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2016 IL App (3d) 150802-U

Order filed November 9, 2016

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

2016

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the Circuit Court of the 13th Judicial Circuit, Grundy County, Illinois,
Plaintiff-Appellee,)	
v.)	Appeal No. 3-15-0802
KENTON R. PELLEGRINI,)	Circuit No. 13-CF-183
Defendant-Appellant.)	Honorable Robert C. Marsaglia, Judge, Presiding.

JUSTICE WRIGHT delivered the judgment of the court.
Justices McDade and Schmidt concurred in the judgment.

ORDER

- ¶ 1 *Held:* The trial evidence was sufficient to prove beyond a reasonable doubt that defendant committed the offense of criminal sexual assault. Trial counsel did not provide ineffective assistance regarding the defense's expert medical witness.
- ¶ 2 Defendant, Kenton R. Pellegrini, challenges his convictions on the grounds that the evidence was insufficient to prove him guilty beyond a reasonable doubt and he did not receive effective assistance of counsel. We affirm.

¶ 3

FACTS

¶ 4 The State charged defendant by indictment with aggravated criminal sexual assault (720 ILCS 5/11-1.30(a)(2) (West 2012)), criminal sexual assault (720 ILCS 5/11-1.20(a)(1) (West 2012)), and aggravated domestic battery (720 ILCS 5/12-3.3(a) (West 2012)). The charges were based on the allegation that defendant forcefully inserted his fingers or hand into the vagina of the victim without her consent, thereby causing harm to the victim.

¶ 5 At trial, the victim testified she and defendant were married on July 21, 2001, and had four children. In September 2013, the victim, defendant, and their children lived in a house at 1271 Brendan Drive, in Morris, Illinois. The couple discussed a divorce in late 2011 and by September 2013, the marriage was “rocky.”

¶ 6 The victim described the couple’s sex life in 2013 as “[n]ot good. Very infrequent.” The victim explained,

“I had basically just lost interest. I lost my feelings of love for him. Just the way he treated me I thought was terrible and basically treated me like a tool, not even like a person, no compassion. Just a rough marriage.”

Unlike the victim, defendant had a high interest in sexual intercourse and would pressure the victim daily.

¶ 7 On September 27, 2013, the victim and defendant attended a festival in Morris with their neighbors, Richard and Kelly Mote. Their children stayed overnight at their maternal grandparents’ home because the Pellegrinis planned to stay out late. The victim did not plan on having any sexual relations with defendant that night.

¶ 8 According to the victim, she had one beer around 8 p.m. before defendant drove the group to the festival. The victim believed she had approximately six beers at the festival from

9 p.m. to 1 a.m. Defendant drove the victim and the Motes back to the Pelligrinis' residence around 1 a.m. At that time, the victim felt dizzy, nauseous, and could feel the effects of the alcohol.

¶ 9 The victim remembered vomiting in the backyard and next remembered being in a bathroom inside the house. She could not recall leaving the bathroom, but the next thing she remembered was being on her bed with the lights on. At this time she was wearing her clothes and was alone.

¶ 10 Next, the victim remembered defendant standing next to the bed, hovering over her, as he told her he wanted to have sexual intercourse. The victim said "just leave me alone." However, defendant removed the victim's pants and underwear. As this happened, the victim testified that she told defendant "No. Stop." She began kicking defendant and telling him to leave her alone. The victim pulled away and defendant pulled her back several times. Defendant pushed and held the victim down on the bed. The victim continued to kick and push defendant while he held her down. Defendant had his hands cupped in a position that the victim could not tell if he had something in his hands. Defendant was "jabbing and pushing and poking his hands into [her]." The victim described defendant's action felt "like a stabbing or a punching, just a full force thrust with his hands, both sides of [her] vagina, and saying to [her], 'Here, take that. How does that feel? I'll do what I want to you tonight.' " The victim began screaming "Stop. Stop. What are you doing? Why won't you stop? Why won't you stop?" The victim testified that she did not consent to defendant's actions.

