2017 IL App (3d) 140983-U

Order filed June 9, 2017

IN THE

APPELLATE COURT OF ILLINOIS

THIRD DISTRICT

2017

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the Circuit Court of the 10th Judicial Circuit, Peoria County, Illinois.
Plaintiff-Appellee,	)	
v.	)	Appeal No. 3-14-0983 Circuit No. 13-CF-1065
DAVID G. STRICKFADEN,	)	
Defendant-Appellant.	)	Honorable David A. Brown, Judge, Presiding.

JUSTICE SCHMIDT delivered the judgment of the court.
Justices Lytton and McDade concurred in the judgment.

ORDER

¶ 1 *Held*: Counsel was not ineffective as he did raise an argument regarding the voluntariness of defendant's videotaped interview at the suppression hearing.

¶ 2 Defendant, David Strickfaden, argues that his counsel was ineffective for failing to advance an argument regarding the voluntariness of defendant's videotaped statement in his motion to suppress. We affirm.

¶ 3 FACTS

¶ 4 The State charged defendant by indictment with two counts of aggravated criminal sexual assault (720 ILCS 5/11-1.30(a)(1) (West 2012)) and three counts of aggravated unlawful restraint (720 ILCS 5/10-3.1(a) (West 2012)).

¶ 5 Defendant filed a motion to suppress his videotaped interview during which he confessed. During opening statements at the hearing on the motion to suppress, defense counsel said:

> "I think you'll see basically from the videotape that they hurried my client through this, and he really didn't know that he had a right to stop it right then whenever he wanted to and exercise the rights that they gave to him because they hurried him through it. He was in a hospital bed on a Morphine drip and had been woken up that morning from his sleep, so I think that's the context the Court should know about."

¶ 6 The State presented the testimony of Detective David Hoyle who testified that he had been a detective with the Peoria County sheriff's department for 22 years. On November 21, 2013, defendant was arrested at 8 a.m., and he was transported to the hospital as he had been stabbed by one of the victims. The next day, November 22, 2013, between 10 and 11 a.m., Hoyle interviewed defendant in his hospital room. Hoyle asked the medical personnel at the hospital whether or not defendant was coherent enough to speak to Hoyle, and they indicated that he was. He further asked if defendant was on any drugs that would prevent him from speaking to Hoyle, and one of the nurses said, "No, he's fine." Another detective accompanied Hoyle to videotape the interview. Hoyle stated that he walked into defendant's hospital room, told defendant the video recorder was on, and advised defendant of his *Miranda* rights by

reading from a form. Hoyle, the other detective, and defendant all signed the form. Defendant then spoke with Hoyle. Defendant never asked for an attorney, requested to stop the interview, or told Hoyle he did not wish to speak with him. Hoyle stated that neither he nor the other detective threatened or coerced defendant or made any promises to defendant. Hoyle stated that defendant appeared to understand what Hoyle said. Hoyle agreed that defendant was 20 years old. Hoyle did not remember whether defendant was asleep when he entered the room. He did see that defendant was connected to some medical devices, but did not pay attention to what they were. He said he "assumed it was like an IV [intravenous drip] and an oxygen sensor." Hoyle did not ask defendant if he was on morphine. The videotape showed the entire interaction between Hoyle and defendant. The State played the first 3½ minutes of the videotape for the court, but defense counsel asked the court to play the full videotape. The court agreed to watch the entire videotape.

¶ 7 Defendant then testified that when Hoyle entered his hospital room he was asleep or "freshly woken up." He had been stabbed on his left lower side or hip. Defendant stated that when Hoyle entered the hospital room he was in "[a] little bit" of pain. During the interview, defendant stated that he was connected to an IV. He also believed he was on a morphine drip. Defendant said the morphine was helping to relieve his pain, but stated: "I just was out of it. I was very badly focused. I couldn't focus at all. It was just—it made it hard to keep my mind on Detective Hoyle with everything else that was going on at the same time." Defendant further stated: "I didn't feel like I had any options. Honestly, I felt like I was completely, like, at the detective's mercy because I was shackled to the bed. I couldn't even get up and use the restroom at any point." Defendant did not read the *Miranda* form when he signed it. He said that he had heard the *Miranda* rights and signed the same form when he had been arrested previously.

Defendant said he did not feel like he had the option of saying he did not want to talk or to have a lawyer present. Defendant acknowledged that Hoyle did not physically touch, threaten, or make any promises to him.

¶ 8 The court took the matter under advisement. In making its ruling, the court stated that it reviewed the videotape and its notes. The court then denied the motion, stating:

> "On a motion like this, the State has a burden of proving that the confession is voluntary. It's based upon the totality of the circumstance, questions whether the defendant's will to resist was overborne or somehow became an involuntary statement due to the totality of the circumstances. It's a preponderance of the evidence analysis. I need not be convinced beyond a reasonable doubt on this matter.
>
> I'll say this. There are a number of cases. While I did research, I read the case that was submitted by the State, I also did some research. There are a number of cases out there as one might expect of individuals being interrogated in the hospitals or in settings where they are being treated in some fashion for medical issues and/or where they are claiming that they should have been treated for medical conditions, and my review of those cases suggests to me that it's the same general analysis, the same burdens, the same criteria are looked at; and so that was my primary purpose was to see if there was, if somebody was medicated whether there is a presumption or if they were in pain whether that changed the

balance or anything like that. I don't find anything to that effect. It's still the totality of the circumstance. It's still a preponderance of the evidence standard as to whether the statements were voluntary.

