2020 IL App (2d) 180302-U
No. 2-18-0302
Order filed October 5, 2020

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the Circuit Court of DuPage County.
Plaintiff-Appellee,	)	
v.	)	No. 15-CF-1269
SAMUEL ENRIQUEZ-CRUZ,	)	Honorable Liam C. Brennan,
Defendant-Appellant.	)	Judge, Presiding.

JUSTICE HUTCHINSON delivered the judgment of the court.
Justices Jorgensen and Hudson concurred with the judgment.

ORDER

¶ 1 *Held*: There was no plain error in the admission of defendant's confession, even though it was obtained through deception by State's Attorney's investigator, and, although it was not required to do so, the trial court made a sufficient inquiry into defendant's pretrial claim of ineffective assistance of counsel.

¶ 2 After a bench trial, defendant, Samuel Enriquez-Cruz, was convicted of four counts of predatory criminal sexual assault of a child (720 ILCS 5/11-1.40(a)(1) (West 2014)) and one count of aggravated criminal sexual abuse (720 ILCS 5/11-1.60(d) (West 2014)). The trial court sentenced him to an aggregate 29 years' imprisonment. On appeal, defendant contends that the trial court committed plain error by admitting into evidence his confession, which was obtained in

part by an investigator's false statement that DNA evidence indicated he had sex with the victim. Defendant also contends that the trial court should have *sua sponte* revisited his pretrial claim of ineffective assistance of counsel after his trial under *People v. Krankel*, 102 Ill. 2d 181 (1984). We affirm.

¶ 3 I. BACKGROUND

¶ 4 In June 2015, the victim in this case, defendant's 12-year-old stepdaughter, Y.G., reported to her mother, Rosa, that defendant had sexually abused her. Prior to trial, the court granted the State's motions to admit the victim's prior statements (725 ILCS 5/115-10 (West 2014)) as well as other-crimes evidence of defendant's prior sexual conduct with the victim (725 ILCS 5/115-7.3 (West 2014)). Defendant moved in with Rosa and Y.G. when Y.G. was two or three years old. When Y.G. was eight, her half-brother, by defendant, E. E.-C. was born.

¶ 5 At trial, Y.G. testified that defendant first started touching her vagina with his hands when she was five years' old. When Y.G. was eight, defendant began to put his mouth on her vagina, he began to place his tongue in her vagina, and he would place his penis in her vagina. Y.G. testified that defendant had sexually penetrated her at least ten times. Y.G. did not tell her mother because she was scared of defendant and that the revelation could also hurt the family. Rosa contacted the authorities and Y.G. provided a recorded statement. Rosa also testified regarding Y.G.'s outcry statement.

¶ 6 On June 24, 2015, Carmen Easton, a DuPage County State's Attorney's Investigator, had a conversation with defendant at the county's Children's Advocacy Center (CAC). Defendant agreed to have the interview recorded. The interview was conducted in Spanish and, without objection, the recording and an English transcription of the conversation were admitted into evidence.

¶ 7 At the beginning of the interview, defendant stated that he was 32 years old and understood his *Miranda* rights and that he wished to speak to Easton. Defendant then signed a *Miranda* waiver. Throughout the interview defendant appeared relaxed and was conversational. Defendant stated that he had known Y.G. since she was two and denied touching her in a sexual way. Defendant affirmed that he came to the CAC to speak with Easton and because he "w[asn't] running away or anything" and was "[t]here to see what [wa]s going to happen." Easton told defendant that she had spoken to Y.G. and that Y.G. stated defendant had sexually penetrated her and that there were DNA results indicating that defendant had sexual relations with Y.G. Easton told defendant that "having relations with the mother and with the daughter…. [i]t's wrong" and defendant responded, "Yes, it's wrong." Later, defendant admitted to some sexual contact, but said that it only occurred when he had been drinking. When asked if he was worried about getting Y.G. pregnant, defendant stated that he "never penetrated her" and said that if Y.G. wanted it to stop he "promise[d] to respect her and to move aside." At another point, defendant again denied that he "penetrated" Y.G. and the following exchange occurred:

"EASTON: So how can [Y.G.] be talking about these things and we have proof? Where does that come from Samuel? The tests are lying?

