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IN THE  
APPELLATE COURT OF ILLINOIS  
FIRST JUDICIAL DISTRICT

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|--|---|------------------|
| IN THE INTEREST OF TYRENZO K., TYEISHA K., | ) | Appeal from the  |
| and SARIAH A.,                             | ) | Court Circuit of |
| Minors-Respondents-Appellees,              | ) | Cook County.     |
|  | ) |                  |
| (THE PEOPLE OF THE STATE OF ILLINOIS,      | ) | 15 JA 467        |
|  | ) | 15 JA 468        |
| Petitioner-Appellee,                       | ) | 15 JA 469        |
|  | ) |                  |
| v.   | ) | The Honorable    |
|  | ) | Rena Van Tine,   |
| AUSTIN A.,                                 | ) | Judge Presiding. |
|  | ) |                  |
| Respondent-Appellant).                     | ) |                  |

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JUSTICE NEVILLE delivered the judgment of the court.  
Presiding Justice Hyman and Justice Mason concurred in the judgment.

**ORDER**

¶ 1 *Held:* When the respondent did not show a reasonable probability that he would have achieved a better result if his counsel had called more witnesses or if his counsel had more thoroughly prepared, he did not show that he received ineffective assistance of counsel.

¶ 2 Austin A. appeals from a dispositional order which gave the Department of Children and Family Services custody of Austin's daughter, Sariah A. Austin argues that he received ineffective assistance of counsel. We find that Austin has not shown a reasonable probability that he would have achieved a better result but for his attorney's alleged errors. Accordingly, we affirm the trial court's judgment.

¶ 3

### BACKGROUND

¶ 4

On September 10, 2014, Shaniko J. called police to report that two of her children, five-year-old Tyrenzo K. and four-year-old Tyeisha K., told her that Austin A. had sexually molested them. Police came to the home Shaniko shared with Austin and spoke with both Shaniko and Austin. Shaniko took Tyrenzo and Tyeisha to a hospital where Dr. Stephen Constantine examined them. Dr. Constantine diagnosed Tyrenzo and Tyeisha as having suffered sexual abuse. The next day, police wrote out a statement Shaniko signed. Chicago Children's Advocacy Center recorded separate victim sensitive interviews with Tyeisha and Tyrenzo. Police arrested Austin.

¶ 5

On May 14, 2015, the State filed a petition to have the court declare Tyrenzo, Tyeisha, and Shaniko's youngest child, Sariah A., wards of the court. The State alleged that Shaniko had physically injured Tyrenzo and Tyeisha. The court gave temporary custody of all three children to DCFS.

¶ 6

Hearing on the petition for adjudication of wardship began on October 15, 2015. Connie Haygood, the DCFS worker assigned to the case, testified that when she met the family on September 11, 2014, she spoke with Tyeisha alone in Haygood's car. Tyeisha volunteered that Austin cut her panties. Tyeisha then said nothing more about the incident and chose not to talk to Haygood at all, except to say she wanted to go back to her mother. Haygood spoke with Tyrenzo next, alone, and he too volunteered that Austin cut Tyeisha's panties. Then Tyrenzo stopped talking to Haygood altogether.

¶ 7

The State presented the written statement Shaniko signed on September 11, 2014. The document says:

"[On] September 10, 2014 around 6:30 PM [Shaniko] was at home \*\*\* [and] Austin \*\*\* and her three kids were all at home too. Shaniko states that around 6:30 PM her two kids Tyeisha and Tyrenzo and Austin were all inside her bedroom and that they were watching TV. \*\*\* Shaniko \*\*\* went into the kitchen. \*\*\* [S]he got up and walked over to the room to check on her kids. Shaniko states that when she opened the door she saw Tyeisha and Tyrenzo both lying on the floor next to each other and saw that they were both lying face down with their butts up in the air sleeping. Shaniko states that she noticed that Tyeisha['s] panties were cut in three places around the butt crack part of Tyeisha['s] panties and that it made a hole. Shaniko states that Tyeisha's panties were not cut like that earlier that evening. \*\*\* Shaniko states that Tyeisha sat up and that she looked scared – and said 'Austin I have to pee.' Shaniko states Austin said 'no.' Shaniko states that she told Tyeisha to come to her. Shaniko states that Tyeisha never responded and she just cried and looked scared as if Austin was threatening her and giving her a mean look as if to threaten her if she said something. Shaniko states that's when he yelled 'what do you need to talk to her for you can come to talk to me.' \*\*\* Austin got dressed and he left out.

