2019 IL App (3d) 170245-U

Order filed September 30, 2019

IN THE

APPELLATE COURT OF ILLINOIS

THIRD DISTRICT

2019

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the Circuit Court
	)	of the 10th Judicial Circuit,
Plaintiff-Appellee,	)	Peoria County, Illinois.
	)	
v.	)	Appeal No. 3-17-0245
	)	Circuit No. 16-CF-143
VERONICA R. DIXON,	)	
	)	The Honorable
Defendant-Appellant.	)	Kevin W. Lyons,
	)	Judge, Presiding.

JUSTICE LYTTON delivered the judgment of the court.
Presiding Justice Schmidt and Justice Holdridge concurred in the judgment.

ORDER

¶ 1 *Held*: Defendant did not establish plain error or ineffective assistance of counsel where the jury was given an exhibit containing defendant's interviews with police and a Department of Children and Family Services (DCFS) employee because the interviews were not prejudicial to her.

¶ 2 Defendant Veronica Dixon, a teacher, was charged with one count of criminal sexual assault and one count of aggravated criminal sexual abuse for having sex with a student. Before she was arrested, defendant was interviewed by police for approximately two hours. Shortly after

that interview, a DCFS employee met with defendant. At trial, portions of defendant's police interview were played for the jury for purposes of impeachment. None of defendant's DCFS interview was shown to the jury. Prior to deliberations, the court provided the jury with the DVD containing the entire police and DCFS interviews of defendant. The jury found defendant guilty of both charges, and the trial court sentenced her to four years in prison. On appeal, defendant argues that she was denied a fair trial by the DVD's presence in the jury room. We affirm.

¶ 3 FACTS

¶ 4 In March 2016, defendant was charged with one count of criminal sexual assault (720 ILCS 5/11-1.20(a)(4) (West 2016)) and one count of aggravated criminal sexual abuse (720 ILCS 5/11-1.60(d) (West 2016)). The indictment alleged that defendant "knowingly committed an act of sexual penetration" with D.D., one of her students. The case proceeded to a jury trial.

¶ 5 At trial, the evidence established that defendant was 28 years old in January 2016, and a seventh and eighth grade teacher at Trewyn School. D.D. was born on January 19, 2001, and started attending Trewyn School in early January 2016. He was in defendant's class at Trewyn, along with his sisters, R.D. and T.D.

¶ 6 D.D. testified that he met defendant in the fall of 2015, when he picked up his younger brother and sister from school. In early January 2016, he went jogging alone with defendant. After that, he asked for defendant's phone number and told her to put the "Text Now" application on her phone so he could communicate with her. Sometime in January 2016 but before January 19, 2016, D.D. texted defendant and asked her to pick him up from his cousin's house. Defendant did so and took him to her house. In defendant's kitchen, defendant and D.D. began kissing. Defendant then put her two children in her bedroom and took defendant to her son's bedroom. In her son's bedroom, defendant performed oral sex on D.D. while D.D. sat on

the bed. After that, the two had sex in the "missionary position" for five to six minutes before D.D. ejaculated on defendant's stomach. After that, D.D. ate dinner with defendant and her children. After dinner, defendant took D.D. home.

¶ 7 D.D. testified that he told his stepfather, Rodney Anderson, that he had sex with defendant. D.D. testified that he loved defendant and thought of her as his girlfriend. Defendant told him that she loved him through text messages. He referred to defendant in text message as "[b]ae", which meant "girlfriend".

¶ 8 D.D.'s mother, Monica Anderson, testified that defendant was the homeroom teacher of several of her children, including D.D. On January 25, 2016, D.D. went out but left his cell phone at home. When D.D.'s phone rang, Rodney answered it. Rodney recognized defendant's voice and hung up the phone. After that, Monica examined the phone. She found many text messages from "Rinky Dink", which was defendant's name on the Text Now application. Monica texted defendant, "[T]his is his mother." After receiving that message, defendant stopped texting D.D. and called R.D. R.D. put her phone on "speaker" mode so that her family could hear what defendant said. According to Monica, defendant said D.D. was "tripping" and "knows he cannot tell people what was going on."

