2021 IL App (4th) 180830-U

NO. 4-18-0830

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED
August 13, 2021
Carla Bender
4th District Appellate
Court, IL

THE PEOPLE OF THE STATE OF ILLINOIS, Plaintiff-Appellee, v. BRIAN A. THOMPSON, Defendant-Appellant.	) Appeal from the) Circuit Court of) Macon County) No. 17CF1251)) Honorable) Jeffrey S. Geisler,) Judge Presiding.

JUSTICE CAVANAGH delivered the judgment of the court.
Justices Harris and Holder White concurred in the judgment.

ORDER

¶ 1 *Held*: (1) A motion for discharge on statutory speedy-trial grounds would have been unmeritorious, and therefore, defense counsel did not render ineffective assistance by omitting to file such a motion.

(2) When all of the evidence is viewed in a light most favorable to the prosecution, a rational trier of fact could find, beyond a reasonable doubt, the elements of solicitation to meet a child.

(3) By eliciting testimony that a photograph fairly and accurately depicted the thing the photograph purported to represent, as that thing existed at the time in question, the State laid a foundation for the admission of the photograph.

¶ 2 In a bench trial, the circuit court of Macon County found defendant, Brian A. Thompson, guilty of three counts of aggravated criminal sexual abuse (720 ILCS 5/11-1.60(d) (West 2016)) and one count of solicitation to meet a child (*id.* § 11-6.6(a)). The court sentenced him to imprisonment for five years.

¶ 3 He appeals on three grounds. First, he claims that his defense counsel rendered ineffective assistance by (1) unjustifiably conceding that there was no statutory speedy-trial problem and (2) failing to file a motion for discharge on statutory speedy-trial grounds. See 725 ILCS 5/103-5(a) (West 2018). For reasons we will explain, we find defense counsel's concession to be correct. By our calculations, the ultimate date of trial was within the 120-day speedy-trial period. See *id.* A motion for discharge would have lacked merit. Effective assistance does not entail the filing of unmeritorious motions.

¶ 4 Second, defendant claims that the State failed to prove, beyond a reasonable doubt, the count of solicitation to meet a child. Specifically, he contends that the evidence was insufficient to prove it was he who sent the Snapchat message in question. When we look at all of the evidence in the light most favorable to the prosecution, we conclude that a rational trier of fact could find, beyond a reasonable doubt, that it was defendant who sent the Snapchat message to the victim's cell phone.

¶ 5 Third, and alternatively, defendant claims that he deserves a new trial because (1) the State failed to lay an adequate foundation for the Snapchat message and (2) defense counsel rendered ineffective assistance by failing to object on the ground of a lack of foundation. To be clear, though, the exhibit at issue here was a photograph: it was a photograph of the victim's cell phone, on the screen of which the Snapchat message, with its obscene picture, was displayed. The State laid a foundation for the admission of the photograph by eliciting testimony from the victim that the photograph fairly and accurately depicted her phone—including, necessarily, the screen of her phone and the configuration of pixels on its screen. An objection on the ground of a lack of foundation would have been unmeritorious, and effective assistance does not mean making unmeritorious objections.

¶ 6 Therefore, we affirm the judgment.

¶ 7 I. BACKGROUND

¶ 8 A. From Arrest to Bench Trial

¶ 9 On August 22, 2017, defendant was arrested. He remained in custody throughout the proceedings below.

¶ 10 On August 28, 2017, he appeared *pro se* for his arraignment. The circuit court appointed the public defender to represent him. The court then announced that the "[c]ause [was] continued for [a] preliminary hearing [on] September 13, [2017]."

¶ 11 On September 13, 2017, defendant appeared with defense counsel, waived his right to a preliminary hearing, and pleaded not guilty. The circuit court continued the case for a pretrial hearing, which was scheduled for November 14, 2017.

¶ 12 On September 26, 2017, defendant was arraigned on additional charges. The circuit court announced, "The [a]dditional [c]ounts *** are continued for a preliminary hearing October 11, [2017]."

¶ 13 On October 11, 2017, the circuit court found the additional charges to be supported by probable cause. The court continued the case for the pretrial hearing already scheduled for November 14, 2017.