I'll say this, that the Courts have outlined a number of factors to consider including the defendant's age, intelligence, background, experience, mental capacity, education, physical condition at the time of the questioning, legality of the detention, duration of the questioning, any physical or mental abuse by police, any threats or promises by the police. And in reviewing those—well, let me take a step back.

In this case the video is pretty clear that when the police officers arrived, questioned him, they had a videotape going. The officer testified that basically the entire interaction with [defendant] was captured on the video, and at the very beginning the officer or detective indicates that before they can talk, he has to give him his warnings; and he does give the warnings. They are in substantial compliance with the standard *Miranda* warnings. Then he asks if he understands them, and the defendant indicates affirmatively and then proceeds to sign the waiver form and sign a couple of other waiver forms as well for DNA testing and for—I'm drawing a blank on what the third form was for, oh, it was a cellphone, and then proceeded to answer questions for a period of close to an hour and that during the exchange, the defendant while it appears to be—

well, he is laying [*sic*] in a hospital bed. At the very beginning he says he feels okay although he is in a little bit of pain, and he appears to be I wouldn't say groggy but tired I guess would be a better way of phrasing it.

However, by all appearances including his actions and his responses to questions, he appears to be lucid. In other words, I don't think any pain that he was in or any medicine that he may have been taking, including painkillers, affected his ability to understand what was going on and/or to waive his rights. He did sign the waiver. I didn't see any signs of coercion. I heard of none during the testimony. And I'll say, also say that he acknowledged his rights, he signed the waiver, and then proceeded to answer the questions for a lengthy period of time. He didn't affirmatively say I hereby waive my rights. He didn't vocalize it, but by signing the waiver, he's indicated that, an understanding of the rights coupled with a course of conduct indicating the waiver is good enough. If that's good enough, then signing the waiver and then a course of conduct consistent with the waiver ought to be good enough.

All of the evidence that I heard and saw on the video suggests a conclusion that the defendant knowingly waived his right to remain silent and that it was voluntary. So I'll deny the defense motion to suppress at this time."

¶ 9 A jury found defendant guilty on all counts. The court sentenced defendant to a total of 27 years' imprisonment.

¶ 10 ANALYSIS

¶ 11 On appeal, defendant argues that his counsel was ineffective for advancing the wrong argument in his motion to suppress. Specifically, defendant argues that his counsel only challenged the statement on *Miranda* grounds and should have challenged the voluntariness of the statement. Since we find that counsel actually did argue that the videotaped statement was made involuntarily and the court found the statement voluntary, we find counsel's performance was objectively reasonable.

¶ 12 To establish a claim of ineffective assistance of counsel, defendant must show that his claim satisfies the two-pronged *Strickland* test (1) counsel's performance fell below an objective standard of reasonableness, and (2) defendant was prejudiced by counsel's deficit performance. *Strickland v. Washington*, 466 U.S. 668, 694 (1984); *People v. Cherry*, 2016 IL 118728, ¶ 24. "In assessing counsel's performance, the reviewing court must indulge in a strong presumption that counsel's conduct fell into a wide range of reasonable representation, and the defendant must overcome the presumption that, under the circumstances, the challenged action might be considered sound trial strategy." *People v. Cloutier*, 191 Ill. 2d 392, 402 (2000). "The reasonableness of counsel's actions must be determined in light of the totality of the circumstances." *People v. Stewart*, 217 Ill. App. 3d 373, 376 (1991).

¶ 13 Here, the record from the suppression hearing shows that defense counsel advanced an argument regarding the voluntariness of the statement. During opening statements, counsel noted that defendant was on a morphine drip and had just woken up when the detectives entered his hospital room. Counsel asked Hoyle if he knew defendant was on a morphine drip. During

defendant's testimony, counsel elicited that defendant "was out of it," had a hard time focusing, and did not feel that he could stop talking or request a lawyer. Viewing the totality of the circumstances, we find that defense counsel appropriately argued the voluntariness of the statement.

¶ 14 Further, the court found both the *Miranda* waiver and the entire statement to be voluntary. In making its determination, the court stated, "[T]he State has a burden of proving that the confession is voluntary. It's based upon the totality of the circumstance, questions whether the defendant's will to resist was overborne or somehow became an involuntary statement due to the totality of the circumstances." The court watched the entire videotape, listed the factors it must consider when determining voluntariness, and stated that defendant appeared lucid and that he saw no signs of coercion. The court then found the statement and the *Miranda* waiver to be voluntary. See *People v. Baker*, 2015 IL App (5th) 110492, ¶¶ 48-55. Viewing the record as a whole, we find that the court was not, as defendant argues, simply "evaluating whether [defendant's] waiver of his *Miranda* rights was knowing and voluntary," but also evaluating the voluntariness of the statement as a whole.

¶ 15 CONCLUSION

¶ 16 For the foregoing reasons, we affirm the judgment of the circuit court of Peoria County.

¶ 17 Affirmed.