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### BACKGROUND

¶4 Defendant was charged with one count of unlawful use or possession of a weapon by a felon and four counts of aggravated unlawful use of a weapon. 720 ILCS 5/24-1.1(a), 1.6(a)(1), (a)(2), (a)(3)(A), (a)(3)(C)(West 2012). At trial, Chicago police officer Tomescu testified that he and his partner, Officer Hicks, responded to an anonymous 9-1-1 call stating that an African-American male traveling in a white van had a gun. The officers located the van and pulled up behind it. Officer Tomescu exited the police car and went to the passenger side of the van, where defendant was seated. He opened the door and ordered defendant to exit the van. After defendant reached to unbuckle his seatbelt, Officer Tomescu pulled defendant out of the van. A brief scuffle ensued, and defendant fled down a nearby alley.

¶5 Officer Tomescu chased defendant into the alley. While Officer Tomescu ran behind defendant in the alley, he observed defendant reach into the front of his hoodie and pull out a gun. Defendant then tossed the gun as he continued to flee. Officer Tomescu eventually apprehended defendant and retrieved the gun, which was loaded with five rounds of live ammunition. Defendant was arrested and taken to a police station. Following his arrest, defendant admitted that he was carrying the gun for protection due to an ongoing conflict with a rival gang.

¶6 On cross-examination, Officer Tomescu testified that he did not know whether anyone obtained the driver's name or whether police searched the van. With respect to the anonymous 9-1-1 caller, Officer Tomescu stated "I would like to say that dispatcher did have a name and phone number, but they were not able to contact him at a later time."

¶7 Defendant testified that he did not own or possess the gun, and he denied making an incriminating statement at the police station. According to defendant, he and the driver were

handcuffed together and searched by the police, who then searched the van and discovered the gun. After additional officers arrived, they briefly questioned both men about their criminal histories and the ownership of the van. After the driver explained that he owned the van, the police released him. When the police attempted to place the second handcuff on defendant, he broke free and attempted to flee.

¶8 The trial court found defendant guilty, explaining that the State and defendant had “totally divergent stories” and that Officer Tomescu was “far more compelling and credible beyond a reasonable doubt.” At the sentencing hearing, defendant read from a letter he sent to the trial court. Defendant claimed that trial counsel provided ineffective assistance because he failed to: (1) obtain the 9-1-1 call transcript; (2) impeach Officer Tomescu based on varying accounts of the incident he gave in police reports, during defendant’s preliminary hearing, and at trial; and (3) investigate the driver’s identity.

¶9 The trial court held a *Krankel* hearing, during which the following colloquy occurred:

“THE COURT: Okay. You are complaining about your lawyer didn’t represent you right. What did he do wrong?”

THE DEFENDANT: I just felt the 911 transcripts, they was never produced.

THE COURT: What about them?

THE DEFENDANT: They were not available, and it was used against me.

THE COURT: We are having a *Krankel* hearing right now.

MR. WOELKERS [DEFENSE COUNSEL]: The Court heard the evidence. The 911’s were unavailable. That is correct. However, Judge, this was, as the Court saw through the testimony basically a he said he said. The

officer testified to one version of the facts. Mr. Curtis was allowed to testify to his version of the facts. After consultation with him, that was the defense we decided on. There were other defenses that were discussed that he did not want to pursue. He wanted to pursue the defense that it was not his gun, he never possessed the gun, and he testified to that. It was a relatively simple gun case. There were no witnesses that were available. The person who was in the van with him, there was no information taken down for him. It was argued at the trial.

THE COURT: Do you have anything else to say?

THE DEFENDANT: The driver was never apprehended. There was three other responding officers, including the one that so-called detained me.

MR. WOELKERS: There were copies of the transcript prior to the trial that were available.

THE COURT: All right. I have heard the complaints now about Counsel pursuant to the Krankel doctrine, and I have listened. I don't find that there was anything that the defense lawyer did wrong. He did put on a defense. It came down to a credibility issue, and I found the police officer to be more credible and compelling beyond a reasonable doubt than the defendant. I will stand by my finding. There is no relief under Krankel."

¶10 Following the denial of defendant's *Krankel* motion, the Court sentenced defendant to 66 months of imprisonment on the UUWF count and merged the remaining counts under the one crime one act doctrine. This appeal followed.

