2012 IL App (4th) 110491-U

NO. 4-11-0491

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED
November 1, 2012
Carla Bender
4th District Appellate
Court, IL

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from
Plaintiff-Appellee,	)	Circuit Court of
v.	)	Sangamon County
COURNEY D. WATSON,	)	No. 09CF573
Defendant-Appellant.	)	
	)	Honorable
	)	John W. Belz,
	)	Judge Presiding.

PRESIDING JUSTICE TURNER delivered the judgment of the court.
Justices Pope and Knecht concurred in the judgment.

ORDER

¶ 1 *Held*: Because defendant failed to specifically object at trial to the admission of hearsay testimony, we find the issue forfeited.

¶ 2 Where hearsay testimony was improperly admitted but amounted to harmless error, defendant is not entitled to reversal of his conviction for aggravated criminal sexual assault.

¶ 3 In April 2011, a jury found defendant, Courney D. Watson, guilty of home invasion, aggravated criminal sexual assault, unlawful restraint, aggravated unlawful restraint, and domestic battery. In June 2011, the trial court sentenced him to prison.

¶ 4 On appeal, defendant argues his conviction for aggravated criminal sexual assault must be reversed because the prosecutor improperly used hearsay testimony at trial. We affirm.

¶ 5 I. BACKGROUND

¶ 6 In July 2009, the State charged defendant by information with home invasion

(count I) (720 ILCS 5/12-11(a)(1) (West 2008)), aggravated criminal sexual assault (counts II and III) (720 ILCS 5/12-14(a)(1) (West 2008)), armed robbery (count IV) (720 ILCS 5/18-2(a)(1) (West 2008)), theft (count V) (720 ILCS 5/16-1(a)(1) (West 2008)), aggravated unlawful restraint (count VI) (720 ILCS 5/10-3.1(a) (West 2008)), unlawful restraint (count VII) (720 ILCS 5/10-3 (West 2008)), and domestic battery (count VIII) (720 ILCS 5/12-3.2(a)(1) (West 2008)). Defendant pleaded not guilty.

¶ 7 In April 2011, defendant's jury trial commenced. Amanda H. testified she began dating defendant in June 2008, and they have a son named Elisha. On July 2, 2009, and for two to three months prior to that date, Amanda was staying at her friend Chelsea's apartment. On the evening of July 1, 2009, Amanda picked up defendant at the house of his daughter's mother. An argument ensued, and defendant broke her phone and stated he should "kill your mom" to Elisha. Amanda dropped off her son and returned to the apartment. At approximately 10 a.m. the next morning, she awoke to find defendant attempting to climb in the window. She pushed him back out. She then heard him open the door to the building, come up the stairs, and start pounding on the apartment door. Defendant broke open the door, entered the kitchen, and "started rummaging through the kitchen drawers." He then grabbed Amanda's car keys, grabbed her by the arm, forced her outside, and told her to get in the car.

¶ 8 Once in the car, defendant told Amanda they were going to get her a new phone since he broke hers the night before. Amanda observed a knife in defendant's back pocket. Defendant drove out of Springfield. Amanda felt scared because defendant kept saying he was going to kill her by running into a light pole. Once out into a wooded area, defendant stopped the car and told Amanda to get out. They walked back into the woods, and defendant started to

unbutton her pants. With the knife in his hand and close to her chest, defendant forced her to bend over and then inserted his penis into her vagina. Amanda kept telling him no, but defendant said "Bitch, shut up."

¶ 9 After about 90 seconds, Amanda saw a farmer approaching on a tractor. They dressed, walked back to the car, and defendant put the knife in his pocket. Amanda got into the car, while defendant talked to the farmer. Two to three minutes later, defendant returned to the car. After they left, defendant told Amanda she "smelled like sex" and "back-handed" her across the face. While they were driving, defendant held up the knife, grabbed her hand, bit her middle finger, and then smacked her again. When Amanda saw the knife sitting in defendant's lap, she grabbed it and threw it out the window. Defendant back-handed her again. When they turned a corner, Amanda opened the door, jumped out of the car, and ran to a house. As nobody was home, Amanda walked down the road, came upon some individuals, and used their phone to call 9-1-1. Police officers arrived and took her to the hospital.

¶ 10 Following defendant's arrest, Amanda testified she had written to him and visited him at the jail. She identified several letters defendant had sent from jail. In one letter, defendant stated he never intended to hurt or scare Amanda, and he "would give [his] life up to take back everything that happened on July 2, 2009." He also wanted her to tell the State's Attorney she would not testify against him and supply an affidavit that she gave a false statement as to the events of July 2, 2009.

