

2017 IL App (2d) 141282-U  
No. 2-14-1282  
Order filed March 6, 2017

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IN THE  
APPELLATE COURT OF ILLINOIS  
SECOND DISTRICT

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THE PEOPLE OF THE STATE	)	Appeal from the Circuit Court
OF ILLINOIS,	)	of Lake County.
	)	
Plaintiff-Appellee,	)	
	)	
v.	)	No. 12-CF-1296
	)	
CRISTIAN DELAO-HERNANDEZ,	)	Honorable
	)	Daniel B. Shanes,
Defendant-Appellant.	)	Judge, Presiding.

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JUSTICE HUTCHINSON delivered the judgment of the court.  
Justices Burke and Spence concurred in the judgment.

**ORDER**

¶ 1 *Held:* Defense counsel's strategic evidentiary decisions were reasonable; however, even if the strategies were not reasonable, any resulting prejudice to defendant was not sufficient to require that he receive a new trial. We therefore affirm defendant's conviction and vacate the \$750 public defender fee, which the parties agree was improperly imposed.

¶ 2 Defendant, Cristian Delao-Hernandez, was convicted by a jury of aggravated kidnapping (720 ILCS 5/10-2(A)(6) (West 2012), and aggravated criminal sexual assault (720 ILCS 5/11-1.30(A)(4) (West 2012). He was sentenced to serve consecutive prison terms of 40 years and 28 years. Defendant contends on appeal that his trial counsel was ineffective for failing to: (1)

object to the admission of defendant's purported statement that he killed two people unrelated to this case; and (2) impeach the State's two main witnesses regarding their respective immigration statuses. As we will explain, we believe that trial counsel's decisions were strategically reasonable. However, even if they were not reasonable, we do not believe that defendant was prejudiced to the extent that a new trial is warranted. Defendant also contends that a \$750 public defender fee was improperly imposed, and the State confesses error in this regard. We therefore affirm defendant's convictions for aggravated kidnapping and aggravated criminal sexual assault, but we vacate the public defender fee.

¶ 3

### I. BACKGROUND

¶ 4 U.S. Marshals raided a Beach Park motel room during the early morning of May 2, 2012. They apprehended three people: defendant, Jose V. and Blanca M. The marshals were assisting Georgia law enforcement officers who were investigating the murder of Jacqueline "Jackie" Ramone. Jackie had been found shot dead in her car near Atlanta the previous day. A Georgia court convicted defendant on charges of murder, aggravated assault, kidnapping, and rape, and sentenced him to serve a prison term of life without parole. Following the Georgia proceedings, defendant was extradited to Illinois to face charges of aggravated kidnapping, criminal sexual assault, and aggravated criminal sexual assault. His convictions on those charges are at issue in this appeal. Jose and Blanca were the State's two main witnesses in the Illinois trial. Blanca was the sole victim of the crimes alleged by the State; the State did not allege that defendant committed any crimes against Jose.

¶ 5 Prior to the Illinois trial, defense counsel moved to bar evidence of defendant's Georgia convictions, as well as the facts surrounding the Georgia murder and the sexual assaults that had allegedly taken place outside Illinois. The trial court barred evidence of the Georgia convictions,

but ruled that the facts surrounding the Georgia murder and sexual assaults were admissible, finding that they were “inextricably intertwined with the allegations brought in this case.”

¶ 6 On the day of jury selection, defense counsel raised an issue concerning Jose’s and Blanca’s respective immigration statuses. The parties had recently learned that Jose and Blanca requested U Visas in connection with the Georgia trial. U Visas are available to victims of designated crimes who are likely to help authorities investigate or prosecute that crime; a U Visa allows these crime victims to remain in the United States as lawful temporary residents despite being otherwise subject to removal. See *L.D.G. v. Holder*, 744 F.3d 1022, 1024 (7th Cir. 2014). According to defense counsel and the prosecutors, the marshals placed an Immigration and Customs Enforcement (“ICE”) hold on Blanca following the raid at the Beach Park motel. Blanca subsequently obtained a U Visa with the assistance of the Georgia prosecutors, and she faced no repercussions for her illegal status at the time of the raid. Jose had previously been deported. He indicated during a police interview that he wanted to avoid illegal reentry charges and he did not want to be deported again. During the Georgia trial, Jose testified that a Georgia prosecutor had promised to contact federal immigration authorities on his behalf. Jose was never charged with any federal crimes for his illegal reentry. Following the Georgia trial, Jose was granted legal status. The prosecutor believed that Jose was initially granted a work Visa, and that he was in the process of applying for a U Visa. Defense counsel acknowledged that Jose and Blanca had both made incriminating statements against defendant before any agreements were in place. Counsel nonetheless argued that the witnesses’ efforts to obtain U Visas were relevant to their biases and motivations to testify against defendant. The trial court ruled that Jose’s prior deportation was irrelevant and therefore barred any such evidence. However, the trial court allowed defense counsel to raise the remaining issues on cross examination. Defense

counsel later informed the trial court that he did not intend to cross-examine Blanca or Jose about their respective immigration statuses.