¶ 9 Rodney testified that one week prior to January 25, 2016, D.D. told him he had sex with one of his teachers. Rodney thought D.D. was "playin[g]" and wanted to "play Mr. Big Guy." Rodney did not take D.D. seriously until January 25, 2016.

¶ 10 R.D. testified that she received a phone call from defendant on her cell phone on January 25, 2016. In that phone call, defendant said that D.D. was "trippin" and that he needed to "stop tellin' people because, you know, we'll get in trouble." Defendant sent texts to R.D.'s phone stating that she was "scared" after she received the text from Monica on January 25, 2016,

stating, "This is his mother." R.D. testified that she saw texts on D.D.'s phone in which defendant admitted having sex with D.D., but D.D. deleted them after his mother found out about his relationship with defendant.

¶ 11 Defendant testified that she began teaching at Trewyn in 2015. On January 7, 2016, she invited all of her students to go jogging with her after school. Only D.D. showed up. On January 13, 2016, D.D. began texting her, and she responded. Defendant testified that she picked up D.D. on January 14, 2016, and took him to her house, where she planned to put his hair in dreadlocks. She denied ever kissing or having sex with D.D.

¶ 12 Defendant testified that she called D.D. on January 25, 2016, to arrange a time to "dread" his hair. She admitted that she lied to police initially and told them that defendant was never at her house. She testified that she deleted the Text Now application from her phone on January 25, 2016, because she "panicked" and "knew what it looked like."

¶ 13 Norman Jackson, a former student of defendant's who was in the same class as D.D., testified that when students were misbehaving, defendant told them that she loved them and that they could do better. Defendant visited Norman at home to help him with homework and missing assignments. Sometimes Norman stayed after school for help, and defendant drove him home.

¶ 14 Detective Vasquez of the Peoria Police Department testified that he, along with Detective Spanhook, interviewed defendant on February 15, 2016. At first, defendant denied sending text messages to D.D. and denied that D.D. had ever been to her house. The State admitted into evidence a recording of defendant's interview with the detectives as People's Exhibit 10. The State explained that the exhibit had been redacted so that only "the relevant portion" would be played for the jury. The prosecutor stated, "The rest would be inadmissible." The State then played for the jury People's Exhibit 10A, which consisted of six short clips from the video of

defendant's interview with the detectives in which defendant denied sending texts to D.D. and denied that D.D. was ever in her home. The final clip showed defendant admitting that D.D. had been in her home.

¶ 15 State's Exhibit 10 consisted of the entire interview of defendant by the two detectives, which lasted approximately two hours. Throughout the police interview, defendant denied having sex or a romantic relationship with D.D. She also repeatedly denied that D.D. had ever been in her house. At one point during the police interview, Detective Vasquez asked defendant how she thought she would do on a lie detector test. Defendant responded, "Pretty good." When Vasquez asked her if she thought she would pass, defendant responded: "Yeah. I'm not going to fail it because I don't got nothing to lie about. I ain't no child molester." After further questioning, defendant admitted that D.D. had been to her house once, but she still denied all wrongdoing. Near the end of the interview with police, defendant insisted she had done nothing wrong and stated, "You can give me a lie detector test."

¶ 16 After Detective Vasquez informed defendant that she was being arrested for criminal sexual assault, the videotape continued for approximately 40 minutes. For the first 20 minutes after the officers' interview, defendant sat alone in the interview room. After that, Vasquez returned to the room and informed defendant that a DCFS caseworker needed to speak with her. A DCFS caseworker named Melissa came into the room and spoke to defendant. Defendant told Melissa that she had never been involved with DCFS before and denied any history of drug or alcohol abuse.

¶ 17 When defendant asked how the DCFS charges against her related to her own children, Melissa said, "Well, because there is a DCFS report on you for sexual penetration so it kind of does bring your kids in there a little bit too." Melissa asked defendant if the police had ever been

called to her house because of domestic violence. Defendant stated that the police were called "one time" when she lived in Decatur. Defendant thought no one was arrested or charged with a crime. That incident did not involve defendant's current boyfriend.