¶ 14 On November 14, 2017, defense counsel made the following request:

> "MR. WHEELER: Judge, in this case, we're asking this be set for trial, also on the 13th.
>
> THE COURT: Show on the motion of Mr. Wheeler, the matter set for jury trial December 13th, [2017]."

¶ 15 On November 27, 2017, defense counsel moved "that the trial be vacated and [that] the matter [be] set for [a] pretrial [hearing] December 26th." Accordingly, without objection by the State, the circuit court "vacate[d] the jury trial allotment and set the matter for [a] pretrial hearing" to be held on December 26, 2017.

¶ 16 On December 26, 2017, defense counsel demanded:

> "MR. WHEELER: Set that for trial, Judge.
>
> THE COURT: Show on motion of Mr. Wheeler, the matter is set for jury trial to January 8[,] [2017]."

The court also scheduled a pretrial hearing for January 5, 2017.

¶ 17 On January 2, 2018, defense counsel moved to continue the case because defendant was attempting to find a different attorney and also because "some other issues" (unspecified) would prevent a trial from being held on January 8, 2018. Accordingly, the circuit court ruled:

> "Let's show by agreement then we can show the jury trial allotment of January [8, 2018,] is vacated. We can vacate the final pretrial [hearing] of January [5, 2018].
>
> The matter shall be set for [a] pretrial [hearing] to January [23, 2018]."

¶ 18 On January 23, 2018, defense counsel requested the circuit court to "[s]et this for trial in March." The court asked the prosecutor if she had "any suggestion on what day [she] want[ed] it set for trial in March." The prosecutor answered no. The court announced, "Let's go ahead and show the matter is set for jury trial to March [12, 2018]. [The] [f]inal pretrial [hearing is] March [9, 2018]."

¶ 19 On March 2, 2018, the jury trial allotment for March 12, 2018, was vacated by agreement. The pretrial hearing scheduled for March 9, 2018, also was called off. By agreement of the parties, the circuit court rescheduled the jury trial for April 17, 2018.

¶ 20 On April 6, 2018, defense counsel told the circuit court:

> "MR. WHEELER: I'd like [to set] a trial date in May, Judge.
>
> THE COURT: Is this going to be continued by agreement?
>
> MS. KURTZ [(PROSECUTOR)]: Yes, sir."

Also, at the request of defense counsel, the circuit court "set it for a possible consent to a [plea-discussion conference on April 24, 2018]." See Ill. S. Ct. R. 402(d) (eff. July 1, 2012).

¶ 21 On May 1, 2018, defense counsel told the circuit court:

> "MR. WHEELER: Judge, this is Ms. Kurtz case. We agreed to a June trial date.
>
> THE COURT: Show by agreement, the matter is set for jury trial to June [11, 2018]."

A final pretrial hearing was scheduled for June 8, 2018.

¶ 22 On May 22, 2018, the State filed two motions for the admission of hearsay statements. See 725 ILCS 5/115-10 (West 2018).

¶ 23 On May 29, 2018, the State moved to cancel the trial date of June 11, 2018, and to reschedule the trial for July 16, 2018. Defense counsel objected. The circuit court asked the prosecutor:

> "THE COURT: Ms. Kurtz, there's not a 120-day issue in this case?
>
> MS. KURTZ: I don't believe so, Judge. I've calculated the time attributable to the People, and I have that there is 37 days. When I go back and look, this had previously been set. On November 14th, 2017, the defense asked for a trial setting. They got the next trial setting, although they got a Wednesday of the jury term. However, on November 27th, the defense came in and made a motion to vacate the

jury trial—I'm sure it was by agreement at that point—but set it for pretrial. Ever since then, any continuance has been on motion either of the defense or by agreement. So by my calculation, no, there is no speedy issue. We are on day 37, and there is certainly enough time to continue it to July.

MR. WHEELER: I checked that out, Judge; and I don't think there is either.

THE COURT: Show there is a written motion to continue on this matter. There is an objection by the defense based on [defendant's] being in custody. Of course, there are 115-10 motions that do need to be heard. I'm going to allow the motion to continue over the defense objection in this matter. I am going to vacate the June 8th final pretrial and the June 11th trial setting."

The court scheduled the section 115-10 motions for June 25, 2018, and the jury trial for July 16, 2018.

