2017 IL App (1st) 143525-U

FIRST DIVISION
February 6, 2017

No. 1-14-3525

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. 13 CR 11606
	)	
REGINALD HIGHSMITH,	)	Honorable
	)	Stanley Sacks,
Defendant-Appellant.	)	Judge Presiding.

JUSTICE MIKVA delivered the judgment of the court.
Presiding Justice Connors and Justice Harris concurred in the judgment.

ORDER

¶ 1 *Held*: Where the State presented testimony that defendant told police he secured a weapon and ammunition in a closet to keep them away from his children and the trial court found that testimony to be credible, the evidence was sufficient to support the trial court's finding that defendant had knowing possession of those items. Defense counsel's failure to seek suppression of defendant's statement was not ineffective assistance of counsel because defendant cannot show that a motion to suppress the statement would have been meritorious.

¶ 2 Following a bench trial, defendant Reginald Highsmith was convicted of unlawful possession of a weapon by a felon, unlawful possession of firearm ammunition by a felon, and unlawful possession of a firearm with a defaced serial number. Mr. Highsmith was sentenced to three years in prison. On appeal, Mr. Highsmith contends that the State failed to prove his

constructive possession of the firearm because it did not show he had knowledge of the weapon and ammunition or exercised exclusive control over the locked closet from which the contraband was recovered. Mr. Highsmith also argues that because his statement to police was the only evidence linking him to the contraband, his counsel was ineffective for failing to move to suppress the statement as the product of an improper custodial interrogation. We affirm.

¶ 3 BACKGROUND

¶ 4 On May 26, 2013, officers of the Chicago Police Department executed a warrant at 7518 South Merrill Avenue in Chicago, Illinois. The warrant was issued for both the residence itself and for "Bridget" Highsmith and was based on an anonymous tip that "Bridget Highsmith" had been selling cannabis from the residence.

¶ 5 At trial, Chicago police officer James Bansley testified that he was a part of the enforcement team that executed the search warrant at the single-family residence located at 7518 South Merrill. He and other officers entered the residence at about 6:20 p.m. on May 26, 2013. Upon entering the residence, they encountered Mr. Highsmith, several children, and a female later identified as Bridgette Highsmith.

¶ 6 Officer Bansley further testified that the house had two bedrooms on the first floor. He stated that he recovered a letter addressed to Mr. Highsmith at 7518 South Merrill from a dresser drawer in one of those bedrooms. The letter was dated March 25, 2013, about two months prior to when the search was executed, and was from the Illinois Department of Human Services regarding Mr. Highsmith's Supplemental Nutrition Assistance Program (SNAP) benefits. That drawer also contained a letter addressed to Bridgette Highsmith. Officer Bansley testified that Mr. Highsmith was being detained in the living room while the officer searched the bedroom but he could not recall whether Mr. Highsmith was handcuffed.

¶ 7 Officer Kevin Fry testified that he collected the letter addressed to Mr. Highsmith from Officer Bansley and then went downstairs into a "semi-finished basement" where other officers had already arrived. Officer Fry stated that the area contained a "couple of bedrooms" and a "large kind of walk-in closet." Another officer removed the closet padlock with a pry bar, entered the closet, and retrieved a .22-caliber rifle and two plastic bags containing ammunition. Officer Fry photographed those items and identified those photographs at trial; he further testified that the serial number on the rifle had been defaced.

¶ 8 Officer Fry testified that, after the contraband was found, Mr. Highsmith was brought to the basement but that Bridgette was not brought into the basement with Mr. Highsmith. Officer Fry advised Mr. Highsmith of his *Miranda* rights, which Mr. Highsmith indicated he understood. Officer Fry asked Mr. Highsmith about the rifle and Mr. Highsmith responded that he found the rifle in an alley and put it in the closet to keep it away from the children. This statement, which we agree was the key evidence used to convict Mr. Highsmith, was not memorialized in writing or otherwise recorded.

¶ 9 The State then introduced a certified copy of Mr. Highsmith's 2010 felony conviction for possession of a controlled substance in case No. 10 CR 0962101.

