumped out. He zoomed off. She went to a church and asked for a ride to her car. She did not tell anyone what happened, because defendant told her that he was a police officer or that he had friends who were police officers. Eventually police officers came to the church and she told them what had happened.

¶ 12 Woodstock police officer George R. Kopulos, Jr., testified that, on January 28, 2013, he executed a search warrant of defendant to take nude photographs of his body. Kopulos was looking for a cut on defendant's scrotum. Defendant told Kopulos that he knew what Kopulos was looking for and that "the Russian girl cut him in the leg." Kopulos found a scab on

defendant's scrotum. Defendant told Kopulos that "he cut himself while shaving as he was getting ready to pick up another one, a prostitute, that night." Later in the evening, Kopulos spoke with defendant about the allegations against him. According to Kopulos, defendant told him that he had a problem with prostitutes. He told him about "the church girl." Defendant said that he had had an altercation with the girl over money. He was unhappy with her because she did not want to do what he was paying her to do. He "had to get a little bit physical with her." Defendant dropped the girl off at the church on Dean Street and Route 176. Defendant told Kopulos that "he paid them, he could do what he wants to them."

¶ 13 According to Kopulos, defendant told him that he grew up in Chicago and that it was easy to get prostitutes. Defendant told him that he was never popular with girls and that this was "more of a control thing." Defendant told him that "he likes rough stuff" and that "[h]e likes calling them names such as 'bitch' and 'fucking bitch' while he's having sex with them." Defendant explained that he would typically meet women on Craigslist, by placing an ad or responding to an ad. He also said that "Steve Block" was the name of a bully at school when he was younger. Kopulos testified that, upon searching defendant's house, he found that the knob on the door to the basement laundry room was turned around so that one had to use a tool to open it from the inside.

¶ 14 Detective Robby L. Branum, of the Woodstock police department, identified an audio recording of a telephone conversation that had taken place on March 26, 2013, between defendant and Charles Oliver, Sr., defendant's father. The recording was played for the jury. Branum explained that defendant called his father with regard to the bond hearing that he had had. His father had questioned why the bond was so high, and defendant explained what he was being accused of. The phone call contained the following exchange:

"DEFENDANT'S FATHER: What happened here?

DEFENDANT: I guess I videotaped some girls and I was aggressive so they're saying because I was aggressive that's claiming rape. So. They took my computers and all the videos I had.

DEFENDANT'S FATHER: Yeah.

DEFENDANT: So.

DEFENDANT'S FATHER: Uhh. So what's he—uhh—what's he say. What's the next step. Where's he go next? What happen—

DEFENDANT: He says time's on our side. He says. So we gotta sit down. He hasn't gotten the videos yet. He's gonna do a contact visit with him Thursday. And he said, ya know, the girls' stories are inconsistent but there's some truth to 'em, ya know so—I dunno, I'm done, I'm just done."

¶ 15 On cross-examination, defense counsel stated: "And with regard to the snippet that the State played for you, 'girl's [*sic*] stories are inconsistent,' and so forth, what [defendant] is actually doing is telling his father what [defense counsel] had said to him regarding the strength of the case or the type of case we were dealing with, right?" The State objected, and the objection was sustained.

¶ 16 During closing arguments, pointing to the telephone conversation, the State argued: "Defendant admits in those conversations he fought with them, he was aggressive with them. But as to the credibility of [L.B.], as to the credibility of [B.H.], it's the defendant's conversation with his father, girls' stories are inconsistent." Defendant objected, arguing that the comment was "beyond the scope," and the objection was overruled. The State continued: "But there is some truth to 'em. I'm done. The defendant knows what he did. The defendant knows that the

girls are telling the truth, but he hopes that they won't be believed. He hopes that [L.B.] won't be believed."

¶ 17 Defense counsel argued that the State did not prove beyond a reasonable doubt that the sexual intercourse that occurred in the bedroom was nonconsensual and the result of force. Defense counsel argued that L.B. agreed to be picked up, agreed to be taken to defendant's house, and agreed to engage in oral and vaginal sex for $200.

¶ 18 The jury found defendant guilty of two counts of criminal sexual assault (720 ILCS 5/11-1.20(a)(1) (West 2012)) and one count of unlawful restraint (720 ILCS 5/10-3(a) (West 2012)).

¶ 19 Following a sentencing hearing, the trial court sentenced defendant to consecutive eight-year terms of imprisonment for criminal sexual assault and to one year of imprisonment for unlawful restraint, to be served concurrently. Following the denial of his motion for reconsideration of his sentence, defendant timely appealed.

¶ 20 II. ANALYSIS

¶ 21 Defendant argues that he was denied a fair trial by the trial court's admission of the portion of the telephone call wherein defendant stated, "And he said, ya know, the girls' stories are inconsistent but there's some truth to 'em, ya know." Defendant asserts that, in conveying his attorney's opinion that there was "some truth" in the witnesses' stories, the statement improperly revealed his attorney's view that he was guilty. In the alternative, defendant maintains that he was denied the effective assistance of counsel where his attorney failed to seek redaction of the statement.

