2016 IL App (5th) 130229-U

NO. 5-13-0229

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Saline County.
	)	
v.	)	No. 12-CF-83
	)	
DAVID G. SPARKS,	)	Honorable
	)	Walden E. Morris,
Defendant-Appellant.	)	Judge, presiding.

PRESIDING JUSTICE SCHWARM delivered the judgment of the court.
Justices Welch and Chapman concurred in the judgment.

ORDER

¶ 1 *Held*: The defendant's convictions are affirmed as the State proved that the defendant committed the offense of predatory criminal sexual assault of a child beyond a reasonable doubt; the trial court's failure to strictly comply with Rule 431(b) did not constitute plain error, and the trial court adequately inquired into the defendant's ineffective-assistance-of-counsel claims.

¶ 2 FACTS

¶ 3 In February 2013, a Saline County jury found the defendant, David G. Sparks, guilty on one count of predatory criminal sexual assault of a child (720 ILCS 5/12-14.1(a)(1) (West 2010); 720 ILCS 5/11-1.40(a)(1) (West 2012)) and three counts of aggravated criminal sexual abuse (720 ILCS 5/12-16(c)(1)(i) (West 2010); 720 ILCS

5/11-1.60(c)(1)(i) (West 2012)). The convictions stemmed from charges that the State filed following an investigation which revealed that for over a year, the defendant had been sexually abusing his step-granddaughter, S.C., who was 6 and 7 years old at the time. The evidence adduced at the defendant's trial established the following.

¶ 4 S.C. was born in June 2004 to Megan Cook and Brad Wilson. S.C. resided with Megan until the fall of 2010, when Brad obtained legal custody of the child following a series of domestic violence incidents involving Megan and a live-in boyfriend. Megan was granted visitation rights and was given custody of S.C. every other weekend.

¶ 5 During her visitation weekends, Megan usually had her mother, Tammy Sparks, and Tammy's husband, the defendant, watch S.C. As a result, S.C. often stayed with the defendant and Tammy several nights a month. Tammy and the defendant lived in a trailer in rural Gallatin County until April 2011, when the trailer was severely damaged in a flood. They then moved into a house in Eldorado. The defendant was born in August 1966.

¶ 6 In January 2012, S.C.'s first grade teacher, Brandi Fletcher, began noticing disconcerting changes in S.C.'s behavior. In addition to uncharacteristically acting up in class, S.C. started "making frequent trips to the bathroom" and "would be gone for long periods of time." Brandi testified that "then it kind of escalated," and S.C. would "kind of zone out" and "kind of rock back and forth in her chair" with her pants pulled up "as high as she could get them." Brandi testified that it appeared to her that S.C. was masturbating. In March 2012, Brandi reported her observations to S.C.'s paternal grandmother, Glenda Wilson, who was "the other first grade teacher" at the school.

¶ 7 Glenda testified that between the fall of 2010 and the spring of 2011, S.C., "a child who never wet the bed," started wetting her bed and waking up scared in the middle of the night. S.C. later began exhibiting behavioral problems at the school, and daytime urinary incontinence became an issue. Glenda explained that S.C.'s problems "just kept getting worse and building."

¶ 8 In March 2012, after Brandi told Glenda that S.C. had ostensibly been masturbating in class, Glenda told S.C. what Brandi had reported and asked S.C. what was wrong. In response, S.C. shrugged her shoulders and said she did not know. When Glenda asked S.C. if anyone had "touched" her, S.C. ran into her arms and started crying. As Glenda comforted her, S.C. stated that it was the defendant "who did it." After S.C. calmed down and Glenda asked her what the defendant had done, S.C. stated that he had " 'licked [her] privates, and he put his fingers inside of [her] and told [her] that [she] tasted good.' " At that point, Glenda called Brad.

¶ 9 Glenda testified that on a later occasion, when she and S.C. were driving home from a shopping trip, S.C. asked her if she thought S.C. was "terrible." Glenda assured S.C. that she was not terrible and that she had just "been through a lot." S.C. then told Glenda that she could not get the defendant "out of [her] mind." S.C. explained that she had been rocking in her chair at school because it reminded her of the things that the defendant had done to her. S.C. further explained that she would sometimes "rock" on her stuffed animals because it made her "feel like [the defendant] made [her] feel." S.C. advised Glenda that the defendant "would grab her crotch every time she was close to him, and he would also take her shirt, pull it out[,] and look at her." S.C. reported that

she and the defendant had watched a pornographic movie together and that the defendant had talked about performing oral sex on Tammy.