¶ 11 Sangamon County sheriff's deputy Troy Sweeney testified he was dispatched to an area southeast of Springfield on July 2, 2009. Sweeney met with Amanda, who was "visibly upset and shaking." Sangamon County sheriff's sergeant Joseph Rath testified he located a

white-handled kitchen knife from a ditch.

¶ 12 Chelsea Simmons testified she returned to her apartment on July 2, 2009, and noticed the door was open and the door frame had been damaged. She testified a knife in the State's exhibit was consistent with the knives she kept in her silverware drawer.

¶ 13 Kenneth Edwards testified he farms land southeast of Springfield. On July 2, 2009, he was working his fields when he saw a car with a black male and a white female pass by. He later saw them walking toward him after coming out of the woods. Edwards asked the male, identified as defendant, what they were doing. Defendant stated they were picking berries. When Edwards asked defendant to show his hands, Edwards saw no berry stains and told defendant he was lying. Edwards stated the female was quiet and "didn't talk."

¶ 14 Larry DuPont testified he was working in his yard on July 2, 2009, when a female came up and asked to use the phone. DuPont stated she was "upset" and he could tell she had been crying. The female used the phone to call 9-1-1.

¶ 15 Springfield police detective Scott Kincaid testified he conducted an interview with defendant. A recording of the interview was played for the jury. During the interview, defendant stated he attempted to climb through the window of the apartment where Amanda was staying and then forced the door open. He took her keys and told her to come for a ride with him. They drove out into the country. They stopped, got out of the car, and then got back in. He denied having sex with Amanda. Defendant started driving and told her he was going to run into a light pole and kill both of them.

¶ 16 Tiffany Mellenthin, a registered nurse at St. John's Hospital, testified she conducted a sexual-assault examination of Amanda and asked her to describe the occurrence.

Mellenthin wrote the description of the occurrence in her examination report. Defense counsel objected to Mellenthin testifying to the narrative portion of the report as it was testimonial in nature, made in anticipation of litigation, and constituted hearsay. The State contended the statements made by the victim were admissible under section 115-13 of the Code of Criminal Procedure of 1963 (Code) (725 ILCS 5/115-13 (West 2008)). Defense counsel responded the statements were cumulative and their probative value was outweighed by their prejudicial effect. Although the trial court did not allow the entire description written in the report, the court allowed Mellenthin to testify to the four sentences that were reasonably pertinent to Amanda's diagnosis or treatment. Defense counsel inquired about the specific lines but did not further object.

¶ 17 Upon further questioning from the State, Mellenthin read from her notes as follows:

> "Patient was spun around. Watson unbuttoned patient's jeans and bent patient over after pulling her pants down. Watson then penetrated patient with his finger and then his penis. Patient states she remained at knifepoint during assault."

Defense counsel did not object to this testimony. Mellenthin also stated Amanda had an injury to her middle finger.

¶ 18 Jennifer Aper, a forensic scientist with the Illinois State Police, testified vaginal swabs from Amanda appeared to have blood-like stains, tested positive for sperm, and contained two male deoxyribonucleic acid (DNA) profiles. A pubic hair combing contained a "green plant-like material" that appeared to be grass.

¶ 19 Amanda Humke, a forensic scientist, testified one of the profiles matched the DNA standard from defendant. A DNA profile taken from a swab of Amanda's finger also matched defendant.

¶ 20 Defendant exercised his constitutional right not to testify. During closing arguments, the State quoted Mellenthin's statement, but defense counsel did not object. Thereafter, the jury found defendant guilty of home invasion, aggravated criminal sexual assault, unlawful restraint, aggravated unlawful restraint, and domestic battery. The jury found defendant not guilty of armed robbery and theft.

¶ 21 Defendant filed a motion for a new trial arguing, *inter alia*, the trial court erred in admitting hearsay statements under section 115-13 of the Code (725 ILCS 5/115-13 (West 2008)). Defendant contended the statements were not made for purposes of medical diagnosis or treatment. The court denied the motion.

¶ 22 In June 2011, the trial court sentenced defendant to 25 years in prison for aggravated criminal sexual assault (count II) to be served consecutive to concurrent terms of 18 years in prison for home invasion (count I), 5 years in prison for aggravated unlawful restraint (count VI), and 3 years in prison for domestic battery (count VIII). Defendant filed a motion to reconsider sentence, which the court denied. This appeal followed.

