



took her into the alley, took her pants off, took his pants off, and then he engaged in a series of sex acts but she could not remember the exact order. Victim testified that she had injuries to her arm and wrist.

Kathryn Howard, the nurse who treated victim, testified that she had examined over two hundred sexual assault cases, and that she does not normally expect to see genital injury. With regard to the victim here, Ms. Howard said victim was "anxious and tearful." Ms. Howard believed her records said the victim told her there was no rectal penetration. Ms. Howard observed injuries to the victim, including a tear, abrasion at the fossa navicularis, and abrasion and tenderness on her hands. During cross-examination, when asked she again said victim indicated there was no penetration of the anus. When asked about visual injuries, Ms. Howard said the only visible injuries were on the hands and genital area.

The clothes the victim was wearing were taken by the police at the hospital. A photograph of her pants, with holes cut in them, was introduced into evidence and victim pointed out grass stains from the fight. Erin Duke, a biological screener for the St. Louis Crime Lab, identified the pants victim had been

wearing at the time of the crimes. Ms. Duke said she found spots on the pants using a poly light, and she cut out spots from a pant leg and the crotch. Sarah Custis, a forensic scientist, testified that she obtained a DNA sample from the pant leg and the DNA profile was consistent with movant's DNA.

Movant's defense to the sex crime charges was that the conduct was consensual. Movant testified that he was driving down Jamieson in the early morning hours. He saw victim come out of her apartment and he pulled over to talk to her. Movant said the victim told him she had a fetish for being with a black guy and he said "Okay." Movant said everything that happened after that was consensual. Movant admitted he took the victim's purse and cell phone.

Detective Richard Noble testified in rebuttal that he was one of the arresting officers. Detective Noble said movant originally said he did not commit the crimes because he had been taking his girlfriend to work at the time the crimes occurred. The detective told movant the victim's cell phone had been stolen and it had been used to call movant's girlfriend numerous times; movant then responded that he had not been taking his girlfriend to work but had been selling drugs and he acquired

the cell phone in a drug transaction. Upon further questioning, movant said people were wearing wigs to disguise their appearance while committing crimes. When told the victim had been raped, movant told the detective who committed the rape but he did not want to be a snitch. Movant then wrote down the name LeRon Crenshaw. The detective checked on Crenshaw and found that Crenshaw had been in custody at the time of the crimes. Movant then admitted to engaging in sexual conduct with the victim, but he became angry when she refused to engage in vaginal intercourse which led to his taking her purse.

Following the jury trial movant was found guilty of all six counts. The convictions were affirmed on appeal. State v. Johnson, 342 S.W.3d 366 (Mo.App.E.D. 2011).

Movant now seeks relief pursuant to Rule 29.15. Counsel was appointed to represent movant and counsel timely filed an amended motion. Having examined the records and files in this case, the Court now finds as follows:

#### CONCLUSIONS OF LAW

1. Movant has requested an evidentiary hearing. To be entitled to an evidentiary hearing the movant must plead facts,

not conclusions, which are not refuted by the record, which if true would entitle movant to relief, and the matters complained of must have resulted in prejudice. Woolridge v. State, 239 S.W.3d 151, 154 (Mo.App.E.D. 2007); Mosby v. State, 236 S.W.3d 670, 675 (Mo.App.S.D. 2007). A movant is not entitled to a hearing where the motion, files and record of the case conclusively show that the movant is not entitled to relief. Rule 29.15(h); Brand v. State, 313 S.W.3d 226, 228 (Mo.App.E.D. 2010); Thomas v. State, 249 S.W.3d 234, 238 (Mo.App.E.D. 2008). This Court has reviewed the files and transcript in this case and finds that movant has failed to allege grounds that would entitle him to relief if true and that are not refuted by the record. Movant is therefore not entitled to an evidentiary hearing.

2. The first claim in movant's amended motion is that his attorney was ineffective for failing to question Kathryn Howard, the nurse who treated victim, about the condition of victim and the victim's clothing. Movant alleges the clothing was intact without stains or tears, and that the victim's neck and face were free of bruising, and movant contends this testimony would

have undercut the victim's testimony about movant's use of force.