¶ 10 Brad testified that even before he obtained custody of S.C., she had spent the night at the defendant and Tammy's house on numerous occasions. Brad indicated that Megan had consistently "use[d] them basically as baby-sitters," because she liked to "go out." Brad stated that after Glenda told him that the defendant had been inappropriately touching S.C., he immediately reported the abuse to the Department of Children and Family Services. He then spoke with S.C.

¶ 11 Brad testified that S.C. had told him, among other things, that she and the defendant had watched a pornographic movie together and that the defendant had talked about performing oral sex on Tammy. S.C. further advised that the defendant had pulled her pants down, licked her vagina, and told her, "[T]hat's what it feels like." S.C. told Brad that the defendant would "grab her chest and grab her crotch and sit her on him while he got hard."

¶ 12 Special Agent Gwen Basinger of the Illinois State Police testified that she interviewed S.C. regarding her allegations against the defendant on March 15, 2012, and then interviewed the defendant on March 16, 2012. Both interviews were video recorded, and both were shown to the jury. Gwen estimated that she had interviewed hundreds of sexually abused children over the years, and she indicated that when conducting such interviews, she employs a semi-structured interview technique, which emphasizes the use of non-leading questions.

¶ 13 During Gwen's interview with S.C., S.C. explained that the defendant had done bad things to her that were "hard to talk about." S.C. eventually recounted specific times that the defendant had sexually abused her, providing details as to various acts and instances. Most of the abuse occurred in the upstairs bedroom of the defendant's home in Eldorado, but S.C. described a time at the defendant's trailer when he had put his tongue in her vagina and pushed her when she resisted. She also described a later instance at the house when the defendant had touched her vagina "under her clothes." S.C. explained that the defendant had "stuck his finger in it" and had then put his finger in his mouth because he "wanted to taste it." S.C. advised that the defendant had rubbed her vagina over her clothes with his hand "pretty much every time" she had visited his house. The defendant made her watch a pornographic DVD when she wanted to watch cartoons. The defendant once tried to take a picture of S.C.'s "privates" and had once shown her his. S.C. advised that she was now afraid of the defendant and did not trust him or want to be around him. S.C. also feared that he might do similar things to her younger cousins. S.C. stated that she had first reported the abuse to Glenda and had then told Brad about it.

¶ 14 When Gwen interviewed the defendant, he indicated that he was aware that he had been accused of sexually abusing S.C. because Megan had confronted him, attacked him, and threatened to kill him for having allegedly "licked the child's bottom." The defendant indicated that he did not fault Megan for being furious and that he had allowed her to "take her frustrations out on [him]." When Gwen advised the defendant that she had spoken with S.C. about what had been happening, the defendant indicated that he was surprised by the allegations and that S.C. only came to his house "every now and then."

The defendant further indicated that he did not believe that what Megan thought had happened had really happened.

¶ 15 When Gwen advised the defendant that she believed that S.C.'s claims were true and that the abuse had been going on "for a long time," he stated that he did not have a side of the story to tell and that he would just accept that whatever S.C. was alleging was the truth. The defendant opined that S.C. was honest and would not lie. The defendant stated that if S.C. was saying that he "did it," then he believed her, because she was not "a liar."

¶ 16 When given the opportunity to deny S.C.'s detailed accounts and claims, the defendant would not say that the various events had not happened. He rather stated that he did not believe that they had happened or that he could not recall that they had happened. The defendant asserted that the only thing that he could remember about touching S.C. was holding her leg on one occasion. When Gwen suggested that the defendant needed therapy and directly asked him, "Is this something you enjoy doing?," he replied, "No." The defendant subsequently indicated that he recognized that what he had been doing to S.C. needed to stop. He further indicated that he had never sexually abused any other children, that he would never be interested in abusing a young boy, and that he was "surprised that [he] was doing this with [S.C.]" The defendant rejected the notion that he had ever sexually abused S.C. while he was sober.

