2014 IL App (4th) 130949-U

NO. 4-13-0949

FILED
September 23, 2014
Carla Bender
4th District Appellate
Court, IL

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from
Plaintiff-Appellee,	)	Circuit Court of
v.	)	McLean County
SASHIKALA RAMACHANDRAN,	)	No. 12CF701
Defendant-Appellant.	)	
	)	Honorable
	)	Scott Drazewski,
	)	Judge Presiding.

JUSTICE KNECHT delivered the judgment of the court.
Justices Pope and Steigmann concurred in the judgment.

ORDER

¶ 1 *Held*: (1) The trial court did not commit plain error when it admitted a 9-1-1 recording.

(2) Defendant was not denied effective assistance of counsel because counsel was not objectively unreasonable for refraining to object to 9-1-1 recording and defendant suffered no prejudice.

(3) The trial court did not commit plain error when it allowed the State to recall a witness to testify to matters inadvertently omitted.

¶ 2 Following a December 2012 jury trial, defendant, Sashikala Ramachandran, was found guilty of permitting sexual abuse of a child (720 ILCS 5/11-9.1A(a) (West 2012)) and not guilty of domestic battery (720 ILCS 5/12-3.2(a)(1) (West 2012)). In September 2013, the trial court sentenced defendant to 48 months' probation, with 180 days in jail as a condition and credit for 151 days served. Defendant appeals, arguing (1) the trial court erred when it admitted a 9-1-1 recording; (2) she was denied effective assistance of counsel because counsel failed to object to

the 9-1-1 recording; and (3) the trial court erred when it allowed the State to recall a witness during its case in chief. We affirm.

¶ 3 I. BACKGROUND

¶ 4 On July 29, 2012, defendant was arrested and charged by information with one count of permitting sexual abuse of a child (720 ILCS 5/11-9.1A(a) (West 2012)) and one count of domestic battery (720 ILCS 5/12-3.2(a)(1) (West 2012)). Count I generally alleged from May 1, 2012, through July 29, 2012, defendant, the mother of S.R., knowingly permitted Kankaraj Sheelam to commit acts of sexual abuse upon S.R. (born May 14, 1997), a minor child under the age of 17. Count II generally alleged on July 29, 2012, defendant, the mother of Sh. R. (born November 6, 2000), struck Sh. R. in the face, causing a bloody nose.

¶ 5 A. Motion *In Limine*

¶ 6 In November 2012, defendant moved *in limine* to exclude the 9-1-1 recording Sh. R. (defendant's younger daughter) made to the Bloomington police on July 29, 2012. According to defendant, the call is inadmissible under Illinois Rule of Evidence 404(b) (eff. Jan. 1, 2011) because the content is not relevant and the prejudicial effect outweighed any probative value. At the hearing on the motion, the State argued the call is relevant because it explains defendant's motive for striking Sh. R. and also explains defendant's actual knowledge of the sexual abuse. The trial court denied defendant's motion, finding the recording is clearly "relevant and material to one or more of the issues in the case as to either or both counts" and "the probative value is not outweighed by the prejudicial effect." (The court also noted the statements made in the recording are an excited utterance.) The matter proceeded to jury trial in December 2012.

¶ 7 B. The Evidence at Trial

¶ 8 1. *The State's Case*

¶ 9 S.R. (defendant's older daughter) testified to incidents of sexual abuse in which Kankeraj Sheelam, a family friend, touched her breasts and private areas, often in defendant's presence. In early 2011, following her father's death, Kankeraj came over to defendant's residence once or twice a week to have dinner and watch movies in the living room. During the movie, Kankeraj sat on the floor with his back against the wall and legs spread. He made S.R. sit between his legs and he would touch and squeeze her breasts. When S.R. asked Kankeraj to stop, he would reply, "it's not a big deal" and "just watch the movie." S.R. also tried to move his hands but was unable to do so. Often times, S.R.'s mother (defendant) and younger sister (Sh. R.) were present while the touching occurred. Defendant would go back and forth between the kitchen and living room. On one occasion, defendant was sitting next to Kankeraj when S.R. asked why he was touching her. Defendant laughed and spoke to Kankeraj in Telugu, an Indian language.