¶ 7 Blanca testified with the assistance of a Spanish-speaking interpreter. She explained that she had been longtime friends with Jackie, who had worked at an Atlanta area bar named Confetti's. She met Jackie at Confetti's shortly after midnight on May 1, 2012. After a couple of hours, a waitress told the women that defendant had offered them \$400 to leave with him. The women did not know defendant and they declined the offer. Defendant then approached them and asked if they would join him at a different bar named The Union. The women eventually agreed to leave with defendant because the waitress agreed to go along. Blanca explained that they knew the waitress and that the waitress had claimed to know defendant. It was agreed that the waitress and defendant would leave in defendant's car, while Blanca and Jackie would follow in Jackie's car. Shortly after leaving Confetti's, defendant pulled over and stopped in the parking lot of an abandoned bar. He said he felt dizzy and he could no longer drive. Blanca and Jackie realized at that point that the waitress from Confetti's was not in defendant's car. Defendant explained that the waitress' boss would not let her leave work. Defendant agreed to drive his car to Jackie's nearby apartment. The women followed. Defendant left his car at Jackie's apartment and got into the back seat of Jackie's car. The three then proceeded in Jackie's car toward The Union.

¶ 8 Blanca testified that, while en route to The Union, defendant began firing a gun out of Jackie's car. Blanca screamed and asked him to stop. Defendant then pointed his gun at Jackie and demanded that she let him drive her car. Jackie refused at first, but then complied with defendant's demand that she stop the car. As defendant was pulling Jackie from the car, Jackie handed Blanca her cell phone. Blanca called 911 on Jackie's cell phone as she attempted to hide

it under her a jacket. However, defendant took the phone, hung up the call, and threw the phone into the back of Jackie's car. He threatened to kill whoever made the call and ordered Blanca to undress. Blanca complied and got into the back seat of Jackie's car. Jackie got into the passenger seat and defendant began driving Jackie's car. As they were driving on the freeway, defendant ordered Blanca to climb on top of him in the driver's seat. Blanca attempted to do so but Jackie pushed her back. Jackie was crying and insisting that she would not let defendant harm Blanca. Defendant pointed his gun close to Jackie's head and fired. He said that Blanca was to blame for Jackie's death. Out of fear for her own life, Blanca agreed with defendant. Blanca testified that she wanted to make defendant believe that she was on his side. Defendant refused to let Blanca go free for fear that she would call the police. He began discussing a plan to get rid of Jackie's body. Blanca suggested that they return to Jackie's apartment and switch cars. Defendant agreed. When they got back to Jackie's apartment and switched to defendant's car, Blanca grabbed her cell phone and hid it in her dress.

¶ 9 Blanca testified that defendant drove his car to another parking lot and stopped in a dark area. He got into the back seat with Blanca, where he touched her breasts and placed his penis in her vagina. He did not use a condom. Blanca did not want to have sex with defendant, but she cooperated because she was afraid. She told defendant that she liked him and that she liked having sex with him so that he would not hurt her. Afterward, defendant drove his car to Jose's apartment. He explained to Blanca that he had left Jose at Confetti's. Blanca had never before met Jose. Defendant introduced Blanca to Jose as his girlfriend. Defendant then asked Jose to accompany them on an errand. Jose at first refused and claimed he had to work, but he later agreed and got into the passenger seat of defendant's car. Blanca was in the back seat. As defendant drove toward the outskirts of Atlanta, he revealed that he was driving to Chicago.

¶ 10 Blanca testified that she repeatedly asked defendant to stop during the day-long drive, because she wanted an opportunity to ask for help. They first stopped at a gas station, but defendant never left Blanca's side—even accompanying her into the women's restroom. The second stop was also at a gas station. Defendant again accompanied her into the women's restroom, where he placed his penis in her vagina. Defendant did not wear a condom, but at Blanca's request, he did not ejaculate inside her. The third stop was at a rest area. Blanca testified that she went into the restroom alone. She had her cell phone concealed in the breast area of her dress. She explained that she did not call 911 because she did not speak English and she did not know her location. She testified, however, that she told a Spanish-speaking woman that she had been abducted and she wrote defendant's license plate number on a bathroom wall. Blanca also testified that, while in the restroom at the rest area, she received a text message from her friend, Miguel Gonzalez. She testified that she texted back to Gonzalez, "Call the police. Help me please." Blanca attempted to stall their departure from the rest area in hopes that police would arrive, but the police did not arrive and they left. The next stop was at a McDonald's. Blanca went alone into the women's restroom and texted Miguel, "They're taking me to Chicago." Blanca later went alone to the women's restroom at another McDonald's and called Miguel. A stranger answered Miguel's phone and Blanca said that she was two hours from Chicago. She then erased the call history on her cell phone and left the restroom. Defendant was waiting outside the restroom. When they got back to defendant's car, defendant threatened her with a gun and demanded her cell phone. Blanca complied and defendant resumed driving.

