2022 IL App (4th) 200528-U

NO. 4-20-0528

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED
March 17, 2022
Carla Bender
4th District Appellate
Court, IL

THE PEOPLE OF THE STATE OF ILLINOIS, Plaintiff-Appellee, v. ROMERO LESLIE, Defendant-Appellant.	) Appeal from the) Circuit Court of) Champaign County) No. 20CF50)) Honorable) Roger B. Webber,) Judge Presiding.

JUSTICE CAVANAGH delivered the judgment of the court.
Justices Harris and Holder White concurred in the judgment.

ORDER

¶ 1 *Held*: By criticizing his trial counsel for inadequate impeachment of the State's witnesses, the defendant raised a matter of trial strategy—a criticism that, on its face, did not merit further inquiry or the appointment of substitute counsel.

¶ 2 In the circuit court of Champaign County, the State charged the defendant, Romero Leslie, with aggravated criminal sexual abuse (720 ILCS 5/11-1.60(d) (West 2018)) in that he touched the breast of a 14-year-old girl, C.A. A jury found him guilty of that offense, and the court sentenced him to imprisonment for four years. He appeals because, in the sentencing hearing, he criticized his trial counsel for inadequately impeaching the State's witnesses and because, in his view, the court omitted to conduct a preliminary inquiry into that allegation of ineffective assistance. We conclude that the defendant's complaint about inadequate impeachment was a complaint about trial strategy. According to case law, *pro se* posttrial complaints about trial

strategy do not merit further investigation by the circuit court or the appointment of substitute counsel. Therefore, we affirm the judgment.

¶ 3 I. BACKGROUND

¶ 4 The evidence in the jury trial tended to show the following. In July 2019, C.A., who lived in South Carolina, was visiting her grandmother, who lived in Rantoul, Illinois. The defendant was married to the grandmother. While the grandmother was away at the store, C.A. was playing a video game with the defendant. They were sitting beside one another, on a couch. According to C.A.'s testimony, the defendant put his hand under the back of her shirt and reached around and touched her breast, underneath her bra. Alarmed, C.A. stood up from the couch. The defendant ordered her to go into a bedroom. She obeyed. In the bedroom, he tried to pull down her pants. She said, "No." Though unable to get her pants down, he pushed her onto a bed and lay on top of her. She pushed him aside, left the bedroom, and went outside the house to wait for her grandmother to return from the store. Using her cell phone, she tried to call her grandmother, but her grandmother did not answer.

¶ 5 When the grandmother returned, C.A. helped her bring in the groceries. Then, while alone with her grandmother in the kitchen, she told her grandmother what had happened. The prosecutor asked C.A.:

> "Q. Did you tell grandma the whole story?
>
> A. No.
>
> Q. Why not?
>
> A. I was scared, and frantic, and I really just wanted to get out."

¶ 6 After her conversation with C.A. in the kitchen, the grandmother confronted the defendant. He denied doing anything wrong, claiming he had only given C.A. a hug. C.A. warned

that if he persisted in his denials, she would call the police. After talking with the defendant outside, the grandmother demanded that he pack up and leave. He did so.

¶ 7 At the time, no one telephoned the police. The grandmother testified that, as far as she knew at the time, she had nothing to report to the police. She had questioned the defendant, who had told her that after hugging C.A. and telling her how glad he was that she was visiting her grandmother, he had merely reached down behind C.A. to pull down her shirt.

¶ 8 Upon returning to South Carolina, C.A. told her mother what had happened, apparently providing more details. Her mother told a pastor, who, as a mandated reporter, reported the incident to the police. The Rantoul police were then notified.

¶ 9 Trial counsel cross-examined C.A. He asked her:

> "Q. Did you tell your grandmother that day that [the defendant] had tried to take off your pants, or pushed you on the bed and gotten on top of you?
>
> A. No.
>
> * * *
>
> Q. *** Do you recall telling the interviewer when you were interviewed in South Carolina that you had completely forgotten about this incident while you were visiting Illinois and Michigan, and didn't think about it until you had gotten back home to South Carolina?
>
> A. Yes."