¶ 17 S.C. testified that she was 8 years old, lived with Brad, and knew the difference between the truth and a lie. S.C. used to frequently visit the defendant and Tammy at their trailer in Gallatin County and their home in Eldorado. S.C. testified that she no

longer liked to be around the defendant because he always did "bad stuff" to her. S.C. indicated that she did not like talking about what the defendant had done.

¶ 18 S.C. first discussed the time at the trailer when the defendant had woken her up and licked her "private area." S.C. explained that after the defendant and Tammy had moved to Eldorado, the defendant had started doing "other stuff," mostly in the upstairs bedroom of the house. S.C. testified that on one occasion, the defendant had "opened up [her] pants and [her] underwear," licked two of his fingers, and then put them "down into" her vagina. He then removed the fingers, "put them in his mouth[,] and [said she] tasted good." S.C. testified that the defendant would pull her shirt back and make comments about her chest. He would also rub her vagina up and down over her clothes with his hand. S.C. indicated that the rubbing was something that the defendant had done "a lot," sometimes while she sat on his lap. S.C. recalled that she and the defendant had watched a pornographic movie together. S.C. denied that the defendant had tried to take pictures or her.

¶ 19 S.C. testified that the defendant had told her to not tell anyone about the things that he had done to her. S.C. stated that she had reported the abuse to Glenda after Brandi had told Glenda about the "thing" that S.C. had been doing in class. S.C. indicated that she had been doing the "thing" because of what the defendant had done and that she thought about the defendant while doing it.

¶ 20 During the execution of a search warrant at the defendant's home, a pornographic DVD was found hidden behind a wall-covering in the upstairs bedroom. A photograph

of S.C., which was "the one and only photograph that was in [the] room," was also discovered.

¶ 21 The defendant did not offer any evidence at trial. The record indicates that the jury deliberated for approximately 45 minutes before finding him guilty on all counts. The trial court subsequently entered judgments on the convictions and imposed sentences totaling 35 years. The defendant subsequently filed a timely notice of appeal.

¶ 22 DISCUSSION

¶ 23 The defendant argues that the State failed to prove him guilty of predatory criminal sexual assault of a child beyond a reasonable doubt; that the trial court's failure to strictly comply with Supreme Court Rule 431(b) (eff. July 1, 2012) requires that the cause be remanded for a new trial, and that alternatively, the cause should be remanded for a hearing on claims of ineffective assistance of counsel that he raised *pro se* prior to trial. For the reasons that follow, we reject all three of the defendant's claims.

¶ 24 Reasonable Doubt

¶ 25 To obtain a conviction on the count alleging predatory criminal sexual assault of a child, the State was required to prove that the defendant penetrated S.C.'s vagina with his finger. The State was thus required to prove that a digital "intrusion" into her vagina had occurred, "however slight" it might have been. 720 ILCS 5/12-12(f) (West 2010); 720 ILCS 5/11-0.1 (West 2012); see also *People v. Maggette*, 195 Ill. 2d 336, 346-50 (2001).

¶ 26 At trial, S.C. testified that the defendant had "opened up [her] pants and [her] underwear," licked two of his fingers, and put them "down into" her vagina. She stated that he had then removed the fingers, "put them in his mouth[,] and [said she] tasted

good." During defense counsel's cross-examination of S.C., when counsel asked her about the time the defendant had licked two of his fingers and "rubbed" her vagina, she confirmed that the defendant had "rubbed [her] in the front private." When counsel subsequently asked S.C. if the defendant had only "rubbed it," she said, "Yes." On redirect, S.C. again described how the defendant had licked his fingers, put them "[i]n her front private," and then "licked them again" before saying that she "tasted good." On recross, when S.C. was again asked if the defendant had "licked his fingers and then rubbed" her, she again said, "Yes." She also explained that he had rubbed her "inside [her] underwear." When counsel asked, "All he did was rub your front private, correct?," S.C. again stated, "Yes." Thereafter, the State did not inquire further.

¶ 27 On appeal, asserting that "S.C.'s own testimony was inconsistent about whether [he] put his finger inside her vagina or just rubbed the outside," the defendant maintains that the evidence presented for the jury's consideration was insufficient to support its finding that an act of digital penetration occurred. We disagree.

