

Boyett was parked. Signs along the interstate notified motorists of the presence of the checkpoint prior to the exit. Trooper Boyett received a call on his radio advising available officers in the vicinity that a red van had exited the interstate at the last exit before the checkpoint, turned around, and reentered the interstate going the opposite direction, away from the checkpoint. Trooper Boyett responded to the call. He followed the red van (driven by the defendant) until he saw the van cross a white line on the highway, at which time he initiated a stop.

¶ 4 When Trooper Boyett approached the van, he could smell a strong odor of marijuana coming from the van. After running the defendant's license and registration and calling to request that a canine unit come to the scene, Trooper Boyett asked the defendant if she had any marijuana. She admitted that she did, and she showed him a bag containing two small vacuum-sealed jars of cannabis. Trooper Boyett asked if she had any more marijuana, and the defendant told him that she did not.

¶ 5 A canine officer arrived at the scene, and his dog alerted on the defendant's vehicle. Trooper Boyett called Master Sergeant Todd Dowdy of the Southern Illinois Drug Task Force and requested backup. When Sergeant Dowdy arrived, he decided that it would be better to bring the defendant to the station to interview her and search her van. He made this decision because it was a very cold day and he did not want the defendant—a 62-year-old woman in a wheelchair—to have to wait outside while officers searched the van.

¶ 6 At the station, the defendant cooperated with police. She indicated that there were three suitcases in the van containing illegal drugs, although she did not know what specifically was in the suitcases. She told Sergeant Dowdy that she was transporting the drugs for an Asian gang in California because members of that gang had threatened her family over her son's gambling debt. She told him that she had

made five previous runs, and she explained the procedure as follows. Gang members contacted her at a property she rented in California and told her to park her van at a certain location. She parked the van at that location, left it for three hours, and then returned. During the three hours, gang members loaded suitcases containing drugs into the van. She then drove to Chicago. When she was approximately half an hour outside of Chicago, she called a gang member in Chicago, known to her only by a number, and that gang member would tell her where in Chicago to park the van so the drugs could be unloaded. The defendant told Sergeant Dowdy that although she was not paid for transporting the drugs, she was given \$5,000 to cover expenses for each run. During a subsequent interview, the defendant told Sergeant Dowdy that her contacts in Chicago were members of a black rap group.

¶ 7 The defendant also told Sergeant Dowdy that she had a prescription for medical marijuana in California and a permit that allowed her to grow marijuana for medical use. She showed him her grow permit, but not her prescription.

¶ 8 A search of the defendant's van led to the discovery of three suitcases containing 26 bags of a green leafy substance that appeared to be cannabis. The suitcases contained a total of approximately 82 pounds of the substance. Only 13 of the 26 bags were tested, and they all tested positive for cannabis. (We note that John Martin, a forensic scientist who testified at the defendant's trial, explained that only 13 bags were tested because the first 13 bags contained more than 5,000 grams of cannabis, which was enough to support the highest penalty for each of the offenses charged.) In addition, officers found several photographs of marijuana plants growing inside a house and a pink sticky note listing types of equipment used for growing plants and calculating what appear to be sales prices or profits over a period of six months. The defendant was charged with unlawful trafficking of cannabis (2,500 or

more grams) (720 ILCS 550/5.1(a) (West 2008)), possession with intent to deliver cannabis (2,000 to 5,000 grams) (720 ILCS 550/5(f) (West 2008)), and possession of cannabis (2,000 to 5,000 grams) (720 ILCS 550/4(f) (West 2008)).

¶ 9 At the defendant's trial, the sole issue was whether she acted under compulsion; she did not deny transporting the cannabis. Sergeant Dowdy and Trooper Boyett both testified at the trial. They testified to the sequence of events we have already described. In addition, Sergeant Dowdy testified that the pink sticky note found in the defendant's van was consistent with the type of "paperwork" often found during raids of "drug houses" with indoor grow operations. He further testified that one marijuana plant can yield approximately one pound of cannabis. He explained, however, that because the cannabis found in the three suitcases in the defendant's van was "highly cultivated" marijuana with a high THC content, it likely came from at least 120 plants. He estimated the street value of the marijuana to be approximately \$1 million. The photographs and the pink sticky note were admitted into evidence.

¶ 10 The defendant testified on her own behalf. She first testified that she suffers from degenerative arthritis and that she "lived in pain" with the condition until March 2008. At that time, she began renting a property in California and went to a doctor there who gave her a prescription for medical marijuana. In addition, she was issued a permit allowing her to grow up to 100 plants. She began growing the marijuana plants at her California property in July 2008.

¶ 11 The defendant testified that she began transporting drugs as a result of gang threats before she began growing marijuana for medical use. She testified that in April 2007, she received a call on her son P.J.'s cell phone. P.J. had been killed in a motor vehicle crash. The defendant explained that she kept his phone so that she could hear his voice on it. She testified that the caller told her that P.J. owed

\$100,000 to a gang in Chicago called the "Bogus Boys." The caller told her that members of the gang had run P.J. off the road intending to scare him into repaying the debt and had not intended to kill him. The defendant testified that she hung up the phone and tried to ask the Highland Park police department to investigate. She explained, however, that she was told that the police needed more information in order to do anything to help her. Asked on cross-examination who she had spoken to at the Highland Park police department, she could not recall.