¶ 10 The defense presented the testimony of Bridgette and Mr. Highsmith. Bridgette testified that she lived at 7518 South Merrill with nine children and a grandchild. Bridgette's three older children were 24, 20, and 19 years old, and Mr. Highsmith was the father of her six younger children, who ranged in age from 14 to 4 years old. She and Mr. Highsmith married in 2004 and, when he lived in the house, they shared the bedroom from which the letters were recovered.

¶ 11 Bridgette testified that Mr. Highsmith moved out of 7518 South Merrill in November 2012 and moved in with his sister, where he was living at the time of these events. Mr. Highsmith often returned to 7518 South Merrill because he worked for a person who lived

nearby and visited at least five days a week to take his children to school. Bridgette stated that Mr. Highsmith did not sleep at the house after he moved out and did not keep clothes or personal items there, but that he did receive mail at the house that she kept on her dresser.

¶ 12 Bridgette testified that she had never seen the contents of the basement closet and neither Mr. Highsmith nor her children had access to it. When asked who used the closet, Bridgette replied that her sister put items in the closet in January 2013. Bridgette was not at home when her sister completed that task and stated that her sister's husband put the lock on the closet. When Bridgette asked her sister why the closet was locked, her sister responded that she did not "want the kids to go in there."

¶ 13 Bridgette testified that on the day of the search, Mr. Highsmith had been at the house since about 1:30 p.m. When the officers entered the house, they handcuffed Mr. Highsmith and separated Bridgette from him. Bridgette stated that she could hear the police downstairs, prying open the locked closet in the basement. The door was secured with a latch and a padlock, for which she kept both sets of keys in a lockbox in her closet.

¶ 14 Mr. Highsmith testified that he and Bridgette had been married for ten years and had lived together "off and on" during that time. Prior to moving in with his sister in November 2012, he lived with Bridgette at 7518 South Merrill for two years where they shared a first-floor bedroom. Mr. Highsmith stated that he "never had a reason to go down in the basement" in the two years he lived in the house. He did not know of the locked closet and had neither keys nor access to the closet.

¶ 15 Mr. Highsmith did not receive mail at his sister's house and did not know her address. Mr. Highsmith said his mail continued to be delivered to 7518 South Merrill because he did not file a change of address form. Mr. Highsmith stated that he did not take the letter from the house because he did not need it to access his SNAP benefits. Similarly to Bridgette's testimony, Mr.

Highsmith stated that he was frequently at 7518 South Merrill to see his children, although he put it at three times per week. He did not spend the night at the house after moving out and he did not have keys to the house. Mr. Highsmith also testified that Bridgette's older children lived in the basement while her younger children lived on the first floor.

¶ 16 Mr. Highsmith testified that on the day the warrant was executed, he arrived at the house about 10 minutes before the officers entered. Mr. Highsmith stated that Officer Fry handcuffed him but did not approach him again. Mr. Highsmith testified that he was not taken to the basement or shown the rifle but stated that, during the search of the home, an officer requested his identification and ran a background check that indicated his prior felony conviction. Mr. Highsmith stated that he was not questioned about the rifle or ammunition and denied making a statement to any officer although he was given his *Miranda* rights while being transported to the police station.

¶ 17 At the close of evidence, the trial court found that the evidence established Mr. Highsmith's possession of the rifle and the ammunition. The court found the testimony was uncontroverted that the basement closet had been locked but that it did not "have to accept" Bridgette's version that she had the only keys, noting her bias towards Mr. Highsmith as the father of her children.

¶ 18 The court further found that, even accepting Mr. Highsmith's testimony that Bridgette's older children lived in the basement, it was "implausible" that Mr. Highsmith would have lived in the house for two years without entering the basement. The court noted that the State needed to prove only that Mr. Highsmith had "access to the premises" and not that he lived in the house.

¶ 19 The court also said that, if the police had made up that Mr. Highsmith gave them a statement about the rifle and ammunition, they "would have made [up] a much better one" than the statement testified to at trial. Furthermore, the court found that while Mr. Highsmith could

have believed that the statement that Officer Fry testified he made would show innocence, the statement was "actually inculpatory" because he admitted to possessing the rifle and ammunition. Finally, the court found that Mr. Highsmith's insistence that he never made a statement to the police was not credible because he was a convicted felon and risked incurring charges for possessing a weapon, so "of course [he's] going to get up there and say he never made the statement." The trial court found Mr. Highsmith guilty of all charged counts.