Shaniko states that after Austin left she got Tyeisha comfortable and asked her what happened did she cut her underwear with the scissors. Shaniko states that Tyeisha said 'no Austin cut my underwear, my panties, he cut it with a knife.' Shaniko states that Tyeisha said that 'Austin put his hand in my butt and mama he choked me until I threw up.' Shaniko states that her son Tyrenzo said 'yea mamma he cut her panties I seened [sic] it I seen him I was watching everything

and he put his hand in her butt, he choked her until she started throwing up.' Shaniko states that's when she asked Tyeisha and Tyrenzo if they knew the difference between a lie and the truth and that they said they did and that her son said 'I know the difference between a lie and the truth, we telling the truth mamma and this is the truth.' \*\*\* Shaniko states that she called the police \*\*\*. \*\*\* Shaniko states that Tyeisha went to the room where it happened and came back to her and said 'here you go mama this is the knife he used right here it was in his vest.' Shaniko states that Tyeisha handed her Austin's black metal foldup pocket knife. \*\*\*

\*\*\* [A]t the Hospital, Tyrenzo \*\*\* said 'Yea Austin touched me first, he stuck his finger in my butt and then he stuck his finger in Tyeisha's butt.['] "

¶ 8 The trial court heard the recordings of the victim sensitive interviews of Tyeisha and Tyrenzo. The interviewer who spoke with Tyeisha first tried to establish whether Tyeisha could distinguish telling the truth from lying. The interviewer asked Tyeisha whether it was true, or a story, if someone said Tyeisha was ten. Tyeisha said, "it's a story." But if someone said there was a dog in the chair, that would be true. (No dog was in the room.) If someone said that Tyeisha and the interviewer were talking, that would be a story.

¶ 9 The interviewer proceeded even though Tyeisha had misidentified a false statement as true and a true statement as false. Tyeisha said Austin ripped her panties, and cut them with scissors. Then she said he cut her panties using a knife from his vest. The interviewer asked what happened next. Tyeisha said, "that's a lie." When the interviewer asked again whether Austin cut her panties, Tyeisha said, "yes." Tyeisha said, "if you cut my panties, I'll cut your

panties," possibly as part of the account of what happened with Austin. Tyeisha said that Austin "dugged in my butt." She said Austin ripped her clothes off. The interviewer asked what Tyeisha had worn that Austin had ripped. Tyeisha said, "jeans." (According to Shaniko, Tyeisha wore only panties, not jeans, at the time of the alleged abuse.) The interviewer asked what Austin said when he was digging in her butt. Tyeisha said Austin said, "I'm gonna bite you." The interviewer asked, "What part of your body did he bite?" Tyeisha answered, "a ballerina."

¶ 10 The interviewer asked how old Tyeisha was when Austin was digging in her butt. Tyeisha said, "Four." The interviewer asked, "How old are you now?" Tyeisha said, "Three." The interviewer asked whether Austin showed Tyeisha any part of his body that she did not want to see. Tyeisha said "Yes." The interviewer asked what part Austin showed her. Tyeisha answered, "A teacher."

¶ 11 Two different interviewers separately tried to talk to Tyrenzo about the incident. Tyrenzo spoke very little in both interviews, and when he made vocal sounds, many of the sounds did not seem to form words. The interviewer several times asked Tyrenzo to repeat what he said because she could not hear him. Tyrenzo, speaking clearly, told the interviewer he could not hear her.

¶ 12 Both interviewers asked questions to find out whether Tyrenzo could distinguish true statements from false ones. Tyrenzo correctly identified two false statements as stories, but he also said that if someone said he was talking with the interviewer, that was a story. In the other interview, when the interviewer asked whether it was true that Tyrenzo was two, he said, "I'm five." Asked whether it was true he was in a green chair, he said correctly, "it's

red." But when asked whether he knew why the interviewer was talking to him, he said he had been left outside on the ground, where he died. The interviewer asked if that was true or a story. He said it was "real." Tyrenzo said that Austin shot him in the stomach with a gun.

¶ 13 After Tyrenzo made no response to several questions in the first interview, the interviewer asked why Tyrenzo did not want to talk. Tyrenzo said he did not know anything. Towards the end of the second interview, the interviewer asked if anyone put anything in Tyrenzo's mouth. He answered, "No. Go fish." He never responded to repeated questions about what he had said at the hospital, or what word he used for the part of his body on which he sits.

¶ 14 Kathleen Mullins, assigned to the case in November 2014, spoke with Tyeisha at a shelter where Shaniko stayed with her children. Mullins asked Tyeisha about an injury Sariah had suffered that morning. According to Mullins, "[Tyeisha] said that she had dropped Sariah on her head. And so then she said that Austin had hit her." Mullins asked when Tyeisha last saw Austin, and she said she had not seen him for some months. Mullins asked how Austin had hit her if she had not seen him. Tyeisha said her mother had hit her. Mullins saw a red linear mark on Tyeisha's arm. Shaniko admitted that she struck Tyeisha with a cord.

¶ 15 Mullins asked Shaniko about the sexual abuse of Tyeisha and Tyrenzo. According to Mullins, Shaniko "said that she had known that something was going on for a couple of years." Shaniko thought Austin had whipped Tyeisha and Tyrenzo when she was not watching. She did not report her suspicions, as she sought to "catch [him] in the act."

¶ 16 The parties also presented medical records for Tyrenzo and Tyeisha. The records show that in 2011, when Tyeisha was almost one year old, Shaniko brought her to the hospital.