¶ 11 Blanca testified that defendant drove past Chicago and explained that they were going to his friend's house. He made some phone calls along the way, during which he spoke of delivering weapons. At one point, defendant stopped near a residence and got into a different

car. Blanca asked Jose for help while the two were alone in defendant's car. Jose agreed to help her escape the next day. Defendant then returned to his car and removed a handgun and some ammunition from the glove compartment. Blanca remembered seeing only two guns: defendant's handgun and the handgun from the glove compartment. She also remembered that defendant had spoken of a "machine gun" hidden elsewhere in the car. She testified that, when defendant returned to his car a second time, he said he had "pawned" the guns.

¶ 12 Blanca testified that they left the residential area and went to a nearby motel. Jose checked in and all three of them entered a room with one bed. Blanca went to take a bath. Defendant followed her to the restroom, where placed his penis in her vagina. Blanca did not want to have sex with defendant, but she was afraid to resist. Defendant did not wear a condom, but at Blanca's request, he did not ejaculate inside her. Later that night, defendant lay down on the bed next to Blanca while Jose sat in a chair. Defendant was sending text messages while Blanca pretended to be asleep. After a while, the police broke through the door of the motel room. Blanca was immediately handcuffed and taken out of the room. The police then removed the handcuffs and took her to a hospital for an examination. Afterward, she was taken to a police station where she gave a statement through an interpreter.

¶ 13 Jose testified with the assistance of a Spanish-speaking interpreter. He explained that he had known defendant for about two months before the events in question. They had worked together at a restaurant. They went to a bar on April 30, 2012, around 11 p.m. They drank and used cocaine which defendant had supplied. Jose testified that, as they were driving to a second bar, defendant took out two guns and gave one to Jose. Both men fired their weapons out of the windows of defendant's car. Jose testified that he was worried about injuring someone because of a nearby apartment complex. The third bar they visited was Confetti's. At one point, Jose

saw defendant talk to a woman who worked at Confetti's. Defendant later left the bar and never returned. Jose left when Confetti's closed around 4:30 a.m. He got a ride home from some other friends who worked at Confetti's.

¶ 14 Jose testified that he called defendant from his apartment after realizing that his backpack and work uniform were in defendant's car. Defendant said that he was outside the apartment in the parking lot. Jose went outside and noticed a woman sitting in defendant's car. Defendant told Jose that he needed to accompany them if he wanted his backpack. Defendant claimed that he was taking Blanca to a bar named La Donia to meet her sister. Jose agreed to go along. However, defendant drove past La Donia and continued to the freeway. Jose asked defendant where they were going and defendant responded that they were going to Chicago. When Jose asked defendant to pull over and let him out, defendant became upset and threatened him with a gun. Defendant said that he needed Jose to go along and help him with some business. Jose did not know what defendant was talking about and he had never before done any business with defendant.

¶ 15 Jose testified that the first stop they made was at a gas station. Jose stayed outside and pumped gas while defendant and Blanca went inside. Jose did not use his cell phone to call for help because defendant had threatened to kill him. Defendant had also warned him not to speak with Blanca. At another gas station, Jose saw defendant follow Blanca to the women's restroom. Jose testified that defendant later spoke of having sex with Blanca at the gas station. The prosecutor asked where Blanca had been when defendant was saying this. Jose answered as follows:

“Now I remember. Now I remember. It was towards the very end at the last stop we made. It was at a McDonald's we stopped at. Blanca went to the—Blanca went to the

restroom inside the McDonald's, and that's when he told me that; that he had—he had taken her and that's when he confessed to me he had killed three people. He had killed two men and a woman.”

Defense counsel objected and the following exchange took place during a sidebar.

“MR. KALATA [prosecutor]: Judge, I brought this issue up to the defense. When I brought this issue up to the defense yesterday, they said they have no objection. I said do you want me to focus only on the murder of the victim in this case, and they said they had no objection to all three.

THE COURT: So I take it this is not a surprise.

MR. RADOSEVICH [defense counsel]: It's not a surprise, no.

THE COURT: I'm the only one surprised.

MR. RADOSEVICH: Yes. I objected because—

THE COURT: What?

MR. RADOSEVICH: —I had a different recollection of our conversation from yesterday. But I don't—

MR. FACKLAM [defense counsel]: Could we have two seconds?