DEFENDANT: Well, I don't know, to tell you the truth I didn't do anything to her. I didn't…

EASTON: The tests are lying? These tests which we sent to the laboratory and – and they investigated and did everything. Are the tests lying? I'm sure…

DEFENDANT: No, no…

EASTON: [T]hey're not.

DEFENDANT: Well, if there are tests, then they can't be lying."

Defendant then stated that he "grabbed" Y.G.'s vagina with his hands and rubbed his penis on the outside of Y.G.'s vagina on "about four occasions" and since she turned 11. According to defendant, Y.G. would "seek [him] out" and would "get on him"; "she was fine" and never said, " 'no.' " Nevertheless, defendant acknowledged he had lied when he denied the abuse and said he would apologize to Y.G. if she were present.

¶ 8 In its ruling, the trial court stated that it found Y.G.'s testimony credible. The court also noted that, after examining the recording and the transcript, it found defendant voluntarily confessed and that his confession was believable. The court stated that while Easton had lied to defendant, and that it found the technique of interrogators lying to suspects can be "problematic," Easton's deception did not rise to the level of overbearing defendant's will or shock the court's conscience. Defendant was later sentenced and filed a timely notice of appeal.

¶ 9 II. ANALYSIS

¶ 10 Defendant's first contention is that it was "prosecutorial misconduct" for Easton, a State's Attorney's investigator, to lie to defendant by telling him DNA results indicated his guilt. Defendant asserts that the State's Attorney is bound by the Illinois Rules of Professional Conduct ("the rules"), which prohibit the use of deceitful statements by an attorney or his or her agent. According to defendant, we "should analyze the interplay between Rules 3.8 [special responsibilities of a prosecutor], 4.1 [truthfulness in statements to others], 8.4 [misconduct], and 5.3 [responsibilities for non-lawyer agents and investigators] to determine whether the State's Attorney's Office as the principal responsible for [Easton's] conduct *** breached the ethical rules and standards governing attorney conduct." Defendant notes that he did not file a motion to suppress and did not file a posttrial motion raising this issue, thereby forfeiting it. Defendant claims

that his argument "implicates state law, not federal law[,]" and that the error was so significant that it bypasses traditional appellate review and justifies a relaxation of the waiver rule. Defendant also claims that he suffered from "a pattern of intentional prosecutorial misconduct" that was so severe it threatens the integrity of the entire judicial system, and should be reviewed under the second prong of the plain-error doctrine. *People v. Johnson*, 208 Ill. 2d 53, 64 (2003); see also *People v. Blue*, 189 Ill. 2d 99, 136 (2000).

¶ 11 While defendant's argument is novel, even if it had been properly raised in the trial court it would have been rejected. As the State perceptively notes, "[a]ll of defendant's arguments that he was deprived of a fair trial by 'prosecutorial misconduct' center on [the] assumption that his statement was inadmissible." There is no authority holding that a statement obtained by deceit—whether in violation of the Rules of Professional Conduct or otherwise—is inadmissible. In fact, the result is quite to the contrary. Our supreme court has *repeatedly* held that the test for the admissibility of a defendant's statements is *voluntariness—i.e.*, whether he " 'confess[ed] freely and voluntarily, without compulsion or inducement of any kind' " as opposed to " 'whether the individual's will was overborne at the time of the confession.' " *People v. Hughes*, 2015 IL 117242, ¶ 31 (quoting *People v. Morgan*, 197 Ill. 2d 404, 437 (2001)). Defendant's argument implicitly concedes that his will was *not* overborne; instead, by reframing the issue under the Rules of Professional Conduct, he argues that Easton's deception rendered his confession *per se* inadmissible. Precedence forecloses that result.

¶ 12 Though courts are often critical of the use of deception by law enforcement (see, *e.g.*, *People v. Sanchez*, 2018 IL App (1st) 143899, ¶ 89), "our supreme court has expressly approved the use of deception to obtain [suspects'] confessions" (*id.* (citing *People v. Martin*, 102 Ill. 2d 412, 427 (1984)). Accord. *Frazier v. Cupp*, 394 U.S. 731, 739 (1969) (holding that officer's false

statement, although relevant to voluntariness, did not render suspect's confession inadmissible).