¶ 24 On July 16, 2018, defendant waived a jury. A count charging him with sexual exploitation of a child was dismissed. A bench trial began that day on the remaining counts.

¶ 25 B. Evidence in the Bench Trial

¶ 26 The most important exhibit in the bench trial was People's exhibit No. 2. This exhibit is a photograph of a cell phone lying on a flat surface, with the screen of the phone facing upward. On the screen is a picture, a digital photographic image, of a penis with a black banner across the picture of the penis. On the black banner is the query "Garage?" The screen of the phone is surmounted by a white banner, and at the very top of the white banner, centered, is the time "4:40 PM," indicating that it was 4:40 p.m. when People's exhibit No. 2 was taken. To the left of "4:40 PM" is the battery strength of the phone, "46%." In the bottom half of the white banner, to the left of "Details," a date and time are listed: "August 21" at "6:20 PM."

¶ 27 S.R., who was born on September 7, 2006, and who lived with her parents in Oreana, Illinois, testified that the phone shown in People's exhibit No. 2 was her phone. She further testified that an adult neighbor of hers, defendant, nicknamed "PT" (because of his ponytail), sent her the picture and text, via Snapchat, while she was at her friend A.S.'s slumber party. In apparent contradiction of that testimony, however, S.R. also testified that defendant sent her the message at 2 or 3 a.m. when she was overnighting in the house of her next-door friend H.E.P. (who was born on October 8, 2004). The slumber party, as distinct from the overnight in H.E.P.'s house, was in A.S.'s grandparents' house, in Oreana. According to the testimony of S.R.'s mother, she picked up S.R. on August 21, 2017, from the slumber party, and on the way home S.R. showed her the Snapchat message that defendant had sent her that day, whereupon S.R.'s mother called the police.

¶ 28 News of the Snapchat message that S.R. had received on her phone spread fast through the neighborhood in Oreana. A close friend of defendant's in the neighborhood, Diep Pressley, testified as follows:

> "[Defendant] comes up to me and he gets on his knees and he starts crying. He tells me that I would never hurt those girls. I would never do anything to the girls. He, one of the things that he had, I remember him saying was that the girls would get, sneak into this house early in the morning and would hold a pillow against his face. They would hold him down and start taking his pants off, and they would record him and take pictures. And I asked [defendant], ['W]hy don't you bring this to our attention. I mean, you're friends with us and you are also friends with their parents. As an adult, you know better. If this was a real situation, if this was really the problem, you should have said something but you didn't. You don't have any evidence to say that you didn't do anything about this.['] He's like, ['O]h, it's all

on their phone.[’] He was afraid they were going to blackmail him if he said anything to us.

Q. Did he say what they were doing to him when they would put something over his face and pull his pants down?

A. They would suck his penis and they would play with him.

Q. Did he say, specifically, who?

A. He said [H.J.P.] and [K.M.]”

¶ 29 H.J.P., who was born on February 21, 2002, was H.E.P.’s sister. K.M., who was born on June 25, 2003, was another friend of S.R.’s who lived in the neighborhood. (Almost all of the girls in this case were neighbors of one another and of defendant, and the girls hung out with one another.) H.J.P. and H.E.P. had a garage in their backyard. Both H.J.P. and K.M. testified that in July or August 2017, in that garage, they submitted to defendant’s insistence that they touch him sexually. Defendant was a friend of H.J.P.’s and H.E.P.’s parents, and the garage in their parents’ backyard was a neighborhood hangout, with a firepit nearby. It was a place for watching ballgames.

¶ 30 In July or August 2017, according to the girls’ testimony, defendant texted H.J.P. to come out to the garage, and K.M. saw a light turn on in the garage. Those two girls, along with S.R. and H.E.P., went out to the garage (they had been in H.J.P.’s and H.E.P.’s house), and defendant was in the garage waiting for them. In their testimony, the girls differed somewhat on the details and as to which bystanders were positioned where. But they all testified—including K.M. and H.J.P.—that, at defendant’s request, first K.M. and then H.J.P. rode him as he was lying on his back on a couch in the garage. K.M. and H.J.P. remained clothed, and defendant was dressed only in a pair of shorts. The two girls, one after another, got on top of him and rubbed their crotches

against his erect penis, and after he pulled down his shorts, they grabbed his penis and masturbated him. S.R. testified that she looked on through a window of a garage and then entered the garage and stood by the couch as this was happening. K.M. or H.J.P. placed a blanket or something over defendant's eyes in an attempt to lessen their own embarrassment, to prevent him from watching them as they were performing sexual services on him.