¶11

## ANALYSIS

¶12 Criminal defendants have a constitutional right to the effective assistance of counsel. U.S. Const., amend. VI; Ill. Const. 1970, art. I, §8; *Strickland v. Washington*, 466 U.S. 668, 686 (1984). To prove ineffective assistance of counsel, a criminal defendant must show that: (1) trial counsel's performance was objectively deficient; and (2) defendant was prejudiced, meaning "that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." *Strickland*, 466 U.S. at 687-88, 694.

¶13 In *People v. Krankel*, 102 Ill. 2d 181 (1984), the Illinois Supreme Court held that a criminal defendant bringing a *pro se* posttrial motion alleging ineffective assistance of counsel is entitled to the appointment of new counsel to represent the defendant during the hearing on the posttrial motion. *Id.* at 189. Cases following *Krankel* make clear, however, that new counsel need not be appointed in every case. *People v. Moore*, 207 Ill. 2d 68, 77 (2003). Instead, the trial court should consider the merit of the defendant's claims and determine whether the defendant is attacking trial counsel's strategy. *Id.* at 77-78. To conduct this inquiry, "some interchange between the trial court and trial counsel regarding the facts and circumstances surrounding the allegedly ineffective representation is permissible and usually necessary in assessing what further action, if any, is warranted on a defendant's claims." *Id.* If the defendant's claims lack merit or relate to matters of trial strategy, then new counsel need not be appointed and the defendant's *pro se* posttrial motion may be denied. *Id.* at 78. If, however, the trial court determines that the defendant's "allegations show possible neglect of the case, then new counsel should be appointed." *Id.*

¶14 "The operative concern for the reviewing court is whether the trial court conducted an adequate inquiry into the defendant's *pro se* allegations of ineffective assistance of counsel." *Id.*

When reviewing the adequacy of a *Krankel* hearing, the applicable standard of review depends on what action the trial court took on the defendant's motion. *People v. Tolefree*, 2011 IL App (1st) 100689, ¶ 25. "[I]f the trial court made no determination on the merits, then our standard of review is *de novo*." *Id.* (citing *Moore*, 207 Ill. 2d at 75). However, "if a trial court has reached a determination on the merits of a defendant's ineffective assistance of counsel claim, we will reverse only if the trial court's action was manifestly erroneous." *Id.* (citing *People v. McCarter*, 385 Ill. App. 3d 919, 941 (2008)). Manifest error means error which is "clearly plain, evident, and indisputable." *People v. Ruiz*, 177 Ill. 2d 368, 384-85 (1997).

¶15 Here, the trial court denied defendant's motion on the merits, stating "I don't find that there was anything that the defense lawyer did wrong." *See Tolefree*, 2011 IL App (1st) 100689, ¶¶ 12-13, 26 (trial court's response to defendant's posttrial motion stating that defendant was represented by "very able counsel" and that the trial court believed the defendant received a fair trial and sentence constituted ruling on the merits on defendant's posttrial motion). Accordingly, we review the trial court's ruling for manifest error.

¶16 Defendant first argues that trial counsel provided ineffective assistance by failing to obtain the transcript of the anonymous 9-1-1 call. Defendant contends that the contents of that phone call would have shown that Officer Tomescu lacked probable cause to detain defendant, and that therefore the evidence of the gun would have been suppressed.

¶17 Even assuming that Officer Tomescu lacked probable cause to detain defendant, defendant's flight from custody broke the causal chain between his purportedly unlawful detention and Officer Tomescu's recovery of the gun. *See People v. Henderson*, 2013 IL 114040, ¶ 50 (finding that defendant did not receive ineffective assistance based on trial counsel's failure to file a motion to suppress gun evidence because the motion would have been

denied because the defendant's flight from custody broke causal chain between unlawful police conduct and discovery of the gun). Accordingly, defendant cannot show that he was prejudiced by trial counsel's failure to obtain a transcript of the 9-1-1 call.

