FOURTH DIVISION
June 30, 2016

No. 1-14-2091

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
	)	Cook County.
Plaintiff-Appellee,	)	
	)	
v.	)	No. 12 CR 7844
	)	
SUZANNE BANTON,	)	Honorable
	)	Charles P. Burns,
Defendant-Appellant.	)	Judge Presiding.

JUSTICE HOWSE delivered the judgment of the court.
Presiding Justice McBride and Justice Ellis concurred in the judgment.

ORDER

¶ 1 *Held*: Defendant's conviction for bribery is affirmed. When viewing the evidence in the light most favorable to the prosecution any rational trier of fact could have found the essential elements of the crime proven beyond a reasonable doubt; the evidence is sufficient to sustain a bribery conviction where defendant, who prior to her indictment was known to be an employee of the Cook County State's Attorney's Office, accepted money for spiritual guidance from a defendant in a DUI case (who was an undercover agent) while stating she could affect the

> outcome of his DUI case by making evidence disappear or making witnesses fail to show up for trial. Where defendant's *pro se* ineffective assistance of trial counsel claim and ineffective assistance of posttrial counsel claims were based on trial counsel's alleged ineffectiveness for failing to call certain witnesses at trial and we find that counsel's decision was one of sound trial strategy, we affirm the trial court's denial of defendant's motion for a new trial.

¶ 2 Following a bench trial, defendant Suzanne Banton, was found guilty of two counts of bribery, two counts of official misconduct, and one count of theft by deception. The trial court merged all the convictions into "Count 1," bribery, entered judgment on that count and sentenced defendant to sixty days in Cook County jail and two years of felony probation. Defendant now appeals her conviction.

¶ 3 I. Background

¶ 4 Defendant, Suzanne Banton, was charged by indictment with two counts of bribery, two counts of official misconduct, one count of theft, and one count of wire fraud. Following a bench trial, the trial court found Banton guilty of two counts of bribery, two counts of official misconduct, one count of theft. Banton was acquitted of the wire fraud count. The trial court merged all the counts into "Count 1," bribery, entered judgment of guilty on "Count 1" and sentenced defendant to sixty days in Cook County jail and two years felony probation.

¶ 5 At trial, the parties stipulated that defendant was employed at the Cook County State's Attorney's Office (CCSAO) as a victim-witness specialist during the relevant time periods. The parties also stipulated that also during the relevant time periods, December 27, 2010 to September 23, 2011, defendant operated a website. The State entered a copy of the website into evidence. The services listed on defendant's website included: "Chakra Balancing"; "Meditations"; "Spiritual Development Classes"; "Forgiveness Ceremonies Part I & Part II"; "House Cleansings/Blessings"; "Bible, Quran, and Torah Interpretations"; "Court Cases"; "Herbalist Offering Herbal Alternatives"; "Inspirational/Motivational Speaking Engagements";

and "Group Events." Under the "Court Cases" category, it states: "Prices based on situation dealing with, $1,500.00 to initiate handling the case…Price will be additional depending on how long issue continues in court. ALL results are based on you being compliant with my directions…I DO NOT ACCEPT every case…at my descretion [*sic*] only!" Below the information on "Court Cases" there is a "Pay Pal Buy Now" icon for $1,500.00. The website also contains testimonials from clients who used defendant's services in the past. The website does not state that defendant worked at the CCSAO.

¶ 6 The State witnesses testified that in 2010 the CCSAO's Investigative Bureau began an investigation because defendant's website advertised that she provided services relating to "court cases" for a fee. Two investigators from the CCSAO Investigative Bureau were assigned to the case, Diane DiSalvo and Paul Munoz. DiSalvo began the investigation in January of 2011 by creating an undercover identity and email account under the name "Tabitha." DiSalvo sent an email to defendant from the Tabitha account. The parties stipulated to the email conversation that took place between DiSalvo acting undercover as Tabitha and defendant, and it was entered into evidence.

¶ 7 DiSalvo first emailed defendant as Tabitha and stated that she was seeking defendant's help for healing. Defendant responded via email around January 8, 2011 and, as a result of the email exchanges, the two agreed to have a phone conversation. They traded voicemails on January 20, 2011 and at 8:41 p.m. that day, defendant was able to get a hold of DiSalvo via telephone and identified herself as Suzanne Banton. Defendant stated that she was in the middle of a jury trial and asked if she could call DiSalvo back. When defendant called DiSalvo back, she stated she was a victim-witness specialist with the CCSAO and worked at 555 West Harrison Street. Defendant stated that she worked with both victims and witnesses.

