

NOTICE
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2019 IL App (4th) 160852-U

NO. 4-16-0852

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED
September 17, 2019
Carla Bender
4th District Appellate
Court, IL

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the
Plaintiff-Appellee,)	Circuit Court of
v.)	Champaign County
PAUL A. ROUSE,)	No. 15CF651
Defendant-Appellant.)	
)	Honorable
)	Heidi N. Ladd,
)	Judge Presiding.

JUSTICE TURNER delivered the judgment of the court.
Presiding Justice Holder White and Justice Cavanagh concurred in the judgment.

ORDER

¶ 1 *Held:* Defendant forfeited both his claim he was denied his right to a speedy trial by his trial counsel’s ineffectiveness and his claim the trial court erred by not allowing him to call certain individuals as impeachment witnesses.

¶ 2 In March 2016, a jury found defendant, Paul A. Rouse, guilty of criminal sexual assault. Defendant makes two arguments on appeal. First, he argues his right to a speedy trial was violated because of his trial counsel’s ineffectiveness. Second, he argues the trial court erred when it prohibited defendant from calling certain witnesses for purposes of impeaching the alleged victim in this case. We affirm.

¶ 3 **I. BACKGROUND**

¶ 4 On May 7, 2015, the State charged defendant by information with criminal sexual assault (720 ILCS 5/11-1.20(a)(2) (West 2014)), alleging defendant committed an act of sexual penetration with K.S. on August 26, 2014, knowing K.S. was unable to give knowing consent.

Defendant also faced criminal charges in two other cases, Nos. 14-CF-1414 and 15-CF-650.

¶ 5 Defendant was first tried in case No. 15-CF-650 and acquitted on October 7, 2015. On October 21, 2015, the State filed a motion to continue the two remaining cases, noting it intended to proceed to trial first in case No. 14-CF-1414. The State considered the charges in case No. 14-CF-1414 as more serious, and the charges carried a greater range of possible penalties. Further, the State noted the outcome in case No. 14-CF-1414 might resolve the need for further proceedings in this case. On November 2, 2015, the trial court granted the State's motion to continue over defendant's objection.

¶ 6 On December 8, 2015, one of defendant's attorneys filed a motion to continue this case. According to the motion, counsel needed time to negotiate with the assistant state's attorney and believed the case could be resolved. Further, the motion stated defendant's case would be prejudiced if he was not afforded another pretrial conference. The trial court allowed defendant's motion to continue until the next allotted jury term following the January 12, 2016, pretrial conference.

¶ 7 On January 12, 2016, one of defendant's attorneys moved to withdraw as defense counsel in this case. At a hearing on the same date, defendant objected to the motion to withdraw. The next day, both of defendant's attorneys filed an amended motion to withdraw. At a scheduled hearing on January 20, 2016, the trial court allowed both of defendant's attorneys to withdraw. Defendant then chose to proceed *pro se*.

¶ 8 Defendant's trial began on March 28, 2016. In his opening statement, defendant told the jury he and K.S. had consensual sex.

¶ 9 In the State's case, Christine Meeker testified she treated K.S. in her capacity as a sexual assault nurse examiner at Carle Foundation Hospital on August 26, 2014. K.S. told

Meeker she and a friend had been drinking alcohol before they went to a bar called Joe's Brewery late in the evening on August 25, 2014. She remained with her friend at Joe's Brewery and left the bar at 2 a.m. Her memory of what occurred after 2 a.m. was "choppy." She remembered being in a room with a tall, skinny African-American man she did not know. She also recalled saying "no." She remembered waking up, putting on her clothes, and seeing her tampon on the floor. She did not remember clearly how she got back to her apartment. She woke up at 7 a.m., did not feel right, and could not recall the specifics of what had happened. K.S. told Meeker she did not know if any vaginal or anal penetration had occurred.