¶ 20 In denying Mr. Highsmith's motion for a new trial, the trial court specifically stated that it found the State's evidence—that Mr. Highsmith gave a statement to the police indicating he had found the gun in the alley and put it in the closet—to be credible and the evidence presented by Mr. Highsmith to be not credible. The court sentenced Mr. Highsmith on two counts, imposing two concurrent prison terms of three years each for unlawful possession of a weapon by a felon and unlawful possession of a firearm with a defaced serial number.

¶ 21 ANALYSIS

¶ 22 A. Sufficiency of the Evidence

¶ 23 On appeal, Mr. Highsmith first contends that the evidence was insufficient to establish his guilt beyond a reasonable doubt because the State did not prove his constructive possession of the firearm and ammunition recovered from the closet. Pointing to testimony that he did not live at the house or have a key to the closet, Mr. Highsmith argues the State did not establish that he had control of the area where the contraband was found.

¶ 24 When considering a challenge to the sufficiency of the evidence, this court must consider whether 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). It is not the function of this court to retry the defendant; rather, 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)).

¶ 25 Mr. Highsmith was convicted of three offenses that share the common element of the knowing possession of a firearm or ammunition. See 720 ILCS 5/24-1.1(a) (West 2012) (unlawful use or possession of a weapon by a felon); 720 ILCS 5/24-1.1(a) (West 2012) (unlawful use or possession of firearm ammunition by a felon); 720 ILCS 5/24-5(b) (West 2012) (possession of a firearm with defaced identification marks). Knowing possession may be actual or constructive. *People v. Moore*, 2015 IL App (1st) 140051, ¶ 23.

¶ 26 Because Mr. Highsmith was not seen in actual physical possession of the recovered contraband, the State was required to proceed on a theory that Mr. Highsmith had constructive possession of the items. Under such a theory, the State had to prove that Mr. Highsmith (1) had knowledge of the contraband; and (2) exercised "immediate and exclusive" control over the area where the contraband was found. *Id.* Evidence of a defendant's constructive possession is " 'often entirely circumstantial.' " *People v. Alicea*, 2013 IL App (1st) 112602, ¶ 24 (quoting *People v. McLaurin*, 331 Ill. App. 3d 498, 502 (2002)).

¶ 27 The State presented evidence that, in executing the search warrant in May 2013, police recovered a letter addressed to Mr. Highsmith at that location, dated two months before the search. Mr. Highsmith testified that he had lived at the house for two years but had moved out in November 2012, about six months prior to the search, and returned several times a week to visit his children who remained in the house. Mr. Highsmith argues that both he and Bridgette presented believable accounts that he did not live in the house when the search took place.

¶ 28 In considering a defendant's control over the area where the weapon and ammunition were found, the defendant's residency at the premises or other indicia of the defendant's control over the premises are key factors but are not dispositive. *People v. Tates*, 2016 IL App (1st)

140619, ¶ 20 (a defendant's lack of control of the location itself is not essential if "circumstantial evidence supports an inference that the defendant intended to control the contraband inside" the premises); see also *People v. Minniweather*, 301 Ill. App. 3d 574, 578 (1998) ("it is defendant's relationship *to the contraband* that must be examined" (emphasis in original)). Constructive possession can be demonstrated if the defendant once had physical control over the contraband with the intent to exercise control again, the defendant has not abandoned the items, and no other person has obtained possession. *People v. Adams*, 161 Ill. 2d 333, 345 (1994).

¶ 29 As proof that Mr. Highsmith had knowledge of the contraband and that he once exercised control over it, the State relies almost entirely on Officer Fry's testimony about Mr. Highsmith's statement to the officer that he picked up the weapon and ammunition in an alley and secured them in the closet. Although Mr. Highsmith contends the indicia of his residency is far less than was present in *People v. Maldonado*, 2015 IL App (1st) 131874, and *Alicea*, in which the defendants' convictions were reversed, the defendants in those cases did not make statements admitting to possession of the contraband. See *Maldonado*, 2015 IL App (1st) 131874, ¶ 34; *Alicea*, 2013 IL App (1st) 112602, ¶¶ 27-33. The same is true of *People v. Moore*, 2015 IL App (1st) 140051, ¶ 28, on which Mr. Highsmith relies in his reply brief.

