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Although it is posted on the internet, this opinion is binding only on the
parties in the case and its use in other cases is limited. R. 1:36-3.

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-3252-16T4

STATE OF NEW JERSEY,

Plaintiff-Respondent,

v.

JUAN R. RODRIGUEZ, a/k/a JESUS
RODRIGUEZ,

Defendant-Appellant.

Submitted April 18, 2018 – Decided April 26, 2018

Before Judges Alvarez and Nugent.

On appeal from Superior Court of New Jersey,
Law Division, Hudson County, Indictment No.
14-05-0877.

Joseph E. Krakora, Public Defender, attorney
for appellant (Monique Moyse, Designated
Counsel, on the brief).

Esther Suarez, Hudson County Prosecutor,
attorney for respondent (Svjetlana Tesic,
Assistant Prosecutor, on the brief).

PER CURIAM

Defendant, Juan R. Rodriguez, appeals from the Law Division's
order denying his petition for post-conviction relief (PCR)

following an evidentiary hearing. He makes a single argument on appeal:

POINT ONE

MR. RODRIGUEZ IS ENTITLED TO RELIEF ON HIS CLAIM THAT HIS ATTORNEY RENDERED INEFFECTIVE ASSISTANCE OF COUNSEL FOR FAILING TO OBTAIN PHONE RECORDS DUE TO AN INADEQUATE INVESTIGATION, LEADING TO AN INADEQUATE CROSS-EXAMINATION, DEPRIVING HIM OF DUE PROCESS AND HIS RIGHT TO A FAIR TRIAL.

Finding no merit in defendant's argument, we affirm.

A Law Division judge convicted defendant during a two-day bench trial in 2015 of five offenses: disorderly persons simple assault, N.J.S.A. 2C:12-1(a)(1); disorderly persons false imprisonment, N.J.S.A. 2C:13-3; third-degree possession of a weapon for an unlawful purpose, N.J.S.A. 2C:39-4(d); fourth-degree unlawful possession of a weapon, N.J.S.A. 2C:39-5(d); and third-degree terroristic threats, N.J.S.A. 2C:12-3(b). The judge sentenced defendant to time served on the disorderly persons offenses and merged the third-degree weapons offense into the terroristic threats offense for purposes of sentencing. The court imposed concurrent three-year probationary terms on the remaining two counts.

To provide context for defendant's PCR claim, we summarize the trial testimony. According to the victim, on a February evening in 2014, she and defendant were at the residence they

shared on 10th Street in Union City, watching television. Defendant appeared angry. When the victim asked if he was okay, he responded, "[y]eah, I'm fine." Defendant then left the room where they were watching television and went to lie down in bed, covering himself head to toe with the sheets. The victim followed defendant to the bedroom and again asked if he was ok. Defendant repeated, "I'm fine." The victim then dressed for bed, turned off the bedroom light and went to get in the bed with defendant.

After the victim got in bed next to defendant, he said, "I wanna talk," but she declined, saying she was tired and would talk the following day. Defendant responded, "I fuckin' said I wanna talk now," got out of bed, turned on the light, and pulled off the sheets covering the victim. Defendant "slammed [the victim] on the bed, . . . got on top of [her] and . . . started to rip [her] shirt and rip [her] underwear." The victim screamed and struggled with defendant, but he held her down on the bed with his right forearm across her throat, left hand on her hair, and knee pressing against her stomach.

Despite her cries to stop, defendant continued to hold her down, causing her to vomit. She also experienced a painful pop in the back of her neck. Defendant eventually released the victim and apologized. The victim stood up, grabbed another shirt, and went to the bathroom. While in the bathroom, the victim

photographed her injuries with her cellular telephone. The photographs, introduced by the State at trial, depicted injuries to the victim's left cheek, the underside of her tongue, her right hand, and behind her left knee.

Just as the victim took the last photograph, defendant entered the bathroom with a knife, grabbed the victim's phone, placed the knife to her stomach, and said, "[y]ou're fuckin' not gonna be nobody's, you're only gonna be fuckin' mine or I'll kill you and then kill myself." Fearing for her life, the victim attempted to calm defendant, but he said, "I'd rather kill you," as he placed the knife horizontally along her neck. Defendant dragged the victim to the bedroom by her hair and threw her on the bed. She hit her head on the backboard.

The victim testified defendant went "crazy." He began to pace throughout the bedroom, threw her phone against the wall, "started marking himself," and advised he was going to kill himself. The victim began to put on her boots and asked defendant if he wanted to go smoke a cigarette, hoping that would give her the opportunity to escape. Defendant told her, "[y]ou're not fuckin' going nowhere," and lunged toward her, slicing her boot with the knife.

Defendant jumped on the bed with the knife still in his hand, grabbed the victim's hair to pull her close to him, and told her

they were going to stay naked in bed. The victim remained in bed next to defendant. If she attempted to move, he would pull her close, threaten her with the knife, and ask her where she was going.

As the two were lying in bed, the victim's phone began to ring. She knew by the unique ringtone it was her mother. The victim answered the phone after receiving defendant's permission and spoke to her mother. Her mother asked the victim to accompany her somewhere. The victim initially said she would go, but defendant said, "[y]ou're not fuckin' going nowhere." Defendant eventually relented and permitted the victim to go with her mother on the condition that he accompany them. They began to get dressed until the mother called back and advised she did not need them to accompany her.