¶ 10 Meeker testified K.S. did not have tenderness, bruising, abrasions, or lacerations to the vaginal canal. However, she had tenderness bilaterally to the outer lips of her vagina. She had multiple small bruises on her thighs and her lower leg which K.S. could not account for. Meeker provided vaginal swabs used during the exam to the Champaign Police Department.

¶ 11 Champaign police officer Amy Petrilli testified she was dispatched to Carle Foundation Hospital on August 26, 2014, at 6:26 p.m. Nurse Meeker provided her with a sexual assault kit. On cross-examination, Officer Petrilli stated she interviewed K.S. However, after the trial court sustained the State's objection to defendant's question whether K.S. said anything about being on a couch, defendant did not ask Petrilli any more questions.

¶ 12 The State presented evidence defendant's deoxyribonucleic acid (DNA) was found on the vaginal swabs provided to the police by Nurse Meeker.

¶ 13 K.S. testified she was a student at the University of Illinois in 2014 and lived in Champaign. On August 26, 2014, she celebrated a friend's birthday at an apartment where she consumed alcohol. A little after midnight, she and some of her friends went to Joe's Brewery. She did not remember what she had to drink there. She and her friend, Andy, left Joe's Brewery

around 2 a.m. However, after leaving the bar, they became separated.

¶ 14 The next thing she remembered was being in an unfamiliar apartment on a couch. She was unaware of anyone else in the apartment other than a man she described as tall, slim, and African-American. She could not remember the man's facial features. Regarding what happened inside the apartment, K.S. testified:

“I only remember bits and pieces. So like I said, I left the bar and I lost a lot of my memory from the bar to the couch. And then I again kind of blacked out between that—between that period, and I kind of came to when I was in the bedroom of that apartment.”

She remembered the same tall, slim, African-American man being on top of her in a bedroom. She could see the man's penis and was pushing him off of her and telling him “no.” She did not remember saying anything else or the man saying anything. When asked where or how she saw the man's penis, K.S. testified, “That whole part is really hazy to me. So I either picked that up from when he was on top of me and I was pushing him off, or that was another piece of memory that just stuck with me through to the next day.” The next thing K.S. remembered was waking up. She saw her pants on the floor and felt like she needed to get out of there.

¶ 15 K.S. testified she had never given defendant consent to be with her sexually and had not met defendant or seen him socially before that night. She did not remember her tampon being removed but it was on the floor on the side of the bed when she woke up. She had no memory of defendant's penis being inside her.

¶ 16 According to K.S., she felt disoriented and in disbelief as to what happened. The way she felt was different than a normal hangover. She walked back to her apartment and tried to sleep but had trouble. When she got up, she still did not feel normal. She went to the gym

and then showered. At that point, she started to realize what had happened.

¶ 17 She then called her mom and boyfriend and told them she thought something bad had happened. Her mom and boyfriend drove to Champaign, and they all went to Carle Hospital where she requested a sexual assault examination. K.S. met with Christine Meeker, a nurse, who treated her and performed the sexual assault examination.

¶ 18 Another young woman, K.H., who was the alleged victim in case No. 14-CF-650, also testified for the State. Prior to her testimony, the trial court told the jurors defendant had been found not guilty of sexually assaulting K.H. but defendant's not guilty verdict did not establish his actual innocence in the prior case. The court instructed the jury it had an independent duty to determine the credibility of K.H.'s testimony and evaluate its weight.

¶ 19 K.H. testified she went out with some friends in Champaign on January 17, 2014, including to Joe's Brewery at 11 p.m. She had approximately six drinks and left the bar around 2 a.m. She and her friends then went to a restaurant. While she was in the restroom, defendant joined the group sitting at her table. K.H. stated she felt drunk but knew what was going on around her. Defendant was talking to one of her friends. K.H. did not know defendant.

¶ 20 Defendant got in a cab with K.H. and her friends after they left the restaurant. Eventually, K.H. and her friend Crystal were alone with defendant. Defendant followed K.H. and Crystal up to Crystal's apartment and followed the women into the apartment. The women did not tell him he could come inside. Crystal fell asleep while defendant was still there.