¶ 8 DiSalvo told defendant she was seeking assistance with healing and that she had a previous healer from Kansas. DiSalvo told defendant she had seen her website and noted that it stated that defendant "offered services for court cases for a fee of $1,500 for initial consultations." DiSalvo told defendant she was interested in the service because someone in her family was involved in a court case. Defendant told DiSalvo she would have to consult with the person in the case, that she could "reverse things," "work in ways to help drop and dismiss cases," and "get them dropped and dismissed from the court." DiSalvo then told defendant her family member was a victim in the court case. Defendant responded that she wanted to meet DiSalvo's family member and that she could still be of service because "you never know if the other side had somebody working in the same manner."

¶ 9 DiSalvo testified that there was then a five-month break in the investigation. In April 2011, DiSalvo's boss, Commander Maurice Macklin, ran a software program on defendant's computer at her 555 West Harrison office. The search did not reveal anything connected to the investigation of her. DiSalvo resumed the investigation around June 27, 2011.

¶ 10 DiSalvo checked the undercover Tabitha email address and saw that defendant had sent her an email in February 2011, offering 50% off one service. DiSalvo emailed defendant around August 22, 2011, and asked if the 50% off offer was still good because she had a family member who needed help with a court case. Defendant responded, "yes" and told DiSalvo to have her family member give her a call.

¶ 11 Investigator Munoz posed as the family member of Tabitha and "Ruben Ortega," who was an actual defendant with a pending DUI case. Munoz contacted defendant via cell phone, discussed his traffic case, and told defendant he needed her help. Defendant told Munoz that she normally charged $1,500.00, but that she would give him a 50% discount, leaving him owing

$750.00. She also told Munoz that she charged $50.00 every time the case was continued. Munoz asked defendant what specifically she would do to help him, and defendant responded that she needed money to get supplies, such as a magic rock, to help his testimony win favor in court.

¶ 12 Defendant asked Munoz about his pending case. Specifically, she asked for the names of all parties involved, including officers, prosecutors, the judge, and any witnesses. When Munoz said that he did not have that information, but he would get a paper and pen to write down what information she wanted him to obtain, defendant told Munoz not to write anything down. Instead, she stated she would leave a message on his voicemail detailing what information she needed, and she did. Munoz and defendant made tentative plans to meet on September 16, 2011.

¶ 13 DiSalvo contacted defendant via email around September 14, 2011 and provided defendant with the information defendant had requested about Ruben Ortega's case. This information included Ortega's full name and date of birth, the judge's name, the location of the case, the name of the defense attorney, the witnesses' names, and the next court date.

¶ 14 Munoz contacted defendant and asked to meet on a date after September 16, 2011, stating that he did not have the money to pay her. On September 20, 2011, Munoz called defendant and left a voicemail, cancelling a second meeting. Defendant later called Munoz and told him, "I don't want you to freak out," but she had a "vision" that he was going to jail. Defendant told Munoz that she needed to get the case started as soon as possible and needed the money to get the supplies because she thought he was going to jail. Munoz recanted as a "frantic defendant," asked why he would be going to jail, and asked defendant to explain herself. Defendant told Munoz he got himself into this situation and not to get aggressive or hostile with her. Munoz told defendant that he knew she worked with the prosecutor's office, the same people who were

trying to put him in jail. Defendant told him she did not get him into his current situation. Defendant then asked Munoz for whatever money he had so she could buy the supplies. Munoz and defendant agreed to meet on another date so he could give money to defendant.

¶ 15 DiSalvo received an email from defendant on September 20, 2011, asking DiSalvo to immediately call defendant. When DiSalvo called defendant that same day, defendant stated that she felt uncomfortable and "that if he came up with his money he should pay his defense attorney." DiSalvo told defendant that her cousin had been upset at the notion of going to jail, and that he now had the money for defendant. Defendant told DiSalvo that she was not a prosecutor, she just worked for the office, and she was concerned that someone might contact the office about this and make "crazy allegations." The conversation ended with defendant telling DiSalvo that she would send scriptures for DiSalvo to give to her cousin to read.

¶ 16 Defendant sent DiSalvo scripture passages with instructions for her cousin to read them and other instructions to help him cleanse himself of negative actions. DiSalvo emailed defendant on September 22, 2011, thanking her and telling her that the passages had worked because her cousin had received a continuance. DiSalvo also stated that her cousin was calmer and had the money if defendant was still willing to meet with him.

¶ 17 DiSalvo and Munoz arranged to meet defendant at a restaurant in the Old Orchard Mall in Skokie, Illinois, on September 23, 2011 around 2 p.m. Munoz was provided with $800.00. When Munoz arrived at the mall, he saw defendant in her car but did not speak to her. Instead, he and DiSalvo went to the restaurant. Defendant followed them into the restaurant wearing a purple baseball hat, which was a prearranged descriptive clothing item, and a CCSAO lanyard with her employee ID hanging from her neck in plain view. DiSalvo and Munoz greeted

defendant and defendant took Munoz's hand and prayed. Defendant told the investigators that she needed to "invoke the help of powerful angels to make this case go away."

