FOURTH DIVISION
March 16, 2017

No. 1-14-2250

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County.
	)	
v.	)	No. 14 DV 73149
	)	
RONALD MARTIN,	)	Honorable
	)	Ursula Walowski,
Defendant-Appellant.	)	Judge Presiding.

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

O R D E R

¶ 1 *Held*: We reverse defendant's conviction for criminal trespass to residence as no evidence was introduced to show defendant entered a residence. We affirm defendant's conviction for domestic battery causing great bodily harm where the testimony of a single credible witness was sufficient to show defendant caused bodily harm to his former girlfriend. We affirm the trial court's finding following a sufficient inquiry into defendant's posttrial *pro se* allegation of ineffective assistance of counsel that no further hearing was necessary.

¶ 2 Following a bench trial, defendant Ronald Martin was convicted of criminal trespass to residence (720 ILCS 5/19-4(a)(1) (West 2012)) and domestic battery causing great bodily harm (720 ILCS 5/12-3.2(a)(1) (West 2012)) and sentenced to 364 days' imprisonment on both

offenses to be served concurrently. On appeal, defendant contends that the evidence was insufficient to support either of his convictions. Specifically, he contends that no evidence was introduced to prove he entered a residence and that the testimony relied upon in securing his conviction for domestic battery was unreliable. Defendant also argues that the trial court failed to conduct a proper preliminary inquiry into his *pro se* motion alleging ineffective assistance of trial counsel pursuant to *People v. Krankel*, 102 Ill. 2d 181 (1984). We affirm in part and reverse in part.

¶ 3 Defendant was charged with domestic battery for knowingly and intentionally causing great bodily harm to Joy Shelton by stabbing her in the neck and back on February 27, 2014. He was also charged with criminal trespass to residence for knowingly entering a residence located at 6504 South Eberhart Avenue without authority on March 22, 2014. The case proceeded as a bench trial.

¶ 4 At trial, Joy Shelton testified that defendant was her former boyfriend. On February 27, 2014, Shelton and defendant had been broken up for approximately one and a half months when they had an encounter on a bus. Shelton was going home after "drinking" at her cousin's house. She had not intended to meet defendant, who boarded the bus approximately 10 minutes after her. After initially avoiding contact, defendant approached Shelton and they spoke until they got off the bus together approximately 20 minutes later. Shelton accompanied defendant to his friend's basement apartment. They went to a couch in the living room. Defendant’s friend was the only other person in the apartment but he was not in the living room. Shelton and defendant’s conversation escalated into an argument. Defendant took Shelton's purse and phone away. He

accused Shelton of cheating on him. Defendant then removed her pants and had sex with her despite her unwillingness and objection. Once he stopped, Shelton fell asleep.

¶ 5 Shelton was awakened by defendant pulling her hair. He had cut her hair while she slept. She produced the cut hair in a plastic bag at trial. Shelton then felt pain in her back. Reaching behind her, she noticed she was "bleeding all over the place." Both her neck and back were bleeding. Defendant was standing over her. Defendant then tried to help Shelton by taping a "shirt or something" over the wounds. Shelton told defendant she needed to go to the hospital but defendant would not let her leave. Defendant's friend entered the room and told defendant to "clean up the mess." Defendant proceeded to "[scrub] the blood off the couch." Shelton attempted to leave but defendant caught her from behind and pulled her back into the apartment. Defendant continued to look through Shelton's phone and they continued to argue for approximately two hours before he fell asleep. Shelton then grabbed her things and left. Her phone was dead as there was no battery in it, so she took the bus to her house where her roommate called an ambulance.

¶ 6 An ambulance took Shelton to the hospital. The police arrived at the hospital, spoke to Shelton, and photographed her injuries. The State introduced the photographs, which Shelton testified fairly and accurately depicted the stab wounds inflicted on her back and neck by defendant.

¶ 7 At approximately 4:00 a.m. on March 22, 2014, Shelton was a passenger in a car leaving her apartment building located at 6504 South Eberhart Avenue when she saw defendant standing at the intersection of 64th Street and King Drive, approximately two blocks from her home. Shelton's roommate subsequently called Shelton and said she "heard somebody in the basement"

of their building and had called the police. Shelton returned to her home and saw police bringing defendant outside the building. She stated police had "pulled [defendant] out of a wall in the basement."

¶ 8 During cross examination, Shelton acknowledged three previous convictions for retail theft. She denied that the wounds on her neck were caused during an altercation with another woman defendant was seeing. Shelton denied telling police that defendant wanted to have sex with her but she refused and went to sleep. She also denied telling police that she called her friend when she left the apartment after the stabbing.