¶ 21 According to K.H., she started to feel "really out of it" like she was going to lose consciousness. Defendant then jumped on her and started thrusting against her "rectal area" and placing his hands down her pants. She slapped at his hands and told him to get off her but he did not. K.H. got away from him and ran to the bathroom and locked herself inside. The next thing

she remembered was waking up on the couch the next morning with unbearable pain in the anal region of her body. She felt like “something had been shoved up [her] butt.” Her pants were around her knees and her underwear had a tear in the anal area. She did not remember how her pants were removed. She testified she never gave defendant permission to have anal sex with her or to put his hands down her pants. In addition, she stated she was not conscious when the penetration occurred.

¶ 22 After K.H.’s testimony, the trial court instructed the jury that if it determined defendant committed the offense against K.H. it could consider K.H.’s testimony only with regard to defendant’s identity, intent, motive, design, and propensity.

¶ 23 Detective Robb Morris of the Champaign Police Department testified he met with defendant on October 13, 2014, and on May 13, 2015. Defendant told the detective he was not familiar with K.S. or K.H. and not in the habit of meeting young women at bars and having casual sex with them without any intention of a relationship. Defendant said the only women he was intimate with were girlfriends or young ladies he knew quite well. When confronted with the fact his DNA was found in K.S.’s rape kit, defendant said he had no explanation for that and still denied knowing her. On cross-examination, Detective Morris stated he never showed defendant a picture of K.S. or K.H. Further, Detective Morris testified K.S. told the detective she did not know defendant. Detective Morris also testified he had never recorded an interview with K.S. where she told him she recalled a man being on top of her or feeling like she was out of it. On redirect, Detective Morris stated he was not the only detective who interviewed K.S.

¶ 24 After the State rested, defendant asked to recall Nurse Meeker and Officer Petrilli and to present evidence from Detective Cecil Gene Moore for the purpose of impeaching K.S.’s testimony she told people a man had been on top of her, she pushed the man off of her, and she

told the man “no.” Defendant had not subpoenaed any of these witnesses. The State objected to defendant calling these witnesses for impeachment purposes because defendant failed to establish an appropriate foundation for the impeachment by confronting K.S. with specific statements made to specific individuals at specific times. The trial court found defendant failed to lay the proper foundation to call these witnesses to impeach K.S.’s testimony. The court then modified its ruling so defendant could call Detective Moore for impeachment purposes because K.S. was asked by defendant if she told Detective Moore she may have told defendant no.

¶ 25 Moore, a detective with the University of Illinois Police Department, was defendant’s sole witness. Moore testified he met with K.S. on September 5, 2014, to discuss the allegation of sexual assault in this case. According to Moore, K.S. did not tell him she told her alleged assailant “no.”

¶ 26 Defendant chose not to testify.

¶ 27 After deliberating, the jury found defendant guilty of criminal sexual assault.

¶ 28 Defendant did not file a posttrial motion. On October 5, 2016, the trial court sentenced defendant to 15 years in prison with a term of mandatory supervised release from 3 years to natural life with defendant’s sentence to run consecutive to his sentence in case No. 14-CF-1414.

¶ 29 This appeal followed.

¶ 30 **II. ANALYSIS**

¶ 31 Defendant makes two arguments on appeal. First, he argues he was denied his right to a speedy trial because his trial counsel’s request for a continuance on December 8, 2015, amounted to ineffective assistance of counsel. Second, he contends the trial court erred by not allowing him to call three witnesses to impeach K.S.’s testimony. However, defendant failed to

file a posttrial motion, and as a result, these issues are forfeited on appeal pursuant to *People v. Enoch*, 122 Ill. 2d 176, 186, 522 N.E.2d 1124, 1130 (1988).

