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2014 IL App (3d) 130073-U

Order filed October 17, 2014

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IN THE  
APPELLATE COURT OF ILLINOIS  
THIRD DISTRICT

A.D., 2014

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the Circuit Court of the 21st Judicial Circuit, Kankakee County, Illinois,
Plaintiff-Appellee,	)	
v.	)	Appeal No. 3-13-0073
CHASMEN T. LOTT,	)	Circuit No. 11-CF-287
Defendant-Appellant.	)	Honorable Kathy Bradshaw-Elliott, Judge, Presiding.

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JUSTICE WRIGHT delivered the judgment of the court.  
Presiding Justice Lytton and Justice Carter concurred in the judgment.

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**ORDER**

- ¶ 1 *Held:* Defendant's claims of ineffective assistance of trial counsel fail, as the claims involve strategic decisions.
- ¶ 2 A jury found defendant, Chasmen T. Lott, guilty of criminal sexual assault (720 ILCS 5/12-13(a)(1) (West 2010)), violation of an order of protection (720 ILCS 5/12-30(a)(1)(i) (West 2010)), and criminal damage to property (720 ILCS 5/21-1(1)(a) (West 2010)), after an incident involving his estranged wife, L.L. On appeal, defendant argues that trial counsel provided

ineffective assistance on several grounds, which cumulatively prejudiced the outcome of his trial. We affirm.

¶ 3

### FACTS

¶ 4

In 2011, L.L. accused defendant of breaking through the back door of her home and sexually assaulting her. The alleged assault was immediately precipitated by Casey G. leaving L.L.'s residence. The State alleged that defendant stood in a nearby parking area while watching Casey leave and then approached the residence, broke through the door, and assaulted L.L. Defendant was charged with criminal sexual assault (720 ILCS 5/12-13(a)(1) (West 2010)), aggravated domestic battery (720 ILCS 5/12-3.3(a-5) (West 2010)), violation of an order of protection (720 ILCS 5/12-30(a)(1)(i) (West 2010)), and criminal damage to property (720 ILCS 5/21-1(1)(a) (West 2010)). He hired private counsel.

¶ 5

Anticipating a jury trial, the State filed a motion pursuant to section 115-7.4 of the Code of Criminal Procedure (725 ILCS 5/115-7.4 (West 2010)), seeking to introduce prior bad acts committed by defendant that were both similar and close in time to the present alleged acts. The court granted the motion, allowing the State to introduce testimony describing six prior acts committed by defendant against L.L. Neither the motion nor the court's order specified what the acts introduced would prove.

¶ 6

At trial, L.L. testified she and defendant married in 2006 and had one child together, a daughter, born in 2007. The couple separated in 2009, and L.L. and their daughter moved in with L.L.'s parents. In April 2010, the court entered an order of protection against defendant on L.L.'s behalf. L.L. testified the order of protection was entered because defendant was stalking and harassing her.

¶ 7 L.L. also testified to multiple prior bad acts allegedly committed by defendant in April of 2010. First, defendant went to L.L.'s workplace and chased her through a warehouse. Later that April, he showed up at her house, and the two of them argued on the front lawn. On another occasion, defendant, upset about his daughter, showed up at Kankakee Community College where L.L. took classes. He yelled at L.L. and pushed her. Later that day, he followed L.L. in his car, cut in front of her, and began yelling at her while she was stopped in the road, with his car blocking her path.

¶ 8 L.L. testified that in June 2010, she was at a party at the Kohl Center, which defendant was also attending. L.L. testified that defendant came up behind her, yanked her hair, and may have pushed her. As a result, defendant was charged with violation of an order of protection.

¶ 9 L.L. and defendant lived together from August through September of 2010, despite the existence of the order of protection. In January 2011, defendant called L.L. on the telephone, asking to visit their daughter. L.L. told him no, because it was too late in the evening. The next morning, L.L. noticed scratches on her car which she had not noticed before.

¶ 10 On the night of May 21, 2011, L.L. was at home with Casey, while her daughter stayed with defendant's mother. L.L. and Casey had sex "[a] lot" of times, and Casey used a condom each time. Sometime after 1 a.m., L.L. showed Casey out the back door. As Casey walked away, L.L. saw defendant approaching her home on foot. L.L. slammed the door shut and locked it. Defendant "kicked the door in" and came inside. L.L. and defendant argued about L.L.'s relationship with Casey and about the broken door.

¶ 11 L.L. testified that after arguing with defendant, she went upstairs to call the police. Defendant snatched her phone away and ended the call before it could be transferred to the local authorities. The two then started arguing again while sitting on L.L.'s bed. Defendant ripped

L.L.'s shirt off and pushed her down. He took off his underwear and put his hand tightly around her neck. She told him to stop, but he refused and put his penis inside her vagina, saying, "If you wanna be a whore, then be a whore." After 10 to 15 seconds, L.L. kicked him off. She grabbed her phone, ran to the bathroom, and called 911. Defendant left as she was calling 911.

¶ 12 When the police arrived, L.L. told them defendant had kicked in her door, but she did not mention anything about a sexual assault, because, according to L.L., she was too embarrassed. L.L. called her friend, Crystal P., early the morning after defendant left, but did not tell her friend about the sexual assault during the phone call. Later that morning, she texted Crystal and told her about the alleged assault.

¶ 13 Crystal testified in corroboration with L.L.'s testimony about the phone call and text message. Crystal received a call from L.L., who sounded like she was in shock and whose voice was trembling. Crystal asked if she was all right, and L.L. responded, "I guess." Later that morning, Crystal received a text message from L.L., explaining that defendant had sexual intercourse with her without her consent. Crystal also testified about the incident at the Kohl Center. Crystal testified that, after defendant pulled L.L.'s hair at the Kohl Center, Crystal and L.L. returned to Crystal's home and fell asleep. Crystal woke up to defendant inside her home, standing over L.L. and screaming at her. Crystal's sister called police, who came and arrested defendant. Crystal's door had been knocked off its hinges.