MR. RADOSEVICH: I have a different recollection.

THE COURT: Take a moment. Talk to each other.

MR. FACKLAM: We will be on the same page I think.

(Brief Pause)

THE COURT: Back on at the side bar.

MR. RADOSEVICH: Thank you, Judge.

THE COURT: What's going on?

MR. RADOSEVICH: I'll withdraw the objection. I apologize.

THE COURT: Okay. But as long as you're here, what's this about.

MR. KALATA: I'm sorry?

THE COURT: As long as you're here, what is this about killing three other people?

That's sort of interesting.

MR. KALATA: That is. That's why I brought it to the defense attention.

THE COURT: Interesting to me. Where is this going?

MR. KALATA: It goes from three to focusing on the murder of Jacqueline.

THE COURT: Just out of curiosity, do we think the defendant might have killed three people?

MR. KALATA: I don't know. I'm not about to investigate.

MR. RADOSEVICH: If you're looking at me, I have no idea, Judge.

THE COURT: The parties are aware of it and there's no objection. Let's keep going.

The objection is withdrawn."

Following the sidebar, Jose testified that defendant said he had killed two men and a woman the previous night. Regarding the woman, defendant claimed that he had fired a gun inside a vehicle. Jose suggested that defendant was hallucinating, but defendant maintained that he had watched the bullet go into the woman's head.

¶ 16 Jose testified that Blanca appeared nervous and scared during the trip. At one point, after ordering Jose to drive, defendant got into the back seat with Blanca. Jose remembered that defendant began kissing and hugging Blanca, but Blanca was trying to push him back. As they neared Chicago, with defendant's permission, Jose called his brother-in-law in defendant's presence. Jose's brother-in-law lived in the Chicago area and he arranged a visit in the following

days. Although he wanted to explain that he had been kidnapped, he was afraid to say anything because of defendant's threats. Defendant later resumed driving and started making phone calls of his own. He continued driving to a residential area north of Chicago. Defendant parked and went to a different car. While he was away, Jose told Blanca that he would help her escape the next day. Shortly thereafter, defendant returned to his car and retrieved a handgun from the glove compartment, which he took back to the other car.

¶ 17 They went to the Beach Park motel and Jose rented a room using a fake name. Jose testified that, once they were all inside the room, defendant followed Blanca to the restroom. Jose heard Blanca say, "No," and "Calm down," while inside the restroom. Blanca looked nervous and uncomfortable when she came out of the restroom. Jose and defendant began exchanging text messages after Blanca went to bed. The parties stipulated to a transcript of an exchange of text messages between defendant's and Jose's cell phones, which took place between 11:31 p.m. and 11:58 p.m. on May 1, 2012. The exchange was translated from Spanish to English. During the exchange, Jose told defendant that they should leave Blanca behind and go elsewhere. Defendant responded that Blanca would help police find them. Defendant continued, "besides, she witnessed what I did." Jose insisted that Blanca would not remember anything and that she did not know the area. Defendant responded, "yes but if we leave her she could tell and I'll be fucked." Jose texted, "if we do that she will find a way to leave that's what I think." Jose also expressed concern that he might have injured someone when they were firing guns near the apartment complex the previous night. Defendant mentioned that they were going to do a "cool job" the next day. However, early the next morning, the police broke into the room and handcuffed all three of them. Jose testified that, at some point after they were taken from Illinois, defendant threatened to kill him and his family if he testified against defendant.

¶ 18 Georgia police detective Andrew Hardaway testified that, on the morning of May 1, 2012, he was dispatched to a parking lot near Atlanta where Jackie's body had been found. Jackie was in the front passenger seat with her seatbelt in place. She had a gunshot wound to her left temple. There were bloodstains and spatter throughout the car. Jackie's purse was in the driver's side door panel and Blanca's purse was underneath the front passenger seat. Both purses contained identification. A cell phone was found in the back luggage compartment of Jackie's car with the battery removed. Miguel Gonzalez met with Hardaway at the scene. He showed Hardaway a text message from Blanca and the Georgia police began tracing Blanca's cell phone. They contacted the U.S. Marshals after tracing the phone to Illinois. Hardaway traveled to Illinois on May 2, 2012, where he interviewed Jose and Blanca with the assistance of an interpreter.

¶ 19 Dr. Kelly Wren testified that she had conducted a sexual assault examination of Blanca on the morning of May 2, 2012. She testified that Blanca did not want to talk, and that Blanca started to cry as she explained through an interpreter what had happened. Wren observed no external or internal injuries during Blanca's examination. She explained that this did not rule out the possibility of sexual assault. Forensic scientist Kelly Lawrence testified that the DNA taken from Blanca's underwear matched defendant's DNA profile. A vaginal swab contained a DNA a mixture of two contributors. Defendant's DNA was consistent with the major profile in the mixture. Jose was excluded from contributing to either profile.