¶ 18 During the conversation that followed, defendant asked Munoz if he had taken a breathalyzer test after his arrest. When Munoz responded that he had, defendant stated that she could make the breathalyzer report disappear from his case file. Defendant told the investigators that she had had another case where the State had a tape of the defendant hitting and yelling at his wife in front of a child and when the prosecutor went to court, the tape was blank. Defendant said that with her help, the contents of the tape mysteriously disappeared. DiSalvo testified that defendant stated that because she was involved in court services, "she could make it where the police officers and witnesses did not show up on the same day," and possibly have the case "nolle processed." Munoz testified that defendant stated "that she would make sure that the witnesses or officers did not appear at the same time so the case would get dismissed." Both investigators testified that defendant said she could get the case dismissed, "nolle prossed" in her words, or get Munoz a sentence of time served.

¶ 19 Munoz then tried to give defendant the $750.00 over the top of the table. Defendant told Munoz to pass the money to her underneath the table. Munoz then passed the money to DiSalvo who passed it to defendant. Munoz then gave defendant $50.00 over the top of the table for the continuance her alleged guidance had given him. Defendant put the money in her purse and the meeting ended.

¶ 20 DiSalvo testified that she used a camera inside a key fob to videotape the meeting inside the California Pizza Kitchen, but did not capture any audio. Munoz wrote a report the next day summarizing the conversation with defendant in question and answer form.

¶ 21 CCSAO Investigative Bureau investigators detained defendant in the mall parking lot after the meeting. A search of her person recovered the $800.00 tendered to her by Munoz.

¶ 22 The State rested. Defendant moved for a directed finding, which the trial court denied.

¶ 23 The defense then entered two stipulations into evidence. First, the parties stipulated that defendant's computer located at 555 West Harrison had been analyzed on September 22, 2011 at 9 p.m., and the results of this analysis showed that there were no files stored in the common area folder associated with this investigation. Second, the parties stipulated that when defendant was processed at the Skokie courthouse on September 23, 2011, a CCSAO lanyard was recovered and it also contained a METRA pass, and was returned to defendant.

¶ 24 Defendant testified on her own behalf. She stated that throughout her several years of employment at CCSAO, she sought promotions and was interviewed by Human Resources. She testified that in those interviews for promotion, her resume as well as her website were discussed, though she acknowledged that her website was not listed on her resume. She testified that she mentioned during her interviews that she taught meditation and relaxation techniques and offered prayer and spiritual healing. Defendant testified that she was never asked about her website's claim that she worked on court cases, but stated that she had been asked about her court case services in one of her interviews. Defendant testified that she had never worked on a criminal case in her private business before. Defendant further testified that her expertise in the matters listed on her website is based upon her master's degree from the Association of Spiritual Development in esoteric teachings and metaphysical sciences.

¶ 25 Defendant testified that a woman who introduced herself as Tabitha contacted her about a criminal case and stated that she needed some help with healing and other services that were offered on defendant's website. Defendant acknowledged that she had also been in contact with

Munoz, who identified himself as Ruben Ortega, about a criminal case. She acknowledged that she was a victim-witness specialist at the time she spoke to Munoz, and her job was to inform victims and witnesses when to come to court on cases. Defendant testified that she did not contact anyone in the State's Attorney's Office, or a judge, witness, or police officers to change the outcome in what she believed was Munoz's case. Defendant stated that all she intended to do was to pray for him and fast.

¶ 26 Defendant testified that she gave Munoz detailed instructions on how to make a homemade cleansing bath and gave him scriptures to read. On direct examination, when defendant was asked about Munoz's testimony that "witnesses don't appear, things are missing from the file," she responded that she was specifically asked how she "was going to bring these actions about," and her response was: "God works in mysterious ways. You can pray for a person and everyone involved in the situation but you cannot guarantee the outcome or what is going to occur, but you have faith in knowing that something will occur in your favor because God is always on your side." When asked about her comment to Munoz that she could make the breathalyzer disappear, defendant stated that she could not take credit for anything that resulted from her praying and fasting. On cross-examination, defendant testified that she could not guarantee the result of her praying and fasting.