¶ 28 It is well established that "[a] reviewing court will not set aside a criminal conviction on grounds of insufficient evidence unless the proof is so improbable or unsatisfactory that there exists a reasonable doubt of the defendant's guilt." *Maggette*, 195 Ill. 2d at 353. "When considering the sufficiency of the evidence, it is not the function of a reviewing court to retry the defendant." *Id.* "Rather, the relevant question is whether, after reviewing all of the evidence in the light most favorable to the prosecution, any rational fact finder could have found beyond a reasonable doubt the

essential elements of the crime." *Id.* "[T]his standard of review applies in all criminal cases, whether the evidence is direct or circumstantial." *Id.*

¶ 29 We initially note that the alleged discrepancies in S.C.'s testimony regarding what the defendant did after licking his fingers were fully addressed during the parties' closing arguments to the jury and during a preceding recess when the trial court denied the defendant's motion for a directed verdict. On both occasions, the State maintained that S.C. had obviously gotten "confused" by counsel's leading questions and that when considered in context, her testimony that the defendant had rubbed her vagina before putting his fingers in his mouth and saying that she tasted good was not necessarily inconsistent with her claims that penetration had occurred. Having reviewed the relevant portions of the record, we agree. We further note that S.C. was candid about not wanting to testify and that the apparent confusion she experienced on cross-examination was understandable given her age and the leading nature of the questions she was asked. See *People v. Bowen*, 183 Ill. 2d 103, 115 (1998) ("It is well known that child witnesses, especially the very young, often lack the cognitive or language skills to effectively communicate instances of abuse at trial [citation] or may be impeded psychologically in their efforts to do so [citation]."). In any event, to the extent that S.C.'s testimony regarding the issue of penetration presented discrepancies, "the discrepancies merely presented a weight-of-the-evidence question for the jury to resolve." *People v. Carroll*, 227 Ill. App. 3d 144, 148 (1992). Moreover, even assuming, *arguendo*, that S.C. had outright denied that penetration had occurred, the jury could have still found the defendant guilty of predatory criminal sexual assault of a child based solely on the

statements that she made to Glenda and Gwen, both of which clearly described an act of digital penetration and both of which were admitted as substantive evidence pursuant to section 115-10 of the Code of Criminal Procedure of 1963 (725 ILCS 5/115-10 (West 2012)). See *People v. Johnson*, 2016 IL App (4th) 150004, ¶ 32 (noting that the jury was free to conclude that the child victim's out-of-court statements that were admitted pursuant to section 115-10 were more credible than her contrary trial testimony). We lastly note that when Gwen asked the defendant about the time that he had penetrated S.C.'s vagina with his fingers before licking them to "taste what it tasted like," the defendant indicated that he was "surprised" that such a "horrible" thing had happened, but he did not deny that it had happened. He rather stated, "If that's what [S.C.] said, I guess I'm going to take it."

¶ 30 Viewing the evidence adduced at trial in the light most favorable to the State, we can only conclude that the defendant's reasonable-doubt argument is wholly without merit. As the State observes on appeal, to the extent that S.C.'s testimony was inconsistent, the "inconsistency was trivial," and "there was ample evidence presented at trial supporting the jury's finding that the defendant committed predatory criminal sexual assault of a child by penetrating S.C.'s vagina with his fingers."

¶ 31 Rule 431(b)

¶ 32 Pursuant to Supreme Court Rule 431(b), during *voir dire*, the trial court must

> "ask each potential juror, individually or in a group, whether that juror *understands and accepts* the following principles: (1) that the defendant is presumed innocent of the charge(s) against him or her; (2) that before a defendant

> can be convicted the State must prove the defendant guilty beyond a reasonable doubt; (3) that the defendant is not required to offer any evidence on his or her own behalf; and (4) that if a defendant does not testify it cannot be held against him or her; however, no inquiry of a prospective juror shall be made into the defendant's decision not to testify when the defendant objects." (Emphasis added.) Ill. S. Ct. R. 431(b) (eff. July 1, 2012).

Rule 431(b) further directs that "[t]he court's method of inquiry shall provide each juror an opportunity to respond to specific questions concerning the principles set out in this section." *Id*.