¶ 11 While defendant continued to force his hand into the victim's vagina, she became nauseous and blood began "gushing" out of her vagina. The victim felt like she had a bowel movement and then began to vomit. Once the victim started bleeding, defendant left the

bedroom, grabbed towels, and started cleaning up the blood. Defendant did not call for help. While defendant was cleaning up the blood, the victim was screaming and crying. Defendant then left the room.

¶ 12 When defendant was gone, the victim's "flight or fight response kicked in." The victim grabbed a towel, wrapped it around her body, and ran out the front door of the house. Eventually, the victim ran across the street to the Motes' residence. The victim knocked on the front door and began yelling "help." However, the Motes did not answer the door before defendant came running, grabbed the victim, and carried her home. Defendant told her to "shut up, stop making a scene, come home, come home." The victim left blood on the Motes' front doorstep. Defendant brought the victim back home to their front porch. The victim continued to fight off defendant, leaving blood and feces on their front porch.

¶ 13 Eventually, defendant brought the victim inside the house. Defendant placed the victim on an ottoman in the entryway but did not call for emergency services. The victim continued to scream because she was in pain and bleeding. In addition to the injury to her vagina, the victim testified that she also suffered from bruises and abrasions on her body caused by defendant.

¶ 14 At some point, the police and paramedics arrived. According to the victim, as the first responders attended to her, she was hysterical and "kind of starting to black out a little bit[.]" Paramedics transported the victim to the emergency room, where doctors packed material in her vagina to stop the bleeding. The victim spent four days in the hospital.

¶ 15 The victim testified that she spoke to Detective Alicia Steffes when she was released from the hospital. The victim acknowledged telling Steffes that she did not recall how she returned to the house from the Motes' because she was getting to the point where she was "blacking out."

¶ 16 On cross-examination, the victim testified she did not recall many of the events from that evening. For example, the victim acknowledged that she could not recall speaking to Officer Jessica Smith (who was one of the first responders) and telling Officer Smith that defendant was “too big” and “got stuck.” The victim also acknowledged she was unable to recall some of the details of the festival or how she got to the backyard pool. However, she testified that she specifically remembered the time frame during the attack. According to the victim, “[f]rom the time of the attack, the time I went to the hospital, I was 100 percent alert.”

¶ 17 Richard Mote testified he and his wife, Kelly, attended the festival with the Pellegrinis. On their way home from the festival, the victim mentioned going for a swim and went to the backyard to turn on the pool heater. When the victim did not return, defendant and Richard went outside to search for her. A video recording taken by Richard with his cellular phone shows the victim sitting beside the pool. The video also shows defendant assisting the victim into the home.

¶ 18 According to Richard, once inside, the victim went into the hallway bathroom. Sometime later, Richard helped defendant open the bathroom door that was locked from the inside. The men popped open the locked door and observed the victim was awake and sitting on the toilet with her elbows on her knees and hands on her forehead. Defendant then led the victim into the bedroom. Around 1:45 a.m., the Motes left the Pelligrinis’ residence and walked home.

¶ 19 According to Richard, after he fell asleep at his home he woke up to a loud scream. Richard went outside and heard a voice say, “get back in the house.” About five minutes after he heard the screams, an ambulance arrived in the neighborhood.

¶ 20 Hannah Knapp testified that she lived on the same street as the Pelligrinis. Her sleep was also interrupted by a female screaming in the middle of the night. Knapp called the police.

¶ 21 Edwina Sloan testified that she lived on the same street as the Pelligrinis. She woke up and heard someone say, “No, no, no. Help me. Help me.” Edwina also called the police. Edwina’s husband also heard a woman screaming “no,” followed by a man’s voice repeatedly stating, “[g]et back in the house. Get back in the house.”

¶ 22 Monty Allbert, a Morris police department sergeant, testified that he responded to a call at 3 a.m. regarding a report of a female screaming. When Allbert arrived at the Pelligrinis’ residence, the front porch light was on. However, as Allbert drove closer to the house, the porch light switched off. Allbert exited his vehicle and as he approached the house, the porch light turned back on. Allbert could see a person standing inside the house. Allbert asked this person, defendant, what was going on. Defendant told Allbert that his wife was “wasted.” Allbert observed blood and feces on the front step of the porch and heard moaning from inside the home. Defendant asked Allbert to call an ambulance but said Allbert could not come inside because his wife was naked.

