2011 IL App (1st) 100273-U

FIRST DIVISION
December 27, 2011

No. 1-10-0273

IN THE
APPELLATE COURT OF ILLINOIS
FIRST DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County.
	)	
v.	)	
	)	No. 09 CR 14687
VICTOR TOWNSEL,	)	
	)	
Defendant-Appellant.	)	Honorable
	)	James B. Linn,
	)	Judge Presiding.

JUSTICE HALL delivered the judgment of the court.

Presiding Justice Hoffman and Justice Rochford concurred in the judgment.

O R D E R

¶ 1 ***Held:*** (1) The defendant was not denied the effective assistance of counsel. (2) The denial of the defendant's motion to quash arrest and suppress evidence was not error. (3)The evidence was sufficient to prove beyond a reasonable doubt that the defendant committed the offense of unlawful possession of a weapon by a felon. (4) Any error as to the adequacy of the trial court's inquiry into the defendant's posttrial allegation of ineffective representation was harmless.

¶ 2 Following the execution of a search warrant, defendant Victor Townsel was arrested and

charged by information with three counts of possession of a controlled substance with intent to deliver and two counts of unlawful possession of a weapon by a felon. Defendant Townsel's motion to quash his arrest and suppress evidence was denied. Following a bench trial, defendant Townsel was found not guilty of the drug charges and guilty of the weapons charges. The trial court sentenced him to five years' imprisonment on each count, to be served concurrently.

¶ 3 Defendant Townsel appeals, contending as follows: (1) he received the ineffective assistance of counsel where defense counsel failed to challenge the scope of the search in the motion to suppress; (2) the denial of the motion to quash his arrest and suppress evidence was error where there was no probable cause to believe that he currently resided at the address in the search warrant; (3) the evidence was insufficient to prove beyond a reasonable doubt that he possessed a weapon; and (4) the trial court failed to make an adequate inquiry into his posttrial allegations of deficient representation by defense counsel.

¶ 4 FACTS

¶ 5 Chicago police received information from an informant that defendant Townsel was selling drugs from the first floor of 5025 West Washington Boulevard (the premises). After the informant's information was corroborated by a controlled drug buy, a search warrant for defendant Townsel and for the premises was issued. The search warrant specified the premises as "5025 West Washington 1st Floor Chicago, Cook County, Illinois (a red brick two story apartment building)." The warrant provided that the police were to seize the following items: cocaine, any documents showing residency, paraphernalia used in weighing, cutting or mixing of illegal drugs, money and any records detailing drug transactions. Following the recovery of

drugs and a .38-caliber handgun, defendant Townsel was arrested. While in his cell at the Homan Square police station, defendant Townsel made a statement to police claiming that other people sold the drugs for him and that he used the handgun for protection.

¶ 6 Defense counsel filed a motion to quash defendant Townsel's arrest and to suppress his statement to police on the basis that the police lacked probable cause to arrest him. Following the hearing, the trial court denied the motion.

¶ 7 Defendant Townsel has raised an issue as to the sufficiency of the evidence. Therefore, the pertinent trial testimony and evidence are set forth below.

¶ 8 Officer Person testified that, on July 23, 2009, he and other members of the Chicago police narcotics unit were proceeding up the stairs at the premises when he observed defendant Townsel down the street from the premises; he was about 50 to 60 feet away from the officer. Officer Person, accompanied by officers, Williams and Fleming, approached defendant Townsel. Officer Person informed him that a search warrant was being executed at the premises. Defendant Townsel complied with the officers' request to return with them to the premises. He was not under arrest at that time.

¶ 9 Officer Person testified that at the time of the search of the premises, there was a young lady on the first floor, a young man who came down from the second floor, and there was a young lady in the basement. Those three individuals waited in the living room while the search was carried out.

¶ 10 Officer Person recovered a letter from the Internal Revenue Service (IRS), addressed to defendant Townsel at "5052 W. WASHINGTON APT BSMT." The officer also recovered

$109 from defendant Townsel. On cross-examination, Officer Person testified that the letter from the IRS was dated March 27, 2009, and concerned defendant Townsel's 2007 taxes.