¶ 12 According to the defendant, she received another call on P.J.'s cell phone 10 days after the first. She could tell that the same person made both calls because she recognized the voice. This time, the caller told her that if she hung up again, the gang would "go after" other members of her family or "finish the job" on her other son, Michael. The defendant explained that Michael had been in a motorcycle accident and suffered a permanent brain injury as a result. The caller gave the defendant a choice between transporting drugs from California to Chicago or paying the \$100,000 debt. She told the caller that she would give him her answer a few days later.

¶ 13 The defendant testified that she attempted to borrow \$100,000 from her husband's pension plan, but was not allowed to do so. When the same person called again four days later, she told the caller that she would pay the gang the \$100,000 her son owed them, but she did not yet have the money. She testified that the caller told her that she would have to make 10 trips to California for the gang in order to pay off the debt. She testified, however, that after further discussion, they agreed that the debt would be paid after she made six trips.

¶ 14 The defendant testified that she made her first trip for the Bogus Boys in May 2007. When Trooper Boyett stopped her, she was making the last of her six trips. She testified that she was relieved when he pulled her over because it meant that her

ordeal with the gang would end. When asked why she turned around before the checkpoint, she stated that she needed to use the restroom. She further testified that she had gone through drug checkpoints on previous runs with no problems.

¶ 15 The defendant admitted that the photographs found in the van showed marijuana that she was growing at her house in California. She testified that the photographs were taken for her by one of her contacts in the Bogus Boys gang. The contact accompanied her on most of her trips to California, driving in a separate car. The defendant explained that she intended to use the photographs in a book she was writing, but she said that the gang contact who took the photographs for her did not know that this was what they were for.

¶ 16 The defendant testified that the marijuana found in the three suitcases in her van did not come from the plants she was growing at her California property. She testified that it takes a year for the plants to grow to the point where they could be harvested, and her plants were not yet ready. She further testified that it would take "at least 20,000 plants" to produce the amount of marijuana found in the suitcases, and that the 100 plants she was allowed to grow would only yield approximately four pounds per year. On cross-examination, the prosecutor asked the defendant if she heard Sergeant Dowdy's testimony that the marijuana found in the suitcases could be produced from far fewer plants. The defendant replied: "No. He doesn't grow. I grow. You only get maybe four ounces from a plant, if you are lucky."

¶ 17 During closing arguments, the State's Attorney reminded the jury that it was legal for the defendant to grow marijuana for medical use in California. He told jurors that it did not matter whether the marijuana found in the defendant's van came from the plants she was growing herself or was obtained elsewhere; the State only needed to prove that she was transporting it across state lines for sale in Illinois. He

then highlighted several inconsistencies in her testimony and argued that her claim of compulsion was not credible. The jury returned verdicts of guilty on all three charges, and the court subsequently sentenced the defendant to eight years on the unlawful trafficking charge. After her posttrial motion was denied, the defendant filed the instant appeal.

¶ 18 The defendant argues that the photographs of her California grow operation constituted inadmissible evidence of other crimes. Evidence that a defendant has engaged in criminal activity other than the crime with which she is charged is generally inadmissible unless it is relevant to show something other than the defendant's propensity to commit crimes. *People v. McGee*, 268 Ill. App. 3d 582, 586, 645 N.E.2d 329, 332 (1994). The defendant acknowledges that her grow operation was legal under California's medical marijuana laws, but points out that it would be illegal in Illinois. She argues that this makes the evidence highly prejudicial. The defendant also acknowledges that her attorney did not object to the admission of the photographs, thereby forfeiting the issue on appeal. She argues, however, that her attorney's failure to object constituted ineffective assistance of counsel. We disagree.

¶ 19 We evaluate claims of ineffective assistance of counsel under the two-part test announced by the United States Supreme Court in *Strickland v. Washington*, 466 U.S. 668 (1984). *People v. Moore*, 279 Ill. App. 3d 152, 156, 663 N.E.2d 490, 494-95 (1996). To prevail on a claim of ineffective assistance of counsel, a defendant must demonstrate that counsel's performance was deficient. *Moore*, 279 Ill. App. 3d at 156, 663 N.E.2d at 495. The defendant must also demonstrate that, but for counsel's deficient performance, there is a reasonable probability that the result of the trial would have been different. *Moore*, 279 Ill. App. 3d at 159, 663 N.E.2d at 496 (citing

Strickland, 466 U.S. at 695). In other words, the defendant must demonstrate prejudice resulting from the ineffective representation. *Moore*, 279 Ill. App. 3d at 157, 663 N.E.2d at 495.