¶ 23 Allbert asked defendant to step outside and asked him what happened. Defendant told Allbert that “they went out tonight and [the victim] got drunk, and they came home and bam, she started bleeding.” Allbert entered the home and spoke to the victim who told him, “He did this to me.” When Allbert asked what defendant had done, the victim stated she did not know.

¶ 24 Officer Jessica Smith arrived and entered the house. Smith observed the victim bleeding profusely. The victim told Smith that defendant “did this to me” and told Smith “[g]et [defendant] away from me.” According to Smith, defendant tried to enter the house and comfort the victim, but the victim told Smith to keep defendant away from her. Smith also overheard the victim tell the paramedics who had arrived, “he was too big and he got stuck.”

¶ 25 John Wiechen, a member of the Morris fire department, was dispatched to the residence. When he arrived, defendant was in front of the garage speaking to Allbert. Wiechen asked defendant what happened. Defendant told Wiechen to go inside and help his wife. Inside the house, Wiechen saw the victim naked on the floor. Wiechen asked the victim what happened and she said she “didn’t want anything else in her.”

¶ 26 Kyle Hoffman, one of the firefighters dispatched to the Pelligrinis’ residence acted to control the victim’s bleeding with bandages and towels. According to Hoffman, the victim appeared oriented to her surroundings. When asked what happened, the victim stated defendant had “stuck it in me.”

¶ 27 The victim told another firefighter at the scene that “[h]e kept shoving things inside of me.” The first responders transported the victim to Morris hospital.

¶ 28 Nurse Savannah Jones treated the victim at Morris hospital. When the victim arrived at the hospital, she was conscious, alert, and talking. However, Jones stated that the victim’s condition was serious and became critical due to the bleeding. Jones asked the victim what had happened and the victim said she and defendant had been drinking at a festival and had returned home. Defendant wanted to have sexual intercourse with the victim, but the victim did not and that defendant tried to “jam” something in her vagina. The victim was not certain what defendant had tried to put in her vagina. Jones did not observe any cuts or bruises on the victim, she only observed the injury to the victim’s vagina.

¶ 29 Dr. Sean Atchinson treated the victim in the emergency room. Atchinson described his conversation with the victim during his examination,

“she and her husband had been out at Corn Fest. They said that they had been drinking some alcohol. They were having a good time. There had been no actual fighting or any argument when they got home.

She described that her husband wanted to have sexual intercourse. She was trying to go to sleep and apparently told him that she did not want to have intercourse with him.

Of course, this is all according to her. States that her—told her husband to leave her alone, told [him] no several times. Then she described that her husband forcefully removed her pants and her underwear and then essentially repeatedly penetrated her vagina with something hard. She wasn’t able to tell me if it was his hand, fist, or some other object, but didn’t believe it was his penis.

She said she was yelling at him to stop, was hit—was kicking him and hitting him, punching him, and was eventually able to get away from him and ran outside screaming for help.”

¶ 30 Atchinson observed injuries to the victim’s vagina, stating that “[t]here was diffuse edema or diffuse—a large amount of swelling about the labia. *** And there was a significant amount of vaginal bleeding, active bleeding from the vagina.” And, according to Atchinson, after “looking over my notes before, I didn’t see any other evidence of trauma on her during my exam.” Initially, Atchinson could not stop the bleeding from the victim’s vagina. He explained, “I essentially had a patient that I thought was potentially bleeding to death in front of me.”

¶ 31 Dr. Leticia Settrini-Best (Best) performed surgery on the victim. Best observed tears on both sides of the victim’s vagina approximately eight centimeters long and about two centimeters deep. According to Best, no normally occurring medical condition would explain the injuries

observed. Best described the victim's injuries as life threatening. Best believed that a large fist could have caused the injuries and indicated she had seen similar injuries in a difficult instrumented vaginal delivery. However, Best opined the victim's serious injury would not be caused by a sex toy or "rough sex." In addition, Best opined the victim's injuries were not the result of routine sexual acts. Instead, the victim's injuries were caused by a tremendous amount of force.

