

No. 1-15-3337

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IN THE APPELLATE COURT  
OF ILLINOIS  
FIRST JUDICIAL DISTRICT

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PEOPLE OF THE STATE OF ILLINOIS	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County.
	)	
v.	)	No. 14500567101
	)	
AMANDA GRIFFIN,	)	Honorable
	)	Matthew Carmody,
Defendant-Appellant.	)	Judge Presiding.

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

**ORDER**

*Held:* Defendant's misdemeanor battery conviction is affirmed where (1) the State proved beyond a reasonable doubt that defendant was the person who attacked the victim, (2) the State did not make improper comments during closing argument, and (3) defendant failed to establish she received ineffective assistance of counsel.

¶ 1 Following a bench trial, the trial court convicted defendant, Amanda Griffin, of misdemeanor battery and sentenced her to one year of conditional discharge. Defendant appeals, arguing (1) the State failed to prove her guilty beyond a reasonable doubt, (2) the prosecutor repeatedly made prejudicial comments during closing argument that were unsupported by the

evidence, and (3) she received ineffective assistance of counsel. For the reasons that follow, we affirm.

¶ 2

## I. BACKGROUND

¶ 3

At trial, Deborah Binol testified that she and her son were at their home during the evening of November 7, 2014. Binol was in the kitchen having a glass of wine while talking to her friend, Mary Villies, over a cordless telephone. Binol's son was playing on a computer in the dining room.

¶ 4

Upon hearing the doorbell ring, Binol looked out the window and saw defendant and another woman, Kaitlyn Bailey, standing on the front porch. Defendant and Bailey had previously been to Binol's house to hang out with Binol's daughter, Heather. Binol recalled meeting defendant five or six times.

¶ 5

Binol testified that she opened the door, while still on the phone with Villies. The women asked whether Heather was home. Villies testified that, through the phone, she heard a girl "with like a squeaky voice" ask for Heather. Binol testified she told the girls that Heather had gone to the mall. According to Binol, defendant then said, "give the f\*\*\*ing c\*\*\* b\*\*\*\*\*." Villies testified the girl said, "well, you tell that c\*\*\* fat a\*\* b\*\*\*\*\*, Heather."

¶ 6

Binol testified that defendant started dragging her by the top of her hair down the front steps. Binol dropped the phone. At the bottom of the stairs, Binol was able to break away; however, defendant then "came back, grabbed [Binol] by [her] clothes and flung [Binol] onto the front lawn." Defendant began stomping on Binol's arm and chest with boots as Binol screamed and tried to roll away. According to Binol, Bailey recorded the incident with her cellular phone, telling defendant to "break the b\*\*\*\*\*'s arm." Eventually, Binol heard a loud crack and felt her "whole arm go hot." Afterward, defendant and Bailey drove away in somebody else's car.

¶ 7 Binol called the police. When Sergeant Lynch arrived, he asked Binol if she wanted medical attention. Binol responded, "just leave me alone." She explained that she "was in excruciating pain." Lynch testified that when he arrived at Binol's home, he saw Binol lying in the front yard, on her back. Lynch knew Binol from "past instances." According to Lynch, Binol became "very belligerent." Lynch observed that her speech was slurred and her breath smelled strongly of alcohol. Lynch testified "it was hard to get too much information out of her" and that when he asked whether she wanted medical treatment, Binol "[b]ecame very belligerent" and acted "very uncooperative." Lynch could not tell whether Binol was in pain. He helped her back into the house and left.

¶ 8 Lynch testified that he returned to Binol's house later that day. According to Lynch, "[a]t this time, [Binol] didn't want to say that [Bailey] is the one that did this to her." However, Lynch testified Binol told him "quite a few times" that Bailey attacked her. Lynch was unsure how many times Binol identified Bailey as her attacker but he "would assume" it was more than three times. Lynch testified Binol said defendant pulled her by her shoulder but did not mention "anything about stomping."

¶ 9 Binol testified that she did not identify Bailey as her attacker. She said she told the police that Bailey was present and that defendant and Bailey grabbed her and pushed her down the stairs. She explained, "[m]aybe they took it as me saying [Bailey], but I used both girls together, because I was in excruciating pain, and both girls were at my front door."