¶ 30 Mr. Highsmith contends that his conviction cannot rest merely on his confession because his inculpatory statement to Officer Fry that he wanted to keep the items away from his children was not "otherwise corroborated" in a recorded or written statement.

¶ 31 To prove a defendant guilty of a crime, the State must prove beyond a reasonable doubt that (1) a crime has been committed, known as the *corpus delicti*; and (2) that the crime was committed by the defendant. *People v. Sargent*, 239 Ill. 2d 166, 183 (2010). Although a defendant's confession "may be integral to proving the *corpus delicti*," such proof of the *corpus delicti* may not exclusively rely on a defendant's extrajudicial confession or admission. *Id.*

"Where a defendant's confession is part of the proof of the *corpus delicti*, the prosecution must also adduce corroborating evidence independent of the defendant's own statement." *Id.*

¶ 32 We note that requiring corroborating evidence to accompany a confession "stems from an historical mistrust of extrajudicial confessions" both because coerced confessions are unreliable and because innocent people may confess to a crime they did not commit "for various psychological reasons." *Id.* However, neither of those specific concerns are present here because Mr. Highsmith does not contend that he was coerced into confessing but instead contends that he did not make a statement at all.

¶ 33 "To avoid running afoul of the *corpus delicti* rule, the independent evidence need only *tend to show* the commission of a crime." *People v. Lara*, 2012 IL 112370, ¶ 18. The corroborating evidence does not, alone, need to be strong enough to prove the charged offense beyond a reasonable doubt. *Id.* "If the corroborating evidence is sufficient, it may be considered, together with the defendant's confession, to determine if the State has sufficiently established the *corpus delicti* to support a conviction." *Id.* Furthermore, "[t]he independent evidence and details of the confession are not required to correspond in every particular" but it "must inspire belief in the defendant's confession." *People v. Rivera*, 2011 IL App (2d) 091060, ¶ 41 (citing *People v. Ruby*, 138 Ill. 2d 434, 451 (1990); *People v. Cloutier*, 156 Ill. 2d 483, 503 (1993)). Our supreme court has noted that "far less independent evidence" is required to corroborate a defendant's confession under the *corpus delicti* rule than is required to show guilt beyond a reasonable doubt. *People v. Lara*, 2012 IL 112370, ¶¶ 45. "Even if a defendant's confession involves an element of the charged offense, the independent evidence need not affirmatively verify those circumstances; rather, the evidence must simply 'correspond' with the confession." *Id.*

¶ 34 In the present case the confession was used to prove Mr. Highsmith's connection with the gun and the ammunition, which is generally considered to be separate and apart from the *corpus*

delicti. See *People v. Lambert*, 104 Ill. 2d 375, 378 (1984) ("the *corpus delicti* must be proved and the identity of the defendant as the guilty party must be established" (internal quotation marks omitted)). The presence of the gun and the ammunition in the closet and the defaced serial number independently established those elements of the crime. Mr. Highsmith did not contest the necessary element that he be a convicted felon. Thus, certain elements of the crime were established solely by other evidence

¶ 35 To the extent that Mr. Highsmith's connection to the gun and the ammunition can be considered part of the *corpus delicti*, the letter found in the first floor bedroom and Bridgette's testimony that Mr. Highsmith was frequently in the residence corroborated Mr. Highsmith's statement that he had put the gun and ammunition in the closet. Therefore, the connection between Mr. Highsmith and the contents of the closet had some independent corroboration. In short, we do not view this evidence as insufficient because of a lack of evidence outside of the confession to establish the *corpus delicti*.

¶ 36 Mr. Highsmith also contends that Officer Fry's testimony about his statement was not credible. As we noted above, the evidence at trial must be viewed in the light most favorable to the prosecution. *Davison*, 233 Ill. 2d at 43. Furthermore, "[i]n a bench trial, the trial court determines the credibility of witnesses, weighs the evidence, resolves conflicts in the evidence, and draws reasonable inferences from the evidence." *People v. Freeney*, 2016 IL App (1st) 140328, ¶ 18. Therefore, "[a]s a reviewing court, we will not substitute our judgment for that of the trier of fact on questions concerning the weight of the evidence or the credibility of witnesses." *Id.* Instead, we must "carefully examine the evidence while giving due consideration to the fact that the trial court saw and heard the witnesses." *People v. Kent*, 2016 IL App (2d) 140340, ¶ 18.