¶ 31 II. ANALYSIS

¶ 32 A. Defendant's Assertion That Defense Counsel Rendered Ineffective Assistance by Failing to Raise a Statutory Speedy-Trial Violation

¶ 33 The State does not dispute that the 85 days from August 21 to November 14, 2017, are attributable to the State. Defendant did nothing to delay his trial during that period.

¶ 34 In the pretrial hearing of November 14, 2017, defense counsel told the circuit court, "Judge, in this case, we're asking this be set for trial, also on [December 13, 2017]." The court responded, "Show on the motion of Mr. Wheeler, the matter set for jury trial December [13, 2017]." The State characterizes the 13 days from November 14 to December 13, 2017, as a defense-requested continuance. Defendant disagrees with that characterization.

¶ 35 Although defense counsel and the circuit court did not call the period of November 14 to December 13, 2017, a continuance, the State is right: the period amounts to a defense-requested continuance. The appellate court has held that "[a]ny type of motion filed by the defendant which eliminates the possibility that the case could immediately be set for a trial *** constitutes an affirmative act of delay attributable to the defendant." *People v. Myers*, 352 Ill. App. 3d 684, 688 (2004). By proposing a particular date in the future as the date when the case would be tried, defense counsel eliminated the possibility that the case could be tried immediately (if the proposal were granted), just as a continuance would do. Therefore, the 13 days from November 14

to December 13, 2017, are effectively a continuance attributable to the defense. Otherwise, defendants could engage in gamesmanship, adding large swaths of time to the State's ledger by requesting on the twentieth day, for example, that the trial be held on the one hundred fifteenth day. See *People v. Vara*, 2016 IL App (2d) 140849, ¶ 34 (noting the presumption "that the legislature did not intend to create absurd, inconvenient, or unjust results").

¶ 36 On November 27, 2017, defense counsel moved to call off the trial scheduled for December 13, 2017, and to schedule a pretrial hearing for December 26, 2017. "[W]here a public defender requests a continuance on behalf of a defendant, such a continuance is delay attributable to the defendant for purposes of tolling the statutory speedy-trial period." *People v. Bowman*, 138 Ill. 2d 131, 141 (1990). This was an open-ended continuance in that no new date for the jury trial was as of yet proposed.

¶ 37 On December 26, 2017, defense counsel simply requested, "Set that for trial, Judge." The circuit court scheduled the jury trial for January 8, 2018. The time from November 27, 2017, to January 8, 2018, is attributable to defendant. If a defendant "[does] not request a continuance to a certain date, all of the time between the motion for continuance and the next trial setting is attributable to [the] defendant." *People v. Majors*, 308 Ill. App. 3d 1021, 1028 (1999). On November 27, 2017, defendant requested a continuance without an end date. Therefore, all of the time from his motion for an open-ended continuance (November 27, 2017) to the next trial setting (January 8, 2018) is attributable to him. See *id.*

¶ 38 On January 2, 2018, defense counsel moved to call off the trial that the circuit court had set for January 8, 2018. The court granted the motion and scheduled a pretrial hearing for January 23, 2018. Therefore, as of January 8, 2018, the running of the speedy-trial period was

suspended again pursuant to a defense motion for an open-ended continuance. See *Bowman*, 138 Ill. 2d at 141; *Majors*, 308 Ill. App. 3d at 1028.

¶ 39 On January 23, 2018, defense counsel requested that the circuit court schedule the jury trial for March 2018. Accordingly, the court scheduled the trial for March 12, 2018. The period from January 8 to March 12, 2018, is attributable to the defense. See *Bowman*, 138 Ill. 2d at 141; *Myers*, 352 Ill. App. 3d at 688; *Majors*, 308 Ill. App. 3d at 1028.