¶ 10 Later that evening, Binol, her husband, son, and daughter went to the police station. According to Lynch, Binol was less belligerent at this time, and she said defendant was actually the one that attacked her and Bailey "just stood in the yard." Binol testified that somebody at the

police department called an ambulance, which transported her to a hospital. Binol had surgery on her shoulder the next day.

¶ 11 Sergeant Argelio Lopez testified that on November 12, Binol told him that she had a home security video of the incident. Binol admitted that she told the police she had a video of the incident. An entry to the half-sheets on January 30, 2015, states "no surveillance video."

¶ 12 Defendant testified that she was not at or around Binol's house on November 7 between 4 and 6 p.m. She also denied making any physical contact with Binol on that date. She acknowledged that she had been to Binol's home sometime in June 2014 and had previously met Binol. She described Binol's daughter, Heather, as an acquaintance. Defendant was asked whether she had a "falling out" with Heather prior to November 7, and defendant responded, "Not I personally." She agreed that Bailey was her friend.

¶ 13 Sally Jones testified that she had a son and that she had known defendant for about five years. At around 2 or 3 p.m. on November 7, Jones was watching television in her kitchen. From the kitchen, Jones could see the stairs to the upstairs of her home as well as the front and back doors to her house. The home had a third door in the laundry room, but a treadmill blocked it.

¶ 14 Defendant, Bailey, and another person entered Jones' home, and defendant and Bailey went upstairs. In total, five people were upstairs. Jones remained in the kitchen or living room area. At around 7 or 8 p.m., police officers arrived, and defendant and Bailey left with them. Jones denied seeing defendant or anybody else leave the house until that time. She testified nobody left between 3 and 7 p.m. Jones never went upstairs at any point.

¶ 15 In rebuttal, Eddie Binol, Binol's fifteen-year-old son, testified that he was in the living room, at his computer, and saw defendant and Bailey at his house at around 5 p.m. on November

7. He heard defendant say something about "sending her a message." After that, Eddie said, defendant grabbed Binol's hair and "stomped" on Binol on the lawn.

¶ 16 On this evidence, the trial court found defendant guilty of battery. In doing so, the court recognized that Binol initially identified Bailey as her attacker. However, the court noted, Binol later identified defendant as her attacker and identified her in court. The court found defendant's own evidence established defendant and Bailey were together on the date of the attack. The court noted that "defendant would have the Court believe that she never ever went to" Binol's house but "there [was] a gaping hole in the amount of time that the witness, Ms. Jones, was not able to see [defendant]." In fact, the court found, Jones' testimony actually supported Binol's testimony that defendant and Bailey were together on the day of the attack and lent "credibility that the two of them conspired to go to the home of Ms. Binol and commit a battery." The court told defendant, "I believe you were on that porch, and I believe you committed that battery. And I don't believe a word you testified to."

¶ 17 In October 2015, the trial court sentenced defendant to one year of conditional discharge, with the first 60 days to be served in the Cook County Department of Corrections. Later that month, defendant filed a motion for new trial, which the trial court denied. Defendant also filed a motion to reconsider her sentence. In response to the motion, the court modified defendant's sentence to allow her to serve the remaining 30 days of her sentence on electronic home monitoring.

¶ 18 This appeal followed.

¶ 19 II. ANALYSIS

¶ 20 On appeal, defendant argues (1) the State failed to prove her guilty beyond a reasonable doubt, (2) the prosecutor repeatedly made prejudicial comments during closing argument that

were unsupported by the evidence, and (3) she received ineffective assistance of counsel. We address each of defendant's arguments in turn.

¶ 21 A. Sufficiency of the Evidence

¶ 22 Defendant first posits the evidence was insufficient to sustain her conviction because the State failed to prove beyond a reasonable doubt that she was the perpetrator of the attack. She observes that Binol originally identified Bailey as her attacker at least three times and only later identified defendant after going to the police station with her family. Defendant also notes Lynch testified Binol was belligerent, intoxicated, and refused medical treatment when the police arrived at her home. Defendant contends this cast "grave doubts" on Binol's credibility. Defendant also argues Binol's testimony at trial about the incident itself was impeached by Lynch's testimony. In addition, defendant posits, Binol lied to the police about having a security video of the incident. Based on the foregoing, defendant contends the State failed to prove defendant committed the attack, especially in light of Jones' testimony that defendant was at her home at the time of the incident.