¶ 32 Best also testified she was aware of the opinion from medical defense expert, Dr. Brian Locker. Best disagreed with Locker's opinion that due to the victim's perimenopausal state, the victim was more susceptible to vaginal injury. According to Best, based on her observations of the tissues in question, she believed the victim was healthy, well estrogenized, and showed no signs of atrophic vaginitis.

¶ 33 Allbert interviewed defendant at the Morris police station. A video recording of the interview was admitted into evidence and presented at trial. In the interview, defendant initially told Allbert he had carried the victim to their bed when she began bleeding. Later in the interview, however, defendant stated he had used a sex toy and his fingers to initiate foreplay with the victim.

¶ 34 Defendant testified on his own behalf. According to defendant, when he entered the bedroom on the night of the incident, he observed the victim leaning back against the headboard of the bed. Defendant testified that he began rubbing her back and legs and fondling her vagina. The victim did not tell defendant to stop or state that she was feeling ill. According to defendant, he and the victim kept a sex toy on either side of the bed in a drawer. Defendant stated he began using the sex toy on the victim for approximately 30 seconds. He stopped when the victim pushed his hand away. Defendant interpreted the victim's action as her wanting him to use his

hand, rather than the sex toy. Defendant then lubricated his fingers with the A+D ointment and “slowly” inserted his fingers into the victim’s vagina. Defendant denied that he forcefully inserted his fingers into the victim and denied that she screamed, told him to stop, kicked, punched, or pushed him.

¶ 35 Defendant testified that when the victim pushed back against him, she lunged forward, and he saw two “chunks” of blood come out of the victim’s vagina and onto his hand. Defendant grabbed a towel from the bathroom and used it on the victim’s vagina to stop the bleeding. Defendant thought the victim had stopped bleeding and went back to the bathroom. When defendant returned to the bedroom, the victim was gone.

¶ 36 Defendant found the victim running toward the Motes’ residence without a shirt or pants. He saw her holding onto the door handle of the Motes’ home with one hand and banging on the door with the other hand. Defendant carried the victim over his shoulder and returned to their home. Defendant noticed the victim was still bleeding.

¶ 37 Dr. Brian Locker testified for the defense. Locker reviewed the victim’s treatment records at Morris hospital and all the police reports. Locker testified that he had observed injuries like the victim’s on hundreds of occasions, usually in situations of natural child birth. Locker testified that the victim’s injuries could occur in a nonvaginal birth situation. Locker gave two specific examples of such situations: a woman falling into a manhole cover and a jet ski accident.

¶ 38 According to Locker’s opinion, the victim’s injury was the result of the combination of defendant inserting his three fingers beyond the knuckles into the victim’s vagina and her vagina being less elastic. Locker stated that loss of elasticity could result from being premenopausal or perimenopausal and from dehydration caused by alcohol consumption. Locker believed the victim was in the perimenopausal state at the time of the injury. This conclusion was based on

the fact that the victim was having hot flashes, irregular bleeding and vaginal dryness that required lubrication for intercourse. According to Locker, the victim's alcohol consumption exacerbated the dryness.

¶ 39 Ultimately, the trial court found defendant guilty of all three charges. The trial court explained,

“It was argued effectively by counsel that—the case of credibility, it really comes down to there was only two people in the room when this happened. I have their word here in court, but I also have everything they did and said before and after as corroboration or, you know, not corroboration.

After very carefully analyzing the actions of the parties, the statements of the parties—and there's contradictions. I can go through and find contradictions in both of their statements, some things that don't line up in both directions.

But having analyzed what they said and what they did, it is my finding that the credibility of [the victim] is better than [defendant's]. I believe her. I do not believe him. It's that simple, so it is a finding of guilty on all three counts.”