The pair remained in the apartment until later that afternoon when the victim asked if she could go upstairs to the landlord's apartment to obtain a letter needed for Medicaid. Defendant, still wielding the knife, said "[a]ll right. Hurry up. Go. Hurry up, but I'm gonna wait for you here." The victim quickly walked upstairs to the landlord's apartment and knocked on the door. The landlord immediately noticed the victim was in distress and let her in the apartment. After explaining what happened, the victim called her mother, who in turn called the police.

The State presented one other witness, the emergency room physician who treated the victim following her ordeal with defendant. The physician's testimony corroborated the victim's story based on the victim's emotional state and injuries observed at the emergency room not long after the victim she was able to leave defendant.

The bench trial took place on May 19 and 20, 2015. Nearly nine months earlier, in August 2014, defense counsel had submitted an investigation request through the Hudson County Public Defender's Office to obtain the victim's cell phone records for the date of the incident. Counsel did not actually receive the records until after the trial.

Following the presentation of the State's proofs, defendant moved for an adjournment or mistrial based on the absence of these cellular phone records. Counsel advised the court defendant insisted she make this motion since the records would contradict or impeach the victim's testimony. The court denied the request because defendant was unable to articulate why the phone records were important to defendant's case beyond defendant's bald assertions they would impeach the victim's testimony.

Following his conviction and the imposition of sentence, defendant filed, but later withdrew, a direct appeal. On June 6, 2016, he filed a pro se petition for PCR. Designated counsel

later supplemented defendant's petition with a letter brief. Defendant argued trial counsel rendered ineffective assistance by failing to request a timely adjournment in order to obtain the victim's cell phone records. On February 6, 2017, Judge Patrick J. Arre, who was not the trial judge, conducted an evidentiary hearing.

Defense counsel testified she had numerous discussions with defendant regarding the phone records, but she was unable to obtain the records prior to trial because she initially had the wrong service provider. When asked why she abandoned her efforts to obtain the records prior to trial, counsel explained she and defendant had a difference of opinion regarding the significance of the phone records. The victim alleged she was held incommunicado overnight. Defendant claimed the records would show "she was communicating . . . with friends, definitely with [defendant's] mother, . . . and with [defendant's] grown daughter." Despite defendant's perceived significance of the records, counsel felt the phone records were not important and, "in [her] view the phone records were not really dispositive of . . . the issue of kidnapping in th[e] case." Further, defense counsel noted similar information regarding the victim's cell phone use was included in the police report, and the matter remained a he-said she-said issue, with the added element of medical records.

Defense counsel also explained to defendant she was more concerned with the "incontestable" medical records that demonstrated the victim had sustained inflicted injuries. Counsel believed she would be able to "score those points" relating to the victim's cell phone usage without the records themselves.

According to defense counsel, defendant accepted this advice and agreed to go to trial without the telephone records. Nonetheless, defendant brought the issue up the second day of trial, after the victim had testified on the first day, now stressing the importance of the records. This insistence is what prompted counsel to request the adjournment or mistrial. When questioned concerning the significance of the phone records, counsel said she had since thoroughly reviewed the records, did not think they were important, and would have done nothing different at trial had she had the records.

On cross-examination, trial counsel said she thought it appropriate to proceed to trial without the records since she could elicit testimony from the victim regarding her communications with other individuals during the night in question. If the victim denied making such communications, the defense could introduce impeachment testimony through other sources, such as the defendant's daughter or mother.

Defendant testified at the PCR hearing. He contended that if trial counsel had obtained the records before trial, the trial court would have had the benefit of considering the "substantial amount of time of phone usage [and] text messaging," during a time the victim alleged she was under duress. This would have provided a more beneficial outcome for defendant.

On March 6, 2017, Judge Arre issued a comprehensive written decision denying defendant's petition. He determined defendant failed to satisfy either prong under the Strickland – Fritz test for evaluating ineffective-assistance claims¹: that is, he failed to "overcome a 'strong presumption' that counsel exercised 'reasonable professional judgment' and 'sound trial strategy' in fulfilling his responsibilities," State v. Nash, 212 N.J. 518, 542 (2013) (citation omitted); and he failed to demonstrate "how specific errors of counsel undermined the reliability of the finding of guilt," United States v. Cronin, 466 U.S. 648, 659 n.26 (1984).

The judge held that trial counsel's strategy of "impeaching [the victim] by bringing to light that she was in possession of her cell phone during the alleged confinement, as well as the operability of her cell phone . . . did not fall below an objective

¹ Strickland v. Washington, 466 U.S. 668, 687, 694 (1984); State v. Fritz, 105 N.J. 42, 58 (1987).


standard of reasonableness rendering her representation ineffective."

Concerning the second Strickland prong, the court found defendant "failed to proffer any evidence as to how the[] records would have impeached [the victim's] trial testimony . . . and failed to show the result of the trial would have been different." Finally, Judge Arre found "in light of the whole case, the discrepancies alleged by the [defendant] are not so material in character or so prejudicial as to justify a reversal."

We affirm, substantially for the reasons expressed by Judge Arre in his thorough and well-reasoned written opinion. Defendant's arguments are without sufficient merit to warrant further discussion. R. 2:11-3(e)(2).

Affirmed.

I hereby certify that the foregoing
is a true copy of the original on
file in my office.


CLERK OF THE APPELLATE DIVISION