¶ 37 In initially finding Mr. Highsmith guilty of the charges against him, the court implicitly made clear that it believed Officer Fry's testimony that Mr. Highsmith made a statement indicating that he had placed the gun and ammunition in the basement closet. Then, in denying Mr. Highsmith's post-trial motion, the court specifically stated that it had found credible the evidence that Mr. Highsmith gave the statement to the police. Because we must defer to these credibility findings of the trial court, considering all of the above, we find that the evidence was sufficient to support Mr. Highsmith's convictions.

¶ 38 B. Ineffective Assistance of Counsel

¶ 39 Mr. Highsmith next contends that his trial counsel was ineffective in failing to file a motion to suppress his inculpatory statement because his conviction was largely based on the statement. He argues that his statement was obtained in a custodial interrogation because he was handcuffed and taken to the basement of the house and that the police lacked probable cause to believe that the gun and ammunition belonged to him.

¶ 40 The State responds by pointing to Mr. Highsmith's trial testimony that he was not questioned by police and did not make a statement. The State asserts that, therefore, a motion to suppress would have contradicted the defense theory that counsel ultimately chose to present at trial. The State further argues that a claim of ineffective assistance based on an undeveloped record is better raised on collateral review than on direct appeal.

¶ 41 In reply, Mr. Highsmith asserts that he may raise his suppression argument despite the theory of his defense at trial. Mr. Highsmith further contends that because he has completed his sentence and his term of mandatory supervised release, he lacks standing to now file a postconviction claim of counsel's ineffectiveness, and asserts that this court should therefore address his contentions.

¶ 42 We reject both of these predicate arguments by the State. The record in this case is sufficiently developed to examine the substance of Mr. Highsmith's ineffective assistance of counsel claim and Mr. Highsmith would not have been precluded from trying to convince the court that he never made the statement simply because he also attempted to have the statement suppressed. However, under the rigorous standards in place for putting forward a claim for ineffective assistance of counsel where counsel failed to file a motion to suppress, we agree with the State that Mr. Highsmith failed to provide an adequate basis for such a claim.

¶ 43 "A claim of ineffective assistance of counsel is evaluated under the two-prong test set forth in *Strickland v. Washington*, 466 U.S. 668 (1984)." *People v. Henderson*, 2013 IL 114040, ¶ 11. Under that test, a defendant must show both that "counsel's performance fell below an objective standard of reasonableness" and that "a reasonable probability exists that, but for counsel's unprofessional errors, the result of the proceeding would have been different." *Id.* A defendant must show both prongs to prevail on an ineffective assistance claim. *Id.*; *People v. Coleman*, 183 Ill. 2d 366, 397 (1998).

¶ 44 To show that counsel performed deficiently, the defendant "must overcome the strong presumption that the challenged action or inaction of counsel was the product of sound trial strategy and not incompetence." *Coleman*, 183 Ill. 2d at 397. As noted above, we disagree with the State's contention that the decision not to file a suppression motion "fell squarely within the realm of sound trial strategy" because of the defense theory at trial that Mr. Highsmith never made a statement to the police. Defendants are permitted to present alternative theories at trial. See *People v. Benford*, 295 Ill. App. 3d 695, 697 (1998). Mr. Highsmith's trial counsel would have been permitted at a suppression motion to argue that, even if the court believed Officer Fry's testimony that Mr. Highsmith made the alleged statement, the statement as unlawfully obtained.

¶ 45 However, Mr. Highsmith must also show that he was prejudiced by his trial counsel's actions. Specifically, with respect to ineffective assistance of counsel claims based on counsel's failure to file a motion to suppress, our supreme court recently "clarif[ied]" that, in order to show prejudice under such circumstances, "the defendant must demonstrate that the unargued suppression motion is meritorious, and that a reasonable probability exists that the trial outcome would have been different had the evidence been suppressed." *Henderson,* 2013 IL 114040, ¶ 15. In *Henderson* our supreme court specifically rejected cases that had held that a criminal defendant could succeed on an ineffective assistance claim based on showing a "reasonable probability" that a motion to suppress would have been successful. *Id.* ¶¶12-15. While we agree with Mr. Highsmith that he has a reasonable basis for a motion to suppress the statement that Office Fry testified he made, he cannot meet the high standard set by the supreme court in *Henderson* of showing that the motion would have been "meritorious."