¶ 20 The defense admitted a security video from the Beach Park motel. It shows defendant's car backing into a parking space at 10:53 p.m. on May 1, 2012. Defendant opens the car door for Blanca and Blanca emerges from defendant's car. Defendant, Jose and Blanca then walk through the parking lot.

¶ 21 During closing arguments, defense counsel outlined a theory in which Jose and Blanca had conspired during the trip from Georgia to Illinois to escape any possible liability in connection to Jackie's murder. Jose was also looking to avoid liability for any injuries that may have been inflicted when he and defendant were shooting guns out of defendant's car. Defense counsel asserted that this was supported by the exchange of text messages between defendant and Jose in the Beach Park motel room. Defense counsel further suggested that Jose was actually in Jackie's car when Jackie was killed, and that the Georgia prosecutors had failed to properly investigate Jose's claim that he went home alone after the others left Confetti's. What really happened, according to defense counsel, was that Jackie and Blanca left Confetti's with defendant and Jose, and the women expected to be paid \$400. Things got out of control when defendant and Jose began firing loaded weapons out of a moving car. At one point, defendant inadvertently shot Jackie in the head. The other three then made a group decision to flee to Illinois. This explained why neither Jose nor Blanca ever actually called the authorities for help—because they did not actually want to be found. During the trip, Jose and Blanca discussed their desire to ensure that defendant alone was prosecuted for Jackie's death. However, the marshals raided the Beach Park motel room before they could iron out the finer details of their story. Thus, defense counsel argued, their stories were “generally similar” but “lacking in detail.” In support, defense counsel pointed to inconsistencies between Jose's and Blanca's respective testimony regarding the order and timing of the various stops between Georgia and Illinois. Defense counsel also pointed out that the State had presented no evidence to verify that Blanca called 911 from Jackie's phone shortly before Jackie was killed. And aside from detective Hardaway's testimony, there was nothing to corroborate the purported communications between Blanca and Miguel Gonzalez. Finally, defense counsel argued that

Blanca had consensual sex with defendant for the purpose of ensuring that he would not conspire with Jose to somehow blame her for Jackie's death. Thus, defense counsel argued, Blanca's motivations for accompanying defendant and having sex with him precluded the State from satisfying the critical elements of kidnapping and sexual assault.

¶ 22 The jury found defendant guilty of criminal sexual assault, aggravated criminal sexual assault, and aggravated kidnapping. The jury also found that defendant had possessed a firearm while he committed the offense of aggravated kidnapping. Following the denial of defendant's post-trial motion, the trial court merged the sexual assault charges and sentenced defendant to serve a 40-year prison term for aggravated kidnapping and a 28-year prison term for aggravated sexual assault. The sentences were ordered to be served consecutively to each other and to defendant's Georgia prison sentence. Defendant timely appealed following the denial of his motion to reconsider sentence.

¶ 23 The record reflects that a document entitled "Exhibit A" was filed. The fines and fees listed on the document include a \$750 Public Defender Fee. There is no mention of any such fee in the reports of proceedings.

¶ 24

## II. ANALYSIS

¶ 25 Defendant's primary contention on appeal is that he is entitled to a new trial because he was denied the right to effective assistance of counsel. He argues that no reasonable trial strategy could support defense counsel's decisions to: (1) withdraw its objection to Jose's testimony that defendant "confessed" to committing two unrelated murders; and (2) refrain from impeaching Jose and Blanca regarding their respective immigration statuses. The State first counters that both of these decisions can be explained as part of reasonable trial strategies. The State goes on to argue that, regardless of whether the strategies were reasonable, the cumulative

effect of the alleged errors was not sufficiently prejudicial to warrant a new trial. We agree with the State's arguments, and we therefore affirm defendant's convictions.

¶ 26 To prevail on his claim that he received ineffective assistance of counsel, defendant must satisfy the two-prong test set forth in *Strickland v. Washington*, 466 U.S. 668 (1984). First, defendant must show that trial counsel's performance fell below an objective standard of reasonableness. Second, he must show that defense counsel's performance was prejudicial, meaning there is a reasonable probability that the result of the proceeding would have been different absent counsel's deficient performance. *Strickland*, 466 U.S. at 691-94. "The failure to satisfy either the deficiency prong or the prejudice prong of the *Strickland* test precludes a finding of ineffective assistance of counsel." *People v. Enis*, 194 Ill. 2d 361, 377 (2000). Courts may therefore resolve ineffectiveness claims by reaching only the prejudice component of *Strickland*, "for lack of prejudice renders irrelevant the issue of counsel's performance." *People v. Coleman*, 183 Ill. 2d 366, 397-98 (1998). Where a claim of ineffective assistance was not raised in the trial court, our review is *de novo*. *People v. Lofton*, 2015 IL App (2d) 130135, ¶ 24.