¶ 40 It is undisputed that the period from March 12 to June 11, 2018, was taken up by agreed-upon continuances. Therefore, that period is attributable to the defense. "Agreed continuances, made on the record, *** constitute affirmative acts of delay attributable to the defendant and will suspend the speedy trial period." *Myers*, 352 Ill. App. 3d at 688.

¶ 41 On May 29, 2018, the prosecutor moved to continue the jury trial scheduled for June 11, 2018. On May 31, 2018, in the hearing on the State's motion for a continuance, the prosecutor opined that only 37 days had elapsed against the State. We are unsure exactly how the prosecutor came up with that total. It appears from her remarks in the hearing of May 31, 2018, that she began counting from November 14, 2017, when defense counsel demanded a trial. That would have been a mistake. Because defendant was in custody, the 120-day period automatically began running from the date of his arrest, August 21, 2017—even without a demand for a trial. See 725 ILCS 5/103-5(a) (West 2018); *People v. Mayo*, 198 Ill. 2d 530, 536 (2002). Apparently, the prosecutor counted 29 days from November 14 to December 13, 2017 (the original date of the jury trial), and another 9 days from May 22, 2018 (the date she filed the section 115-10 motions), to May 31, 2018 (the date of the hearing). That came to 38 days, which was close to the prosecutor's total of 37 days.

¶ 42 Defense counsel agreed with the prosecutor that there would be no statutory speedy-trial problem if the trial were set for July 16, 2018. Despite the prosecutor's miscalculation, defense counsel was correct. From August 21 to November 14, 2017, the State had used 85 days (as the State admits). From June 11 to July 16, 2018, the State would use an additional 35 days, for a total of 120 days (85 + 35 = 120). Under section 103-5(a) of the Code of Criminal Procedure of 1963 (725 ILCS 5/103-5(a) (West 2018)), the State was allowed 120 days to try a defendant who was in custody. Thus, contrary to defendant's present contention, defense counsel did not render ineffective assistance by (1) agreeing that there would be no speedy-trial problem if the case went to trial on July 16, 2018, and (2) refraining from filing a motion for discharge on statutory speedy-trial grounds. "To prevent the speedy-trial clock from tolling, section 103-5(a) requires defendants to object to any attempt to place the trial date outside the 120-day period." *People v. Phipps*, 238 Ill. 2d 54, 66 (2010). In the hearing on May 31, 2018, the State did not attempt to place the trial date outside the 120-day period. The date that the State proposed, July 16, 2018, was the one hundred twentieth day. Therefore, defense counsel would have had no valid *speedy-trial* objection to the State's proposed trial date. If the trial took place on July 16, 2018, as the prosecutor proposed, defendant would receive what the legislature regarded as a speedy trial. See 725 ILCS 5/103-5(a) (West 2018). Just as defense counsel lacked grounds for a contemporaneous speedy-trial objection, so did he lack grounds for a motion for discharge. Omitting to file a legally unmeritorious and, therefore, futile motion for discharge was not ineffective assistance. See *Phipps*, 238 Ill. 2d at 65; *People v. Cooksey*, 309 Ill. App. 3d 839, 844 (1999).

¶ 43 B. Defendant's Claim That the Evidence Was Insufficient to Prove Solicitation to Meet a Child

¶ 44 1. *The Date When the Snapchat Message Was Sent and Where S.R. Was When She Received the Message*

¶ 45 Section 11-6.6(a) of the Criminal Code of 2012 (720 ILCS 5/11-6.6(a) (West 2016)) defines the offense of solicitation to meet a child as follows:

> "A person of the age of 18 or more years commits the offense of solicitation to meet a child if the person while using a computer, cellular telephone, or any other device, with the intent to meet a child or one whom he or she believes to be a child, solicits, entices, induces, or arranges with the child to meet at a location without the knowledge of the child's parent or guardian and the meeting with the child is arranged for a purpose other than a lawful purpose under Illinois law."

Thus, the State had to prove that, through the use of a computer, cell phone, or other device, defendant intended to arrange for S.R. to meet with him for an unlawful purpose. Defendant maintains that "[t]he evidence presented regarding the alleged origin and receipt of the Snapchat message was inconsistent and unclear" and that the evidence failed to establish that he sent the message. He argues that "it is not even clear when, or where, S.R. purportedly received the message."