¶ 9 During redirect, Shelton testified that her injuries required multiple surgeries. She acknowledged she did not want to testify and when she spoke to police about defendant trying to have sex with her, she was embarrassed about what happened.

¶ 10 Officer Maritza Morales testified that, on February 27, 2014, she received a call about a person stabbed at 6504 South Eberhart. While en route to that location, Morales was informed that the victim had been transported to the hospital. She reported there and spoke to Shelton while she was being treated. Morales learned that the incident did not occur at 6504 South Eberhart. She observed bandaging on Shelton's "neck area."

¶ 11 During cross-examination, Morales testified that Shelton told her that defendant forced her off the bus. Shelton did not mention another man at the apartment to which defendant led her. Shelton did not tell Morales defendant raped her. She told Morales defendant wanted to have sex with her but she refused and went to bed. Shelton also told Morales she phoned a friend when she left the apartment. The State rested.

¶ 12 The trial court found defendant guilty of both charges. It stated that it heard Shelton's and Morales' testimony and "[t]his is a question of credibility and it is sufficient for a finding of guilty for one credible witness." It found there was not “any real impeachment” of Shelton. It did not find "those two points of impeachment with the officers" (whether she was forced off the bus and whether she called her friend) "to be significant." The court acknowledged Shelton was impeached regarding whether or not she was raped, but stated Shelton "was confronted with that" and she “readily admitted” that she did not tell anyone she was raped. The court stated it "found Ms. Shelton's demeanor in court to be very significant. And it's hard to transcribe that in a transcript as to demeanor but she was tearful, just her mannerisms in the way she testified. Everything about the way she testified I find showed to me she was a very credible witness about what had happened to her." The case proceeded immediately to sentencing.

¶ 13 During allocution, defendant denied the allegations against him and stated: "[A] lot of evidence wasn't presented. The fact that she sent from her e-mail sending me an e-mail that I didn't do it." The court then interjected, stating that it wanted to clarify for the record whether defendant talked to his attorney about those things. Defendant said that he did. The court asked whether there was something defendant wanted his attorney to do that he did not do. Defendant said yes and explained:

> "Joy sent me an e-mail when this situation took place explaining the situation. It was on Facebook. It's a message that only can be sent from her Facebook account. You can pull it – I can pull it up on my Facebook right now. I wanted that to be a key part. That would have gotten me off."

¶ 14 The court asked defense counsel if he saw the email. Counsel had not and explained he "went through [defendant's] Facebook a couple of times. It's humongous. *** I was unable to find anything." After the court asked defendant whether there was anything else about his counsel's representation he was dissatisfied about, defendant stated "I feel *** a lot of evidence was withheld. And I mean it was withheld but I'm – I guess he represented me to the best of his ability." The trial court then sentenced defendant to 364 days' imprisonment on each offense, to be served concurrently.

¶ 15 Defense counsel filed a motion for a new trial, which alleged "newly discovered evidence *** of such a conclusive character that it will probably change the result on retrial" had become available. He explained that, after sentencing, he had examined defendant's Facebook account again and this time found an email message that corroborated defendant's theory of the case: that Shelton had been attacked by another woman, not by defendant.

¶ 16 At a hearing on the motion for a new trial, defendant testified that, on February 25, 2014, he and Shelton attended a party together. Another woman defendant was dating, "Takeisha," was at the party. Takeisha and Shelton got into a fight during which Shelton was "injured." Defendant heard Shelton say "this bitch be cutting me." Shelton remained with defendant after that party for approximately "[a] day and a half." At approximately 5:30 a.m. on February 28, 2014, defendant received a Facebook message from Shelton that read "You said you loved me LaRon, and you walked away and let that bitch hurt me. I'm in the hospital and you're probably with her. I'm sending you to jail. Now, let's see how that ugly fat bitch really feel. Love you, bitch. 112."

¶ 17 Defense counsel argued that the motion for a new trial came down to the Facebook message. He stated: "Whether the evidence was available through due diligence prior to the trial, with the information I had, it was not available. Mr. Martin did tell me there was a post on Facebook. I checked for posts on Facebook, I didn't find the message. So it was not discoverable, it was not available." He concluded that had a jury seen the Facebook message, it is "very likely they would find reasonable doubt." Alternatively, he argued that, if the court found that the Facebook message was available to counsel before trial, "then my representation was ineffective."