¶ 14 Bourbonnais police officer Neil King testified that on May 21, 2011, he responded to a call from L.L. stating she wanted to add to her earlier report of criminal damage to property. L.L. told King that, in addition to breaking down her door, defendant sexually assaulted and choked her. King testified to the detailed description L.L. gave him of the night's events. L.L. gave King a shirt that was ripped during the assault, some beads that had fallen off the bracelet

she was wearing, and defendant's car keys, which he left at her home. King found a condom package on L.L.'s bed and two used condoms in the bathroom trash. The used condoms were not tested for deoxyribonucleic acid (DNA).

¶ 15 Donna Bell was the emergency room physician who treated L.L. that night. Bell testified that L.L.'s vagina showed excoriations which could have been created by a sexual assault, but conceded that the excoriations could also have come from consensual sexual conduct.

¶ 16 The State introduced evidence that a vaginal buccal swab sample taken from L.L. was analyzed and could not exclude defendant, based on a buccal swab taken from defendant's cheek. The State rested.

¶ 17 Defendant testified that he got off work late the night of May 21, 2011, and stopped by L.L.'s apartment complex to hang out with his cousin and two women in the parking lot adjacent to L.L.'s back door, although none of them lived at the complex. Defendant heard a sound come from L.L.'s apartment and saw a man exit through the back door. The man walked away, and defendant went toward the back door to enter the home. L.L. closed the door before he got there and he instinctively lowered his shoulder and broke through the door.

¶ 18 According to defendant, he and L.L. talked in the kitchen about L.L.'s visitor before L.L. invited defendant upstairs. Defendant told L.L. about his plans to move to Iowa with their daughter and open a barbershop. L.L. told him it would be fine for defendant to take their daughter to Iowa.

¶ 19 After defendant and L.L. prayed, defendant kissed L.L.'s cheek twice while they were seated on the floor. Defendant pulled down L.L.'s pants, and L.L. leaned back on the floor. Defendant performed oral sex and L.L. did not object. In a passionate moment, defendant ripped off L.L.'s shirt and kissed her breasts.

¶ 20 L.L. asked defendant to wear a condom. Defendant found a condom on the dresser and put it on. Defendant and L.L. lay on the bed and began having sex. Defendant had his hand on her neck but was not choking her. After 10 or 15 seconds, defendant stopped because he did not want to wear a condom. L.L. demanded that he wear one. As defendant was looking for another condom, L.L. took her phone into the bathroom. Defendant followed her and placed his used condom in the bathroom trash.

¶ 21 In the bathroom, L.L. asked defendant if he planned to pay to have the back door fixed. Defendant said he would give L.L. money once he knew what it cost. Defendant left the bathroom and L.L. closed the bathroom door. Defendant could hear L.L. calling the police from inside. Defendant left the home.

¶ 22 On cross-examination, the State focused on details about defendant's testimony that he did not mention when he was first interviewed by the police about the incident. Defense counsel rehabilitated defendant on those questions by pointing out how detailed defendant's statement to the investigator was but how small details might not be mentioned during an interview.

¶ 23 The jury found defendant guilty of criminal sexual assault, violation of an order of protection and criminal damage to property. The court sentenced him to concurrent sentences of six years for criminal sexual assault and two years for violation of an order of protection. On the criminal damage to property charge, defendant was sentenced to the equivalent time he had already spent in custody. Defendant appeals.

¶ 24 ANALYSIS

¶ 25 Defendant argues that we must grant him a new trial because he was denied his constitutional right to the effective assistance of counsel. U.S. Const., amends. VI, XIV; Ill. Const. 1970, art. I, § 8. To establish a claim of ineffective assistance of counsel, a defendant

must show: (1) that his attorney's performance was objectively unreasonable under prevailing professional norms; and (2) a reasonable probability that, but for counsel's errors, the result of the proceedings would have been different. *Strickland v. Washington*, 466 U.S. 668, 689-94 (1984). We apply a strong presumption that counsel's performance was reasonable. *People v. Palmer*, 162 Ill. 2d 465, 476 (1994). Strategic decisions by counsel are virtually unchallengeable (*People v. Jimerson*, 127 Ill. 2d 12, 33 (1989)), as we avoid analyzing claims through "the distorting effects of hindsight." *Strickland*, 466 U.S. at 689.

¶ 26 Defendant argues that trial counsel's performance was deficient because counsel failed to: (1) offer a jury instruction admonishing the jury from relying on the prior-bad-acts evidence to establish the nonconsensual nature of the sexual contact with L.L.; (2) object when the prosecutor told the jury during closing argument that defendant's DNA found on the vaginal swab originated semen and not saliva; (3) object to King and Lindsay Smith's testimony recounting L.L.'s prior consistent statements about the details of the alleged assault; and (4) failed to competently cross-examine Detective Brett Bukowski. Defendant claims that those four errors combined to prejudice his trial.

¶ 27 A defense counsel's choice of jury instructions—outside the realm of lesser-included charges—is a matter of trial strategy and cannot serve as a basis for an ineffective assistance claim. *People v. Bobo*, 375 Ill. App. 3d 966, 977 (2007). Likewise, defense counsel's decision whether to object during closing arguments is a matter of trial strategy (*People v. Perry*, 224 Ill. 2d 312, 348-49 (2007)), as is the manner in which cross-examination is conducted. *People v. Pecoraro*, 175 Ill. 2d 294, 326-27 (1997). The decision not to object to Smith and King's testimony about L.L.'s prior statements may have been questionable, but that error alone was not enough to prejudice the outcome of the trial.