¶ 40 Prior to sentencing, defendant obtained substitute counsel. Defendant then filed a motion for judgment of acquittal or alternatively, a new trial. The motion alleged that the evidence was insufficient to prove defendant's guilt beyond a reasonable doubt. The motion also alleged defendant's trial counsel provided ineffective assistance because he failed to adequately support Locker's medical opinions. Specifically, the motion alleged counsel failed to introduce peer-reviewed articles addressing the mechanisms of severe nonobstetric laceration injuries, including vaginal lacerations associated with significant bleeding after consensual intercourse. In addition,

the motion alleged that Locker told trial counsel it was imperative that he be provided with the victim's previous gynecological records to render his opinion. According to the motion, counsel failed to make an effort to secure those records.

¶ 41 Accompanying the motion was Locker's affidavit. The affidavit averred that the additional records would have strengthened his opinions at trial because the records documented the victim was prescribed Zolof, which reduces the desire for sexual intercourse and contributes to decreased natural lubrication. In addition, the victim was taking aspirin, which may cause increased bruising and bleeding. The victim suffered from irregular periods, which is consistent with the victim's perimenopausal state. Locker also averred that Best's postoperation report noted that the victim was premenopausal, thereby contradicting Best's trial testimony.

¶ 42 During the hearing on the motion, defendant's trial counsel testified that he received several medical articles from Locker, but made the tactical decision not to question Locker about the articles at trial. Trial counsel did not explain the trial tactic. Trial counsel also stated he did not obtain the victim's prior medical records because Locker did not request counsel to obtain those medical records.

¶ 43 After hearing the arguments of the parties, the trial court first rejected defendant's argument that the evidence was insufficient to prove his guilt. Specifically, the court noted,

“I based my credibility findings on the testimony of each of the two, the defendant and the victim, the alleged victim, as corroborated or contradicted by other witnesses, other people that were there, other statements that were made just before, during, and after.

So to say it was based on medical evidence, I think is an exaggeration. Certainly the level of injury was an element of one of the offenses, but the Court's

finding that this was a nonconsensual act was based on testimony, testimony of witnesses, of witnesses to the event itself and just before, during, and after.

Frankly, not Dr. [Best].

But here, I—and for better or for worse, I can clear this up on the record. Now, I don't have the benefit of the whole transcript, which I know you do, but I took pretty decent notes, I believe.

This was Dr.—all this going on and on about whether or not [the victim] is perimenopausal, you know, her—the regularity of her periods, the nature of her periods, Dr. [Best] testified quite clearly and succinctly that the condition of the operative tissues, the tissues that were involved in this injury were not susceptible to tearing. They were not dry. They were not—as Dr. Locker testified in his first testimony about what would happen in a perimenopausal condition, sometimes more susceptible to injury. Dr. [Best], who has the—you know, frankly the—and based on—you know, my findings are based on the fact that she was there, she observed, she treated. I give her testimony on that complete credibility.

So, frankly, the condition of perimenopausal—she testified and she listed the reasons of why she—by 'she,' I mean Dr. [Best], why [the victim] was not.

But all of that, as I understand the testimony, was just to lay the foundation of whether or not the tissues in question would be dry, susceptible to tearing. Dr. [Best] said unequivocally that they were not.

So that's—so that you understand the basis of—and all of this business about dehydration because of the medication or excessive intake of alcohol, or any other reason, is all speculative on Dr. Locker's part. The person that was there that

observed it, the physician, the surgeon, said no, and that’s how I—that’s how I based—I found her testimony to be credible and I accepted it as true, and I found Dr. Locker’s testimony to be speculative, and I still do[.]”

¶ 44 The trial court rejected defendant’s alternative argument that trial counsel was ineffective for failing to obtain support of Locker’s trial testimony. In particular, the trial court found defendant was not prejudiced by counsel’s performance. The trial court noted, “nothing here—not only does it not change my mind, it solidifies my original opinion. This was not a consensual act. That is and remains my finding based on all of the testimony I’ve heard.” Further, the trial court stated that Locker’s testimony would not have changed the outcome of the case because “the witness who directly observed the operative tissues, whether or not they were susceptible to accidental tearing, opined clearly, succinctly, and convincingly that they—that the tissues were not.”

¶ 45 Ultimately, the trial court sentenced defendant to a term of eight years’ imprisonment.