¶ 10 In the spring of 2012, defendant rented a house from Kankeraj on Clearwater Avenue. Kankeraj's visits increased to three or four times per week. Each time he came over, he made S.R. lie next to him on the couch in the living room. On some occasions, Kankeraj covered himself and S.R.; on other occasions, he told defendant and Sh. R. to go upstairs. (Defendant never asked why she had to leave.) During the movie, Kankeraj touched S.R.'s breasts and private areas and S.R. could feel his front private part touch her from behind. When asked what she did when Kankeraj touched her, S.R. stated, "I started to cry because I couldn't do anything about it."

¶ 11 S.R. further testified in June 2012, defendant and Kankeraj were upstairs in the master bedroom. Defendant came downstairs and told S.R. to go see Kankeraj in the master bedroom. There, S.R. lay in bed while Kankeraj touched her breasts and tried to have a

conversation. He spoke in a disciplinary tone and said she has "to do it with him or else he'll send her back to India." During this conversation, defendant came upstairs to tell S.R. and Kankeraj she was going to run errands and S.R. ran out of the bedroom because she was afraid of what Kankeraj might do. At the top of the staircase, S.R. cried and begged defendant not to leave but defendant told S.R. to calm down and listen to Kankeraj. S.R. testified:

> "Q. What did you say to [defendant]?
>
> A. I told her that he was like touching me in my breast area and that it just wasn't right.
>
> Q. What did she say?
>
> A. Well she said like be open minded and don't really just like think like [out]side the box or something like that.
>
> * * *
>
> Q. What did you tell your mom he told you?
>
> A. I told her that—that he said that he was going to have sex with me.
>
> * * *
>
> Q. Okay. When you had this conversation with your mom, what did she say?
>
> A. Well she said to just do it with him like three or four times and then he'll get tired of you and it will be over."

S.R. also told defendant about Kankeraj's threat to send her back to India if she did not have sex with him. Defendant explained if S.R. listened to Kankeraj, he would pay for her college,

continue to buy her clothes, and get her anything she wanted. The conversation was emotional and both S.R. and defendant were crying.

¶ 12 On a separate occasion, defendant told S.R. to meet Kankeraj because he wanted to take her to Taco Bell. (Kankeraj did not drive or park near defendant's residence; he instead parked at gas stations or Clearwater Park.) At Taco Bell, Kankeraj said he wanted to "do it" with S.R., Sh. R., and defendant. (We note, based on the testimony at trial, it is not clear whether S.R. told defendant about her conversation at Taco Bell. However, S.R. eventually told defendant Kankeraj wanted "to do it" with her.)

¶ 13 On July 29, 2012, Kankeraj wanted to watch a movie in the master bedroom with S.R., Sh. R., and defendant. All four were on the bed. After 10 minutes, defendant left the bedroom because she was tired and wanted to sleep on the downstairs couch. Defendant asked Sh. R. to accompany her, but she wanted to stay and watch the movie. When defendant left, Kankeraj told Sh. R. to lie next to him. He proceeded to touch her chest and Sh. R. began crying. Kankeraj asked her to leave the room. After Sh. R. left, Kankeraj lay on top of S.R. and pretended to have sex with her. S.R. started to cry because she was not able to push him off and she "felt so helpless." Sh. R. returned to the master bedroom because she could hear her sister cry and Kankeraj again told her to leave. Sh. R. called 9-1-1 and defendant was awakened by 9-1-1's return phone call. Defendant became "real mad" when she learned Sh. R. called 9-1-1 and S.R. tried to protect Sh. R. by hugging her. Defendant managed to hit Sh. R. in the face, causing a bloody nose. Defendant instructed S.R. and Sh. R. to tell the police Sh. R. called 9-1-1 because she had a bloody nose and did not know what to do because S.R. and defendant were asleep.

¶ 14 Sh. R. testified and corroborated S.R.'s testimony. She observed Kankeraj touch S.R. every time he came over. She specifically recalled seeing him touch S.R.'s chest, underwear

area, and bottom. (Kankeraj also touched Sh. R. on the chest and underwear area.) Defendant was often present during the unwanted touching. On various occasions, Kankeraj told defendant to tell Sh. R. to leave the room so he and S.R. could watch the movie alone.