¶ 18 The court stated it found that defense counsel "did all he could prior, couldn't find it, and he found it later." It found that defense counsel "did do his due diligence," concluding that it "see[s] nothing as far as any sort of ineffectiveness." The court then found that the new evidence did not require it to order a new trial as "even if I heard it at the trial would not change my mind." The court noted it was unknown who sent the message, the message had no context, and there were “a million possibilities” as to who sent it and why. The court denied defendant's motion for a new trial.

¶ 19 Defendant first argues that we should reverse both convictions as the evidence was insufficient to support a finding of guilt for the offense of criminal residential trespass to residence or of domestic battery causing great bodily harm.

¶ 20 When we review a challenge to the sufficiency of the evidence, " 'the relevant question 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.) *People v. Davison*, 233 Ill. 2d 30, 43 (2009) (quoting *Jackson v. Virginia*,

443 U.S. 307, 319 (1979)). In doing so, we draw all reasonable inferences in favor of the State (*Davison*, 233 Ill. 2d at 43) and we do not retry the defendant (*People v. Collins*, 106 Ill. 2d 237, 261 (1985)). A reviewing court will not set aside a criminal conviction "unless the evidence is so improbable or unsatisfactory that it creates a reasonable doubt of the defendant's guilt." *People v. Givens*, 237 Ill. 2d 311, 334 (2010).

¶ 21 Defendant argues, and the State concedes, that the State failed to introduce any evidence that proved defendant entered a residence and thus his conviction for criminal trespass to a residence must be reversed. The criminal trespass to residence statute provides that a person commits criminal trespass to a residence when he, without authority, knowingly enters or remains within any residence that is the dwelling place of another. 720 ILCS 5/19-4(a)(1) (West 2012). Subsection a-5 of that statute specifies that "in the case of a multi-unit residential building or complex, 'residence' shall only include the portion of the building or complex which is the actual dwelling place of any person and shall not include such places as common recreational areas or lobbies." 720 ILCS 5/19-4(a-5) (West 2012).

¶ 22 Here, the 6504 South Eberhart Avenue address where defendant was alleged to have committed the offense was a residential apartment building. Thus, an essential element that the State had to prove to support defendant's conviction for criminal trespass to residence is that defendant entered an actual dwelling place within the multi-unit residential building where Shelton lived.

¶ 23 The only evidence introduced at trial placing defendant within the building placed him in "the wall" of the basement. There was no evidence that the basement was an "actual dwelling place." Therefore, as the State failed to prove that defendant entered a residence as defined by

statute (720 ILCS 5/19-4(a-5) (West 2012)), an essential element of the offense of criminal trespass to residence, we reverse defendant's conviction for criminal trespass to residence.

¶ 24 We next turn to defendant's claim that the State introduced insufficient evidence to support his conviction for domestic battery causing bodily harm. Section 12-3.2(a)(1) of the Criminal Code provides that a person commits domestic battery if he knowingly and without legal justification causes bodily harm to any family or household member, which includes "persons who have or have had a dating *** relationship." 720 ILCS 12-3.2(a)(1) (West 2012); 720 ILCS 5/12-0.1 (West 2012). Defendant was convicted in large part based on Shelton's testimony. The unequivocal testimony of a single credible eye-witness is sufficient to sustain a conviction. *People v. Smith*, 185 Ill. 2d 532, 541 (1999).

¶ 25 Defendant argues, however, that Shelton's testimony "defies reason," was impeached, was inconsistent, and was therefore not credible. He contends Shelton's testimony was not credible given (1) the improbability of her being awoken when her hair was pulled after sleeping through a stabbing so severe that she required surgery and (2) the impeachment by her prior inconsistent statements to police.

¶ 26 Shelton testified that after a non-consensual sexual encounter with defendant, she awoke to him cutting her hair and pain in her neck and back. She reached behind herself and felt blood. After she was able to leave the apartment where the battery occurred, she went home and her roommate called an ambulance that took her to the hospital, where she had surgery performed on both her neck and back. The trial court, as the trier of fact, found Shelton to be "very credible," noting it "found Ms. Shelton's demeanor in court to be very significant. And it's hard to transcribe that in a transcript as to demeanor but she was tearful, just her mannerisms in the way

she testified. Everything about the way she testified I find showed to me she was a very credible witness about what had happened to her."