¶ 33 In the present case, the parties agree that although the trial court complied with Rule 431(b)'s requirement that the prospective jurors be asked if they accepted the rule's enumerated principles, the court failed to ask the prospective jurors if they understood the principles, which was "error in and of itself." *People v. Belknap*, 2014 IL 117094, ¶ 44. The parties further agree that because the defendant objects to the trial court's failure to strictly comply with Rule 431(b) for the first time on appeal, the defendant has forfeited the issue. *Id*. ¶ 47. The defendant thus seeks plain-error review, which "bypasses normal forfeiture principles and allows a reviewing court to consider unpreserved claims of error in specific circumstances." *People v. Thompson*, 238 Ill. 2d 598, 613 (2010).

¶ 34 "A defendant seeking plain-error review has the burden of persuasion to show the underlying forfeiture should be excused." *People v. Johnson*, 238 Ill. 2d 478, 485 (2010). Here, to establish that plain-error review is warranted, the defendant must establish that the evidence of his guilt is closely balanced or that the trial court's violation of Rule

431(b) resulted in a biased jury. See *People v. Wilmington*, 2013 IL 112938, ¶¶ 33-34; *Thompson*, 238 Ill. 2d at 613-15. The defendant argues that the evidence of his guilt is closely balanced. The State counters that the evidence overwhelmingly established the defendant's guilt and that "[t]he instant case was hardly a close one." We agree with the State.

¶ 35 When determining whether the evidence of a defendant's guilt is closely balanced for purposes of plain-error review, "a reviewing court must undertake a commonsense analysis of all the evidence in context." *Belknap*, 2014 IL 117094, ¶ 50. The analysis must be a "qualitative, as opposed to a strictly quantitative," one and must take into account the totality of the circumstances. *Id.* ¶¶ 53, 62.

¶ 36 Here, the evidence adduced at trial established that the defendant began sexually abusing S.C. when she was 6, that he abused her for more than a year before she reported what had been happening, and that she reported what had been happening after her first grade teacher became concerned that she was masturbating in class. At trial, S.C. testified as to specific acts and instances of abuse and indicated that the "thing" she had been doing in class was a result of what the defendant had been doing to her. S.C.'s accounts and descriptions were age-appropriate and consistent with what she had previously reported to Glenda, Brad, and Gwen. Moreover, having been admitted pursuant to section 115-10, S.C.'s statements to Glenda, Brad, and Gwen were deemed inherently trustworthy (see *Bowen*, 183 Ill. 2d at 115-19), and the jury was instructed that it could consider them as substantive evidence of the defendant's guilt on the charged offenses (see Illinois Pattern Jury Instructions, Criminal, No. 11.66 (4th ed. 2000)). The

jury was further instructed that it could consider the evidence of the uncharged incident that occurred at the defendant's trailer in Gallatin County as evidence of his propensity to commit the charged offenses. See 725 ILCS 5/115-7.3 (West 2012); Illinois Pattern Jury Instructions, Criminal, No. 3.14 (4th ed. 2000). The jury also watched Gwen's video-recorded interview with S.C., which we note is particularly compelling and probative. See *Bowen*, 183 Ill. 2d at 115-16.

¶ 37 The jury likewise watched Gwen's video-recorded interview with the defendant. As indicated, during the interview, when Gwen repeatedly gave the defendant the opportunity to deny S.C.'s allegations, he did not do so. Instead, he claimed disbelief or lack of recall. He unequivocally stated, however, that S.C. was honest and would not lie. The defendant explained that if S.C. was saying that he "did it," then he believed her, because she was not "a liar." Additionally, the defendant made several statements towards the end of the interview that the jury could have readily determined were implicit admissions of guilt. On appeal, the defendant maintains that he was "very vague" with Gwen and "did not confess any wrongdoing." However, his statements and lack of denials were essentially a series of admissions or tacit admissions that S.C.'s allegations were true. See *People v. Soto*, 342 Ill. App. 3d 1005, 1013 (2003). S.C. also claimed that the defendant had exposed her to pornography and that most of the sexual abuse had occurred in the upstairs bedroom of his home. Notably, a pornographic DVD was found hidden in the room, and a picture of S.C., which was "the one and only photograph that was in [the] room," was also found.

¶ 38 Under the circumstances, we conclude that the evidence of the defendant's guilt is overwhelming and that the record fully supports his intimations that S.C. had truthfully reported what he had done to her. The defendant is thus unable to meet his burden of establishing that his failure to object to the trial court's Rule 431(b) violation should be excused.