¶ 15 Sh. R. further testified on July 29, 2012, she was watching a movie in the master bedroom with S.R., defendant, and Kankeraj. During the movie, Kankeraj asked defendant to tell Sh. R. to leave and both defendant and Sh. R. left. Sh. R. went to her bedroom. She returned to the master bedroom because she heard her sister crying. When she entered the room, Kankeraj was on top of S.R. and he told Sh. R. to leave the room. Sh. R. immediately called 9-1-1 to report she and her sister were being molested. She spoke in a quiet voice because she did not want Kankeraj to hear. Defendant woke up because 9-1-1 tried calling back. Defendant asked Sh. R. why she called 9-1-1 and hit her in the face. Defendant told S.R. and Sh. R. to tell the police Sh. R. called 9-1-1 because she had a bloody nose and was scared.

¶ 16 Following Sh. R.'s testimony, defense counsel inquired (outside the presence of the jury) whether Sh. R.'s interview at the Child Advocacy Center (CAC) would be introduced "[b]ecause if it is, I would ask [Sh. R.] remain here for potential recall." The State then moved to recall Sh. R. because it inadvertently omitted a line of questions regarding statements she made to the CAC investigator. The trial court observed:

> "THE COURT: The court has previously ruled that the interview of [Sh. R.] if [Sh. R.] testified and there was opportunity to cross[-]examine which she was would be admissible. So with that additional thought in mind, let me hear from you Ms. Wong.
>
> MS. WONG [(Defense attorney)]: Um, the [digital video disc (DVD)], the interview would be admissible *** [s]o if counsel

wants to call her back and inquire about that particular conversation, that may be a cleaner way of doing it. But I'm just suggesting to the court if the interview comes in there would be additional motions.

THE COURT: Um-hm. As to specifically though the State's request to recall the witness to explore that particular area or line of questioning, any objection?

MS. WONG: I would simply object for the record. I understand it's the court's discretion."

The trial court allowed the State to recall Sh. R., finding the proposed testimony relevant to the issue of defendant's knowledge.

¶ 17 On recall, Sh. R. testified she heard defendant, S.R., and Kankeraj discuss S.R. being sent back to India. Sh. R. did not hear them discuss sex, but she later learned from S.R. that Kankeraj threatened to send S.R. back if she refused to have sex with him (defendant was not present during Sh. R. and S.R.'s conversation).

¶ 18 Following Sh. R.'s testimony on recall, the State moved to admit and publish the 9-1-1 recording. The trial court inquired:

"THE COURT: *** Ms. Wong, is there any objection to the introduction as well as publication then of State's exhibit one A without a foundation being laid for same?

MS. WONG: No, we had stipulated earlier."

The court admitted and published the 9-1-1 recording without objection. During the 9-1-1 call, Sh. R. spoke in a quiet voice and much of the recording—the first 1 minute 22 seconds—

involves the operator trying to obtain her address, though the phrase, "my sister is being molested and so am I," can be made out. Near the end of the call, the operator asks, "Who's doing this to you?" and Sh. R. begins to whimper and breathe heavily. The operator again asks, "Who's doing this to you?" but the call ends at 1 minute 52 seconds.

¶ 19 The State called Officer Steve Moreland to the stand. Officer Moreland testified on July 29, 2012, he was dispatched to defendant's residence in response to a call from an 11-year-old female who reported she and her sister were being molested. Upon arrival, he met defendant and two girls at the front door. Sh. R. was visibly shaken and crying. Defendant stated her 11-year-old daughter called 9-1-1 because she had a bloody nose and was scared. Officer Moreland spoke with Sh. R., who informed him a family friend was having sex with her, her sister, and her mother. Officer Moreland next spoke with S.R. and decided to take the two children into protective custody, and he arrested Kankeraj. Officer Moreland explained to defendant the allegations against Kankeraj and she replied he was supporting the family and there was a misunderstanding.