¶ 11 Officer Calvo testified that he was responsible for searching a bedroom located to the left of the front door. He observed both male and female clothing, a bed and a dresser. From underneath the mattress, the officer recovered a pill bottle, which contained 23 small blue-tinted ziplock bags with a red "S" logo. Each bag contained a white substance, which the officer believed was crack cocaine. The officer observed three similar bags containing the same substance on the dresser. The parties stipulated that defendant Townsel's name was not on the pill bottle. On cross-examination, Officer Calvo identified a photograph of the pill bottle; he acknowledged that the last name on the pill bottle was "Pough."

¶ 12 Officer Altamirano testified that he searched the rear of the residence. He walked outside and saw a garbage can. Inside the garbage can he observed the butt of a handgun protruding from a towel. He recovered a .38-caliber special blue steel revolver containing five live .38-caliber rounds. On cross-examination, Officer Altamirano testified that the garbage can was located just outside of the rear door, which was located between the first floor and the basement. The officer acknowledged that there were separate entrances to the basement and the first floor. On redirect examination, Officer Altamirano testified that the basement could be accessed via the first floor.

¶ 13 Officer Williams testified that at the time of the search, he advised defendant Townsel of his *Miranda* rights in the living room of the premises. Later, while in the defendant's cell at the Homan Square station, Officer Williams again advised defendant Townsel of his *Miranda* rights.

After indicating that he understood his rights, defendant Townsel told Officer Williams, " 'I don't sell, people sell for me as far as the narcotics go.' " Officer Williams testified that, when asked about the handgun, defendant Townsel stated, " 'I had that .38, I had it for a while, it is bad around here,' something like that." After refreshing his recollection with his report, Officer Williams testified "[defendant Townsel] said, ' [i]t is a war going on in the hood; I had a gun for protection. I have been walking around with it, a .38, that's it.' " Officer Williams further testified that he inventoried the evidence collected by officers, Person, Calvo and Altamirano.

¶ 14 On cross-examination, Officer Williams acknowledged that he also inventoried the drugs recovered from a dryer in the basement. The officer further acknowledged that he did not request that defendant Townsel reduce his statement about the drugs and the handgun to writing. The officer did not reduce defendant Townsel's statement to writing and did not videotape or audiotape the statement. On redirect examination, Officer Williams testified that Officer McCann recovered drug evidence from a dryer located in the basement.

¶ 15 The parties stipulated that the substances recovered during the search contained crack cocaine and that defendant Townsel had a felony conviction. The State rested, and defense counsel's motion for a directed finding was denied. The parties stipulated to records from the gas and electrical companies showing that from March 13 to September 2009, service to the first floor of the premises was in the names of persons other than the defendant. The parties further stipulated that a State of Illinois identification card carried by defendant Townsel at the time of his arrest listed his address as "714 North Long, Chicago, Illinois." Defendant Townsel declined to testify.

¶ 16 The trial court found defendant Townsel not guilty of the drug charges. The court noted that defendant Townsel was not on the premises when the police arrived and that it was unclear whether he was referring to the drugs recovered from the premises by the police when he made the statement to Officer Williams. The trial court found defendant Townsel guilty of the weapons charges based on his statement to Officer Williams that the recovered handgun was the gun he used for protection.

¶ 17 The trial court denied defendant Townsel's motion for a new trial and imposed concurrent five year' sentences on the weapons convictions. Following the denial of his motion to reconsider sentence, defendant Townsel filed a timely notice of appeal.

¶ 18 ANALYSIS

¶ 19 I. Ineffective Assistance of Counsel

¶ 20 Defendant Townsel contends that defense counsel's failure to challenge the scope of the search of the premises constituted ineffective assistance of counsel. The search warrant in this case specified the first floor of the premises. Therefore, defendant Townsel maintains that the search of the basement and the exterior area of the premises where the garbage can was located were unlawful. Defendant Townsel reasons that had defense counsel challenged the scope of the search, the drugs found in the basement, the .38-caliber handgun found in the garbage can and his statement to Officer Williams would have been suppressed.