¶ 10 In addition, defense counsel raised some uncertainty about when the incident supposedly happened. On redirect examination, C.A. had testified that after staying with her grandmother for a week, she went to Michigan to visit her father and that she then returned to Rantoul to visit her grandmother for another week. It was about two days after she returned to

Rantoul from Michigan that the defendant sexually touched her—or so C.A. testified on direct examination. In his cross-examination, however, defense counsel asked her:

"Q. Are you entirely sure that this happened the second week you were visiting your grandmother and not the first week?

A. I don't know [indicating].

Q. Could this have happened a couple of days after you arrived at your grandmother's house the first week of your visit, prior to when you went to Michigan?

A. No, I don't think so [indicating].

Q. Is it possible?

A. Yes, it is possible."

¶ 11 Trial counsel cross-examined the grandmother, too. He asked her:

"Q. Now when [C.A.] talked to you and you asked her what had happened, did she tell you that [the defendant] had touched under her shirt, like had touched her breast?

A. No [indicating].

Q. Did [C.A.] tell you that [the defendant] had pulled on your shirt, and she felt like he was trying to touch her?

A. Not in those words, but yes.

Q. Okay. What—what words?

A. He—he—she said that he had—she—he say—she didn't say he was trying to touch her, she just says he was tugging at her shirt.

Q. Did she ever tell you that he—that he pulled her shirt up?

A. No [indicating].

Q. Did she ever tell you that he had tried to pull her pants down?

A. No, no. Excuse me.

Q. Did she ever tell you that he had pushed her on your bed and jumped or climbed on top of her?

A. No.

Q. Did you ask her when you were standing in the kitchen to show you what he had done to her shirt?

A. Yes.

Q. And if—if you would stand up and show us what it was that she—that she showed you, please?

A. She said he was like—[indicating] she was just like real—she was just like fumbling with her shirt.

Q. Okay, thank you. Did she tell you that that made her feel uncomfortable?

A. Yes.

Q. But that's all the details that she told you?

A. Pretty much.

Q. What do you mean, pretty much?

A. Oh, yeah, that's it."

The grandmother further testified, on cross-examination, that when she questioned the defendant, he gave an account that "was similar" to the account that C.A. had given her in the kitchen. Nevertheless, after hearing his explanation, the grandmother told the defendant to "get the hell out." He gathered up the few items he had brought, and he left and never came back. Even before

this incident, the grandmother was separated from the defendant because, she testified, he had been unfaithful. He had come to Rantoul from Bloomington, Indiana, to attempt a reconciliation. The attempt was unsuccessful; the incident with C.A. caused a definitive break. During the second week when C.A. was in her home, the defendant was no longer there.

¶ 12 The jury found the defendant to be guilty.

¶ 13 In the sentencing hearing, the defendant made a statement in allocution. He insisted that he was innocent. He referred vaguely to "lost" and "[un]available" statements, the "discrepancies" in which might have resulted in his acquittal if the statements had been presented to the jury and if witnesses had been cross-examined on the statements. He claimed, "[M]y strategy defense was about the statements that the—the family had made, that somehow never became present." He continued:

> "As described by the victim statements have been lost or not presented that was taken by the Rantoul police officer, and then yet I just ended up facing this accuser alone, without having the opportunity to, by the police statements that I had read to—to argue against, to show the—the jury in my defense, to show the jury that there's discrepancies. It wasn't clean and narrow and cut as, you know, me going—coming to court, and not having those statements to address, to cross-examine. *** Come to trial the statements was not presented. You know, it wasn't available.
>
> So again I've been sitting here, you know, trying to do what I can. My attorney's been overworked, whatever, I don't know. She's doing the best she can, I guess, and in what she can do, but I have a duty also to look at, to know what's going on in my case, and to help my attorney to present whatever information I have that can help me.

* * *

> So like I said, a lot of things was missing to defend me on that, and you know had I had that, and just, you know, this little bit of information, then the statements that I was trying to address, like I said, never came to argument, other than just finding out a story that he did that. So I relied on the story, but the references of the statements that was full of discrepancies and then turned—my attorney came to me and I reviewed, and then they were never as exhibits presented to the jury that would show that something was wrong here, for someone to touch someone, you never said anything, not that report ***. I thought that would be conveyed to a jury to show, oh, this is wrong that why it ain't all of the time, but just because someone said you done it doesn't mean you done it. But if it's not dug into, you know, properly investigated to show that, and to sow doubt, to sow doubt, you know, you got strengths and weaknesses in the case to sow the doubt."