¶ 13 As our supreme court has stated, "[t]he fact that a confession was procured by deception or subterfuge does not invalidate the confession as a matter of law." *People v. Melock*, 149 Ill. 2d 423, 450 (1992) (suppression of statement not warranted on ground that polygraph technician falsely told defendant that he failed polygraph test). Indeed, courts have repeatedly held that police falsehoods regarding the evidence against the persons being questioned do not, standing alone, render the confession involuntary. See, *e.g.*, *People v. Holland*, 121 Ill.2d 136, 154 (1987) (false statement by police that defendant's car was found in alley where rape occurred, and he would have to explain this, did not invalidate confession); *People v. Kashney*, 111 Ill. 2d 454, 465-66 (1986) (assistant State's attorney falsely told defendant that his fingerprints were found "all over the [victim's] apartment"); *Martin*, 102 Ill. 2d at 427 (police interviewer falsely stated that defendant had been identified by a witness as the "triggerman"); *People v. Torry*, 212 Ill. App. 3d 759, 767 (1991) (police falsely told defendant that the blood of both murder victims had been found on his clothing); *People v. Kokoraleis*, 149 Ill. App. 3d 1000, 1015-16 (1986) (police falsely told defendant that codefendant had already implicated him in one of two murders). Rather, although police deception weighs against finding that a confession was voluntary, it is only one of many factors to be weighed in determining voluntariness. *Melock*, 149 Ill. 2d at 450.

¶ 14 While this case involved a State's Attorney's investigator—that is, an agent of the State's Attorney and a law enforcement officer (55 ILCS 5/3-9005(b) (West 2014))—there is no material difference between our supreme court's holding in *Kashney* and the instant case. That is, despite defendant's contention, as our supreme court has held that deception by an assistant state's attorney, standing alone, does not require suppression, there is no basis for us to say that deception by a State's Attorney's investigator warrants a different result. Furthermore, we note that while

Easton's deception would weigh against a finding of voluntariness, that would appear to be the only factor in defendant's favor. When we consider defendant's age, apparent intelligence, the relatively short duration of the interview (under an hour), the fact that defendant had received *Miranda* warnings, and the fact that defendant voluntarily appeared at the CAC for a recorded interview, "we find no indication that defendant's will was overborne such that any inculpatory statements were involuntary." *Kashney*, 111 Ill. 2d at 467. As other courts have observed, "[f]ar from making the police a fiduciary of the suspect, the law permits the police to pressure and cajole, conceal material facts, and actively mislead—all up to limits not exceeded here [citation]." *United States v. Rutledge*, 900 F.2d 1127, 1131 (7th Cir. 1990).

¶ 15 A careful analysis reveals that this case—specifically, Easton's deception—is a breed apart from the galling prosecutorial misconduct at issue in *Blue* and *Johnson*. In both *Blue* and *Johnson* (they were codefendants), prosecutors displayed a murdered police officer's "blood- and brain-splattered uniform, they presented the emotionally charged testimony of [the officer's] father, much of which was irrelevant and obviously intended to appeal to the jury's emotions, and they succeeded in compounding these errors by the introduction of transparently inflammatory testimony that served only to highlight the ceremonies and oath associated with [the officer's] service and duties as a police officer, matters irrelevant to defendants' guilt or innocence." *Johnson*, 208 Ill. 2d at 72. Subsequently, the prosecution's closing argument was "nothing more than thinly veiled, emotion-laden appeals to the jury, meant to intensify improper evidence previously introduced and to reinforce the poignancy of the [officer's] family's loss. Such matters were irrelevant at that point in the proceedings. The comments improperly shifted the focus of attention away from the actual evidence in the case." *Id*. at 83-84; see also *Blue*, 189 Ill. 2d at 132-34. Furthermore, in *Blue*, the lead prosecutor's "objections" to witness testimony were so

"palpably hostile" that the court found the prosecutor had, in effect, given testimony in violation of the advocate-witness rule. See *Blue*, 189 Ill. 2d at 133-37. In contrast to the highly charged courtroom antics in *Johnson* and *Blue*, here, Easton's deception was more-or-less contained to a calm, recorded conversation at the CAC, wherein defendant freely—almost boastfully—confessed to carrying on an inappropriate sexual relationship with Y.G. Unlike in *Johnson* and *Blue*, here, the State neither misstated the evidence during closing argument nor sought to improperly inflame the passions of the jury. Accordingly, any comparison between the instant case, and *Johnson* and *Blue* must be rejected.