¶ 39 Ineffective Assistance of Counsel

¶ 40 On July 19, 2012, the defendant filed a *pro se* motion for the appointment of new counsel. The motion alleged, among other things, that trial counsel had been neglecting the defendant's case and had told the defendant to hire a private attorney. The motion further suggested that counsel was prejudiced against the defendant and wanted him to enter a guilty plea.

¶ 41 On July 20, 2012, the defendant's motion was addressed at a hearing, where the trial court questioned the defendant and his attorney about the defendant's allegations. See *People v. Jocko*, 239 Ill. 2d 87, 92 (2010) (indicating that the trial court should address a defendant's *pro se* pretrial ineffective-assistance claims prior to trial where the claims implicate the complete deprivation of counsel or a potential conflict of interest). The defendant specifically complained that counsel had indicated that he did not have time to work on the defendant's case and that the defendant should hire a private investigator and a private attorney. The defendant further complained that counsel had failed to produce requested documents, including "the doctor's report on the girl."

¶ 42 In response, counsel explained that he had been providing the defendant with all received discovery and that the documents that the defendant had referenced, which had

not yet been received, were neither relevant nor necessary for the defense. Counsel further stated that he had advised the defendant that the State would not pay for an expert to review the doctor's report but that the defendant had the right to hire one. Counsel acknowledged that he had advised the defendant that he had a busy schedule and that the defendant could hire a private attorney if he believed that counsel was not devoting enough time to the case. Counsel denied the defendant's suggestions that he did not care about the case, however, stating that he had told the defendant that he would be "ready to go to trial when it's ready to go to trial."

¶ 43 At the conclusion of the hearing, the trial court denied the defendant's motion for the appointment of new counsel. The court stated that after considering the motion, the defendant's statements, and counsel's statements, it did "not believe that [counsel's] representation [was] inadequate."

¶ 44 In February 2013, the defendant's trial commenced. Posttrial, the defendant did not complain that counsel had been ineffective, and the trial court did not revisit the defendant's pretrial claims that had been addressed at the July 2012 hearing. As an aside, we note that the record indicates that the State disclosed a doctor's report shortly before trial and that trial counsel filed a motion *in limine* to exclude the doctor's testimony due to the late disclosure. Although it is unclear whether the defendant's motion was granted, unremarkably, no medical evidence was presented at trial. See *People v. Garcia*, 2012 IL App (1st) 103590, ¶ 89 (noting that "the medical testimony *** demonstrated that trauma or penetration can occur and 'present no injury whatsoever' ").

¶ 45 The defendant's final argument on appeal is that his cause should be remanded for a preliminary *Krankel* hearing (*People v. Krankel*, 102 Ill. 2d 181 (1984)) on the ineffective-assistance-of-counsel claims that were raised and addressed at the hearing on his motion for the appointment of new counsel. The defendant maintains that posttrial, the trial court was obligated to further inquire into the pretrial claims. The State responds that a remand is unnecessary in light of the trial court's determination that none of the defendant's claims were meritorious or required further inquiry. We agree with the State.

¶ 46 Under *Krankel*, the trial court is obligated to inquire into a defendant's *pro se* posttrial claims that he was denied the effective assistance of counsel. *People v. Moore*, 207 Ill. 2d 68, 77-78 (2003). This inquiry, which is often referred to as a "preliminary *Krankel* hearing" (*People v. Jolly*, 2014 IL 117142, ¶ 26), is "intended to promote consideration of *pro se* ineffective assistance claims in the trial court and to limit issues on appeal" (*People v. Patrick*, 2011 IL 111666, ¶ 41). "During this evaluation, 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 claim[s]." *Moore*, 207 Ill. 2d at 78. If the claims show that trial counsel may have neglected the case, the trial court should appoint new counsel and set the matter for a hearing. *Id*. If the court ultimately determines that the claims lack merit or pertain only to matters of trial strategy, however, then no further action is required. *Id*.