¶ 27 The court found the impeachment with Shelton's statements to police regarding being forced off the bus and later calling a friend to be insignificant. The court found Shelton's statement to police that defendant tried to have sex with her and she refused was not impeachment. The court stated Shelton had been confronted by the statement and "admitted that she did not tell anyone that she was in a sense raped" and "she did not want to go talk to the detective about this case" and "didn't even want to be here to testify." It was clear to the court that Shelton did not "even want to be here telling me any of this happened" and it found her reluctance to be corroboration, not impeachment.

¶ 28 Defendant nonetheless essentially asks us to reweigh the evidence or speculate with him on other possible conclusions that could be reached from the evidence. However, a reviewing court will not simply reweigh the evidence at trial and substitute its judgment for that of the trier of fact (*People v. Ortiz*, 196 Ill. 2d 236, 259) nor will it reject the trial court's credibility determinations and substitute its own (*People v. Spiller*, 2016 IL App (1st) 1333389, ¶ 28). Although defendant argues that we should reject the trial court's finding that Shelton was credible due to various deficiencies, the record does not show that her testimony was "so wholly incredible or so thoroughly impeached that it is incapable of being used as evidence against defendant." See *People v. Sanders*, 2012 IL App (1st) 102040, ¶ 15. To the contrary, the trial court found Shelton to be credible and the impeachment to be insignificant. We find no reason to disturb that finding on review. Shelton's testimony, which showed she had a previous

relationship with defendant and he caused great bodily harm that required surgery to her neck and back was therefore sufficient to support defendant's conviction for domestic battery.

¶ 29 Defendant lastly contends that the trial court failed to conduct a proper inquiry when it was first apprised by defendant of defense counsel's alleged ineffective assistance of counsel, and when given the opportunity to correct the error, allowed trial counsel to litigate his own ineffectiveness.

¶ 30 Our supreme court, beginning with *Krankel*, 102 Ill. 2d 181, has instructed that when a defendant presents a *pro se* posttrial claim of ineffectiveness of counsel, the trial court should conduct an inquiry to examine the factual basis of the claim. *People v. Moore*, 207 Ill. 2d 68, 77-78 (2003). To invoke this rule, the defendant must make some allegation of ineffective assistance of counsel for the court to consider and provide some factual specificity of the reason for the allegation. *People v. Cunningham*, 376 Ill. App. 3d 298, 304, 314 (2007). If a defendant's *pro se* allegations of ineffective assistance of counsel show possible neglect, new counsel is appointed to represent the defendant in a full hearing on his claims. *Moore*, Ill. 2d at 78.

¶ 31 If a defendant does not make a valid ineffective assistance claim, he does not trigger the need for the trial court to conduct a *Krankel* hearing. *People v. Taylor*, 237 Ill. 2d 68, 75-76 (2010); *People v. Jocko*, 239 Ill. 2d 87, 93-94 (2010). While the pleading requirements for raising a *pro se* claim of ineffectiveness of counsel are "somewhat relaxed," a defendant must still satisfy minimum requirements to trigger a *Krankel* inquiry by the trial court. *People v. Washington*, 2015 IL App (1st) 131023, ¶ 11. The defendant must make some allegation of ineffective assistance of counsel and "provide some factual specificity of the reason for the allegation." *Id.* However, "[a] bald allegation that counsel rendered inadequate representation is

insufficient" to trigger either a preliminary inquiry or a hearing under *Krankel*. *People v. Radford*, 359 Ill. App. 3d 411, 418 (2005).

¶ 32 "The operative concern for the reviewing court is whether the trial court conducted an adequate inquiry into the defendant's *pro se* allegations of ineffective assistance of counsel." *Moore*, 207 Ill. 2d at 78. Whether the court gave proper attention to a defendant's *pro se* motion claiming ineffective assistance of counsel is a legal question. *People v. Washington*, 2012 IL App (2d) 101287, ¶ 17. We review defendant's claim *de novo*. *Taylor*, 237 Ill. 2d at 75.

¶ 33 Here, during allocution at sentencing, defendant alleged that "a lot of evidence wasn't presented." Specifically, he stated that defense counsel failed to produce an email from Shelton sent to him on Facebook that said defendant "didn't do it." The court inquired into defendant's allegations. It asked whether defendant had brought up the existence of the Facebook message with defense counsel prior to trial. When defendant said that he did, the court asked defense counsel whether he looked for it and asked defendant if he had any other dissatisfaction with counsel's representation. Defense counsel stated that the message was unavailable prior to trial despite his due diligence. He had looked for it on defendant's "humungous" Facebook account "a couple times," but could not find "anything." After additional questioning by the court, defendant conceded that defense counsel "represented me to the best of his ability."