¶18 Defendant next argues that trial counsel provided ineffective assistance because he did not properly impeach Officer Tomescu. Defendant specifically claims that trial counsel should have cross-examined Officer Tomescu about three purported inconsistencies in his testimony: (1) at the preliminary hearing, Officer Tomescu stated that he approached the driver's side of the van, but at trial he testified that he approached the passenger side of the van; (2) Officer Tomescu testified at trial that while he was behind defendant he saw defendant reach into the front pocket of his hoodie and retrieve the gun; and (3) Officer Tomescu stated in the police report that defendant threw the gun at the ground, but in the preliminary report he stated that defendant threw the gun over a fence and it hit a garage.

¶19 The Illinois Supreme Court has repeatedly held that trial counsel's decision whether to impeach a witness is a matter of trial strategy which cannot support a claim of ineffective assistance of counsel. *See, e.g., People v. Smith*, 177 Ill. 2d 53, 92 (1997); *People v. Pecoraro*, 175 Ill. 2d 294, 326 (1997); *People v. Franklin*, 167 Ill. 2d 1, 22 (1995). Similarly, "an attorney's decision as to how \*\*\* to cross-examine a witness is generally matter of trial strategy which, by itself, will not support a claim of ineffective assistance." *People v. McKinney*, 260 Ill. App. 3d 539, 546 (1994)(citing *People v. Stewart*, 104 Ill. 2d 463, 492 (1984)). Accordingly, defendant's dissatisfaction with the manner in which trial counsel cross-examined Officer Tomescu does not provide a valid basis for finding that trial counsel's representation of defendant was deficient.

¶20 Defendant next argues that trial counsel provided ineffective assistance by failing to take steps to ascertain the driver's identity. Defendant claims that the potential testimony of this third-party witness would have been crucial because the case concerned a credibility battle between defendant and Officer Tomescu. Defendant cites *People v. McLaurin*, 2012 IL App (1st) 102943, in support of his argument. In *McLaurin*, the trial court remanded for a *Krankel* hearing based on the defendant's claim that defense counsel was ineffective because he did not adequately investigate the whereabouts of a witness. *Id.* ¶ 53. However, the witness's identity was known, defense counsel made a proffer about the contents of the witness's testimony, and the trial court declined to inquire whether the witness should have been subpoenaed based on the mistaken belief that the witness could not be subpoenaed in Illinois. *Id.* ¶¶ 3, 6, 47. Here, by contrast, neither the police, trial counsel, or defendant knew the driver's identity or what his testimony would consist of, and there is no allegation that the trial court conducted a perfunctory *Krankel* hearing based on a mistaken understanding of the law. Accordingly, *McLaurin* is distinguishable and does not control the resolution of this case.

¶21 "To prevail on a claim of ineffective assistance of counsel based on a failure to investigate, defendant must show that substantial prejudice resulted and that there is a reasonable probability that the final result would have been different had counsel properly investigated." *People v. Orange*, 168 Ill. 2d 138, 151 (1995)(citing *Strickland*, 466 U.S. at 694). Defendant has not shown how he was prejudiced by trial counsel's failure to investigate the identity of the driver, which is not surprising given the trial court's credibility determination and defendant's own testimony that he fled from the police. *People v. Lewis*, 165 Ill. 2d 305, 349 (1995)(defendant's flight is circumstantial evidence of guilt); *People v. McCann*, 348 Ill. App. 3d 328, 338 (2004)(erroneous evidentiary ruling was harmless in light of overwhelming evidence

of defendant's guilt, including evidence that defendant fled from police). Moreover, under these facts, it is impossible to determine whether the driver's testimony would have been favorable to defendant. Substantial prejudice does not arise from counsel's failure to introduce testimony from "unnamed, unknown witnesses \*\*\* who might have testified to facts that would not exonerate the defendant." *People v. Blankley*, 319 Ill. App. 3d 996,1006 (2001); *see People v. Redmond*, 341 Ill. App. 3d 498, 516 (2003)(defendant's mere speculation about how a witness would have testified was insufficient to support ineffective assistance claim based on trial counsel's failure to call witness). Accordingly, defendant was not prejudiced by trial counsel's failure to investigate the driver's identity.

¶22

#### CONCLUSION

¶23 We find defendant's ineffective assistance of counsel claims lack merit. Therefore, the trial court did not commit manifest error by denying defendant's *pro se* posttrial motion. The judgment of the circuit court is affirmed.

¶24 Affirmed.