¶ 23 II. ANALYSIS

¶ 24 A. Forfeiture

¶ 25 On appeal, defendant argues his conviction for aggravated criminal sexual assault must be reversed because the prosecutor improperly used the hearsay testimony of nurse Mellenthin to bolster Amanda's credibility by repeating certain details of Mellenthin's conversa-

tion with her that were unrelated to medical diagnosis or treatment. Specifically, defendant claims the trial court erred by allowing Mellenthin to read from the narrative portion of the report that had no relevant medical purpose and served only to bolster Amanda's credibility, *i.e.*, her identification of defendant as her attacker and that she remained at knifepoint during the assault. In response, the State argues defendant forfeited his argument by objecting at trial on different grounds and failing to object at trial and in his posttrial motion to the statements that were admitted.

¶ 26 To preserve an issue for review on appeal, a defendant must object at trial and raise the issue in a posttrial motion. *People v. Hestand*, 362 Ill. App. 3d 272, 279, 838 N.E.2d 318, 324 (2005). "It is well established that '[o]bjections at trial on specific grounds waive all other grounds of objection.' " *People v. Macri*, 185 Ill. 2d 1, 75, 705 N.E.2d 772, 807 (1998) (quoting *People v. Miller*, 173 Ill. 2d 167, 191, 670 N.E.2d 721, 733 (1996)). "A general objection is generally not enough to preserve an issue for review, and '[o]bjections to evidence should especially designate the particular testimony considered objectionable and point to the objectionable features.' " *People v. Wilson*, 2012 IL App (1st) 101038, ¶ 34, 966 N.E.2d 1215, 1222 (quoting *People v. Graves*, 142 Ill. App. 3d 885, 894, 492 N.E.2d 517, 524 (1986)).

¶ 27 In the case *sub judice*, defense counsel objected to Mellenthin reading from the narrative portion of her report because the statements therein were testimonial in nature, made in anticipation of litigation, and constituted hearsay. The State responded the statements were admissible under section 115-13 of the Code. The trial court read from the statute and concluded only four sentences would be allowed from the entire narrative portion of the report. Defense counsel did not specifically object to the offending statements in the report that defendant now

argues on appeal, namely that his name was twice mentioned in Mellenthin's statement and that Amanda remained at knifepoint during the assault.

¶ 28 We find this issue forfeited. "[F]orfeiture is particularly appropriate under these circumstances because, had defendant raised the argument at the trial level that he now seeks to raise on appeal, the trial court would have had the opportunity to address any alleged deficiencies in its findings to overcome the problem." *People v. Bryant*, 391 Ill. App. 3d 1072, 1078, 909 N.E.2d 391, 397 (2009). Here, the trial court heard defendant's general hearsay objection, read from the statute, and concluded the four sentences were admissible under section 115-13. Had defendant made the specific argument that Mellenthin's statements went beyond section 115-13, the court could have addressed the issue and possibly decided to completely prohibit testimony to the two areas defendant now argues constituted error or set forth restrictions on which parts the jury would be allowed to hear. Failure to specifically object results in forfeiture of the issue now on appeal. However, even if this issue was not forfeited, we would find defendant is not entitled to a new trial.

¶ 29 B. Hearsay Statements Admitted Pursuant to Section 115-13

¶ 30 "The rule against hearsay generally prevents the introduction at trial of out-of-court statements offered to prove the truth of the matter asserted." *People v. Spicer*, 379 Ill. App. 3d 441, 449, 884 N.E.2d 675, 684 (2007). However, section 115-13 provides an exception to the hearsay rule for statements made for purposes of medical diagnosis or treatment and provides as follows:

> "In a prosecution for [aggravated criminal sexual assault], statements made by the victim to medical personnel for purposes of

> medical diagnosis or treatment including descriptions of the cause of symptom, pain or sensations, or the inception of general character of the cause or external source thereof insofar as reasonably pertinent to diagnosis or treatment shall be admitted as an exception to the hearsay rule." 725 ILCS 5/115-13 (West 2008).

In analyzing section 115-13, this court has stated as follows:

> " 'Section 115-13 is a codification of the firmly rooted common law hearsay exception allowing statements describing medical history, symptoms, pain, or sensations made for purposes of medical diagnosis or treatment. The assumption underlying both section 115-13 and the common law exception is that the desire for proper diagnosis or treatment outweighs any motive to falsify.' " *People v. Simpkins*, 297 Ill. App. 3d 668, 680, 697 N.E.2d 302, 310 (1998) (quoting *People v. Roy*, 201 Ill. App. 3d 166, 179, 558 N.E.2d 1208, 1217 (1990)).