¶ 18 When Melissa asked if there had ever been physical violence between defendant and her current boyfriend, defendant responded affirmatively. Defendant said she called the police on him between August and December 2015, for physical violence but the officers who responded did not arrest him because they did not believe her. She said she had bruising, a sore, and was bloody as a result of that altercation. At the conclusion of the interview, defendant asked Melissa if the DCFS report involved the same "thing" that police were investigating. Melissa responded, "yeah."

¶ 19 Peoria police officers seized the cell phones belonging to defendant and D.D. James Feehan, a digital forensic examiner for the Peoria Police Department, analyzed the phones and drafted reports, which he copied onto two Blu-Ray disks. Those disks were admitted into evidence at People's Exhibit 6. People's Exhibit 6A was a printout of the text messages between defendant and D.D.

¶ 20 On January 14, 2016, at 8:41 p.m., D.D. texted defendant, "u know I wanna fuck again nd call me." Defendant did not respond. Later, at 10:36 p.m., D.D. texted defendant, "[L]uv u." Defendant replied, "Luv u 2." At 11:06 p.m., D.D. texted defendant, "Bae nvm gn luv u," which Vasquez interpreted as "Bae. Never mind. Good night. Love you." Defendant replied, "Luv u." D.D. responded, "Ilym", which means "I love you more."

¶ 21 There were other text messages between defendant and D.D. on January 15, 2016, and January 18, 2016. Additionally, on January 20, at 2:52 p.m., D.D. texted defendant, "ily", which Vasquez interpreted to mean "I love you." Defendant responded at 2:54 p.m., "ily u 2."

¶ 22 On January 23, 2016, at 10:42 a.m., D.D. texted defendant, "[m]issing u hbu." Defendant replied at 10:44 a.m, "[j]us layin here u aint missin me u playin." D.D. responded, "I'm dead ass bae Imu a lot." At 11:10 a.m., defendant replied, "IMU 2 tho frfr," which means "I miss you too, though, for real, for real."

¶ 23 The jury was given all of the exhibits, including People's Exhibits 6 and 10, prior to deliberations. During deliberations, the jury sent a message to the judge stating that it could not play the Blu-Ray disks contained in People's Exhibit 6. The court instructed the jury that it could not consider information on the disks contained in Exhibit 6 beyond what was provided to them in paper form in "People's 6A." After nine hours of deliberations, the jury informed the court that it was at an impasse. The court allowed the jurors to retire for the evening and instructed them to return the next day.

¶ 24 After deliberating for an additional hour the following day, the jury found defendant guilty of both counts. Defendant filed a motion for a new trial, which the trial court denied. The trial court sentenced defendant to four years in prison.

¶ 25 ANALYSIS

¶ 26 On appeal, defendant argues that she was denied her right to a fair trial because the jury was given People's Exhibit 10, which contained inadmissible and prejudicial material, specifically references to a lie detector test, the DCFS charge against her, and past domestic violence incidents. She contends that the admission of this evidence amounted to plain error and that her counsel's failure to object constituted ineffective assistance of counsel.

¶ 27 I. Plain Error

¶ 28 A trial court has discretion to permit or deny jurors to take admitted evidence into the jury room. See *People v Hudson*, 157 Ill. 2d 401, 439 (1993); *People v. Holcomb*, 370 Ill. 299,

300 (1938). However, a court commits error by allowing an exhibit not admitted into evidence to be viewed by the jury. *People v. Taylor*, 166 Ill. 2d 414, 438 (1995); *Holcomb*, 370 Ill. at 300. Additionally, an exhibit admitted into evidence for impeachment purposes only cannot be taken to the jury room. *People v. Carr*, 53 Ill. App. 3d 492, 499 (1977); *Esderts v. Chicago, Rock Island & Pacific R.R. Co.*, 76 Ill. App. 2d 210, 229 (1966). Furthermore, it is error for a trial court to allow a witness' entire statement to go to the jury room when only a portion of the statement was presented at trial. See *Carr*, 53 Ill. App. 3d at 497-99. *Nelson v. Northwestern Elevated R.R. Co.*, 170 Ill. App. 119, 124-25 (1912). However, reversal is required only if extraneous material allowed in the jury room is prejudicial to the defendant. See *Lawson v. G.D. Searle & Co.*, 64 Ill. 2d 543, 556 (1976); *Bieles v. Ables*, 234 Ill. App. 3d 269, 272 (1992); *Carr*, 53 Ill. App. 3d at 497.