The defendant complained, "I might as well have been facing Mother Theresa without having those statements, and the jury would convict. I would convict me, not having any other discrepancies in the matter with the things she said, you know, I had touched her breast, and I did not."

¶ 14 After the defendant finished making his statement in allocution, the circuit court remarked, "[The defendant] *** commented that [there] were things that were not brought up about her impeachment. My observation at trial was the defense counsel did a very good job of pointing out inconsistencies in testimony, and more importantly, the lack of detail and specificity as to dates when the offense allegedly occurred."

¶ 15 II. ANALYSIS

¶ 16 The defendant observes that, in the sentencing hearing, he "told the [circuit] court that there was evidence of discrepancies in statements from the witnesses that would have supported his defense but [that] were not presented to the jury." Although the court "correctly understood that [the defendant] was claiming his *** counsel's ineffectiveness," the defendant faults the court for omitting to conduct a preliminary inquiry into his allegation of ineffective assistance. "[W]hen a defendant presents a *pro se* posttrial claim of ineffective assistance of counsel, the trial court should *** examine the factual basis of the defendant's claim." *People v. Moore*, 207 Ill. 2d 68, 77-78 (2003). "The operative concern for the reviewing court is whether the trial court conducted an adequate inquiry into the defendant's *pro se* allegations of ineffective assistance of counsel." *Id.* at 78. The defendant complains that the circuit court conducted no inquiry at all into his complaint that, in his jury trial, valuable opportunities for impeachment had been thrown away. He "told the court that there was evidence of discrepancies in statements from the witnesses that would have supported his defense but [that] were not presented to the jury." He points out, for example:

> "The trial court had not reviewed the taped interview of C.A. that took place in South Carolina, because it was never admitted into evidence, and there may have been numerous inconsistent statements made by C.A. that were not utilized during C.A.'s cross-examination. Alternatively, there could have been other prior inconsistent statements made by C.A.'s grandmother ***. The trial court also never asked [the defendant] the basis for his claim that his case was not properly investigated."

¶ 17 In context, though, when the defendant spoke of a "proper investigation," he evidently meant probing, or "digging into," the discrepancies or inconsistencies in prior statements

to "sow doubt." He argued to the circuit court, "But if it's not dug into, you know, properly investigated to show that, and to sow doubt, to sow doubt, you know, you got strengths and weaknesses in the case to sow the doubt." At bottom, his allegation of ineffective assistance was that his trial counsel had failed to do a good enough job impeaching the State's witnesses.

¶ 18 "[T]he trial court can base its evaluation of the defendant's *pro se* allegations of ineffective assistance on its knowledge of defense counsel's performance at trial and the insufficiency of the defendant's allegations on their face." *Id.* at 79. "If the trial court determines that the claim *** pertains only to matters of trial strategy, then the court need not appoint new counsel and may deny the *pro se* motion." *Id.* at 78.

¶ 19 "Generally, the decision whether or not to cross-examine or impeach a witness is a matter of trial strategy which will not support a claim of ineffective assistance of counsel." *People v. Pecoraro*, 175 Ill. 2d 294, 326 (1997). Case law appears to recognize two exceptions to that rule. One exception is "the complete failure to impeach the sole eyewitness when significant impeachment is available." *People v. Salgado*, 263 Ill. App. 3d 238, 246-47 (1994). The other exception is the "fail[ure] to conduct any meaningful adversarial testing." *People v. Haynes*, 2021 IL App (1st) 200110-U, ¶ 45. As the appellate court put it in *Haynes* when responding to an ineffectiveness claim premised on the failure to cross-examine eyewitnesses about their statements to the police, "matters of trial strategy are ultimately the province of trial counsel and usually will not support a claim of ineffective assistance unless counsel entirely fails to conduct any meaningful adversarial testing." (Internal quotation marks omitted.) *Haynes*, 2021 IL App (1st) 200110-U, ¶ 45. Neither of those two exceptions applies to the present case. Therefore, we conclude that the defendant's complaint about inadequate impeachment, on its face, pertained to trial strategy and did not call for any inquiry by the circuit court. See *Moore*, 207 Ill. 2d at 78.

¶ 20 III. CONCLUSION

¶ 21 For the foregoing reasons, we affirm the circuit court's judgment.

¶ 22 Affirmed.