¶ 20 Officer Jared Bierbaum testified and corroborated Officer Moreland's testimony that on July 29, 2012, an 11-year-old female reported sexual abuse and hung up the phone. Upon arrival, he observed Officer Moreland speak with Sh. R. in the driveway and he noticed she was visibly shaken and had a bloody nose. Officer Bierbaum spoke with defendant, who insisted Sh. R. called 9-1-1 because she had a bloody nose and there were no problems. After Officer Moreland spoke with S.R., he asked Bierbaum to take the girls into protective custody.

¶ 21 The State moved to admit and publish a 53-minute video of defendant's interview with Detective Michael Johnson. Although Detective Johnson did not testify at trial, defense counsel stipulated to its foundation and admissibility. (We note the State did not call Detective

Michael Burns, a trained forensic interviewer with the Bloomington police department, to testify about his interviews with S.R. or Sh. R. We further note the State did not introduce the hearsay statements S.R. and Sh. R. made during their CAC interview—statements which the trial court ruled admissible pursuant to section 115-10 of the Criminal Procedure Code of 1963 (725 ILCS 5/115-10 (West 2010)). Nor was evidence introduced about how the police learned defendant committed the crime of permitting sexual abuse of a child or the events leading to her arrest.)

¶ 22 2. *The Defendant's Case*

¶ 23 Defendant testified Kankeraj was a trusted family friend. He accompanied defendant to hospitals while her husband was ill, helped her find employment, served as guardian to her daughters, and assisted S.R. and Sh. R. with homework, discipline, and chores. Defendant acknowledged Kankeraj came over several times a week to play board games, have dinner, and watch television. Although she observed S.R. sit between Kankeraj's legs, defendant was not concerned because his own children sat between his legs and lay next to him on the couch. Whenever they watched movies, defendant would go back and forth between cooking and watching television, and she never saw Kankeraj inappropriately touch her daughters. She answered:

> "No, I did not see, because it was—there was blanket, because we have always extra comforter to cover. So the cover, he was—they would cover—both of them, they would cover."

When asked if S.R. ever complained about being touched or groped, defendant stated, "No, she did not use those words at all." Defendant also denied telling S.R. to "be open[-]minded" or "think *** outside the box" because she does not speak English at home. When asked whether she told S.R. to "do it three or four times, he'll get tired of you," defendant testified she had no

idea what S.R. was talking about because "I don't talk in English, I don’t use the English words, 99.9 percent of the time, so I don't use those words at all." Defendant further testified she remembers a conversation where S.R. complained Kankeraj threatened to send her to India but S.R. never said he wanted to have sex with her. Defendant explained:

> "Raj told her that he will send her back to India if she's not behaving, and he was saying she has to behave, she has to listen to him, she has to be disciplined, she has to help me in the chores, she's not listening to me, so all of those complaints he made, and if she's not doing good in her studies, he will send her back to India."

¶ 24 Defendant acknowledged a conversation in which S.R. complained about having to "do it" with Kankeraj or get sent to India. Defendant explained:

> "A. She told me that [']do it[']meaning obeying, disciplining, obeying being discipline, listening to him. She did not mention to me the words sex at all, any time.
>
> Q. [(Assistant State's Attorney)] But she told you [']do it[']with him?
>
> A. It means—it has 100 meanings, 1,000 meanings. It doesn't mean only the sex, you know, because I was not talking with her about sex part at all in my—
>
> Q. Ma'am—
>
> A. —when I had conversation with her at any point in time, so she did not say the word sex."

¶ 25 Defendant testified on July 29, 2012, Kankeraj came to her house around 3 p.m. and wanted to watch a movie in the master bedroom with S.R., Sh. R., and defendant. Defendant asked her daughters to bring the Blu-ray player upstairs. The four got in bed and started the movie. After 10 minutes, defendant decided to leave because she was tired and wanted to sleep. She asked Sh. R. to leave the room with her but Sh. R. wanted to stay and watch the movie. Defendant went downstairs, made tea, and fell asleep on the couch. She was awakened by the phone, which kept ringing. Defendant did not answer but noticed the call was from 9-1-1. She went upstairs to find out if anyone knew why 9-1-1 called. S.R. and Kankeraj were in the master bedroom and Sh. R. was standing in the hallway. Defendant could tell she had been crying. Defendant asked Sh. R. if she called 9-1-1 but she just stood there. Defendant took the upstairs phone, pressed redial, and determined someone dialed 9-1-1 using the upstairs phone. Eventually, Sh. R. admitted she called 9-1-1 and defendant "got really mad" and slapped her on the cheeks.