¶ 46 Defendant regards the State's evidence as contradictory. On the one hand, the State presented evidence that S.R. received the Snapchat message while she was at a slumber party in A.S.'s grandparents' house. On the other hand, the State presented evidence that S.R. received the Snapchat message while she was in H.E.P.'s house.

¶ 47 But H.E.P.'s house and A.S.'s grandparents' house were two different places in Oreana. S.R. testified:

"A. We were at [A.S.'s grandmother's house] and [A.S.] was there. [Ce.B.] was there. [Ch.B.] was there and me. And [A.S.] took the video of a picture of his penis on her phone—or he sent it to me. And then she took the video of it.

Q. Okay. Did you also screenshot it?

A. Yes."

People's exhibit No. 2 tends to suggest that S.R. screenshot the message on August 21, 2017, at 6:20 p.m.—which was the day when, according to the testimony of S.R.'s mother, she picked up S.R. from the slumber party and S.R. divulged the picture to her. The trouble is, S.R. also testified that she received the Snapchat message at 2 or 3 a.m. while she was spending the night in H.E.P.'s house and that she understood the message as an invitation to come out to the garage in the backyard.

¶ 48 Was more than one sexually explicit picture sent to S.R.'s phone? Not according to her testimony. Defense counsel asked S.R.:

"Q. *** Just to make sure the only picture of any body part that you received was the one that [A.S.'s] grandfather saw, right?

A. Yes.

Q. That is the only time you received any picture like that?

A. Yes."

¶ 49 To complicate matters further, A.S. testified that, during the slumber party, she saw "nude pictures"—in the plural—on S.R.'s phone. A.S. testified, "That night, we were all sitting on our phones and [S.R.] showed me some messages on Snapchat that PT had sent her, and they were nude pictures and some messages that he had been messaging her for a few weeks."

¶ 50 In sum, then, we agree that S.R. contradicted herself on the questions of when she received the Snapchat message and where she was when she received it. Although the reliability of S.R.'s testimony could fairly be challenged for those reasons, we do not understand defendant to claim that the photograph admitted as People's exhibit No. 2 was a fabrication. It would be difficult to challenge the reliability of People's exhibit No. 2—which, we understand defendant to admit, nails down the date and time when S.R. saved (or screenshotted) the Snapchat message. To quote from defendant's brief, People's exhibit No. 2 "reflects a date of August 21 and a time of 6:20 p.m. above the image of the Snapchat message, indicating that the image was saved on August 21 at 6:20 p.m. [citation]." S.R., therefore, must have received the Snapchat message moments before saving it, for the Snapchat message otherwise would have automatically self-destructed (such ephemerality being a selling point of Snapchat). And nailing down the date and time of the screenshot effectively nails down S.R.'s location: it is undisputed that she was at A.S.'s slumber party on August 21, 2017.

¶ 51 In any event, "[t]he date of the crime is not an essential element of the offense when the statute of limitations is not questioned." *People v. Letcher*, 386 Ill. App. 3d 327, 331 (2008). The same holds true of where S.R. was when she received the Snapchat message. "The act described was unlawful[,] and the location at which it occurred was not an element of the crime to be charged and proved." *People v. Burke*, 400 Ill. 240, 243 (1948). Looking at all the evidence in the light most favorable to the prosecution, including People's exhibit No. 2, we are unconvinced that the contradictions in S.R.'s testimony as to when and where necessarily would lead all rational triers of fact to disbelieve S.R. that defendant sent her the Snapchat message. See *People v. Campbell*, 146 Ill. 2d 363, 374 (1992). "It is for the fact finder to resolve conflicts or inconsistencies in the testimony of the witnesses" (*People v. Bull*, 185 Ill. 2d 179, 205 (1998)),

and we are unable to say that the testimony was so weak and contradictory as to "compel[ ] the conclusion that no reasonable person could accept it beyond a reasonable doubt" (*People v. Cunningham*, 212 Ill. 2d 274, 279 (2004)). People's exhibit No. 2 was powerful corroboration.

¶ 52 2. *Proof That It Was Defendant Who Sent the Snapchat Message to S.R.*

¶ 53 Defendant contends that the evidence was insufficient to prove that he sent the Snapchat message in People's exhibit No. 2 to S.R. We disagree. Looking at all of the evidence in the light most favorable to the prosecution, we conclude that a reasonable trier of fact could find, beyond a reasonable doubt, that it was defendant who sent the message to S.R.'s phone. See *Campbell*, 146 Ill. 2d at 374.