¶ 21 A. *Standard of Review*

¶ 22 When the facts relevant to an ineffective assistance of counsel claim are not in dispute, our review is *de novo*. *People v. Bew*, 228 Ill. 2d 122, 127 (2008).

¶ 23 B. *Discussion*

¶ 24 In determining whether a defendant has been denied the effective assistance of counsel, we apply the two-pronged test set forth in *Strickland v. Washington*, 466 U.S. 668 (1984). The *Strickand* test requires that the defendant establish that (1) counsel's performance fell below an objective standard of reasonableness, and (2) that he suffered prejudice as a result of the deficiency. *People v. McCarter*, 385 Ill. App. 3d 919, 929 (2008). A defendant must satisfy both prongs of the *Strickland* test. *People v. Simms*, 192 Ill. 2d 348, 362 (2000). Where an ineffective assistance of counsel claim can be disposed of on the ground that the defendant was not prejudiced, a court need not determine whether counsel's performance was constitutionally deficient. *People v. Evans*, 186 Ill. 2d 83, 94 (1999).

¶ 25 "In order to establish prejudice resulting from failure to file a motion to suppress, a defendant must show a reasonable probability that: (1) the motion would have been granted, and (2) the outcome of the trial would have been different had the evidence been suppressed." *People v. Patterson*, 217 Ill. 2d 407, 438 (2005). Where the filing of a motion to suppress would have been futile, the failure to file such a motion does not establish ineffective assistance of counsel. *Patterson*, 217 Ill. 2d at 438.

¶ 26 Defense counsel did file a motion to quash defendant Townsel's arrest and to suppress evidence but failed to contest the scope of the search. Defendant Townsel maintains that a motion challenging the search of the basement would have been granted because the search warrant specified the first floor of the premises. In response, the State maintains that the issue as to the basement search is moot since defendant Townsel was found not guilty of the drug

offenses. Defendant Townsel disputes the State's mootness argument maintaining that the suppression of the basement search would have led to the suppression of his oral statement to Officer Williams, which the trial court relied on in finding him guilty of the weapons charges.

¶ 27 "An appeal is moot if no actual controversy exists or if events have occurred that make it impossible for the reviewing court to grant the complaining party effectual relief." *In re Marriage of Peters-Farrell*, 216 Ill. 2d 287, 291 (2005). Even though defense counsel did not challenge the search of the basement, the trial court found defendant Townsel not guilty of the drug charges, including those stemming from the drug evidence found in the basement. Thus, defendant Townsel has already received the relief he would have received had defense counsel successfully challenged the basement search.

¶ 28 We disagree with defendant Townsel that a successful challenge to the basement search would have resulted in the suppression of his statement to Officer Williams regarding the .38-caliber handgun. Defendant Townsel made his statement after his arrest and while he was being held at the Homan Square police station. The defendant's arrest was not based solely on the drug evidence from the basement, as the search of the first floor of the premises revealed evidence of drugs. Defense counsel did challenge defendant Townsel's arrest and moved to suppress evidence stemming from it, which was denied by the trial court. As defendant Townsel's arrest and subsequent statement to Officer Williams did not stem from the drug evidence in the basement of the premises, he was not prejudiced by defense counsel's failure to challenge the search of the basement.