¶ 26 Following deliberations, the jury found defendant guilty of permitting sexual abuse of a child and not guilty of domestic battery.

¶ 27 On December 31, 2012, defendant filed a written motion for judgment notwithstanding the verdict, raising the sole issue of reasonable doubt. At the September 2013 sentencing hearing, the trial court denied the motion and sentenced her to 48 months' probation, with 180 days in jail as a condition and credit for 151 days served.

¶ 28 This appeal followed.

¶ 29 II. ANALYSIS

¶ 30 A. Admissibility of the 9-1-1 Recording

¶ 31 Defendant argues the trial court erred when it admitted and allowed publication of Sh. R.'s 9-1-1 call. Specifically, defendant contends the recording's prejudicial effect outweighed its probative value. The State responds by claiming defendant failed to object to the 9-1-1 call during trial and in her posttrial motion, thereby forfeiting the issue for appeal.

¶ 32 Defendant argues that we may nevertheless recognize the error as plain error. The State contends we may not consider defendant's plain-error argument because defendant raised it for the first time in her reply brief. The Illinois Supreme Court held reviewing courts may consider a plain-error argument where, as here, it is raised for the first time in a reply brief. *People v. Williams*, 193 Ill. 2d 306, 347-48, 739 N.E.2d 455, 477 (2000). Accordingly, we address defendant's plain-error argument.

¶ 33 "The plain-error rule bypasses normal forfeiture principles and allows a reviewing court to consider unpreserved claims of error in specific circumstances." *People v. Thompson*, 238 Ill. 2d 598, 613, 939 N.E.2d 403, 413 (2010). A reviewing court will find plain error and grant relief only where:

> "(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." (Internal quotation marks omitted.) *Leach*, 2012 IL 111534, ¶ 60, 980 N.E.2d 570.

¶ 34 The threshold step of plain-error review is establishing whether an error occurred. *Thompson*, 238 Ill. 2d at 613, 939 N.E.2d at 413. We first consider whether the trial court erred in admitting the 9-1-1 recording in this case.

¶ 35 Evidence is admissible if it is relevant to an issue in dispute and its probative value is not substantially outweighed by its prejudicial effect. Ill. R. Evid. 402, 403 (eff. Jan. 1, 2011); *People v. Johnson*, 208 Ill. 2d 53, 102, 803 N.E.2d 405, 433 (2003). As our supreme court explained in addressing the admission of a 9-1-1 recording, relevant evidence "will not be excluded merely because it may prejudice the accused or because it might arouse feelings of horror or indignation in the jury." *People v. Williams*, 181 Ill. 2d 297, 314, 692 N.E.2d 1109, 1119 (1998). Rather, trial judges must weigh the prejudicial effect and probative value of a piece of evidence. *Id.* The decision to admit a 9-1-1 recording is within a trial judge's discretion, and we will not interfere with the decision absent an abuse of discretion. *Id.*

¶ 36 Defendant asserts the 9-1-1 recording is highly prejudicial because it "exposed the jury to passionate evidence." We disagree. During the 9-1-1 call, Sh. R. spoke in a quiet voice and much of the recording—the first 1 minute 22 seconds—involves the operator trying to obtain her address, though the phrase, "my sister is being molested and so am I," can be made out. Sh. R. also provides her age and her sister's age. Near the end of the call, the operator asks, "Who's doing this to you?" and Sh. R. begins to whimper and breathe heavily. The operator again asks, "Who's doing this to you?" but the call ends at 1 minute 52 seconds. We conclude the trial court could properly determine the nature of the recording was not so highly prejudicial to defendant in light of the circumstances in this case. The jury was confronted with the testimony of both victims, who described in detail specific instances of sexual abuse. The jury also heard Officers Moreland and Bierbaum testify to the substance of the 9-1-1 call. In view of this evidence, we