To prevail on a claim of ineffective assistance of counsel, a criminal defendant must show that his counsel's performance failed to conform to the degree of skill, care and diligence of a reasonably competent attorney and that he was thereby prejudiced. Williams v. State, 168 S.W.3d 433, 439 (Mo.banc 2005); Wilkes v. State, 82 S.W.3d 925, 927 (Mo.banc 2002). There is a presumption that counsel made all significant decisions in the exercise of his reasonable professional judgment and that any challenged action was part of counsel's sound trial strategy. Williams, supra; State v. Tokar, 918 S.W.2d 753, 761 (Mo.banc 1996). The extent of cross-examination is generally a matter of trial strategy. Kelley v. State, 24 S.W.3d 228, 233 (Mo.App.S.D. 2000). See also, Thomas v. State, 761 S.W.2d 246, 252 (Mo.App. 1988); Swearingin v. State, 629 S.W.2d 560, 563 (Mo.App. 1981).

The Court finds movant's claim is without merit as the suggested questioning about injuries to the victim's head and or neck would not have changed the outcome of the trial. The victim said her only physical injuries were to her wrists, and

Ms. Howard said the only injuries were to the victim's hands and genital area. There was no suggestion that victim had bruising on her head and or neck. With regard to the victim's clothing, there was evidence that her pants had grass stains and movant's DNA was obtained from a stain on victim's pant leg. The Court has reviewed the victim's testimony both during direct and cross-examination and does not believe it necessarily follows that clothes other than her pants would have sustained tears or additional stains if the victim's testimony about the occurrence was accurate. Therefore, this claim is contrary to the evidence at trial and is without merit.

3. The next claim in movant's amended motion is that his appellate attorney was ineffective for failing to challenge the sufficiency of the evidence to support the kidnapping charge. Movant contends the evidence did not show he "removed [A.A.] for the purpose of terrorizing [A.A]."

Section 565.110 provides that one of the ways a person commits the crime of kidnapping is if he unlawfully removes a person from the place where she is found for the purpose of terrorizing the victim. The crime of kidnapping is designed to include situations where confinement or movement of a person

without the person's consent creates a harm, including terror, that is not adequately covered by another offense. Therefore, the amount of movement or confinement cannot be defined as it will vary according to the circumstances. State v. Woodland, 768 S.W.2d 617, 619 (Mo.App.E.D. 1989).

The Court believes the evidence that movant confronted the victim in front of her building and then first dragged her into the street and then into a gangway, while she struggled, in order to terrorize her by the sexual assaults that took place in the alley. The Court believes the evidence supports a reasonable inference regarding movant's intention. This claim is without merit.

4. Movant's final claim is that his attorney was ineffective for attempting to cross-examine the victim about whether anal sodomy occurred, because while she stated he did not put his penis in her butt, movant was expected to testify he did but that it was at her request. Movant claims the attempted impeachment, rather than bringing out an inconsistency between the victim's trial and deposition testimony, demonstrated that the victim's testimony was consistent.



The extent of cross-examination is generally a matter of trial strategy. Kelley v. State, 24 S.W.3d 228, 233 (Mo.App.S.D. 2000). The Court does not believe this questioning could have had any effect on the outcome of the trial. The victim's testimony with regard to the attempted anal sodomy was consistent with her report to Ms. Howard, which had already been testified to by Ms. Howard. Movant did not dispute that he tried to or did commit anal sodomy, but rather he claimed it was consensual.

ORDER

The Court has considered each claim in movant's Rule 29.15 Motion and has reviewed the records in movant's case. The Court finds that movant has failed to allege facts which are not refuted by the record and which entitle him to relief.

THEREFORE, the Court orders, adjudges and decrees that Movant's request for a hearing is DENIED and that the Motion made pursuant to Supreme Court Rule 29.15 is DENIED.

SO ORDERED:



Michael K. Mullen, Judge

Dated:

Jan 12, 2016