¶ 29 We further determine that defense counsel's failure to challenge the search of the exterior

area of the premises was not ineffective assistance of counsel because there was no reasonable probability that the motion would have been granted as to that search. This court has held that "a tenant has no reasonable expectation of privacy in common areas of an apartment building that are accessible to other tenants and their invitees." *People v. Lyles*, 332 Ill. App. 3d 1, 7 (2002). According to Officer Altamirano's testimony, the garbage can containing the .38-caliber handgun was located between the first floor and the basement. There was no evidence that the area was secured by a locked gate or otherwise closed off. See *Lyles*, 332 Ill. App. 3d at 6 (no reasonable expectation of privacy in an unlocked residential common area shared by other tenants, citing *People v. Smith*, 152 Ill. 2d 229, 243, 245-46 (1992)). As the search of the exterior of the premises did not implicate defendant Townsel's fourth amendment rights, he was not prejudiced by defense counsel's failure to challenge the warrantless search of the exterior of the premises. *Lyles*, 32 Ill. App. 3d at 7.

¶ 30 We conclude that defendant Townsel failed to establish his claim of ineffective assistance of counsel.

¶ 31 II. Denial of Motion to Quash Arrest and Suppress Evidence

¶ 32 Defendant Townsel contends that the denial of his motion to quash arrest and suppress evidence was error. He argues that the police had no probable cause to believe that he had control over the premises or of the contraband discovered during the search of the premises.

¶ 33 A. *Standard of Review*

¶ *34* In reviewing a trial court's ruling on a motion to suppress, we apply a two-step standard of review. First, we defer to the trial court's findings of fact and will not reverse those findings

unless they are against the manifest weight of the evidence. Second, we review *de novo* the trial court's ultimate legal ruling as to whether suppression is warranted. *People v. Luedemann,* 222 Ill. 2d 530, 542-43 (2006).

¶ *35* B. *Discussion*

¶ *36* "Probable cause for a warrantless arrest exists where police have knowledge of facts that would lead a reasonable person to believe that a crime has been committed and that the person to be arrested committed it." *People v. Munson,* 206 Ill. 2d 104, 122 (2002). The court's determination that probable cause to arrest exists is based on the facts known to the police at the time of the arrest, not by what was found during a search subsequent to the arrest. *People v. Lee,* 214 Ill. 2d 476, 484 (2005). In determining whether probable cause to arrest exists, the court utilizes commonsense considerations that are factual and practical, not technical legal rules. *Munson,* 206 Ill. 2d at 122-23.

¶ 37 In this case, the police secured a search warrant for both defendant Townsel and the first floor of the premises based on information from an informant that defendant Townsel was selling drugs out of the premises's first floor apartment. This information was corroborated by a controlled drug buy, in which the informant knocked on the front door of the premises, which was answered by defendant Townsel. The informant then purchased drugs from defendant Townsel. A search of the first floor of the premises revealed drug evidence and a letter from the IRS addressed to defendant Townsel at the basement apartment of the premises.

¶ 38 Defendant Townsel argues that the State failed to prove that he resided in the first floor apartment of the premises where the drug evidence was found. He points out that, at best, the

IRS letter indicated that at one time he resided in the basement apartment of the premises. Therefore, he reasons that the evidence failed to establish that he had constructive control of the premises or of the drug evidence.

¶ 39 Defendant Townsel relies on *People v. Ray*, 232 Ill. App. 3d 459 (1992). In that case, the reviewing court reversed the defendant's conviction of possession of cocaine where the State failed to show that the defendant owned, rented or lived in the apartment where the cocaine was found. *Ray* and the other cases relied on by defendant Townsel are distinguishable from the present case. The issue in those cases was whether the defendants were proved guilty beyond a reasonable doubt. However, "[t]he standard for determining whether probable cause is present is probability of criminal activity, rather than proof beyond a reasonable doubt." *Lee*, 214 Ill. 2d at 485. Moreover, since the decision in *Ray*, courts have held that proof of a defendant's control of the premises was not a prerequisite to establish constructive possession of contraband. See *People v. Eghan*, 344 Ill. App. 3d 301, 308 (2003) (citing *People v. Adams*, 161 Ill. 2d 333, 344-45 (1994)).

¶ 40 We conclude that the information from the informant, the controlled drug buy and the search of the first floor of the premises provided sufficient facts from which the police could reasonably believe that there was probable cause to arrest defendant Townsel. Therefore, the denial of the motion to quash arrest and suppress evidence was not error.