¶ 54 S.R. was asked how she knew that the message came from defendant's Snapchat account to her Snapchat account. She answered:

"A. Because his username.

Q. Do you remember his username?

A. No.

Q. Okay. Had you communicated with this defendant through Snapchat before?

A. Yes.

Q. Okay. Did you guys have a streak?

A. Yes.

Q. What is a streak?

A. It's when you Snapchat for, like, so many days.

Q. What kind of stuff were you Snapchatting in the streak?

A. I would just send streaks, like, we all do it.

Q. Of what?

A. Just, like, a picture, like, a random picture. I send it to everyone on mine.

Q. Okay. And you had received snaps from this defendant before; is that right?

A. Yes."

Even though S.R. could not remember defendant's Snapchat username, a reasonable trier of fact could believe her when she testified that she recognized defendant's Snapchat account from his username. She testified that she had designated him as a friend in her Snapchat account and that she had been on a streak with him before. It is believable that Snapchat users might be unable to recall off the top of their head the username of a certain friend and yet be able to identify the friend if they saw the username.

¶ 55 Besides, one would not have to merely take S.R.'s word for it. A.S. testified that, at the slumber party, she made a video of S.R. opening the Snapchat message, to prove that the message was sent from defendant's Snapchat account. At the time of the bench trial, the video no longer existed. Consider, however, the following exchange between defense counsel and S.R.'s mother, who had just got done testifying that she recognized the shorts in People's exhibit No. 2 as belonging to defendant:

"Q. So, in fact, you don't know who sent this picture?

A. Yes, I know who sent it. It was [defendant]. For the hundredth time. He sent the picture.

Q. Did these, this picture, these shorts, do they have a name on them or anything that you see?

A. Um, actually, these shorts don't say a name but the video I saw of him sending it says Brian Thompson, PT."

Thus, according to the testimony of S.R.'s mother, she watched the now-lost video that A.S. had made of S.R. opening the Snapchat message, and the video showed that the message was sent from "PT," apparently defendant's username (as well as nickname).

¶ 56 Even if the message came from defendant's Snapchat account, that would not clinch the case, defendant argues, because there was testimony that some of the girls had on occasion gotten hold of his phone, looked through it, and played pranks on him. There was no evidence, however, that defendant's phone was commandeered on August 21, 2017, around 6:20 p.m. Besides, the "Garage?" invitation is consistent with his sexual activities with the girls in the garage. "[I]n weighing evidence, the trier of fact is not required to disregard inferences which flow normally from evidence before it [citation], nor need it search out all possible explanations consistent with innocence and raise them to a level of reasonable doubt." *Id.* at 380.

¶ 57 C. The Foundation for the Admission of People's Exhibit No. 2

¶ 58 Defendant argues that the State failed to lay an adequate foundation for the admission of People's exhibit No. 2 and that defense counsel rendered ineffective assistance by failing to object to the exhibit on the ground of an inadequate foundation.

¶ 59 People's exhibit No. 2 is a photograph. To lay a foundation for the admission of a photograph, the proponent must present evidence that the photograph fairly and accurately represents the thing the photograph purports to represent as that thing existed at the relevant time. *Jackson v. Seib*, 372 Ill. App. 3d 1061, 1070 (2012); Ill. L. & Prac., *Evidence* § 242 (2017). Accordingly, the prosecutor asked S.R.:

"Q. *** And is it actually, is People's 2 a photograph of your phone with that screenshot on there?

A. Yes.

Q. And does People's 2 fairly and accurately show your phone with the screenshot from when you got it and then told your mom?

A. Yes."

That exchange was a textbook authentication of a photograph. An objection to People's exhibit No. 2 on the ground of a lack of foundation would have been meritless. A defense counsel does not render ineffective assistance by refraining from making futile objections. *People v. Mister*, 2016 IL App (4th) 130180-B, ¶ 95.

¶ 60 III. CONCLUSION

¶ 61 For the foregoing reasons, we affirm the circuit court's judgment.

¶ 62 Affirmed.