¶ 27 On cross-examination, defendant did not deny that she told the investigators a story about a blank videotape. However, defendant stated that she did not consider the videotape to be evidence of a crime because it was evidence in a custody battle. Defendant denied that the videotape showed a man hitting his wife, but stated that it was simply a recording of the father of the child using foul language to the mother of the child. Defendant denied asking Munoz if he had taken a breathalyzer. She denied that she told the investigators that she could make the

breathalyzer disappear from the court file. She denied removing material from an official case file in this case or any other case. She denied ever discussing victims or witnesses not showing up to court with the investigators and denied telling them she could arrange for witnesses and officers not to appear in court on this case, causing a dismissal.

¶ 28 Defendant testified that Munoz paid her $750.00 for the time she would spend praying and fasting to assist them. Defendant then explained why Munoz paid her an additional $50.00:

> "The $750 was the deposit for me to help you do the prayers and help you put you through your cleansing process and to fast and pray on your behalf. The additional $50 was if the case was not finished the first time you go to court and you didn't get a result you weren't happy with and we have to go back to court another time, then you still need to continue to pay me because I am still continuing to fast and pray on your behalf."

Defendant testified that she did not do anything to help Munoz get a continuance besides fast and pray.

¶ 29 Defendant testified that on the day of her meeting with the investigators, she left work at 26th and California, took the bus to Ogilvie Transportation Center, took a train home, then drove to Old Orchard Mall. She admitted she was wearing her CCSAO identification card at the meeting, but stated that it was on the lanyard that also contained her train and bus passes along with her work identification.

¶ 30 Defendant testified that her intuition told her that Munoz's case was a lie and she got that sense before the meeting at the restaurant, and that she went there not expecting to be paid any money. She testified that she accepted the $800.00 from Munoz to "help him cleanse himself

and go through a cleansing process so that some good things could come from something negative in his life."

¶ 31 After the meeting at the restaurant, defendant was detained and taken to the Skokie courthouse. Defendant insisted that she was not seeking a bribe or to use her office to influence the outcome of a case.

¶ 32 Defendant rested.

¶ 33 Following closing arguments, the trial court found defendant guilty of two counts of bribery, two counts of official misconduct, and one count of theft by deception. The trial court acquitted defendant of the wire fraud count. In his ruling, the trial court judge stated that he looked to the "totality of the circumstances" when making his decision. He further stated: "The defendant testified herself. I found her testimony to be very suspect. I found her testimony to be self serving, and frankly the fact that she has taken $750 to pray and fast for somebody with no specifics I find to be very very unbelievable and disingenuous." The trial court judge noted, "[t]he fact of the matter is she took the $800 at that point in time while wearing the State's Attorney [*sic*] office lanyard." Based on the evidence and facts of the case, the trial court judge went on to find:

> "there is an indication to me of proof beyond a reasonable doubt that she knew exactly what she was doing.
>
> If she is as holy as she says she is, and maybe she is in parts of her life, I don't know why you need to take $800 in order to get a criminal case to go away when all the parties on the other side of the table are telling them that they have a criminal case, they have evidence and there is inculpatory or what we call incriminating

> evidence such as a breathalyzer and she is telling people she can make this go away and gives anecdotes about how evidence disappears on particular cases.
>
> Whether or not her motivations were greed or something else, I really don't know and frankly I don't have to come to that conclusion. But I believe this is an ongoing conversation. *** I believe that she agreed and solicited money in exchange for, at least the impression that she could influence a particular case."

The judge then concluded:

> "I believe she used her office to convince others that she could do so, and the mere fact that she might not have been proven to have gone on the computer to get names of witnesses or the police officers. She made specific representations, she wanted names of all parties involved, and she also said, and I believe this to be true, she would make sure that the witnesses and police officer would not show up in the same case."

¶ 34 Following the trial court's finding of guilty, defendant filed a motion for a new trial and a supplemental motion for a new trial. Prior to the hearing on the motion, defense counsel moved to withdraw because defendant reported him to the ARDC alleging ineffective assistance of counsel for failing to call several witnesses on her behalf. The trial court judge stated that it was his practice to advise defendants at the time defense counsel rested that there would be no more witnesses called and inquire whether the defendant had discussed calling any additional witnesses with counsel. The trial court asked defendant if he so advised her, and she responded

that she did not recall. The trial court stated that it believed it had asked defendant whether she agreed with trial counsel's decision not to call additional witnesses.

¶ 35 The trial court judge then asked defendant what other witnesses she wanted to call at trial and she responded that she had given counsel a list of ten or more people who would attest to the credibility of her prayer work. The judge asked defendant how the witnesses would have affected the outcome of this trial and defendant stated, "If I had the witnesses present to testify on my behalf, they could have testified to the fact that what I do is prayer work to help people and nothing else." Defense counsel stated that defendant gave him a list of witnesses, but none of them were relevant to this criminal case as they were all people who, among other things, wanted spirits removed from their house. Counsel said he told defendant to pick two witnesses that he could prepare for mitigation. Defense counsel also stated that he prepared defendant for trial and the testimony she provided was not what he expected.