Shaniko reported that she left Tyeisha and Tyrenzo in the care of their uncle, and when Shaniko returned, she thought Tyeisha's vagina appeared as if someone penetrated her, and Tyrenzo's penis appeared as if someone had played with it. Doctors found no evidence of abuse. On April 26, 2013, when Tyeisha was two, Shaniko brought her to the hospital "for evaluation for possible abuse." Shaniko said she left Tyeisha in the care of Shaniko's boyfriend, and the next day, Tyeisha complained of rectal pain. Shaniko noticed redness around Tyeisha's rectum. Shaniko told doctors that Tyeisha did not say anyone touched her. Again, doctors found no evidence of abuse.

¶ 17 Although Austin's attorney subpoenaed five witnesses, including two from DCFS, the witnesses did not come to court, and the attorney presented only Dr. Constantine as a witness. Dr. Constantine admitted that he based the diagnosis of sexual abuse on the statements of Shaniko, Tyrenzo and Tyeisha. He found no physical evidence of sexual abuse.

¶ 18 In closing argument, Austin's counsel argued that the State had not proven its case because it never produced the cut panties, or showed any pictures of the cut panties. Counsel cast doubt on the credibility of Shaniko's statement to police, directing the court's attention to Shaniko's prior unsubstantiated accusations, in 2011 and 2013, that other men sexually abused her children. Counsel emphasized that Dr. Constantine found no physical evidence of abuse. Counsel also pointed out that Tyeisha falsely accused Austin of striking her, and admitted that her mother struck her only after the interviewer reminded Tyeisha that Austin was in jail.

¶ 19 Despite the several false stories Tyeisha and Tyrenzo told in the victim sensitive interviews, despite their erratic ascription of truth values to statements in those interviews, and despite their frequent failure to respond coherently to questions posed, the trial court found credible their statements to Haygood, Mullins and Constantine about the abuse. The court found that Tyrenzo's statements adequately corroborated Tyeisha's statements. Based in part on the finding that Austin sexually abused Tyeisha, the court entered a dispositional order, dated June 14, 2016, giving custody of Tyeisha and Tyrenzo to DCFS. Austin filed a timely notice of appeal.

¶ 20 Appellate counsel for Austin filed a motion to withdraw pursuant to *Anders v. California*, 386 U.S. 738, 744 (1967). This court denied the motion and asked appellate counsel to address the issues of whether Austin's trial counsel provided ineffective assistance by failing to investigate adequately Shaniko's report that Austin abused Tyeisha, and by failing to subpoena the other men Shaniko accused of molesting Tyeisha.

¶ 21 ANALYSIS

¶ 22 Austin argues on appeal that he received ineffective assistance of counsel in that his counsel did not adequately investigate the allegations, and counsel failed to present at trial several witnesses. "Illinois courts apply the standard utilized in criminal cases to gauge the effectiveness of counsel in juvenile proceedings." *In re S.G.*, 347 Ill. App. 3d 476, 479 (2004). "Generally, in order to establish ineffective assistance of counsel, one must show both that counsel's representation fell below an objective standard of reasonableness and that a reasonable probability exists that, but for the error, the result would have been different." *S.G.*, 347 Ill. App. 3d at 479.



¶ 23 Austin's counsel subpoenaed five witnesses who did not come to court and who did not testify. Counsel did not subpoena Shaniko's brother whom Shaniko accused of sexually molesting Tyrenzo and Tyeisha in 2011. Counsel did not subpoena Shaniko's boyfriend from 2013, whom Shaniko also accused of sexually abusing the children.

¶ 24 "A claim that trial counsel failed to investigate and call a witness must be supported by an affidavit from the proposed witness. [Citations.] In the absence of such an affidavit, a reviewing court cannot determine whether the proposed witness could have provided testimony or information favorable to the defendant, and further review of the claim is unnecessary." *People v. Enis*, 194 Ill. 2d 361, 380 (2000). Because Austin has not produced affidavits from the missing witnesses, we cannot determine whether the witnesses would have made any difference to the trial. Doctors found no evidence of abuse in 2011 and 2013. We assume for purposes of this appeal that Shaniko's brother and boyfriend would testify that they did not abuse the children. But the court saw the medical record, including the note that Shaniko told doctors she suspected the two men of sexual abuse, and the doctors' findings of no supporting evidence. We cannot conclude that presenting any of the missing witnesses would have affected the result of the trial.

¶ 25 Next, Austin argues that his counsel did not obtain the medical records until two weeks before the trial, leaving counsel inadequate time to prepare. Counsel never obtained the sexual assault evidence kit from the police. However, Austin has not shown what evidence counsel would have presented if she had received the sexual assault evidence kit, or if she had obtained the medical records earlier. Counsel used the medical records appropriately to bring to the court's attention Shaniko's prior unsubstantiated accusations of sexual abuse.

Counsel also presented Dr. Constantine's testimony that he found no physical evidence of abuse.

¶ 26 Because Austin has not shown a reasonable probability that he would have achieved a better result with better prepared counsel, or with the presentation of more witnesses, he has not shown that he received ineffective assistance of counsel.

¶ 27 CONCLUSION

¶ 28 Austin has not shown that he would have achieved a better result if his attorney had presented certain witnesses or if his attorney had conducted discovery sooner. Therefore, Austin has not shown that he received ineffective assistance of counsel. Accordingly, we affirm the trial court's judgment.

¶ 29 Affirmed.