¶ 27 Turning to the first prong of *Strickland*, the performance prong, a decision concerning the evidence to present on defendant's behalf rests with trial counsel. *People v. Wilborn*, 2011 IL App (1st) 092802, ¶ 79. A defendant seeking to show ineffective assistance of counsel must therefore overcome the strong presumption that his attorney's decisions were an exercise of reasonable trial strategy. *People v. Gordon*, 2016 IL App (1st) 134004, ¶ 40. A defendant can overcome the strong presumption that defense counsel's strategy was sound if the decisions appear "so irrational and unreasonable that no reasonably effective defense attorney, facing similar circumstances, would pursue such a strategy." *People v. King*, 316 Ill. App. 3d 901, 916 (2000).

¶ 28 Here, defendant first notes the discussion during the sidebar in which the prosecutor indicated his willingness to avoid Jose's testimony that defendant had confessed to committing two unrelated murders. According to Jose, defendant claimed to have killed two men and a woman. The woman was presumably Jackie, but there is nothing in the record aside from Jose's testimony to show that defendant killed two men. Defendant argues that the evidence of two men being killed was ultimately inadmissible because the State was unable to show beyond a mere suspicion that these offenses had even taken place, let alone that defendant had committed them. See *People v. Thingvold*, 145 Ill. 2d 441, 455-56 (1991). Thus, defendant argues, there was no sound reason for defense counsel to allow the jury to hear such prejudicial testimony from Jose. The State argues in response that defense counsel's decision to allow Jose's testimony was part of a calculated strategy to undermine Jose's credibility. The State points specifically to the following statements made by defense counsel during closing argument:

“Well, it's interesting that Jose attributes three people that were killed to [defendant]. Perhaps in that moment that he's coming up with this story he doesn't know that the police are going to see his text message where he said I think I killed someone and maybe he's just covering his bases and saying, you know what, if other people are dead, that's on him too; so I'm going to say that he told me he killed a whole bunch of people.”

¶ 29 Regarding the evidence of Jose's and Blanca's respective immigration statuses, defendant argues that, even without the evidence that Jose had previously been deported,<sup>1</sup> there was no possible strategic reason to refrain from utilizing the valuable impeachment evidence that Jose and Blanca were in the United States illegally at the time of the raid, and that they had both

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<sup>1</sup> We note that defendant has not challenged the trial court's ruling to exclude evidence of Jose's prior deportation.

subsequently sought U Visas. The State again responds that defense counsel's decision was part of a calculated trial strategy. The State argues that, by opening the door to the U Visas, defense counsel would have allowed the State to introduce damaging evidence of defendant's Georgia convictions, evidence which had previously been excluded by the trial court. The State asserts that, because the U Visas were directly connected to the Georgia prosecution, defendant's Georgia convictions would have been admissible to explain the context of the discussions with federal immigration authorities.

¶ 30 The State also touches on another strategy that appears to have been contemplated by defense counsel. Defense counsel argued before trial and in his post-trial motion that evidence of Jose's prior deportation was critical to its theory as to the relevance of the U Visas. By cross-examining Jose and Blanca about their efforts to obtain U Visas, defense counsel would have raised an inference that Jose and Blanca were biased and motivated to testify falsely against defendant. The argument would have been that Jose and Blanca only claimed to be crime victims because they wanted to remain in the United States. However, had defense counsel chosen this path, the State may have been permitted to admit evidence of Jose's and Blanca's prior consistent statements to police in the aftermath of the raid at the Beach Park motel room. See *People v. Donegan*, 2012 IL App (1st) 102325, ¶ 52 (noting that a prior consistent statement is admissible to rebut a charge that a witness was motivated to testify falsely where it can be shown that the statement was made before the motive to testify falsely came into existence). It appears from the record that defense counsel's strategy would have been to counter the prior consistent statements with evidence of Jose's prior deportation. Defense counsel would have argued that, through these prior deportation proceedings, Jose gained substantial knowledge of the immigration system, including the availability of U Visas for crime victims. Finally, defense

counsel would have argued that Jose relayed this knowledge of U Visas to Blanca during the day-long trip from Georgia to Illinois—before either of them made any incriminating statements against defendant to any authorities. Thus, without evidence of Jose’s prior deportation, there would have been no way for defense counsel to counter the State’s admission of the prior consistent statements, and defendant’s case would only have been weakened by the admission of this bolstering evidence. Tenuous though it may be, this appears to be the connection that defense counsel sought to make between Jose’s prior deportation and Jose’s and Blanca’s knowledge of U Visas. Once the trial court excluded the evidence of Jose’s prior deportation, defense counsel believed it could no longer argue its theory to the jury—that Jose and Blanca both knew about the availability of U Visas for crime victims *before* the raid.