¶ 41 III. Reasonable Doubt

¶ 42 Defendant Townsel contends that the evidence was insufficient to prove him guilty of unlawful possession of a weapon by a felon beyond a reasonable doubt.

¶ 43 A. *Standard of Review*

¶ *44* "A reviewing court will not set aside a conviction on grounds of insufficient evidence unless the proof is so improbable or unsatisfactory that there exists a reasonable doubt of the defendant's guilt." *People v. Scott*, 337 Ill. App. 3d 951, 956 (2003).

¶ 45 B. *Discussion*

¶ *46* When a defendant raises a challenge to the sufficiency of the evidence, the relevant inquiry is whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the offense beyond a reasonable doubt. *People v. Moore*, 375 Ill. App. 3d 234, 238 (2007). We will not affirm a criminal conviction where the prosecution's evidence was so weak as to create a reasonable doubt of the defendant's guilt. *Scott*, 337 Ill. App. 3d at 957.

¶ 47 In order to sustain a conviction of unlawful possession of a weapon by a felon, the State must prove that the defendant (1) knowingly possessed a firearm, and (2) had been convicted of a felony. *People v. Ingram*, 389 Ill. App. 3d 897, 899 (2009). Defendant Townsel's status as a convicted felon was undisputed. Therefore, our focus is on whether he knowingly possessed the .38-caliber handgun.

¶ 48 The elements of knowledge and possession are questions of fact to be determined by the trier of fact. *Eghan*, 344 Ill. App. 3d at 306. The trier of fact determines the weight to be given the testimony of the witnesses, their credibility and the reasonable inferences to be drawn from the evidence. *Eghan*, 344 Ill. App. 3d at 306. While we defer to the trial court's credibility determinations, such deference does not require us to "rubberstamp" its findings in a

bench trial in place of careful consideration of the evidence. See *Scott*, 337 Ill. App. 3d at 957.

¶ 49 The defendant maintains that the State failed to prove beyond a reasonable doubt that he had constructive possession of the .38 caliber handgun. A defendant has constructive possession of the contraband when he has the intent and capability to maintain control and dominion over the contraband. *Eghan*, 344 Ill. App. 3d at 307. Knowledge may be established by evidence of acts, declarations, or conduct of a defendant from which it may be inferred that the defendant knew of the existence of the contraband. *Eghan*, 344 Ill. App. 3d at 307 (citing *People v. Chavez*, 327 Ill. App. 3d 18, 24 (2001)).

¶ 50 In *People v. Moore*, 365 Ill. App. 3d 53 (2006), this court determined that the evidence established beyond a reasonable doubt that the defendant had constructive possession of the cocaine located in a pile of leaves, explaining as follows:

> "[N]ot only does a defendant not need to control the premises, he does not even need to have actual, personal, present dominion over the drugs themselves. [Citations.] The State need only show that the defendant has not abandoned the drugs and no other person has obtained possession of the drugs. [Citation.] Proof that the defendant knew the drugs were present and exercised control over them establishes that constructive possession." (Internal quotation marks omitted.) *Moore*, 365 Ill. App. 3d at 60 (quoting *People v. Jones*, 295 Ill. App. 3d 444, 453 (1998), quoting *Adams*, 161 Ill. 2d at 354) .

¶ 51 The evidence in the record and the reasonable inferences from that evidence support the trial court's determination that defendant Townsel knowingly possessed the .38-caliber handgun beyond a reasonable doubt. There was evidence that defendant occupied the basement apartment

of the premises. The .38-caliber handgun was found in a garbage can, located between the basement and the first floor apartments. Evidence that the garbage can was accessible to the first floor tenant did not diminish the exclusive dominion and control required to establish constructive possession. See *Ingram*, 389 Ill. App. 3d at 901. It could be reasonably inferred from the evidence that the .38-caliber handgun was wrapped in a towel and placed in a garbage can accessible to his apartment, that defendant Townsel had not abandoned the handgun and that he sought both to conceal its presence and to retain control over it. As to the requirement of knowledge, it could be reasonably inferred from defendant Townsel's statement to Officer Williams that he had a .38-caliber handgun that he used for protection and from the location of where the handgun was discovered that he knew of the existence of the handgun.