¶ 47 Unless the allegations suggest that prejudice will be presumed, *e.g.*, where there is a conflict of interest or the complete deprivation of counsel, a trial court is not obligated

to conduct a pretrial preliminary *Krankel* hearing on a defendant's pretrial ineffective-assistance-of-counsel claims. See *Jocko*, 239 Ill. 2d at 92-93; *People v. Washington*, 2012 IL App (2d) 101287, ¶ 22. The trial court is not precluded from doing so, however, and can thus address a defendant's pretrial claims at a pretrial hearing. See *Washington*, 2012 IL App (2d) 101287, ¶ 22. Either way, posttrial, the trial court is not obligated to inquire into pretrial claims that, "when made and after trial," were facially insufficient to warrant the appointment of new counsel. *Washington*, 2012 IL App (2d) 101287, ¶ 27; see also *Moore*, 207 Ill. 2d at 79 ("Also, the trial court can base its evaluation of the defendant's *pro se* allegations of ineffective assistance on its knowledge of defense counsel's performance at trial and the insufficiency of the defendant's allegations on their face.").

¶ 48 Irrespective of whether a preliminary *Krankel* hearing was held pretrial or posttrial, "[t]he 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." *Moore*, 207 Ill. 2d at 78; see also *People v. Johnson*, 159 Ill. 2d 97, 125 (1994); *Washington*, 2012 IL App (2d) 101287, ¶¶ 19, 22. "The question of whether a court has given proper attention to a defendant's *pro se* motion claiming ineffective assistance of counsel is a legal question." *Washington*, 2012 IL App (2d) 101287, ¶ 17. After assessing the underlying claims, however, "[t]he trial court's decision to decline to appoint new counsel for a defendant based on a judgment that the ineffective assistance claim is spurious shall not be overturned on appeal unless the decision is manifestly erroneous." *People v. McCarter*, 385 Ill. App. 3d 919, 941 (2008).

"A decision is manifestly erroneous if it contains an error that is clearly evident, plain, and indisputable." *People v. Hatchett*, 2015 IL App (1st) 130127, ¶ 26.

¶ 49 Here, at the pretrial hearing on the defendant's motion for the appointment of new counsel, the trial court fully inquired into the defendant's ineffective-assistance-of-counsel claims before determining that the defendant was being adequately represented and that his suggestions that he was completely deprived of counsel were without merit. The court thus properly conducted a pretrial preliminary *Krankel* hearing before rejecting the defendant's contention that counsel had been neglecting his case. See *Washington*, 2012 IL App (2d) 101287, ¶ 22. Posttrial, there would have been no need to revisit this claim, because counsel's performance at trial demonstrated that neglect was clearly not an issue.

¶ 50 With respect to the defendant's pretrial complaint that counsel had failed to produce requested documents, counsel explained that he had been providing the defendant with all received discovery and that the documents that the defendant had referenced, which had not yet been received, were neither relevant nor necessary for the defense. Counsel's strategic decisions are presumed to be competent (*People v. Veach*, 2016 IL App (4th) 130888, ¶ 77), and "[t]he decisions of what witnesses to call and what evidence to present are generally unassailable matters of trial strategy that cannot form the basis of a claim of ineffective assistance of counsel" (*People v. Ward*, 371 Ill. App. 3d 382, 433 (2007)). At most, the defendant's complaint thus pertained to matters of trial strategy that were presumptively competent. The claim was thus facially insufficient to warrant the appointment of new counsel, and there was no need for further inquiry under

Krankel, pretrial or posttrial. See *Moore*, 207 Ill. 2d at 78; *Washington*, 2012 IL App (2d) 101287, ¶ 25; *Ward*, 371 Ill. App. 3d at 433. As previously indicated, if it is ultimately determined that a defendant's *pro se* ineffective-assistance-of-counsel claims pertain only to matters of trial strategy, then under *Krankel*, no further action is required. *Moore*, 207 Ill. 2d at 78.

¶ 51 Because the trial court's pretrial preliminary *Krankel* inquiry revealed that counsel had not been neglecting the defendant's case and that, at most, the defendant's complaint regarding the production of documents pertained to matters of trial strategy, there was no need for the trial court to revisit the defendant's pretrial claims posttrial, when it was apparent that neglect was not an issue. Accordingly, we reject the defendant's contention that the trial court's pretrial inquiry into his ineffective-assistance-of-counsel claims was insufficient.

¶ 52 CONCLUSION

¶ 53 For the foregoing reasons, we hereby affirm the defendant's convictions and deny his request that the cause be remanded for a posttrial *Krankel* inquiry.

¶ 54 Affirmed.