¶ 31 We do not believe that any of these strategies were “so irrational and unreasonable that no reasonably effective defense attorney, facing similar circumstances, would pursue such a strategy.” See *King*, 316 Ill. App. 3d at 916. As we will explain, the undisputed facts in this case weighed heavily in favor of the State. One of those undisputed facts was that defendant had shot and killed Jackie. Defense counsel theorized that Blanca was not fearfully complying with defendant’s commands following Jackie’s death; rather, Blanca was willfully conspiring with Jose to avoid any potentially adverse consequences related to Jackie’s death. Because there was little evidence to support this theory, it was paramount that defense counsel maximized every opportunity to impeach Jose’s credibility. To that end, it was reasonable for defense counsel to allow Jose’s testimony that defendant confessed to killing three people, only to later argue that Jose had sensationalized his self-serving testimony. The unfavorable facts also justified defense counsel’s desire to avoid opening the door to evidence of defendant’s Georgia convictions or

Jose's and Blanca's prior consistent statements. Thus, it was also reasonable for defense counsel to refrain from cross-examining Jose and Blanca regarding their respective immigration statuses.

¶ 32 However, even if any of the strategies in question were not reasonable, we do not believe that defendant can satisfy the second prong of *Strickland*, the prejudice prong. This issue turns on whether there is a reasonable probability that the result of defendant's trial would have been different if defense counsel had objected to the evidence of the unrelated murders and had cross-examined Jose and Blanca regarding their respective immigration statuses. See *Strickland*, 466 U.S. at 694. "[A] reasonable probability that the result would have been different is a probability sufficient to undermine confidence in the outcome—or put another way, that counsel's deficient performance rendered the result of the trial unreliable or fundamentally unfair." *People v. Evans*, 209 Ill. 2d 194, 220 (2004). A defendant may establish that the requisite prejudice was caused by the cumulative effect of individual trial errors. *People v. Hall*, 194 Ill. 2d 305 at 350 (2000). Here, we agree with the State that the cumulative effect of defense counsel's alleged errors was not sufficiently prejudicial to warrant a new trial.

¶ 33 The undisputed facts established during defendant's trial are as follows. On the night of April 30, 2012, defendant and Jose drank alcohol, used cocaine, and fired weapons out of defendant's car as they passed by an apartment complex near Atlanta. Thereafter, during the early hours of May 1, 2012, defendant shot Jackie in the head at point-blank range inside her own car. Jackie's friend Blanca was inside Jackie's car at the time of the shooting. There were bloodstains and spatter throughout Jackie's car. Jackie's body was left inside her car at her apartment complex near Atlanta. She was wearing a seat belt in the front passenger seat. Her purse containing her identification was in the driver's side door panel and her phone was in the back luggage compartment with the battery removed. Blanca's purse containing her

identification was underneath the passenger seat. Defendant, Jose and Blanca were in Illinois on the night of May 1, 2012. They went to a Beach Park motel shortly before 11 p.m. Defendant and Jose exchanged several text messages between 11:31 p.m. and 11:58 p.m. During the exchange, Jose and defendant argued over whether they should leave Blanca behind when they left town the next day. Defendant did not want to leave Blanca behind, indicating that Blanca had witnessed what he had done. Jose maintained that, if they took Blanca along, “she [would] find a way to leave.” Jose also expressed concern that he might have injured someone when they were firing guns near the Atlanta area apartment complex the previous night. U.S. Marshals raided the Beach Park motel room early on the morning of May 2, 2012. Blanca was taken to a hospital, where an examination revealed no evidence of external or internal injuries. DNA taken from Blanca’s underwear matched defendant’s DNA profile. A vaginal swab contained a DNA a mixture of two contributors. Defendant’s DNA was consistent with the major profile in the mixture. Jose was excluded from contributing to either profile.

¶ 34 Given these undisputed facts, we cannot say there is a reasonable probability that the jury’s verdict would have been different if defense counsel had: (1) stood by its initial objection to Jose’s testimony that defendant confessed to committing two unrelated murders; and/or (2) cross-examined Jose and Blanca regarding their respective immigration statuses. We acknowledge that there are inconsistencies between Jose’s and Blanca’s testimony regarding several details of the trip from Georgia to Illinois. We agree with defense counsel’s assessment of those inconsistencies during closing argument: the stories put forth by Jose and Blanca were “generally similar” but “lacking in detail.” However, it cannot be overlooked that the undisputed facts established during defendant’s trial favored the State. To explain, we look to the key elements of the offenses in question.