¶ 36 The trial court found:

> "[the] decisions that were made were trial strategy decisions. The defendant acceded to those decisions. I specifically asked, again, if somebody can tell me I didn't, I will rephrase my words here, but I believe I did, and the defendant chose to testify herself as a client has the right to testify if they so desire, client, slash, defendant. I don't believe there is any [*sic*] *Krankel* issues here."

¶ 37 The trial court allowed defense counsel to withdraw and appointed a public defender to represent defendant in posttrial proceedings.

¶ 38 Defendant's assistant public defender filed a new motion for a new trial, which included defendant's claim that trial counsel was ineffective. The prosecutor told the court that he had

contacted trial counsel to determine counsel's availability to testify at the hearing on the motion. The trial court stated that it had already conducted a preliminary *Krankel* hearing but that there "may be additional things that come out." However, at a subsequent hearing, the prosecutor stated that because the court conducted *Krankel* questioning already, there was no need to have trial counsel to return to court for the ineffective assistance hearing. Defendant's public defender agreed and stated, "We are just going to stand on those particular issues in our motion."

¶ 39 The trial court judge denied the motion for a new trial. In doing so, the judge stated that "there was a pre-*Krankel* hearing that was conducted in this matter when [defendant] originally filed a motion for new trial and attempted to fire [trial counsel]***." The judge further stated that after he questioned defense counsel he did not feel that there were allegations of ineffective assistance that merited additional investigation. The trial court denied the motion for a new trial.

¶ 40 A sentencing hearing followed. The trial court first merged all the counts into "Count 1," bribery, and entered judgment on "Count 1." The trial court sentenced defendant to 60 days in the Cook County jail and two years felony probation. Defendant filed a motion to reconsider the sentence, which was denied. Defendant now appeals her conviction.

¶ 41 II. Analysis

¶ 42 Initially we note that defendant argues that there was insufficient evidence to convict her of official misconduct and theft by deception. However, the trial court merged those convictions into "Count 1," bribery pursuant to section 33-1(d) of the Code of Criminal Procedure (Code). 720 ILCS 5/33-1(d) (West 2010).[1] "The effect of a trial court merging one conviction into another conviction is vacatur of the merged conviction." *People v. Betance-Lopez*, 2015 IL App (2d) 130521, ¶ 61; *People v. Jones*, 337 Ill. App. 3d 546, 555 (2003) ("because those convictions

[1] Defendant's *mittimus* reflects only a conviction for one count of bribery pursuant to section 33-1(d) of the Code.

merged into one conviction of aggravated unlawful use of a weapon, we need address only the evidence of that offense"); see *People v. Kargol,* 219 Ill. App. 3d 66, 75 (1991) (merger results in vacation of merged convictions). As such, when the trial court merged the convictions in Counts 2, 3, 4 and 5 into Count 1, the convictions for Counts 2-5 were vacated by operation of law. See *id*. Therefore, we will consider the sufficiency of the evidence to convict defendant on the remaining bribery conviction.

¶ 43 A. Sufficiency of the Evidence

¶ 44 Defendant first argues that the State failed to prove beyond a reasonable doubt that she was guilty of bribery. The due process clause of the fourteenth amendment to the United States Constitution requires that a person may not be convicted in state court "except upon proof beyond a reasonable doubt of every fact necessary to constitute the crime with which he is charged." *People v. Cunningham*, 212 Ill. 2d 274, 278 (2004) (quoting *In re Winship,* 397 U.S. 358, 364 (1970)). When reviewing the sufficiency of the evidence in a criminal case, a reviewing court's 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 crime beyond a reasonable doubt." (Emphasis in original.) *Jackson v. Virginia,* 443 U.S. 307, 319 (1979); *People v. Collins*, 106 Ill. 2d 237, 261 (1985). Under this standard, a reviewing court must allow all reasonable inferences from the record in favor of the prosecution. *Cunningham,* 212 Ill. 2d at 280. This standard applies in all criminal cases, regardless of the nature of the evidence. *Id*. at 279. "[A] reviewing court will not reverse a criminal conviction unless the evidence is so unreasonable, improbable or unsatisfactory as to create a reasonable doubt of the defendant's guilt." *People v. Rowell*, 229 Ill. 2d 82, 98 (2008). In a bench trial, the credibility of the witnesses and the weight to be given to their testimony is decided by the trial court, and its

judgment should not be set aside unless the proof is so unsatisfactory as to cause a reasonable doubt of guilt to appear. *People v. Herron*, 76 Ill. App. 3d 437, 440 (1979).