cannot say the admission of the tape was so prejudicially inflammatory as to deny defendant a fair trial. Even if the recording captured Sh. R. in a passionate state and may have raised feelings of contempt or indignation in the jury, this alone does not bar its admission. *Id.*; *People v. Edgeston*, 157 Ill. 2d 201, 237-38, 623 N.E.2d 329, 347-48 (1993) (admission of a 9-1-1 tape depicting " 'the horror and brutality of death' " was not so inflammatory as to preclude its admission where the evidence was probative of the circumstances of the crime).

¶ 37 Defendant further argues the 9-1-1 tape was not necessary because other witnesses were capable of explaining the events without the tape. However, the Illinois Supreme Court squarely rejected this argument when it held 9-1-1 recordings may be admitted, even where they are cumulative to oral testimony. *Williams*, 181 Ill. 2d at 315, 692 N.E.2d at 1119; see also *People v. Jurczak*, 147 Ill. App. 3d 206, 213, 497 N.E.2d 1332, 1338 (1986) (evidence may properly be admitted even if cumulative to oral testimony covering the same issue). Thus, the fact Sh. R. testified about her call to 9-1-1 does not bar admission or publication of the 9-1-1 recording.

¶ 38 We find the 9-1-1 recording has sufficient probative value and properly corroborated Sh. R.'s testimony regarding the call she made to 9-1-1. The recording was necessary to fully explain the State's case to the trier of fact and to show Officers Moreland and Bierbaum were acting in the course of their official duties when they were dispatched to defendant's residence in response to Sh. R.'s 9-1-1 call. See *Williams*, 181 Ill. 2d at 313, 692 N.E.2d at 1119 (9-1-1 tape admitted to show a police officer was acting in the course of his official duties). The recording further explains defendant's motive for slapping Sh. R. and provides the jury with information to determine the appropriate weight to give to the conflicting testimony regarding the domestic battery. We hold the trial court did not abuse its discretion in

allowing the jury to hear the 9-1-1 tape. Since we find the court did not err by admitting the 9-1-1 recording, we need not proceed further through the plain-error analysis.

¶ 39 B. Ineffective Assistance of Counsel

¶ 40 Defendant next contends her trial attorney was ineffective for failing to object to the 9-1-1 recording at trial and in a posttrial motion. The State argues counsel could not be considered deficient for failing to object because the 9-1-1 recording was admissible. The State also asserts defendant was not prejudiced by the admission of this evidence.

¶ 41 To prevail on her ineffective-assistance claim, defendant must establish both (1) counsel's performance fell below an objective standard of reasonableness (performance prong); and (2) there is a reasonable probability, but for counsel's errors, the result of the proceeding would have been different (prejudice prong). *Strickland v. Washington*, 466 U.S. 668, 687 (1984). The decision to object to the admission of evidence is a strategic one and generally may not form the basis of a claim of ineffective assistance of counsel. *People v. Perry*, 224 Ill. 2d 312, 344, 864 N.E.2d 196, 216 (2007). More importantly, "counsel cannot be ineffective for failing to object if there was no error to object to." *People v. Sanders*, 2012 IL App (1st) 102040, ¶ 24, 965 N.E.2d 1275; *cf. People v. McGhee*, 2012 IL App (1st) 093404, ¶¶ 45-50, 964 N.E.2d 715.

¶ 42 As stated above, the 9-1-1 recording was probative and the trial court did not err when it admitted and published the recording. Any objection to the admission of the recording on the grounds its prejudicial effect outweighed its probative value would be futile. "Defense counsel is not required to make futile motions or objections in order to provide effective assistance." (Internal quotation marks omitted.) *People v. Smith*, 2014 IL App (1st) 103436, ¶ 64, __ N.E.3d __. By objecting to the 9-1-1 recording, defense counsel would run the risk of

appearing obstructionist to the jury, especially here, where the 9-1-1 recording was certainly going to be admitted. Defense counsel was not objectively unreasonable for refraining to object to the 9-1-1 recording. See *People v. Aliwoli*, 238 Ill. App. 3d 602, 624, 606 N.E.2d 347, 362 (1992) (rejecting defendant's claim of ineffective assistance of counsel where his attorney stipulated to the accuracy of the 9-1-1 recording).