¶ 52 Defendant Townsel argues that, standing alone, his statement to Officer Williams was not sufficient to sustain his convictions. *People v. Lesure*, 271 Ill. App. 3d 679, 682 (1995). Defendant Townsel's statement referenced a .38-caliber handgun, which he had used for protection. The police recovered a .38-caliber handgun from an area in close proximity to the apartment where the IRS letter to defendant Townsel was addressed and in proximity to the location where the informant stated defendant Townsel was selling drugs. Such independent evidence corroborates defendant Townsel's oral statement to Officer Williams. See *People v. Cloutier*, 156 Ill. 2d 483, 503 (1993) (independent evidence need not rise to the level of proof beyond a reasonable doubt but must only tend to confirm a defendant's confession).

¶ 53 We conclude that the evidence was sufficient to prove defendant Townsel guilty of unlawful possession of a weapon by a felon beyond a reasonable doubt.

¶ 54 IV. Adequacy of the *Krankel* Inquiry

¶ 55 Defendant Townsel contends that the trial court failed to conduct an adequate inquiry into his posttrial claims of ineffective assistance of counsel.

¶ 56 Prior to imposing the sentences in this case, the trial court asked defendant Townsel if he wished to make a statement. The following colloquy took place:

"THE DEFENDANT: Well, I don't understand a lot about the law. I don't see how I wound up in here. I wish my lawyer would have addressed a lot of what she is addressing now before you found me guilty because I believe if she would have represented me a little better in this matter when I first told her due to an oral statement that I did not make - - I don't understand it, but how she represented me I could see how I got found guilty.

THE COURT: You have the right to say what you wish and take the position you want to take, but I am looking at the story of your life here, and you are just a criminal. You are just living a criminal life.

You are going to stand up now and say it is somehow your lawyer's fault because you didn't like the way she handled your trial to explain all this, I don't agree with you. Yes.

THE DEFENDANT: I don't mean to cut you off. I am not saying it like that. I am talking about just the oral statement part. It was never mentioned through the whole process.

THE COURT: It was one part of the evidence against you. I heard testimony about it. I believed it.

THE DEFENDANT: Now you - -."

THE COURT: I believe you had a gun and that you are involved with drugs again, which is what you have been doing all of your life since you have been a juvenile. *** "

The trial court then proceeded to impose the five-year sentences.

¶ 57 In addition to the transcript of the sentencing hearing, the record also contains a hand-written motion by defendant Townsel, requesting that the trial court reverse his conviction based on defense counsel's failure to mention to the court that defendant Townsel never made an oral statement, that the State failed to prove he made the statement because there were no *Miranda* forms signed by him and that there was no videotape to confirm that the oral statement was made.

¶ 58 A. *Standard of Review*

¶ 59 If the trial court made no determination on the merits of a defendant's posttrial claim of ineffective assistance of counsel, our review is *de novo*. *People v. Tolefree*, 2011 IL App (1st) 100689, ¶25 (citing *People v. Moore*, 207 Ill.2d 68, 75 (2003)). If the trial court has reached a determination on the merits of the defendant's claim, we will reverse only if the trial court's decision was manifestly erroneous. *Tolefree*, 2011 IL App (1st) 100689, ¶25 (citing *McCarter*, 385 Ill. App. 3d at 941).

¶ 60 B. *Discussion*

¶ 61 From the decision in *People v. Krankel*, 102 Ill. 2d 181 (1984), our courts have evolved the rule that where a defendant raises a challenge to the effectiveness of defense counsel, the trial court should examine the factual basis of the defendant's claim. *Moore*, 207 Ill.2d at 77-78. If

upon examination the court determines that the claim lacks merit or pertains only to matters of trial strategy, no appointment of new counsel is necessary, and the court may deny the *pro se* motion. *Moore*, 207 Ill. 2d at 78. If the allegations demonstrate the possibility of neglect, new counsel should be appointed. *Moore*, 207 Ill. 2d at 78.