¶ 16 As a final matter, we note that it is not the province of this court or the trial court to adjudicate claims regarding the conduct of State's Attorneys or any other attorney under the Rules of Professional Conduct; that is the province of the Attorney Registration and Disciplinary Commission (ARDC). See *People ex rel. Brazen v. Finley*, 119 Ill. 2d 485, 494 (1988). "It is the law of this State that the sole authority to impose disciplinary sanctions on attorneys is with the supreme court, and the appropriate forum to investigate the conduct of an attorney and conduct hearings is the [ARDC]." *City of Chicago v. Higginbottom*, 219 Ill. App. 3d 602, 629 (1991) (citing *People v. Camden*, 210 Ill. App. 3d 921 (1991)). Whether an attorney's statement—or the statement of his or her agent—violates the Rules of Professional Conduct is a matter for the ARDC, not the courts. In sum, even if we fully consider the issue on the merits, we would find that Easton's deception did not render defendant's statement inadmissible. Accordingly, we find the issue waived as defendant has no shown that the trial court erred, let alone that it committed plain error.

¶ 17 Defendant's second contention is that we should remand this case for the trial court to conduct a posttrial inquiry into defendant's pretrial claim of ineffective assistance of counsel pursuant to *People v. Krankel*, 102 Ill. 2d 181. The State responds that the trial court was not

obligated to conduct any inquiry into defendant's claim prior to trial pursuant to the holding in *People v. Jocko*, 239 Ill. 2d 87 (2010), and that in any event, the court conducted a more-than-adequate inquiry. We agree with the State that the trial court's inquiry was sufficient.

¶ 18 Relevant here, prior to defendant's trial, defense counsel spread of record that defendant believed counsel was ineffective for not filing a motion to suppress his recorded statements because defendant believed the State had edited the recording. Specifically, counsel stated, defendant believed the State had "edited out" a "threat" by Easton that if defendant did not confess, she would "tak[e] his son away***." Defense counsel stated that after reviewing the video, he did not believe it had been edited and saw no basis for a suppression motion. Counsel then sought and obtained a continuance to have the recording analyzed by an expert. At a subsequent hearing, counsel stated that he had obtained the expert's report and provided a copy to defendant. The report apparently indicated that the recording had not been altered and no suppression motion was filed. Defendant was admonished about proceeding to a bench trial but stated that he still believed that part of the video was missing. At trial, Easton testified that the recording was a complete and accurate representation of her conversation with defendant, and that she never threatened to take his son away. After trial, defendant did not renew any claim regarding trial counsel's ineffectiveness.

¶ 19 Far from "ignor[ing]" defendant's claim (*People v. Ayres*, 2017 IL 120071, ¶ 23), the record shows that the trial court conducted a sufficient inquiry into defendant's assertion regarding the recording. See *People v. Moore*, 207 Ill. 2d 68, 78 (2003) ("The operative concern for the reviewing court is whether the trial court conducted an adequate inquiry into the defendant's *pro se* allegations of ineffective assistance of counsel [citation]"). In fact, nearly 10 pages of the report of proceedings are devoted to the trial court's colloquy with defense counsel and defendant about

his allegation that the recording had been edited. Those portions of the record show "the insufficiency of the defendant's allegations on their face." *Id*. at 79. Counsel not only examined the evidence, but also sent it to a video expert for analysis. We, too, have examined defendant's interview which does not appear to have been edited in any way and, while Easton did deceive defendant about DNA testing, there is no indication that she threatened to "take away" his son. In any event, the record created in the trial court was sufficient to show that counsel did not neglect to examine this issue prior to defendant's trial. See *People v. Washington*, 2012 IL App (2d) 101287, ¶ 20.

¶ 20 III. CONCLUSION

¶ 21 In sum, we find no plain error in the admission of defendant's confession and that the trial court conducted an adequate inquiry into defendant's pretrial claim of ineffective assistance of counsel. For the reasons stated, we affirm defendant's convictions and sentence.

¶ 22 Affirmed.