¶ 23 At the outset, defendant argues that we should employ a *de novo* standard of review because the facts of this case are not in dispute. In support of her argument, defendant cites to *People v. Smith*, 191 Ill. 2d 408, 411 (2000). However, the issue in *Smith* was whether the undisputed evidence showed the defendant committed armed violence within the meaning of the statute. See *id.* at 411-13. Here, the issue is whether the State proved beyond a reasonable doubt that defendant was the attacker, which is a factual question centering on the credibility of witnesses and the reasonable inferences to be drawn from the evidence. Accordingly, *de novo* review is inappropriate. See *People v. Kibayasi*, 2013 IL App (1st) 112291, ¶ 39.

¶ 24 Instead, we must determine whether, after viewing the evidence in the light most favorable to the prosecution, "any rational trier of fact could have found beyond a reasonable doubt the essential elements of the crime." *People v. Brown*, 2013 IL 114196, ¶ 48 (citing *Jackson v. Virginia*, 443 U.S. 307, 318-19 (1979)). In making this evaluation, we may not substitute our judgment for that of the trial court on issues concerning the credibility of witnesses or the weight of the evidence. *People v. Jackson*, 232 Ill. 2d 246, 281 (2009). Reversal is warranted only where "the evidence is so unreasonable, improbable, or unsatisfactory as to justify a reasonable doubt of the defendant's guilt." *Brown*, 2013 IL 114196, ¶ 48.

¶ 25 A person commits battery if she knowingly, without legal justification, causes bodily harm to an individual or makes physical contact of an insulting or provoking nature with an individual. 720 ILCS 5/12-3(a) (West 2014). Defendant's sole contention in this case is that the State failed to prove she was the person who attacked Binol.

¶ 26 Viewing the evidence in the light most favorable to the prosecution, a rational trier of fact could have found defendant was the individual who attacked Binol. Binol had previously met defendant and identified her at the police station and at trial as her attacker. Binol's testimony alone was sufficient to sustain defendant's conviction. See *People v. Siguenza-Brito*, 235 Ill. 2d 213, 228 (2009) (the testimony of a single witness, if positive and credible, is sufficient to support a conviction). Moreover, Binol's testimony was corroborated by the testimony of her son, Eddie, who likewise identified defendant as the attacker. Villies also provided testimony regarding the voice she heard over the phone, and the court then had the opportunity to listen to defendant as she testified. Further, Jones testimony tended to corroborate Binol's testimony that defendant and Bailey were together on the day of the attack.

¶ 27 Defendant attempts to discredit Binol's and Eddie's testimony on several bases. Specifically, defendant argues Eddie was biased, had limited mental capacity, offered testimony that differed from Binol's in some respects, and was "coached" to provide testimony supporting Binol's.<sup>1</sup> With respect to Binol's testimony, defendant notes Lynch testified Binol was belligerent, refused medical treatment, and initially identified Bailey as her attacker multiple times. Defendant's arguments fail, however, because the trial court had the opportunity to hear all of the testimony at trial, and it was for the trial court to determine Binol's and Eddie's credibility in light of these alleged shortcomings. *Jackson*, 232 Ill. 2d at 281. In this regard, we note the court explicitly observed that Binol initially identified Bailey as her attacker. Nevertheless, the court evidently found Binol's testimony to be credible, and the court found defendant's testimony was not. We will not substitute our judgment for that of the trial court. Furthermore, Binol provided an explanation for Lynch's testimony that Binol initially identified Bailey, testifying as follows: "[m]aybe [the police] took it as me saying [Bailey], but I used both girls together, because I was in excruciating pain, and both girls were at my front door." She also testified she was drinking wine, explaining Lynch's testimony that her breath smelled of alcohol.