This court has also noted "courts should interpret section 115-13 of the Code liberally so as to not parse statements made by the victim to medical personnel." *People v. Denny*, 241 Ill. App. 3d 345, 361, 608 N.E.2d 1313, 1324 (1993).

¶ 31 "A trial court is vested with discretion in determining whether the statements made by the victim were ' "reasonably pertinent to [the victim's] diagnosis or treatment." [Citation.]' " *People v. Davis*, 337 Ill. App. 3d 977, 989, 787 N.E.2d 212, 222-23 (2003) (quoting *People v. Williams*, 223 Ill. App. 3d 692, 700, 585 N.E.2d 1188, 1194 (1992)). Thus,

we will not overturn the trial court's decision that the medical-diagnosis exception applies absent an abuse of discretion. See *Spicer*, 379 Ill. App. 3d at 449-50, 884 N.E.2d at 684. "An abuse of discretion occurs only when the trial court's ruling is arbitrary, fanciful, or unreasonable or when no reasonable person would take the same view." *People v. Vannote*, 2012 IL App (4th) 100798, ¶ 24, 970 N.E.2d 72, 78.

¶ 32 1. *Hearsay Statements Identifying Defendant as the Perpetrator*

¶ 33 In his first contention of error, defendant argues his identity was not necessary for medical diagnosis and treatment and thus Mellenthin's statement was improperly admitted. At trial, Mellenthin read from her report in which Amanda described the occurrence as follows:

> "*Watson* unbuttoned patient's jeans and bent patient over after pulling her pants down. *Watson* then penetrated patient with his finger and then his penis." (Emphasis added.)

¶ 34 Courts have found hearsay statements made by medical personnel as to the identity of the attacker are not admissible under the section 115-13 exception or the common-law exception "since the identity of the person who attacked her was not necessary to her receiving proper medical treatment." *People v. Cassell*, 283 Ill. App. 3d 112, 125, 669 N.E.2d 655, 665 (1996); see also *People v. Oehrke*, 369 Ill. App. 3d 63, 68, 860 N.E.2d 416, 420 (2006) (statements identifying the offender fall outside the common-law hearsay exception); *Davis*, 337 Ill. App. 3d at 990, 787 N.E.2d at 223 (stating the identity of the attackers was not necessary to the victim receiving proper medical treatment); *People v. Hall*, 235 Ill. App. 3d 418, 435, 601 N.E.2d 883, 896 (1992) ("Although medical personnel may testify as to statements made by a sexual assault victim pertinent to medical diagnosis or treatment, they may not identify the

alleged perpetrator"); *People v. Perkins*, 216 Ill. App. 3d 389, 397-98, 576 N.E.2d 355, 361 (1991); *People v. Hudson*, 198 Ill. App. 3d 915, 922, 556 N.E.2d 640, 645 (1990) (stating the identification of the offender falls outside the scope of the hearsay exception); *People v. Sommerville*, 193 Ill. App. 3d 161, 175-76, 549 N.E.2d 1315, 1326 (1990) (statement identifying the perpetrator " 'as a black man' *** should have been excluded as descriptive testimony unnecessary for medical diagnosis and treatment"); *People v. Taylor*, 153 Ill. App. 3d 710, 721, 506 N.E.2d 321, 329 (1987).

¶ 35 Here, the identity of Amanda's assailant was not necessary to her receiving proper medical treatment. Thus, the two references to "Watson" were not admissible under the hearsay exception found in section 115-13.

¶ 36 In arguing the statements were admissible under section 115-13, the State relies on several cases where the trial court was found to have properly admitted the victim's statement describing the sexual abuse and identifying the defendant as the perpetrator during a medical history taken by a doctor. See *Simpkins*, 297 Ill. App. 3d at 680, 697 N.E.2d at 310; *People v. March*, 250 Ill. App. 3d 1062, 1076, 620 N.E.2d 424, 435 (1993); *Roy*, 201 Ill. App. 3d at 178, 558 N.E.2d at 1216.