¶ 22 We first consider whether defendant forfeited his argument concerning the admissibility of the statement made during the telephone call. The State argues that defendant forfeited the issue by failing to object to the admission of the statement at trial and by failing to raise the issue

in a posttrial motion. See *People v. Harvey*, 211 Ill. 2d 368, 385 (2004). Although defendant moved to exclude recordings of seven of his in-custody telephone conversations, the motion was based on the State's late disclosure of the items, not on the basis now advanced in this court. Similarly, when defense counsel objected to the recording's admission during trial, the objection was for lack of foundation. Furthermore, defendant failed to raise the issue in a posttrial motion. Accordingly, because defendant did not raise the issue below, it is forfeited.

¶ 23 Nevertheless, defendant argues that, even if the issue is forfeited, we should review the matter under the plain-error doctrine. The plain-error doctrine offers criminal defendants a narrow path to appellate review of forfeited trial error. *People v. Walker*, 232 Ill. 2d 113, 124 (2009). We will apply the plain-error doctrine 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 (2007).

The first step of plain-error review is determining whether any error occurred. *People v. Sargent*, 239 Ill. 2d 166, 189 (2010). If it did not, then plain error could not have occurred. *People v. Kitch*, 239 Ill. 2d 452, 465 (2011). When seeking plain-error review, a defendant has the burden to persuade the court that the forfeiture should be excused. *People v. Johnson*, 238 Ill. 2d 478, 485 (2010). If the defendant fails to meet that burden, the issue will remain forfeited. *People v. Hillier*, 237 Ill. 2d 539, 545 (2010).

¶ 24 We hold that the admission of the statement does not amount to clear or obvious error. It is at least plausible that the statement was an admission of guilt by defendant, not an assessment of guilty by his attorney, because only defendant would know whether there was "some truth" to the women's stories. Indeed, the State specifically argued to the jury that it was an admission by defendant. In any event, to the extent that the statement could be attributed to counsel, the statement did not clearly or obviously go the issue of whether defendant committed the offenses at issue. Indeed, the evidence made clear that there was "some truth" to the women's stories. Defendant does not dispute that he met L.B. and B.H. through Craigslist, that he brought them to his home, or that he had sex with them. Video evidence shows defendant and L.B. having sex. Defendant concedes that the evidence that L.B. wanted to engage in sex acts with defendant (at least initially) was overwhelming. Thus, it is clear from the evidence, not just the statement, that there was "some truth" to the women's stories. The critical issue for the jury was whether the women's allegations that the sex acts became nonconsensual were truthful. As the statement was not clearly or obviously a comment on the women's truthfulness with respect to the critical issue at trial, there was no clear or obvious error in its admission.

¶ 25 The factual scenario of the present case is far different from those contained in the cases relied on by defendant. In *People v. Fields*, 226 Ill. App. 3d 345, 348 (1992), evidence was admitted at the defendant's murder trial that the defendant told another man that his attorney was trying to suppress the gun, that the discharged bullet was too fragmented for comparison, that a witness could not identify him, and that his attorney told him that he had a 50/50 chance of acquittal. Prior to trial, the trial court ruled that the defendant's comments pertaining to his conversation with his attorney were inadmissible. *Id.* At issue on appeal was whether defense counsel opened the door to the previously excluded evidence. The court found that, even if he

had, the remarks about what defense counsel was going to do in the case, the condition of the evidence, and counsel's assessment of the defendant's chance of acquittal were irrelevant. *Id*. Nevertheless, the court found the error harmless. *Id*. In *People v. McLain*, 226 Ill. App. 3d 892 (1992), this court found reversible error where defense counsel apprised the jury at the beginning of *voir dire* that the defendant pleaded not guilty and, in the alternative, also pleaded guilty but mentally ill. Neither *Fields* nor *McLain* warrants a finding of plain error in the present case. As noted, it is undisputed that there was "some truth" to the women's stories. The statement to that effect did not amount to plain error.

¶ 26 Defendant's alternative argument, that counsel was ineffective for failing to seek redaction of the call, also fails. To succeed on a claim of ineffective assistance of counsel, a defendant must satisfy the two-part test of *Strickland v. Washington*, 466 U.S. 688 (1984). To satisfy the first prong, the defendant must show that his counsel's performance was deficient because it fell below an objective standard of reasonableness. *People v. Harris*, 206 Ill. 2d 1, 16 (2002). To meet the second prong, the defendant must demonstrate prejudice by showing a reasonable probability that, but for counsel's deficiencies, the result of the proceeding would have been different. *Id*. If such a claim can be disposed of because the defendant suffered no prejudice, then a court should not decide whether counsel's performance was deficient. *People v. Villanueva*, 382 Ill. App. 3d 301, 308 (2008).

¶ 27 Here, to establish prejudice, defendant must show a reasonable probability that, had defense counsel moved for redaction, the motion would have been granted and the result of the proceeding would have been different. See *People v. Patterson*, 217 Ill. 2d 407, 438 (2005). Defendant makes no such argument. He argues, instead, that "error which impugns the integrity

of the judicial process is prejudicial" under *Strickland*. Given our analysis above, we find that defendant has failed to establish prejudice and thus his ineffective-assistance claim fails.

¶ 28 III. CONCLUSION

¶ 29 For the foregoing reasons, the judgment of the circuit court of McHenry County is affirmed. As part of our judgment, we grant the State's request that defendant be assessed $50 as costs for this appeal. 55 ILCS 5/4-2002(a) (West 2014); see also *People v. Nicholls*, 71 Ill. 2d 166, 179 (1978).

¶ 30 Affirmed.