¶ 28 Further, we are not persuaded by defendant's claim that Binol's testimony was unbelievable because it differed in some respects from the testimony of Lynch and Eddie. It is not our role to "reevaluate the credibility of witnesses in light of inconsistent testimony and ostensibly retry the defendant on appeal." *People v. Howard*, 376 Ill. App. 3d 322, 329 (2007). Instead, it was for the trial court to determine whether these minor inconsistencies undermined the credibility of Binol's testimony. *Id.*

¶ 29 In sum, the evidence was sufficient to sustain defendant's conviction.

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<sup>1</sup> We note that defendant contends Eddie suffered "from disabilities, was in therapy, and was regressing." As the State correctly points out, however, this evidence was established at defendant's sentencing hearing, not during trial; accordingly, we reject defendant's attempt to rely on such evidence in challenging Edward's credibility.



¶ 30

B. Prosecutorial Misconduct

¶ 31

Defendant next claims the prosecutor engaged in prosecutorial misconduct by making prejudicial comments during closing argument that were unsupported by the evidence. Specifically, defendant takes issue with the following commentary, which the State made during rebuttal in response to defense counsel's argument that defendant was not at Binol's home.

"Well, judge, there is a problem with that. The problem is that there are multiple witnesses that put this defendant at the front door of Deborah Binol.

And even if you want to go and say, well, there is some in-discrepancies there, how can you possibly account for the fact that when [Villies] is on the phone with [Binol], if you recall how she characterized the voice on the other end of the phone. She couldn't tell who it was.

But, judge, you had the opportunity to listen to this defendant when she took the stand today. You heard her talk. You heard the pitch and tone of her voice. The way that [Villies] described the voice that she heard through the phone, as the person on the other side of that door at the victim's house matches exactly what this defendant's voice sounded like today in court when she was testifying.

But according to the defense, that must be the biggest coincidence in the world, because she wasn't there."

The prosecutor later stated as follows.

"Judge, in this case you have two witnesses that put this defendant at the doorstep of Ms. Binol. Two witnesses that say that this defendant was the person who caused Ms. Binol her injuries. One person that decided, or can say, that the voice, or can tell you about the voice of that person at the end on the phone. And we know, after hearing the defendant, it matches the defendant."

¶ 32 Defendant contends the prosecutor's comments were improper because (1) no evidence was presented that Villies ever identified the voice over the phone as "matching" defendant's, (2) Villies would not have been able to make a voice comparison during trial, as she would not have been in the courtroom when defendant testified, (3) no evidence was presented that defendant had a squeaky voice, and (4) the prosecutor improperly testified to his own opinion. Defendant acknowledges she did not object to the aforementioned comments; however, she urges us to review the comments under the plain-error doctrine. See *People v. Thompson*, 238 Ill. 2d 598, 613 (2010) ("[t]he plain-error rule bypasses normal forfeiture principles and allows a reviewing court to consider unpreserved claims of error in specific circumstances"). The first step in plain-error review is to determine whether any error occurred. *Id.*

¶ 33 Prosecutors have wide latitude in making closing arguments and may "comment on the evidence and any fair, reasonable inferences it yields." *People v. Glasper*, 234 Ill. 2d 173, 204 (2009). A prosecutor may also "discuss subjects of general knowledge, common experience, or common sense in closing argument." *People v. Beard*, 356 Ill. App. 3d 236, 242 (2005). However, prosecutors may not "argue assumptions or facts not based upon the evidence." *People v. Johnson*, 208 Ill. 2d 53, 115 (2003). We review a closing argument in its entirety and any challenged remarks in context. *Glasper*, 234 Ill. 2d at 204.

¶ 34 A conflict currently exists regarding the correct standard of review for closing arguments. See *People v. Donahue*, 2014 IL App (1st) 120163, ¶ 102. However, we need not resolve the conflict, because under either an abuse of discretion or *de novo* standard, defendant's argument fails. See *id.* ¶ 103.