¶ 29 Here, the jury was provided with People's Exhibit 10, which consisted of the entire police interview of defendant, as well as the DCFS employee's interview of defendant. Because Exhibit 10 was admitted at trial for impeachment purposes only, it was error for the trial court to allow it to go to the jury room. See *Carr*, 53 Ill. App. 3d at 499; *Esderts*, 76 Ill. App. 2d at 229.

¶ 30 Trial judges and counsel have the responsibility to scrutinize all items taken to the jury room and remove any improper material. *Bieles*, 234 Ill. App. 3d at 272. When improper material is sent to the jury room and defense counsel fails to object, we reverse only when there is plain error. See *id.* at 271. Under the plain error doctrine, the defendant bears the burden of showing that one of the following errors occurred: (1) a prejudicial error that may have affected the outcome in a closely balanced case, or (2) a presumptively prejudicial error that is so substantial that it must be remedied even though it may not have affected the outcome. *People v. Nitz*, 219 Ill. 2d 400, 415 (2006). Allowing extraneous items to go the jury room is not a

presumptively prejudicial error under the second prong of plain error; the defendant must show that the error was prejudicial and that the evidence was closely balanced. See *People v. Arnhold*, 140 Ill. App. 3d 840, 844 (1986); *People v. Dixon*, 75 Ill. App. 2d 77, 79-80 (1966).

¶ 31 Generally, a witness' testimony cannot be corroborated by admission of a prior statement that is consistent with her trial testimony. *People v. Ruback*, 2013 IL App (3d) 110256, ¶ 26. Such statements are inadmissible because they improperly bolster a witness' in-court testimony. See *id*.; *People v. Donegan*, 2012 IL App (1st) 102325, ¶ 52. "The danger in prior consistent statements is that a jury is likely to attach disproportionate significance to them." *People v. Smith*, 139 Ill. App. 3d 21, 33 (1985). "People tend to believe that which is repeated often, regardless of its intrinsic merit, and repetition lends credibility to testimony that it might not otherwise deserve." *Id*. When a jury is improperly permitted to take the statements of State witnesses into the jury room, reversal is required because the testimony of those witnesses is improperly bolstered and emphasized, thereby prejudicing the defendant. See *Carr*, 53 Ill. App. 3d at 497-99; *Nelson*, 170 Ill. App. at 123-25.

¶ 32 Here, People's Exhibit 10 showed defendant in her interview with police, repeatedly denying having sex or any inappropriate contact with D.D. These denials constituted prior consistent statements, which are normally prohibited because they tend to bolster the witness' credibility and in-court testimony. See *Ruback*, 2013 IL App (3d) 110256, ¶ 26; *Donegan*, 2012 IL App (1st) 102325, ¶ 52. Although consistent statements from State witnesses typically prejudice a defendant by bolstering the witnesses' testimony (see *Carr*, 53 Ill. App. 3d at 497-99; *Nelson*, 170 Ill. App. at 123-25), the statements in this case were defendant's and would have served to bolster her trial testimony. See *Ruback*, 2013 IL App (3d) 110256, ¶ 26; *Donegan*,

2012 IL App (1st) 102325, ¶ 52; *Smith*, 139 Ill. App. 3d at 33. Defendant was not prejudiced by the trial court's error in allowing People's Exhibit 10 to go to the jury room.

¶ 33 Defendant contends that two specific portions of the DVD prejudiced her: (A) Vasquez's query about a polygraph examination, and (B) her conversation with the DCFS caseworker about the DCFS charge against her and prior incidents of domestic violence, which the jury could have construed as "other-crimes evidence."