¶ 32 Regardless of forfeiture, defendant argues we can consider these issues pursuant to the plain error rule. A reviewing court may excuse a procedural default when a clear or obvious error occurred and (1) “the evidence is so closely balanced that the error alone threatened to tip the scales of justice against the defendant, regardless of the seriousness of the error,” or (2) the “error is so serious that it affected the fairness of the defendant’s trial and challenged the integrity of the judicial process, regardless of the closeness of the evidence.” *People v. Sebby*, 2017 IL 119445, ¶ 48. As discussed below, defendant cannot establish a clear or obvious error occurred in this case.

¶ 33 A. Ineffective Assistance of Counsel

¶ 34 We first address defendant’s argument he was denied his right to a speedy trial because his trial counsel was ineffective by asking for a continuance on December 8, 2015. If defense counsel was not ineffective in requesting the continuance, defendant was tried within the applicable speedy trial period. We find defendant’s trial counsel was not ineffective.

¶ 35 “To prevail on a claim of ineffective assistance of counsel, the defendant must show both that (1) counsel’s performance was deficient, and (2) the deficient performance prejudiced defendant such that he was deprived of a fair trial.” *People v. Cordell*, 223 Ill. 2d 380, 385, 860 N.E.2d 323, 327 (2006), citing *Strickland v. Washington*, 466 U.S. 668, 687 (1984). Counsel’s strategic decisions are generally immune from ineffective assistance claims. *People v. Manning*, 241 Ill. 2d 319, 327, 948 N.E.2d 542, 547 (2011).

¶ 36 According to defendant, his attorney’s request for a continuance on December 8, 2015, was objectively unreasonable and defense counsel had no strategic reason to ask for the

continuance. We disagree. Defense counsel stated in his motion he wanted time to negotiate with the assistant state's attorney and believed the case could be resolved. Considering defendant was found not guilty in case No. 15-CF-650, defense counsel may have believed his chances of working out an advantageous deal for defendant had improved. Even assuming, *arguendo*, no reasonable attorney would have asked for a continuance in this situation, defendant cannot establish he was prejudiced by the continuance because he cannot show a reasonable probability exists he would not have been tried within the 160 day speedy trial limit established by section 103-5(e) of the Code of Criminal Procedure of 1963 (Procedure Code) (725 ILCS 5/103-5(e) (West 2014)) had his counsel not asked for the continuance.

¶ 37 Defendant's reliance on the Third District's recent opinion in *People v. Mooney*, 2019 IL App (3d) 150607, is misplaced as *Mooney* is factually distinguishable from the situation in this case. In *Mooney*, after announcing the defendant was ready for trial on the date set for trial, defense counsel then agreed (1) to continue the trial for a reason not beneficial to the defendant, (2) to toll defendant's right to a speedy trial, and (3) to set a trial date outside the speedy trial period. *Mooney*, 2019 IL App (3d) 150607, ¶ 6. At the later trial date agreed to by defense counsel, the defendant's trial counsel again asked the court to continue the trial, agreeing the continuance would toll the speedy trial clock even though the reason for the requested continuance was the State's last minute production of evidence. *Mooney*, 2019 IL App (3d) 150607, ¶ 7.

¶ 38 The Third District noted the reasons for the continuances could not be factually attributable to the defendant. According to the court, on January 5, 2015, the case was continued after the trial court and prosecutor spoke of a scheduling issue with one of the State's witnesses. *Mooney*, 2019 IL App (3d) 150607, ¶ 23. As for the continuance on March 24, 2015, the Third

District noted defense counsel made the motion to continue only after the State provided defense counsel with a video of the defendant's arrest moments before trial. *Mooney*, 2019 IL App (3d) 150607, ¶ 23. The Third District found defense counsel should not have agreed the delay was attributable to the defendant because it was necessitated by the State's late production of evidence. *Mooney*, 2019 IL App (3d) 150607, ¶ 23.