¶ 46 ANALYSIS

¶ 47 I. Sufficiency of the Evidence

¶ 48 First, defendant argues the State failed to prove his guilt beyond a reasonable doubt. A person commits criminal sexual assault if they commit an act of sexual penetration and uses force or threat of force. 720 ILCS 5/11-1.20(a)(1) (West 2012). A person commits aggravated criminal sexual assault if they commit criminal sexual assault and they cause bodily harm to the victim. 720 ILCS 5/11-1.30(a)(2) (West 2012).¹

¹We note that defendant has not included an argument regarding the sufficiency of the evidence as to his conviction for aggravated domestic battery.

¶ 49 Here, defendant admits that he performed an act of sexual penetration resulting in the victim's injuries. However, defendant argues the State's evidence failed to prove the sexual encounter was not consensual and resulted from defendant's use of force.²

¶ 50 When reviewing a challenge to the sufficiency of the evidence, the question is whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime charged beyond a reasonable doubt. *People v. Collins*, 106 Ill. 2d 237, 261 (1985). A criminal conviction will only be reversed where the evidence is so unreasonable, improbable, or unsatisfactory as to justify a reasonable doubt of defendant's guilt. *People v. Brown*, 2013 IL 114196, ¶ 48.

¶ 51 It is not this court's function to retry a defendant who challenges the sufficiency of the evidence. *People v. Siguenza-Brito*, 235 Ill. 2d 213, 228 (2009). Instead, in a bench trial, the trial court remains responsible for determining the credibility of the witnesses, the weight to be given to their testimony, and the reasonable inferences to be drawn from the evidence. *Id.* "It also is for the trier of fact to resolve conflicts or inconsistencies in the evidence." *In re Jonathon C.B.*, 2011 IL 107750, ¶ 59. "When evidence is merely conflicting, a reviewing court will not substitute its judgment for the judgment of the trier of fact." *People v. Downin*, 357 Ill. App. 3d 193, 202 (2005).

¶ 52 In this case, the victim testified that she told defendant to leave her alone and physically resisted defendant by kicking and pushing him away. This testimony established the victim did not expressly consent to engage in a sexual act with defendant. In addition, in the absence of express consent, the victim described how defendant overpowered the victim and held her against the bed. As the victim continued to resist, defendant penetrated her vagina with his

²Neither party addressed whether the victim's level of intoxication impacted the issue of consent in the trial court on appeal.

fingers or hand. This testimony alone, if credible, is sufficient to support the trial court's finding that defendant used force when he penetrated the victim's vagina with his hand. See *People v. Courtney*, 288 Ill. App. 3d 1025, 1036 (1997).

¶ 53 Defendant provided a very different version of the events for the trier of fact to consider. During trial, defendant admitted the victim pushed his hand away when he inserted a lubricated sex toy into her vagina. However, defendant testified that he interpreted the victim's reaction as her way of communicating to him that she wanted him to remove the sex toy and then insert his hand in the place of the sex toy. Accordingly, defendant lubricated his fingers with the A+D ointment and "slowly" inserted his fingers into the victim's vagina. Defendant told the court that after he slowly inserted his fingers, the victim pushed back against his hand and lunged forward. At this time, defendant unexpectedly saw two "chunks" of blood on his hand which came from the victim's vagina. Defendant denied that he forcefully inserted his fingers causing the victim's life threatening injuries.

¶ 54 Defendant relies on *People v. Walker*, 154 Ill. App. 3d 616, 626 (1987), to support his contention that the evidence in this case was insufficient. Unlike the instant case, the victim in *Walker* did not ask Walker to stop or testify that she fought back against her attacker. See *id.* Additionally, the victim in *Walker* gave inconsistent accounts of the nature of the force used by the defendant. *Id.* at 622.

¶ 55 The facts in the case at bar are distinguishable from the circumstances considered in *Walker*. Here, the victim testified that she verbally refused to give her consent to engage in a sex act, physically resisted defendant's sexual advances when he persisted in the absence of her consent, and then demanded defendant to stop. Unlike *Walker*, the victim's physical injuries

included bruises and scratches that were consistent with her description of fighting off her attacker. On this basis, we distinguish the decision in *Walker*.