¶ 34 A. Polygraph

¶ 35 "[P]olygraph evidence cannot be admitted into evidence." *People v. Skiles*, 115 Ill. App. 3d 816, 827 (1983). However, the mere mention of a polygraph examination is not necessarily inadmissible "polygraph test evidence." See *id*. A defendant's statement of her willingness to take a polygraph test may be admitted at trial. See *id*. Such a statement does not prejudice the defendant nor is it inadmissible "polygraph test evidence." *Id*.

¶ 36 There is no question that it is improper to admit polygraph evidence at trial. See *Skiles*, 115 Ill. App. 3d at 827. However, no polygraph evidence was admitted here. During the police interview, Vasquez asked defendant how she thought she would perform on a polygraph test. Defendant responded, "Fine. I'm telling the truth." Nothing about this question suggested that defendant had taken a polygraph. In fact, it suggests the opposite – that defendant had not been given a polygraph exam. Additionally, near the end of the police interview, defendant offered to take a polygraph examination, establishing that she had not previously taken one. Defendant's offer to take a polygraph examination was not improper or prejudicial to her. See *Skiles*, 115 Ill. App. 3d at 827. Because defendant was not prejudiced, there is no plain error. *See Arnhold*, 140 Ill. App. 3d at 844; *Dixon*, 75 Ill. App. 2d at 79-80.

¶ 37 B. Other-Crimes Evidence

¶ 38 The term "other-crimes evidence" refers to misconduct or criminal acts committed by the defendant either before or after the alleged criminal conduct for which the defendant is on trial. *People v. Nixon*, 2016 IL App (2d) 130514, ¶ 35 (2016). As a general rule, evidence of other crimes is not admissible for the purpose of showing the defendant's propensity to commit a crime. *Id*.

¶ 39 Here, no statements made by defendant or the DCFS caseworker contained in People's Exhibit 10 constituted "other-crimes evidence" or suggested that defendant had committed a crime or misconduct in the past. In her responses to the DCFS caseworker, defendant denied having any prior involvement with DCFS. The caseworker made clear at the end of her interview with defendant that the DCFS charge against defendant arose out of the criminal charges against defendant related to D.D. Based on the caseworker's statements, the jury could not have believed that DCFS was investigating another incident of wrongdoing involving defendant.

¶ 40 Furthermore, none of defendant's testimony about prior incidents of domestic would have led the jury to believe that defendant had committed a crime or misconduct in the past. Defendant told the DCFS employee that she had been involved in two incidents of domestic violence, one in Decatur and one in Peoria with her current boyfriend. However, defendant never stated that she was the aggressor in either incident and clearly testified that she was the victim in the most recent incident of domestic violence involving her current boyfriend. That testimony did not prejudice the defendant. If anything, it would make her appear more sympathetic to the jury. Defendant was not prejudiced, there is no plain error. *See Arnhold*, 140 Ill. App. 3d at 844; *Dixon*, 75 Ill. App. 2d at 79-80.

¶ 41 II. Ineffective Assistance

¶ 42 Claims of ineffective assistance of counsel are evaluated under the two-prong test set forth in *Strickland v. Washington,* 466 U.S. 668 (1984), which requires a showing of deficient performance by counsel and resulting prejudice. *People v. Cloutier*, 178 Ill. 2d 141, 163 (1997). Prejudice exists when there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different. *Id.* Counsel's failure to object to an exhibit amounts to ineffective assistance of counsel only if a reasonable probability exists that the jury would have returned a different verdict but for the exhibit. See *id.* at 173.

¶ 43 While it was error for the jury to be given People's Exhibit 10 during deliberations, the exhibit did not prejudice defendant. Because defendant cannot show that People's Exhibit 10 caused her prejudice, she failed to establish ineffective assistance of counsel. See *id.*

¶ 44 CONCLUSION

¶ 45 The judgment of the circuit court of Peoria County is affirmed.

¶ 46 Affirmed.