¶ 35 Villies testified she heard a "squeaky" voice through the phone when Binol answered the door on the day of the attack. The trial court then had the opportunity to hear defendant's voice when she testified. It was entirely reasonable for the prosecutor to argue to the trial court that defendant's voice, which the trial court heard, matched the "squeaky" voice that Villies described hearing on the phone. The prosecutor was merely commenting on the evidence presented at trial and asking the trial court to use its common sense in determining the plausibility of the defense theory that Binol misidentified defendant as her attacker. See *Beard*, 356 Ill. App. 3d at 242 (where the defendant's theory was that the victim's roommate beat her, the prosecutor's argument that the roommate was not "terribly strong-looking" and would not have had the strength to cause the victim's injuries was not improper, as the jury saw the roommate testify and was familiar with her appearance; the prosecutor's argument "simply called upon to the jury to use its common sense and experience in judging the apparent strength of an individual in assessing the credibility of defendant's claim that the roommate caused the victim's injuries).

¶ 36 The cases on which defendant relies are readily distinguishable. In *People v. Linscott*, 142 Ill. 2d 22, 34-35 (1991), the prosecutor repeatedly claimed that hairs from the defendant "matched" those found on the victim and in the victim's apartment, when the State's expert refused to use the word "matched" and instead testified the hairs from the defendant were "consistent" with those found on the victim and in her apartment. Similarly, in *People v. Tillman*, 226 Ill. App. 3d 1, 19 (1991), the State improperly argued that the defendant's pubic hair was

found at the crime scene when the expert witness actually testified only that pubic hair found at the crime scene was similar to the defendant's pubic hair samples. In *People v. Giangrande*, 101 Ill. App. 3d 397, 403 (1981), the State commented that hair found on the tape of a box in which the victim's torso was found were those of the defendant, when a forensic scientist testified only that the hairs could have originated from the defendant.

¶ 37 In all three of the cases cited by defendant, the prosecutor improperly overstated the value of physical evidence that was presented. Here, however, the State in no way overstated the evidence. The State merely pointed out that Villies testified she heard a "squeaky voice" and then argued, based on the court's opportunity to hear defendant's voice when testifying, that defendant's voice matched the voice described by Villies. Thus, we find no error in the prosecutor's argument. As we have found no error, "there can be no plain error." *People v. Bannister*, 232 Ill. 2d 52, 71 (2008).

¶ 38 C. Ineffective Assistance of Counsel

Finally, defendant argues she received ineffective assistance of counsel where trial counsel failed to (1) file an answer asserting an alibi defense, (2) understand "rudimentary" trial procedures and evidentiary rules, (3) question defendant about her alibi location, (4) call any alibi witnesses who were with defendant at the time of the offense, (5) object to prosecutorial misconduct in the State's closing rebuttal argument, and (6) timely file a motion for new trial.

¶ 39 We review claims of ineffective assistance of counsel under the test set forth in *Strickland v. Washington*, 466 U.S. 668, 688 (1984). *People v. Manning*, 241 Ill. 2d 319, 326 (2011). Pursuant to *Strickland*, a defendant must show counsel's performance was deficient and that he suffered prejudice as a result. *Strickland*, 466 U.S. at 687. "In order to satisfy the deficient-performance prong of *Strickland*, a defendant must show that his counsel's performance

was so inadequate that counsel was not functioning as the 'counsel' guaranteed by the sixth amendment. Counsel's performance is measured by an objective standard of competence under prevailing professional norms." (Internal quotation marks omitted.) *Manning*, 241 Ill. 2d at 326-27. Moreover, a defendant "must overcome the strong presumption that the challenged action or inaction may have been the product of sound trial strategy." (Internal quotation marks omitted.) *Id.* at 327.

¶ 40 To satisfy the prejudice prong, a defendant "must show 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 694. A defendant may establish prejudice by showing "that counsel's deficient performance rendered the result of the trial unreliable or the proceeding fundamentally unfair." *Manning*, 241 Ill. 2d at 327 (quoting *People v. Jackson*, 205 Ill. 2d 247, 259 (2001)). The defendant carries the burden of establishing prejudice. *People v. Glenn*, 363 Ill. App. 3d 170, 173 (2006). We may dispose of a claim of ineffective assistance of counsel by considering the prejudice prong without first considering counsel's performance. *People v. Hale*, 2013 IL 113140, ¶ 17.<sup>2</sup>