¶ 45 The trial court found defendant guilty on two counts of bribery pursuant to sections 33-1(d) & (e) of the Code of Criminal Procedure. 720 ILCS 5/33-1(d), (e) (West 2010). Her convictions were then merged into "Count 1," bribery, which was bribery pursuant to section 33-1(d) of the Code. That section of the Code states that a person commits bribery when: "He or she receives, retains or agrees to accept any property or personal advantage which he or she is not authorized by law to accept knowing that the property or personal advantage was promised or tendered with intent to cause him or her to influence the performance of any act related to the employment or function of any public officer, public employee, juror or witness[.]" 720 ILCS 5/33-1(d) (West 2010). In order to commit the offense of bribery, the statute does not require that the act to be influenced ever be performed. *People v. Dougherty*, 160 Ill. App. 3d 870, 874 (1987). "[A] person's receipt of property is not alone enough to sustain a bribery conviction." *People v. Jordan*, 15 Ill. App. 3d 672, 675 (1973). "[A]ll that is required under section 33-1(e) of the statute is that the money defendant accepted was paid to him pursuant to an understanding that it be used to influence the performance of a public employee." *Dougherty*, 160 Ill. App. 3d at 875. As stated in *People v. Wright*,

> "The language of the statute, however, does not require the performance of an illegal act. The statute requires only that the defendant received, retained or agreed to accept the money knowing that it was offered with the intent that it influence the defendant as a public officer in the performance of an official act." *People v. Wright*, 105 Ill. App. 3d 187, 190 (1982).

¶ 46 Defendant argues that the State failed to prove her guilty of bribery beyond a reasonable doubt where it failed to present evidence that defendant knew or understood that Munoz tendered her the money with the intent to improperly influence her as a public employee because: (1) defendant did not advertise on her website that she worked for the CCSAO, (2) defendant never specifically stated that she would do anything other than pray and fast for DiSalvo or Munoz, (3) defendant and the investigators never specifically discussed that the purpose of any payment was to influence defendant in her role at the CCSAO, and (4) there was no evidence that defendant ever did anything to tamper with the real "Ruben Ortega" case. However, defendant's argument ignores other evidence in the record from which the factfinder could have reasonably inferred that defendant knew that the money she received was paid with the intent to influence her in the performance of her duties at the CCSAO. Specifically, there was evidence, which the trial court found to be reliable, that: defendant made her employment at the CCSAO known to the undercover investigators; defendant discussed working on cases in which evidence disappeared; defendant discussed being able to prevent witnesses from showing up to court at the same time; defendant requested all the names of the persons involved in Munoz's criminal DUI case; defendant inquired about the evidence in Munoz's case, specifically a breathalyzer; and defendant in fact accepted $800.00, $750.00 of which she requested be passed to her under the table, from the investigators. Viewing the evidence in the light most favorable to the prosecution, we find that a rational trier of fact could have found that there was sufficient evidence that defendant was guilty of bribery beyond a reasonable doubt. Therefore, defendant's conviction for bribery is affirmed. See *People v. Shelton*, 252 Ill. App. 3d 193, 207 (1993). Furthermore, while defendant argues that she only agreed to pray and fast in exchange for the $800.00, that argument is based almost entirely on her trial testimony, testimony that the trial

court judge found to be "very suspect" and "self serving." We see no basis in the record upon which we could set aside this credibility finding. See *Herron*, 76 Ill. App. 3d at 440 (in a bench trial, the credibility of the witnesses and the weight to be given to their testimony is decided by the trial court, and its judgment should not be set aside unless the proof is so unsatisfactory as to cause a reasonable doubt of guilt to appear).

¶ 47 Defendant cites two cases she believes to be analogous to this case: *People v. Jordan*, 15 Ill. App. 3d 672 (1973) and *People v. Adam*, 238 Ill. App. 3d 733 (1992). However, we find these cases to be distinguishable from the case at bar. In *Jordan*, an ambulance was called to the scene of an accident. Upon reaching the scene, the driver of the ambulance approached an officer and "slipped" him a ten-dollar bill. *Jordan*, 15 Ill. App. 3d at 674. There was no evidence, however, that the officer in his official capacity had done anything to warrant the receipt of the money. *Id*. at 676. There was no evidence that the officer summoned that particular ambulance, and most important there was no evidence that the officer accepted the money knowing that the driver tendered it to him with the intent to influence his performance of his duty. *Id*.