¶ 34 Defendant's statement arguably set forth an ineffective assistance of counsel claim. Defendant concedes that the court properly inquired of defendant and defense counsel regarding this allegation. He also agrees that, upon learning counsel unsuccessfully tried to find the email, the court correctly determined that no further inquiry necessitating the appointment of new counsel was warranted. Defendant takes issue with what happened after this hearing.

¶ 35 Defense counsel filed a motion for a new trial, in which he alleged new evidence, that could not have been discovered prior to the trial by the exercise of due diligence, became available and it was "of such conclusive character that it will probably change the result of the trial." That evidence was a message allegedly sent from Shelton's Facebook account to defendant's Facebook account at 5:32 a.m. on February 28, 2014, that read:

> "You said you love me Laron and you walked away and let that bitch hurt me I'm in the hospital and you're probably with her I'm sending you to jail now let's see how much that ugly fat bitch really love you Boo 112"

¶ 36 At the hearing on the motion for a new trial, defendant testified under questioning by defense counsel that Shelton was stabbed by another woman, not by him. He had been dating the woman and the woman and Shelton fought over him at a party. Defendant read the Facebook message to the court. Defense counsel told the court that, despite his thorough pretrial search of defendant's Facebook account amounting to "due diligence," the message "was not available" prior to trial. He only discovered it after trial and the message was, therefore, newly discovered evidence warranting a new trial. Counsel argued alternatively that, if the message was available prior to trial, then his inability to locate it amounted to ineffective assistance of counsel.

¶ 37 The court stated that it had listened to defendant's testimony, read the motion, and listened to the arguments. It concluded that defense counsel "did do his due diligence" and his representation did not show "any sort of ineffectiveness." It went on to state that, had the Facebook message been introduced as evidence at trial, it would not have changed the court's ruling. The court denied the motion for a new trial.

¶ 38 Defendant argues that, in ruling on these arguments, the court glaringly departed from the directive of *Krankel* and *Moore*. He asserts the court should have resolved the *Krankel* issue raised as a prerequisite to the posttrial motion for a new trial. Defendant argues the court failed to conduct an adequate inquiry into the ineffective assistance of counsel claim and, crucially, allowed the allegedly ineffective defense counsel to question defendant regarding the ineffectiveness allegations.

¶ 39 However, defendant did not raise a *pro* se ineffective assistance of counsel claim after the court disposed of his initial claim made during allocution at sentencing. Any ineffectiveness claim at the hearing on the motion for a new trial was raised by counsel, and the court fully explored that claim, finding that defense counsel did "do his due diligence" and there was "nothing as far as any sort of ineffectiveness." Defendant himself did not renew his ineffective assistance of counsel claim. Where there was neither an explicit nor an implicit *pro se* claim of ineffectiveness of counsel, no *Krankel* inquiry was required. *People v. Taylor*, 237 Ill. 2d 68, 77 (2010).

¶ 40 Even if we somehow construe defense counsel’s argument as a valid *pro se* ineffective assistance claim, defendant’s assertion that the trial court never contemplated the merits of his claim is contradicted by the record. The court fully explored whether counsel could have found the email prior to trial and found "nothing as far as any sort of ineffectiveness." Moreover, the trial court stated “this [email] message, in and of itself even if I heard it at the trial would not change my mind.”

¶ 41 “[W]here the trial court's probe into a defendant's allegations reveals [those claims] are 'conclusory, misleading, or legally immaterial' or do 'not bring to the trial court's attention a

colorable claim of ineffective assistance of counsel,' the trial court may be excused from further inquiry." *People v. Burks*, 343 Ill. App. 3d 765, 774 (2003) (quoting *People v. Johnson*, 159 Ill. 2d 97, 126 (1994)). Here, after fully exploring the issue and taking into account the evidence presented at trial, the trial court considered the email and found it would not have exonerated defendant and was therefore immaterial. We therefore affirm the trial court's ruling.

¶ 42 Having found no evidence was introduced at trial that showed defendant entered a residence, we reverse his conviction for criminal trespass to residence. We affirm defendant's conviction for domestic battery causing bodily injury where Shelton's credible testimony was sufficient to support his conviction. We affirm the trial court's finding, following its inquiry into defendant's posttrial *pro se* ineffective assistance of counsel allegations, that no *Krankel* hearing with new counsel was required.

¶ 43 Affirmed in part; reversed in part.