¶ 41 First, we reject defendant's argument that counsel was ineffective for failing to file an answer asserting an alibi defense pursuant to Illinois Supreme Court Rule 413 (eff. July 1, 1982). Illinois Supreme Court Rule 413 requires a defendant to disclose to the prosecution "any defenses he intends to make at a hearing or trial" and furnish the prosecution with, *inter alia*, certain information regarding the people he intends to call as witnesses and, "if the defendant intends to prove an alibi, specific information as to the place where he maintains he was at the

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<sup>2</sup>Our court has held that when the basis of a defendant's ineffective assistance claim relies on matters outside of the record, the claim is better brought in a collateral proceeding. *People v. Kirklin*, 2015 IL App (1st) 131420, ¶ 127. However, we find the record in this case is sufficient to resolve defendant's claims.

time of the alleged offense." Ill. S. Ct. R. 413(d) (eff. July 1, 1982). However, defendant's contention that counsel was ineffective for failing to comply with Rule 413(d) fails because defendant has failed to show how he was prejudiced in any way by counsel's alleged failure to comply with the rule. "The purpose of the discovery rules is to prevent surprise or unfair advantage and to aid in the search for the truth." (Internal quotation marks omitted.) *People v. Wright*, 2013 IL App (1st) 103232, ¶ 65. Thus, if any party was prejudiced by counsel's alleged failure to comply with Rule 413(d), it was the State, not defendant. Indeed, defendant has not argued she was in any way curtailed from presenting evidence relating to her alleged alibi defense. See *id.* (noting that courts have recognized the exclusion of alibi testimony is a possible sanction for a Rule 413 violation). Accordingly, any claim that counsel was ineffective for failing to comply with Rule 413(d) is meritless.

¶ 42 Defendant next argues defense counsel demonstrated a lack of understanding of "rudimentary trial procedures and evidence," which required the trial court to frequently intervene to guide counsel through basic questioning and correct counsel's mistakes. In support of her contention, defendant cites to isolated portions of the record in which the trial court sustained the State's objections to counsel's questioning and made comments to counsel on the correct manner in which to proceed. In arguing these portions of the transcript demonstrate that counsel was ineffective, defendant relies on *People v. Bryant*, 391 Ill. App. 3d 228 (2009), and *People v. Baines*, 399 Ill. App. 3d 881 (2010).

¶ 43 In *Bryant*, the defendants' attorney repeatedly indicated to the jury that the defendants would testify and set forth in detail what the defendants' testimony would allegedly establish. *Bryant*, 391 Ill. App. 3d at 230. However, despite promising and suggesting to the jury that it would hear evidence supporting the defense, counsel did not present any evidence whatsoever.

*Id.* at 235, 239. Instead, counsel attempted to support the defense theory by cross-examining the State's witnesses. *Id.* at 239-40. Counsel was unsuccessful in doing so, however, because the trial court repeatedly sustained the State's objections to counsel's questions. *Id.* at 234-35, 240. The *Bryant* court found counsel's conduct fell below an objective standard of reasonableness where counsel failed to adduce available evidence that would support an otherwise unsupported defense. *Id.* at 242.

¶ 44 In *Baines*, the defendant had to guide his own defense counsel during defendant's direct examination. *Baines*, 399 Ill. App. 3d at 888. During this direct examination, counsel elicited a damning admission from the defendant. *Id.* Nonetheless, counsel then continued questioning the defendant in a manner that bolstered the State's case. *Id.* Further, counsel's cross-examination of the victim showed counsel "was clearly and wholly unaware of many basic facts." *Id.* at 894.

¶ 45 *Bryant* and *Baines* are both distinguishable. Unlike in *Bryant*, here, defense counsel did not promise evidence he did not deliver, and counsel presented evidence through the testimony of Jones and defendant to support the theory that Binol misidentified defendant as her attacker. Further, contrary to *Baines*, counsel did not elicit a damning admission from defendant during direct examination, nor did counsel's examination of the State's witnesses show counsel was in any way unfamiliar with the facts of the case. We have reviewed the portions of the record defendant has quoted as well as the rest of the record, and we find the record merely shows counsel acted as a zealous advocate on defendant's behalf. As the State posits, while counsel struggled at times to satisfactorily phrase his questions to Binol and Lynch regarding inconsistent statements Binol made, these isolated incidents do not show counsel rendered deficient representation.