¶ 43 Assuming, *arguendo*, counsel's failure to object was not sound trial strategy, we would nevertheless find defendant suffered no prejudice because the absence of the 9-1-1 tape does not tip the scales of justice. Defendant fails to show how the jury would not have learned the substance of the 9-1-1 recording—Sh. R., Officer Moreland, and Officer Bierbaum each testified Sh. R. called 9-1-1 to report she and her sister were being molested. Because of the evidence against defendant, she cannot establish she was prejudiced when counsel failed to object. Therefore, defense counsel was not ineffective for failing to object to the admission of the 9-1-1 recording.

¶ 44 C. Recalling a Witness

¶ 45 Defendant's final contention is the trial court abused its discretion when it allowed the State to recall Sh. R. Again, we note defendant failed to raise this issue in her written post-trial motion and the issue is forfeited on review. *Leach*, 2012 IL 111534, ¶ 60, 980 N.E.2d 570. Defendant argues we may address her argument under the plain-error doctrine. We therefore turn to the first step of plain-error review and determine whether an error occurred when the trial court allowed the State to recall Sh. R. during its case in chief.

¶ 46 The State may recall a witness to elicit additional testimony during its case in chief where the testimony does not contradict the witness's earlier testimony and the defendant has ample opportunity to cross-examine the witness and is not prevented from preparing her case

to counter the additional testimony. *People v. Kissinger*, 116 Ill. App. 3d 826, 832-33, 452 N.E.2d 615, 619-20 (1983). The court may allow the recall of a witness to prove matters inadvertently omitted previously or to adduce additional testimony. *People v. Thompson*, 57 Ill. App. 3d 134, 142, 372 N.E.2d 1052, 1059 (1978). The decision to allow a witness to be recalled is within the discretion of the trial court. *People v. Lewis*, 223 Ill. 2d 393, 405, 860 N.E.2d 299, 306 (2006).

¶ 47 The present case falls well within the ambit of *Kissinger* and *Thompson*. During the State's case in chief, and immediately after Sh. R.'s testimony, the State moved to recall Sh. R. to prove matters inadvertently omitted. The trial court inquired about the additional area the State sought to address and the State explained it wished to ask Sh. R. questions concerning statements she made to Detective Burns at the CAC. The State said:

> "MR. GHRIST [(Assistant State's Attorney)]:
>
> Conversations that she heard with Mom, and this would go to knowledge o[f] the defendant and the question in the CAC interview i[s] this[:] Did you hear him tell your mom that your sister had to have sex with him[?] And she nods. And the CAC interviewer confirms and said, you heard that conversation? Okay. And then at some point, no excuse, and then your mom at some point said that your sister is going to have to do this? So she doesn't have to go back to India? And it's kind of a sacrifice and she nods again."

Since the issue concerned defendant's knowledge of sexual abuse, the trial court determined the additional testimony was relevant and allowed the State's motion to recall. On recall, Sh. R.'s

testimony was limited in scope and did not contradict her prior testimony. The additional testimony could not have surprised defendant because the trial court previously ruled the CAC interview admissible and defendant requested Sh. R. remain available for potential recall. Defendant had ample opportunity to cross-examine the witness and prepare her case to counter the additional testimony. Since the trial court was satisfied with the relevancy of the proposed testimony, we conclude the trial court was well within its discretion to allow the State to recall Sh. R. as a witness. *Thompson*, 57 Ill. App. 3d at 142, 372 N.E.2d at 1059. Because we find the court did not err when it allowed the State's motion for recall, we need not proceed further through the plain-error analysis.

¶ 48 III. CONCLUSION

¶ 49 For the reasons stated, we affirm defendant's conviction for permitting sexual abuse of a child. As part of our judgment, we award the State its $50 statutory assessment against defendant as costs of this appeal. 55 ILCS 5/4-2002(a) (West 2012).

¶ 50 Affirmed.