¶ 46 The fourth amendment to the United States Constitution protects the "right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures." U.S. Const., amend. IV. The central inquiry under the fourth amendment is the reasonableness of the particular governmental invasion. *Michigan v. Summers*, 452 U.S. 692, 700 n.11 (1981).

¶ 47 The existence of a valid search warrant establishes probable cause that an occupant of that home committed a crime, which provides officers with the limited authority to detain the home's occupants during the search, and those present are lawfully seized for the duration of the warrant search so long as the duration is not unreasonably prolonged. *Summers*, 452 U.S. at 703; see also *Brendlin v. California*, 551 U.S. 249, 255 (2007).

¶ 48 Here, there is no question that Mr. Highsmith's initial detention by the police was proper. He was initially detained upon the officers' entry into the house pursuant to the execution of a

search warrant. Officer Bansley recovered from a first-floor bedroom a letter that was addressed to Mr. Highsmith at that location and, based on the letter, the officers in this case reasonably could have deemed Mr. Highsmith to be an occupant of the house. Even accepting Mr. Highsmith's testimony that he was handcuffed upon the officers' entry into the house, police can detain those individuals who are present with reasonable force, including the use of handcuffs, while completing the search. *Muehler v. Mena*, 544 U.S. 93, 102 (2005) ("the use of handcuffs minimizes the risk of harm to both officers and occupants"); *Conner*, 358 Ill. App. 3d at 959-60.

¶ 49 After Mr. Highsmith was properly detained during the search and the rifle and ammunition were discovered in the basement closet, he was taken to the basement and questioned. Mr. Highsmith argues, and the State does not dispute, that this was a custodial interrogation, which would need to be supported by probable cause. *People v. Elliot*, 314 Ill. App. 3d 187, 191 (2000)

¶ 50 Probable cause exists when the facts and circumstances within the knowledge of the arresting officer are sufficient to conclude that an offense has been committed and that the person arrested has committed the offense. *Id.* "The existence of probable cause depends upon the totality of the circumstances at the time of the arrest." *People v. Grant*, 2013 IL 112734, ¶ 11. "Therefore, whether probable cause exists is governed by commonsense considerations, and the calculation concerns the probability of criminal activity, rather than proof beyond a reasonable doubt." *People v. Hopkins*, 235 Ill. 2d 453, 472 (2009). "Indeed, probable cause does not even demand a showing that the belief that the suspect has committed a crime be more likely true than false." (Internal quotation marks removed.) *Id.*

¶ 51 The evidence in this record shows that, prior to the custodial interrogation of Mr. Highsmith, two letters were recovered from a first-floor bedroom, one addressed to Mr. Highsmith and the other to his wife. In addition, a rifle and ammunition were found in the locked

basement closet of the residence and the rifle had a defaced serial number. Based on this evidence, a reasonable judge could certainly conclude that Mr. Highsmith had control over the contents of the closet, and that therefore the police had sufficient information to question him based on probable cause to believe he had committed the crime of possession of a firearm with a defaced serial number.

¶ 52 Furthermore, although the police officers were never asked, Mr. Highsmith admitted at trial that the police ran a background check on him. If the police ran a background check on Mr. Highsmith before they questioned him, knowledge of his prior felony conviction would lend support to a finding of probable cause that he had also committed the crimes of possession of a firearm and ammunition by a felon.

¶ 53 On the record before us, although there would be some basis for a motion to suppress, we cannot say that such a motion would be "meritorious." Because Mr. Highsmith cannot show that he was prejudiced by counsel's failure to file a motion to suppress his statement, he cannot show that he received ineffective assistance of counsel. *Coleman*, 183 Ill. 2d at 397-98.

¶ 54 CONCLUSION

¶ 55 In conclusion, the evidence was sufficient to establish Mr. Highsmith's guilt when viewed in the light most favorable to the prosecution. Additionally, defense counsel's failure to file a motion to suppress Mr. Highsmith's inculpatory statement did not constitute ineffective assistance of counsel because the record does not establish that such a motion would have been meritorious. Accordingly, the judgment of the trial court is affirmed.

¶ 56 Affirmed.