¶ 62 As the reviewing court, our main concern is to determine whether the trial court conducted an adequate inquiry into the defendant's claim of ineffective representation. *Moore*, 207 Ill. 2d at 78. Some interchange between the trial court and defense counsel is usually necessary in assessing what further action, if any, is required. *Moore*, 207 Ill. 2d at 78. The trial court may question defense counsel and have him or her explain the facts and circumstances surrounding the defendant's allegations, or a brief discussion between the court and the defendant may be sufficient. A trial court can also base its evaluation of the defendant's *pro se* allegations of ineffective representation "on its knowledge of the defense counsel's performance at trial and the insufficiency of the defendant's allegations of on their face." *Moore*, 207 Ill. 2d at78-79.

¶ 63 In *People v. Vargas*, 409 Ill. App. 3d 790 (2011), this court found that the trial court failed to make an adequate inquiry into the defendant's posttrial claims of ineffective representation. After permitting the defendant to set forth his claims, the court did not respond to his claims but proceeded to sentence him. While imposing sentence, the court commented that the defendant would not be satisfied until he found a lawyer who would win the case for him. While noting that the claims lacked detail, this court found that further questioning by the trial court could have resolved any lingering doubt or established the necessity for further inquiry consistent with *Krankel*. This court concluded that remand for the limited purpose of

conducting a preliminary *Krankel* inquiry was required. *Vargas*, 409 Ill. App. 3d at 803.

¶ 64 In the present case, the trial court did respond to defendant Townsel's claims. In fact, the court's response to his rather vague claim of ineffective representation led defendant Townsel to specify that his claim was based on defense counsel's failure to raise at trial the fact that he denied making any oral statement. The trial court also explained that the oral statement was only part of the evidence against him. Nonetheless, it heard the testimony about it and believed it.

¶ 65 Moreover, any error in failing to conduct a further inquiry into his claim that defense counsel was ineffective was harmless. See *Tolefree*, 2011 IL App (1st) 100689, ¶46 (trial court heard all of the testimony at trial and had an adequate basis in the trial record to determine the defendant's claims); see also *Vargas*, 409 Ill. App. 3d at 803 (a trial judge's decision on a *pro se* ineffectiveness motion could be based on the judge's knowledge of counsel's performance and the merits of the claims on their face, citing *Moore*, 207 Ill. 2d at 79). Unlike *Vargas*, in the present case , there was an adequate basis in the record from which the trial court could determine the merits of the claim of ineffective assistance of counsel. See *Vargas*, 409 Ill. App. 3d at 803 (remand required because defendant's claims of ineffective representation concerned matters *de hors* the record and not readily ascertainable by a trial judge).

¶ 66 In the present case, the record reflects that defense counsel sought to have defendant Townsel's oral statement suppressed. At trial, she thoroughly cross-examined Officer Williams concerning the circumstances under which defendant Townsel was alleged to have made the oral statement and elicited the fact that there was no other proof that defendant Townsel made the statement. As there were no other witnesses to the statement, the only way remaining to

challenge the statement was for defendant Townsel to testify. The record reflects that the defendant chose not to testify. In his written motion to the trial court, defendant Townsel did not allege that he was prevented from testifying. Instead, he argued that the State failed to prove he had made the statement because there was no signed *Miranda* waiver or a videotape of the statement, matters which had been explored by defense counsel during the trial.

¶ 67 We conclude that the trial court's failure to inquiry further into defendant Townsel's posttrial ineffectiveness of counsel claim was harmless error, and the court's failure to appoint new counsel was not manifestly erroneous.

¶ 68 CONCLUSION

¶ 69 Defendant Townsel's convictions and sentences are affirmed.