¶ 35 The first offense is aggravated kidnapping (720 ILCS 5/10-2(A)(6) (West 2012). As alleged by the State, the key elements to be considered by the jury were: (1) whether defendant carried Blanca from one place to another by use of force or threat or imminent force; and (2) whether he intended to secretly confine Blanca against her will. The second offense is aggravated criminal sexual assault (720 ILCS 5/11-1.30(A)(4) (West 2012). As alleged by the State, the key elements to be considered by the jury were: (1) whether defendant committed an act of sexual penetration upon Blanca by use of force or threat of force, and: (2) whether he did so without Blanca's consent.

¶ 36 Regarding aggravated kidnapping, the defense theory was that Blanca willingly accompanied defendant and Jose on the trip from Georgia to Illinois. She then conspired with Jose during the trip to escape any possible liability in connection with the events surrounding Jackie's murder. This theory seems plausible on its face. However, it was undermined by the undisputed fact that Blanca had just seen defendant murder her friend at point-blank range inside a car. Moreover, Blanca left her purse with her identification in Jackie's car. The State argued that Blanca did this intentionally, in hopes that it would lead to her rescue. At any rate, it is difficult to accept that Blanca would have forgotten or inadvertently left her purse with her identification at the murder scene if her priority in that moment was to avoid any liability in connection with the murder. Finally, during their exchange of text messages at the Beach Park motel, Jose and defendant argued about whether they should "leave" Blanca behind the next day. Jose goes so far as to assert that Blanca would "find a way to leave." While not dispositive, the text messages undermine any notions that Blanca was free to leave if she desired.

¶ 37 Regarding aggravated criminal sexual assault, the defense theory was that Blanca had consensual sex with defendant to ensure that he would not conspire with Jose to blame her for

Jackie's death. Once again, this is undermined by the fact that Blanca had just seen defendant murder her friend at point-blank range inside a car. As the State asserted during its rebuttal argument, it is hard to believe that Blanca would have had consensual sex with defendant shortly after meeting him, seeing him murder her friend, and leaving the gruesome crime scene.

¶ 38 Aside from the undisputed facts, Blanca also testified that she texted Miguel Gonzalez during the trip and pleaded, "Call the police. Help me please." Although the State did not introduce any phone records to verify the content of the text, it nonetheless argued that Blanca's communications with Gonzalez led the U.S. Marshals to the Beach Park motel room. The State stressed that the minor inconsistencies in Blanca's and Jose's stories were understandable given what had just transpired. The State also argued that, although Blanca had chances to escape or seek help, the text messages between Jose and defendant corroborated Blanca's fear of defendant's retribution, as they established defendant's fear that Blanca would go to the police if he let her leave. Thus, the State argued, the evidence established that Blanca simply did what she needed to do to survive: she agreed to accompany defendant and have sex with him. However, because she made these decisions under threat of imminent force from defendant, the evidence was sufficient to satisfy the elements of the offenses in question.

¶ 39 Because the physical evidence favors the State's theory of the case, and because we find the State's theory to be far more plausible than defendant's, we do not believe there is a reasonable probability that the result of defendant's trial would have been different absent defense counsel's alleged errors. This case turned on whether the jury believed that Blanca was acting under threat of imminent force from defendant when she accompanied him to Illinois and had sex with him in the Beach Park motel room. That being the case, it is unlikely that Jose's testimony regarding the two unrelated murders was a factor in the jury's verdict. The State

elicited Jose’s testimony for the purpose of establishing that Jose did not seek help because he feared defendant. The State discussed this testimony only vaguely during its rebuttal argument to counter defense counsel’s use of the statement to attack Jose’s credibility, stating that Jose was afraid because defendant was “killing people.” It is also unlikely that the jury would have accepted defendant’s theory of the case if it had learned of Blanca’s illegal status and procurement of a U Visa. As we have discussed, this would not have changed the undisputed fact that Blanca had just seen defendant murder her friend. Regardless of whether she feared deportation, it is hard to believe that she willingly accompanied defendant to Illinois and had consensual sex with him. For all of these reasons, we reject defendant’s ineffective assistance of counsel claims and affirm his convictions.

¶ 40 Before concluding, we must briefly address defendant’s contention that the State’s imposition of a \$750 public defender fee was improper for lack of a hearing to determine the reasonableness of the fee. 725 ILCS 5/113-3.1(a) (West 2014); *People v. Somers*, 2013 114054 ¶¶ 12-18. The parties agree that there is no indication in the reports of proceedings that such a hearing was conducted. We therefore accept the State’s confession of error in this regard. We comment only that that we have repeatedly admonished Lake County for improperly assessing public defender fees.

¶ 41

### III. CONCLUSION

¶ 42 For the reasons stated, we affirm defendant’s convictions for aggravated kidnapping and aggravated criminal sexual assault, and we vacate the \$750 public defender fee.

¶ 43 Affirmed.