¶ 39 According to the Third District, defense counsel in *Mooney* had no strategic reason to go along with tolling the speedy trial limit on January 5, 2015, or on March 24, 2015, and his actions directly pushed the defendant's trial outside the applicable speedy trial period. *Mooney*, 2019 IL App (3d) 150607, ¶ 24. As a result, the Third District concluded it was objectively unreasonable for defense counsel to agree these continuances tolled the defendant's speedy trial period. *Mooney*, 2019 IL App (3d) 150607, ¶ 25.

¶ 40 We need not decide whether we agree with the Third District's analysis in *Mooney* because the situation here is factually distinguishable. Unlike in *Mooney*, defendant's trial attorney's request for a continuance did not directly push defendant's trial date outside of what would have been the speedy trial period absent the continuance request. Further, unlike in *Mooney*, it is not clear counsel's strategy was not for defendant's benefit. As noted earlier, defense counsel stated he wanted more time to try to negotiate a plea deal with the State. Thus, defendant cannot establish the continuance request was objectively unreasonable, especially considering defendant had been found not guilty in case No. 15-CF-650.

¶ 41 B. Impeachment Witnesses

¶ 42 We next address defendant's argument the trial court erred when it sustained the State's objection to defendant's request to call Nurse Meeker, Officer Petrilli, and Detective Moore to impeach K.S.'s testimony. The trial court found defendant had not laid a proper

foundation to impeach K.S. through statements she made to these individuals.

¶ 43 The admission of evidence is within the sound discretion of the trial court and will not be disturbed unless the trial court abused its discretion. *People v. Becker*, 239 Ill. 2d 215, 234, 940 N.E.2d 1131, 1142 (2010). We will only find a trial court abused its discretion if its ruling was arbitrary, fanciful, or unreasonable or where no reasonable person would have agreed with the view adopted by the trial court. *Becker*, 239 Ill. 2d at 234, 940 N.E.2d at 1142.

¶ 44 Before a witness may be impeached with a prior inconsistent statement, the party wishing to do so must establish a proper foundation for the statement. *People v. Henry*, 47 Ill. 2d 312, 321, 265 N.E.2d 876, 882 (1970). This is ordinarily accomplished by directing the attention of the witness to the time and place where the prior statement was made, to whom the witness made the statement, the substance of the prior statement, and other circumstances related to the statement. *Henry*, 47 Ill. 2d at 321, 265 N.E.2d at 882. The purpose of these foundational requirements is to avoid unfair surprise and allow the witness an opportunity to explain the earlier statement. *Henry*, 47 Ill. 2d at 321, 265 N.E.2d at 882. However, in *Henry*, our supreme court held that meeting the formal foundation requirements is not always necessary if the party seeking to impeach a witness asked sufficient questions during his cross examination to substantially satisfy the reasons for the rule requiring a foundation. *Henry*, 47 Ill. 2d at 322, 265 N.E.2d at 882.

¶ 45 As noted earlier, defendant did not preserve this issue for our review and must show the trial court made a clear or obvious error in denying defendant's request to recall Nurse Meeker and Officer Petrilli. Defendant cannot establish a clear or obvious error occurred.

¶ 46 Defendant failed to draw K.S.'s attention to any statement she made to either Nurse Meeker or Officer Petrilli about what occurred in defendant's apartment, particularly

regarding K.S. seeing a man on top of her, pushing the man off of her, and telling the man “no.” Defendant never mentioned Officer Petrilli during his cross-examination of K.S. and only mentioned Nurse Meeker with regard to K.S.’s alcohol consumption. As a result, the trial court did not abuse its discretion by not allowing defendant to call either Meeker or Petrilli for the purpose of impeaching K.S. with regard to what she remembered happening in defendant’s apartment. As a final matter, we note the trial court did allow defendant to call Detective Moore.

¶ 47

III. CONCLUSION

¶ 48

For the reasons stated, we affirm the trial court’s judgment in this case.

¶ 49

Affirmed.