¶ 48 Here, there is evidence that when Munoz tendered $800.00 to defendant, it was known that defendant worked at the CCSAO and she was wearing a CCSAO lanyard at the time the money was tendered; defendant was accepting the $800 to assist Munoz in his criminal DUI case; defendant told the investigators that she had worked on cases where evidence disappeared and she could make witnesses not show up on the same dates; defendant asked for all the witnesses involved in Munoz's criminal case and whether there was any evidence in his case, specifically a breathalyzer. As such, while there was no evidence in Jordan to show that the $10 was tendered to have the officer act in any way—in fact, there was no evidence as to why the

money was tendered at all—here there is plenty of evidence to suggest why the money was tendered and that it was tendered for the purpose of defendant using her office to affect the outcome of Munoz's criminal case.

¶ 49 Further, in *Adams*, the appellate court reversed a bribery conviction where the State failed "prove that defendant knowingly received or solicited anything of value for filling out the false application on the date in question." *Adams*, 238 Ill. App. 3d at 741. Here, it is uncontested that defendant accepted $800 dollars from Munoz. Therefore, *Adams* is also distinguishable.

¶ 50 B. Ineffective Assistance of Counsel

¶ 51 1. *Pro Se* Ineffective Assistance of Trial Counsel

¶ 52 Defendant first argues that the trial court erred when it denied her ineffective assistance of counsel claim contained in her motion for a new trial because the trial court judge misinterpreted the record at the preliminary *Krankel* hearing. Under *Krankel*, when a defendant presents a *pro se* posttrial claim of ineffective assistance of counsel, the trial court should first examine the factual basis of the defendant's claim. *People v. Moore*, 207 Ill. 2d 68, 77-78 (2003). If the trial court determines that the claim lacks merit or pertains only to matters of trial strategy, then the court need not appoint new counsel and may deny the *pro se* motion. *Id.* However, if the allegations show possible neglect of the case, new counsel should be appointed. *Id*. Here, defendant argues that, during the *Krankel* hearing, the trial court judge improperly stated that he believed he had questioned defendant as to whether she wanted to call any other witnesses before resting her case at trial, yet the record shows that the judge never made such an inquiry. Despite this misunderstanding, though, the trial court judge allowed defendant to retain

new counsel for her post-trial motions.[2] Although the trial court judge inaccurately recalled his comments during the *Krankel* hearing, we find defendant's argument to be without merit where trial counsel made a decision not to call witnesses he deemed irrelevant. Therefore, the trial court did not abuse its discretion when it denied defendant's motion for a new trial based on trial counsel's alleged ineffectiveness. *People v. Gibson*, 304 Ill. App. 3d 923, 930 (1999) (whether to grant a motion for new trial is addressed to the sound discretion of the trial court, and a court of review will not reverse the trial court's ruling absent a clear abuse of discretion).

¶ 53 To establish ineffective assistance of trial counsel, a defendant must demonstrate that counsel's representation was objectively unreasonable and, but for the attorney's errors, there was a reasonable probability the outcome at trial would have been different. *Strickland v. Washington*, 466 U.S. 668, 694 (1984); *People v. Harre*, 263 Ill. App. 3d 447, 451 (1994). A defendant's claim must satisfy both parts of the *Strickland* test, and the failure to satisfy either part precludes a finding of ineffective assistance of counsel. *People v. Patterson*, 192 Ill. 2d 93, 107 (2000).

¶ 54 In addition, a defendant must overcome the strong presumption that counsel's challenged actions were a part of sound trial strategy and not due to incompetence. *People v. Coleman*, 183 Ill. 2d 366, 397 (1998). Decisions concerning which witnesses to call at trial and what evidence to present on defendant's behalf ultimately rest with trial counsel. *People v. Ramey*, 152 Ill. 2d 41, 53-55 (1992). These types of decisions have long been viewed as matters of trial strategy (*People v. Haywood*, 82 Ill. 2d 540, 543-44 (1980)), which are generally immune from claims of ineffective assistance of counsel. *People v. Guest*, 166 Ill. 2d 381, 394 (1995). This general rule is predicated upon our recognition that the right to effective assistance of counsel refers to

[2] Trial counsel had filed a motion to withdraw as defendant's counsel because defendant filed an ARDC report against him for failing to call certain witnesses to testify at trial.

"competent, not perfect representation." *People v. Stewart*, 104 Ill. 2d 463, 492 (1984). Hence, " '[m]istakes in trial strategy or tactics or in judgment do not of themselves render the representation incompetent.' " *People v. Hillenbrand*, 121 Ill. 2d 537, 548 (1988). The only exception to this rule is when counsel's chosen trial strategy is so unsound that "counsel entirely fails to conduct any meaningful adversarial testing." *Guest*, 166 Ill. 2d at 394.