¶ 46 Further, we reject defendant's contention that she suffered prejudice in that counsel failed to "bring out important inconsistencies in" Binol's testimony and to effectively impeach Binol's testimony through Lynch. Counsel was able to elicit Binol's testimony in which she denied initially identifying Bailey as her attacker as well as Lynch's testimony that Binol did, in fact, initially identify Bailey. Counsel also elicited testimony from Binol and Lopez establishing that Binol claimed to have a surveillance video of the attack. Accordingly, counsel was able to present evidence calling Binol's credibility into question and supporting a theory that Binol's identification was unreliable. Thus, defendant has failed to show counsel was ineffective in its questioning of Binol and Lynch.

¶ 47 Defendant next argues that counsel was ineffective for failing to question defendant about her alibi location and failing to call any alibi witnesses who were with defendant at the time of the offense. Defendant relies on Jones' testimony that defendant was with four individuals in the upper portion of Jones' home when Binol was attacked. Defendant posits counsel's failure to call any of those four witnesses to corroborate defendant's alibi defense "constitutes deficient performance and cannot be deemed sound strategy."

¶ 48 Decisions relating to which witnesses to call and what evidence to present for the defense are matters of trial strategy. *People v. Munson*, 206 Ill. 2d 104, 139 (2002). Such decisions enjoy a strong presumption that they reflect sound trial strategy, not incompetence; thus, these decisions are generally immune from claims of ineffective assistance of counsel. *People v. Enis*, 194 Ill. 2d 361, 378 (2000). Nonetheless, "counsel may be deemed ineffective for failure to present exculpatory evidence of which he is aware, including the failure to call witnesses whose testimony would support an otherwise uncorroborated defense." (Internal quotation marks omitted.) *Bryant*, 391 Ill. App. 3d at 238.



¶ 49 Here, defendant fails to overcome the presumption that counsel's decisions were the product of sound trial strategy and fails to show she suffered prejudice from counsel's purportedly deficient performance. During direct examination, counsel elicited testimony from defendant that she was not at Binol's house on the day in question and that she did not attack Binol. This testimony went directly to the heart of the defense theory of misidentification. Given the presumption we must make that counsel's decision was the product of sound trial strategy, we can presume that any additional testimony defendant could have provided would not have aided the defense's theory. Moreover, the trial court explicitly found that defendant was not a credible witness, stating it did not "believe a word [defendant] testified to." Thus, defendant cannot show she suffered prejudice by counsel's failure to elicit more testimony from her where the court found defendant was not credible. As to defendant's contention that counsel should have called additional witnesses, defendant has not provided any evidence establishing those potential witnesses would have provided testimony favorable to her case. Defendant's failure to do so means she cannot overcome the presumption that counsel's decision was a matter of sound trial strategy. Nor can defendant show she suffered prejudice, as it is just as likely that these additional witnesses would have provided damaging testimony.

¶ 50 Defendant also contends counsel was ineffective for failing to object during the prosecutor's rebuttal argument and failing to include this issue in defendant's motion for new trial. However, as we have concluded that the prosecutor's argument was not improper, it follows that counsel could not have been ineffective for failing to object to that argument or include it in his posttrial motion.

¶ 51 Defendant's argument that counsel was ineffective for failing to timely file a motion for new trial is equally meritless. Although counsel's motion was untimely, defendant cannot show

she was in any way prejudiced by the untimely nature of the motion where the trial court allowed counsel to go forward on the motion and considered the merits of the claims contained therein, and our court has likewise considered the merits of defendant's contentions on appeal.

¶ 52 In sum, defendant has failed to show that any of counsel's purported individual errors warrant a finding of ineffective assistance. Further, we reject defendant's contention that the cumulative effect of counsel's purported errors rises to the level of ineffective assistance of counsel. Even considering the alleged errors together, defendant has failed to show a reasonable probability exists that the outcome of the proceeding would have been different had counsel not made the alleged errors. See *Strickland*, 466 U.S. at 694.

¶ 53 III. CONCLUSION

¶ 54 For the reasons stated, we affirm the trial court's judgment.

¶ 55 Affirmed.