¶ 20 Because a defendant must satisfy both prongs of the *Strickland* test, a failure to demonstrate either counsel's deficient performance or prejudice will defeat her claim. *People v. Clendenin*, 238 Ill. 2d 302, 317-18, 939 N.E.2d 310, 319 (2010). Thus, if it is simpler to resolve a claim of ineffective assistance of counsel based on the prejudice prong of *Strickland*, courts may do so. *People v. Ingram*, 382 Ill. App. 3d 997, 1006, 888 N.E.2d 520, 527 (2008) (citing *Strickland*, 466 U.S. at 697). To demonstrate prejudice under *Strickland*, a defendant need only show that it is reasonably probable that a more favorable result would have been obtained absent counsel's unprofessional errors. *People v. Fletcher*, 335 Ill. App. 3d 447, 455, 780 N.E.2d 365, 371 (2002). Here, we find that the defendant has failed to make this showing.

¶ 21 We find that the defendant has failed to show that a more favorable result was reasonably probable for two reasons. First, we do not believe the photographs were sufficiently prejudicial to sway a jury otherwise disposed to believe the defendant's tale of compulsion. Second, we do not find it reasonably likely that a reasonable jury would have found the defendant's testimony credible had the photographs not been admitted.

¶ 22 The defendant argues that the photographs were highly prejudicial because they informed jurors that she had engaged in activity which is prohibited in Illinois, even though it is legal in California, where it occurred. She argues that because growing marijuana for medical use is not legal in Illinois, "there is still a significant stigma" surrounding the use and growing of marijuana or other narcotics. We are not

persuaded.

¶ 23 We first note that because we resolve this case under the prejudice prong of *Strickland*, we do not need to determine whether the photographs constituted inadmissible evidence of uncharged crimes. However, we address the defendant's arguments on this issue to the extent that they have a bearing on the photographs' potential to prejudice the jury.

¶ 24 There is no dispute that the defendant was legally permitted to grow marijuana for medicinal use in California, and there was no evidence that she grew marijuana in Illinois. In addition, there was no evidence that the defendant had transported marijuana previously other than her own testimony and statement to police indicating that she had transported marijuana under compulsion on five previous occasions. There was no evidence that the defendant used marijuana for recreational purposes and no evidence that she was an addict. We are not convinced that growing and using marijuana for medical purposes in a state where it is legal to do so carries the same sort of stigma as producing, selling, or using illegal drugs for nonmedical reasons. Indeed, jurors may well have sympathy for a disabled defendant who is unable to get relief from chronic pain by any other means. The prosecutor apparently recognized that this was a possibility because he asked jurors to set aside any sympathies they might have before making their decision.

¶ 25 We acknowledge, however, that there was some conflicting testimony in the record as to whether the defendant exceeded the number of plants her permit allowed her to grow in California. The defendant testified that she was allowed to grow up to 100 plants. She also testified that she grew 100 plants. Sergeant Dowdy, however, testified that he believed that California's medical marijuana law allowed people with prescriptions and grow permits to grow up to either 12 or 24 plants. However, the

State did not emphasize this testimony. As previously mentioned, the prosecutor specifically told the jury that the defendant did not break any laws by growing marijuana in California. We note that the defendant does not address this discrepancy on appeal, and in any case, it does not alter our conclusion. We find it highly improbable that the photographs played a significant role in the jury's determination. We therefore conclude that a different result was not reasonably probable had they not been admitted.

¶ 26 Moreover, we believe that the numerous inconsistencies in the defendant's testimony made it highly unlikely that a reasonable jury could have found her story of compulsion credible. As previously noted, she testified that she was able to negotiate with the gang member who initially called her on her son's cell phone. He told her that she would have to make 10 trips to California to pay off her son's debt, but somehow they agreed that she could make only 6 trips and the debt would be considered paid. The defendant's testimony that she was able to negotiate with a gang member is at odds with her testimony that she was frightened enough that she felt compelled to do what gang members told her. The defendant also testified that at some point after her arrest, she tried to e-mail one of her contacts from the gang. This, too, is inconsistent with the fear she claimed to feel. Likewise, the defendant's claim that a gang member photographed marijuana plants inside her home seems highly improbable in the face of the gang's alleged threats against her family.

¶ 27 In addition, there were inconsistencies between her testimony and what she told police in two interviews. For example, she initially told Sergeant Dowdy that she had been threatened by an Asian gang in California, and that she was to deliver the drugs to members of that same gang in Chicago. She later told Sergeant Dowdy that she was to deliver the drugs to members of a black rap group in Chicago. At trial,

however, she testified that she had been threatened by a gang in Chicago and that she was to deliver the drugs to members of that gang.

¶ 28 We also find it significant that there was no evidence to corroborate any aspect of the defendant's story. Considering the defendant's inconsistent statements, the inherently implausible elements of her story, and the complete lack of corroborating evidence, we conclude that it was not reasonably probable that a rational jury would have found the defendant's testimony credible had the photographs been excluded. Thus, we find that the defendant's claim of ineffective assistance of counsel must fail.

¶ 29 For the foregoing reasons, we affirm the defendant's conviction.

¶ 30 Affirmed.