¶ 55 Here, defendant argues that trial counsel was ineffective because he failed to call 12-14 witnesses at trial that she identified to him. Defendant states that these witnesses would have testified that she was a legitimate provider of spiritual healing and prayer services. However, defendant's trial counsel stated that he chose not to call these witnesses during defendant's case in chief because none of the witnesses claimed to receive any "court case" services from defendant. Instead, the witnesses had all received services from defendant that were aimed at removing spirits from their homes. Trial counsel stated that he would have called two of these witnesses to testify at the sentencing hearing; however, defendant filed her ARDC report prior to sentencing. Therefore, these witnesses would not be able to speak to defendant's "court cases" services, which is the only service at issue in this case. In fact, defendant testified that she had never provided services for criminal court cases before DiSalvo and Munoz approached her. *People v. Eyler*, 133 Ill. 2d 173, 217 (1989) (relevant evidence is defined as evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable than it would be without the evidence). Based on the evidence presented in this case, we find defendant unable to overcome the strong presumption that trial counsel's decision not to call those 12-14 witnesses was sound trial strategy (*Coleman*, 183 Ill. 2d at 397), especially where the testimony these witnesses would have allegedly provided at trial was irrelevant to the criminal conviction at issue. Further, although defendant argues that the witnesses' testimony

could have impacted the outcome of the case (see *Strickland*, 466 U.S. at 694 (defendant further failed to show that there was a reasonable probability the outcome at trial would have been different had her trial counsel called those witnesses to testify at trial)), we disagree. First, contrary to defendant's assertion, the trial court judge never made a finding that he believed the other services offered by defendant were a sham. Instead, the judge found that, in this case, he found it hard to believe that someone would pay another person $800.00 to pray and fast on their behalf. Further, whether defendant was a legitimate provider of spiritual healing and prayer services is irrelevant to whether she lured Munoz into giving her $800 in exchange for using her office to help him in his DUI criminal case. Even if we assume defendant is a legitimate provider of spiritual healing and prayer services, that does not affect whether she lured Munoz into giving her $800.00 this case. Therefore, evidence of a legitimate spiritual healing and prayer services business is not relevant to the bribery that occurred in this case. See Ill. R. Evid. 401 (eff. Jan 1, 2011) (" 'Relevant evidence' means evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence."). As such, although the trial court judge may have misremembered the record on the *Krankel* hearing (*Alpha School Bus Co. v. Wagner*, 391 Ill. App. 3d 722, 734 (2009) (we may affirm the judgment of the trial court on any basis in the record)), where defendant is unable to ultimately show that trial counsel was ineffective, we affirm the judge's ruling dismissing defendant's motion for a new trial based on that ineffective assistance of trial counsel claim. *Gibson*, 304 Ill. App. 3d at 930 (new trials should be granted only when the opposite conclusion is clearly apparent to the reviewing court or the trier of fact's findings are unreasonable, arbitrary and not based on the evidence).

¶ 56 2. Ineffective Assistance of Post-Trial Counsel

¶ 57 Next, defendant argues that, after being appointed new counsel to represent her in posttrial matters, her posttrial counsel was ineffective where he relied on the same ineffective assistance of counsel claim that she had presented *pro se* during the *Krankel* hearing, without attaching any affidavits in support of that claim. Defendant argues that her ineffective assistance of counsel claim—that there were 12-14 witnesses who should have been called to testify that she was a legitimate provider of spiritual healing and prayer services—depended on matters outside the trial record, namely their testimony, and posttrial counsel failed to make their testimony a part of the record by way of affidavits so that the trial court and reviewing courts could properly review those claims.

¶ 58 As we have already found that trial counsel was not ineffective for failing to call the 12-14 witnesses identified by defendant at trial, it follows that posttrial counsel could not be ineffective for failing to provide affidavits in support of that meritless claim. Again, to establish ineffective assistance of trial counsel, a defendant must demonstrate that counsel's representation was objectively unreasonable and, but for the attorney's errors, there was a reasonable probability the outcome at trial would have been different. *Strickland*, 466 U.S. at 694. Where trial counsel was not ineffective in choosing not to call those 12-14 witnesses at trial, it follows that posttrial counsel was not ineffective for failing to provide affidavits in support of that meritless claim. Further, even if the affidavits showed definitively that defendant had a legitimate spiritual healing and prayer service business, that fact is irrelevant to whether she committed bribery in this specific case.

¶ 59 C. Judicial Prejudice

¶ 60 Defendant last argues that, upon remand, we should have her case assigned to a different judge. However, because we are affirming the trial court's ruling and not remanding the matter, we need not address this issue.

¶ 61 III. Conclusion

¶ 62 For the reasons above, we affirm the trial court's rulings and affirm defendant's conviction.

¶ 63 Affirmed.