¶ 56 Defendant challenges the court's decision to reject his defense that the victim willingly participated in a consensual sex act with her husband. It appears from the record that the court found the victim's testimony credible and concluded defendant used force to overcome the victim's desire to avoid having sex that evening.

¶ 57 We will not substitute our judgment on questions involving the credibility of a witness. *Downin*, 357 Ill. App. 3d at 202. We recognize the trier of fact had the best opportunity to observe the demeanor of both defendant and the victim during the course of their testimony. It is the trier of fact's role to resolve any inconsistencies in the testimony of each witness and then to determine the weight to be given to each witness. *People v. Tomei*, 2013 IL App (1st) 112632, ¶ 59.

¶ 58 After carefully reviewing the evidence in this case, we conclude sufficient evidence was presented at trial to allow the trier of fact to find that defendant used force to overcome the victim's resistance to a nonconsensual act of sexual penetration by defendant. See 720 ILCS 5/11-1.20(a)(1) (West 2012).

¶ 59 II. Ineffective Assistance of Counsel

¶ 60 Next, defendant argues trial counsel provided ineffective assistance when he failed to adequately support Locker's medical expert testimony. Specifically, defendant argues trial counsel failed to: (1) question Locker regarding a medical journal article describing how lacerations similar to those suffered by the victim could occur during consensual sexual intercourse; (2) subpoena and provide Locker with the victim's prior medical records which would have further supported Locker's opinion; (3) show Locker photographs of the scene of the

crime which would have offered further support for Locker’s opinion; and (4) support Locker’s opinions and challenge Best’s trial testimony. Because defendant failed to establish that he suffered prejudice as a result of counsel’s conduct, we hold defendant was not deprived of effective assistance of counsel.

¶ 61 To succeed on a claim of ineffective assistance of counsel, a defendant must show that: (1) counsel’s performance was objectively unreasonable; and (2) the defendant suffered prejudice as a result. *Strickland v. Washington*, 466 U.S. 668, 687 (1984). The failure to satisfy either prong of the *Strickland* standard precludes a finding of ineffective assistance of counsel. *Id.* at 697. If an ineffective assistance of counsel claim can be disposed of because defendant cannot establish prejudice, we need not determine whether counsel’s performance was deficient. *People v. Graham*, 206 Ill. 2d 465, 476 (2003).

¶ 62 Turning to the prejudice prong of the *Strickland* standard, defendant concedes that Locker’s testimony would not have “completely exonerated” defendant. Nevertheless, defendant argues that Locker’s testimony was crucial to negating Best’s testimony that the victim’s injuries would not have occurred during routine sexual intercourse and that there was nothing about the victim’s medical condition that would have predisposed her to suffering lacerations. In order to show prejudice in this context, defendant must establish that there is a reasonable probability that, but for counsel’s alleged error with regard to Locker’s testimony, the result of the proceeding would have been different. *Id.* at 694. “The benchmark for judging any claim of ineffectiveness must be whether counsel’s conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied on as having produced a just result.” *Id.* at 686.

¶ 63 Locker’s testimony, at best, established it was *possible* that the victim’s injuries could have naturally occurred even if she freely consented to have sex that night. We note that

“[p]hysical injury or resistance is not necessary to prove a victim was forced to have sexual intercourse.” *People v. Bowen*, 241 Ill. App. 3d 608, 620 (1993). Stated differently, a naturally occurring physical injury does not negate an accusation that the sex act was against the victim’s wishes from the onset. Rather, if credible, the victim’s testimony alone established the encounter was nonconsensual. *Supra* ¶ 55. Locker’s expert testimony would not have shed light on whether the victim consented or not. Thus, defendant has failed to establish a reasonable probability that the result of the trial would have been different but for counsel’s alleged error with regard to Locker’s testimony.

¶ 64

CONCLUSION

¶ 65

The judgment of the circuit court of Grundy County is affirmed.

¶ 66

Affirmed.