¶ 37 We note, and the States concedes, the three cited cases involve statements made to medical personnel by minors, not adults. Our supreme court has noted, in a case involving a minor, that "at least in the family setting, a victim's identification of a family member as the offender is closely related to the victim's diagnosis and treatment in cases involving allegations of sexual abuse." *People v. Falaster*, 173 Ill. 2d 220, 230, 670 N.E.2d 624, 629 (1996). Although the court cited *Hall* and *Hudson*, both of which found identification testimony by

medical personnel impermissible, the court concluded that, because of the minor's possible emotional and psychological injuries resulting from the abuse by a family member, the identity of the abuser could be significant in diagnosing and treating the minor. *Falaster*, 173 Ill. 2d at 230, 670 N.E.2d at 629. Thus, as it pertained to section 115-13, the court found a nurse's testimony as to the minor victim's identification of the defendant as the abuser was properly admitted. *Falaster*, 173 Ill. 2d at 230-31, 670 N.E.2d at 629-30.

¶ 38 Here, however, Amanda was not a minor at the time of the assault. This was not a father/daughter abuse situation. The First District has noted "[n]o Illinois court has extended the medical diagnosis and treatment hearsay exception to include an adult, physical abuse victim's statements identifying her attacker." *Oehrke*, 369 Ill. App. 3d at 70, 860 N.E.2d at 421. While identification of the perpetrator may be admitted under section 115-13 in certain circumstances, such as when it relates to diagnosis or treatment, those circumstances are not present here. Nothing indicates Amanda's identification of defendant as the assailant would assist medical personnel in making a diagnosis as to her condition and/or making a decision as to the proper course of treatment then or in the future.

¶ 39 Even though we find it was error for the trial court to allow the identification of defendant as the attacker in this case, we find any error resulting from the admission of Mellenthin's testimony was harmless. "The admission of the evidence is harmless error if there is no reasonable probability that the verdict would have been different had the hearsay been excluded." *Oehrke*, 369 Ill. App. 3d 71, 860 N.E.2d at 422.

¶ 40 In this case, the identity of the person who sexually assaulted Amanda was not at issue. Defendant was not unknown to Amanda. Kenneth Edwards, the farmer who happened on

the scene of the assault, identified defendant as the male coming out of the woods. Vaginal swabs taken from Amanda matched defendant's DNA profile. Thus, either defendant committed the sexual assault or the act was consensual. Since identification was not at issue, the improper admission of Mellenthin's testimony identifying defendant as the assailant was harmless error. See *Perkins*, 216 Ill. App. 3d at 398, 576 N.E.2d at 361.

¶ 41 2. *Hearsay Statement Stating Victim was Held at Knifepoint*

¶ 42 In his second contention of error, defendant argues Mellenthin was allowed to testify as follows:

"Patient states she remained at knifepoint during assault."

Defendant argues that since no evidence indicated Amanda was injured with a knife, this statement does not describe her medical condition and was irrelevant to medical diagnosis and treatment.

¶ 43 We find no error as to this statement. Amanda identified the knife and testified to defendant's use of it to threaten her prior to and after the sexual assault. Amanda's statement that she remained at knifepoint during the assault was part of her description of the "inception or general character of the cause or external source *** insofar as reasonably pertinent to diagnosis or treatment." 725 ILCS 5/115-13 (West 2008). The statement "informed medical personnel both where to look and for what to look when they examined or treated" Amanda. *Denny*, 241 Ill. App. 3d at 361, 608 N.E.2d at 1324; see also *Davis*, 337 Ill. App. 3d at 990, 787 N.E.2d at 223 (finding a sexual assault victim's statement to a nurse about the manner in which she was beaten and injured fell under section 115-13); *Cassell*, 283 Ill. App. 3d at 125, 669 N.E.2d at 665 (finding victim's statement to an emergency room nurse that she was dragged from her apartment

was admissible under section 115-13); *Perkins*, 216 Ill. App. 3d at 397, 576 N.E.2d at 361 (finding a doctor's testimony that the victim told him she had been "sexually assaulted" was admissible as a statement pertinent to medical diagnosis and treatment). Defendant has not cited any case law that the absence of a knife injury on Amanda made the statement inadmissible under section 115-13. As we find no error in the admission of the knife statement, and as we have found the identification statements to be harmless error, defendant is not entitled to reversal of his conviction for aggravated criminal sexual assault.

¶ 44 III. CONCLUSION

¶ 45 For the reasons stated, we affirm the trial court's judgment. As part of our judgment, we award the State its $50 statutory assessment against defendant as costs of this appeal.

¶ 46 Affirmed.