2017 IL App (2d) 150890-U
No. 2-15-0890
Order filed December 20, 2017

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IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS, Plaintiff-Appellee, v. MANUEL A. OCHOA, Defendant-Appellant.	))))))))))	Appeal from the Circuit Court of Kane County. No. 14-CF-2225 Honorable T. Clinton Hull, Judge, Presiding.

JUSTICE HUTCHINSON delivered the judgment of the court.
Presiding Justice Hudson and Justice Zenoff concurred in the judgment.

ORDER

¶ 1 *Held*: We rejected defendant's contention of ineffective assistance of counsel, as defendant did not establish a reasonable probability that the outcome of his jury trial would have been different absent defense counsel's purported errors; Affirmed.

¶ 2 Defendant, Manuel A. Ochoa, was convicted by a jury of unlawful possession of a stolen motor vehicle. On appeal, he contends that he is entitled to a new trial because defense counsel was ineffective. Specifically, defendant argues that defense counsel's errors led to the admission of custodial statements and hearsay evidence that helped the State fill the evidentiary gaps in its case. We affirm.

¶ 3 I. BACKGROUND

¶ 4 Defendant was charged with committing a single offense of unlawful possession of a stolen motor vehicle. 625 ILCS 5/4-103(a)(1) (West 2014). As alleged in the indictment, on or about December 18, 2014, defendant possessed Lisette Cardenas's 1997 Toyota Corolla with an Illinois registration number V176156, knowing that the car was stolen. Defendant's one-day jury trial took place on April 28, 2015.

¶ 5 Cardenas was the State's first witness. She acknowledged having past convictions for obstructing justice and misdemeanor theft. She testified that she purchased the car in question in March 2014. She described the car's color as tan. She explained that the car came with three sets of keys. Cardenas kept one key and she gave another key to her mother. She was unsure what she had done with the third key, but she believed it was somewhere inside the car.

¶ 6 On December 13, 2014, at approximately 4 p.m., Cardenas drove with her sister and her infant daughter to an Aurora restaurant named Panchos. Cardenas testified that the car's stereo and driver's side window were operational and intact. She was inside the restaurant for about two hours. She did not give anyone permission to use the car during that time. Upon leaving the restaurant, Cardenas realized that her car was no longer in the parking lot, so she called the Aurora police to report that it had been stolen.

¶ 7 Cardenas testified that she received a phone call on December 18, 2014, informing her that her car had been located and she could pick it up from a tow yard. When she went to the tow yard, she observed that the driver's side window had been shattered. As a result, shards of glass were scattered throughout the car. The car's stereo had been removed from the dashboard and it was lying on the passenger seat. There were several unknown items inside the car, including a stroller, a child's car seat, a purse, a pair of muddy work boots, a set of National

Geographic compact discs, and several pieces of mail addressed to unknown persons. Some of Cardenas's personal items were missing, including three suitcases and a tablet computer. Finally, Cardenas noticed that the third car key, which she believed had been left in the car, was partially broken with the functional end still in the ignition. Cardenas was able to start the car with the partially broken key. She then drove the car to the Aurora police department for the collection of evidence.

¶ 8 The State introduced several exhibits that were admitted into evidence. One of the exhibits was a car stereo, which Cardenas identified as the stereo that had been removed from the dashboard of her car. Cardenas also identified a series of pictures and testified that they accurately depicted her car and its contents as they appeared on the day she went to the tow yard. One of the pictures showed a license plate with the registration number "V176156." Another picture showed a large amount of shattered glass on the driver's seat and the floor of the car.

¶ 9 The State's next witness was Aurora police officer Jason Woolsey. He testified that he arrested defendant on December 18, 2014, following a foot chase. Woolsey explained that he was working a traffic detail when his attention was drawn to a car which he described as "an older model, maybe late-90's edition, Toyota Corolla or Camry." Woolsey believed the car was silver. The driver's side window appeared to be open but there were shards of broken glass shimmering on the bottom side. Thinking that this was "rather strange," Woolsey followed the car. Shortly thereafter, the car made an abrupt left turn without signaling. This traffic violation caused Woolsey to activate his emergency lights. The car made another quick left turn and parked outside a house. The sole occupant fled from the car going eastbound on foot. Woolsey chased the occupant and found him hiding behind a fence. He then drew his service weapon and forced the occupant to the ground. Woolsey identified the occupant in court as defendant.

¶ 10 Woolsey testified that he secured defendant in handcuffs and made him sit on the ground near his squad car. Without advising defendant pursuant to *Miranda v. Arizona*, 384 U.S. 436 (1966), Woolsey asked defendant "if he had anything to say for himself." According to Woolsey, defendant stated that "the car was loaned to him by a friend." When Woolsey asked for the friend's name, defendant responded that he "did not know." Woolsey testified that this exchange took place before he ran the car's license plates through dispatch.

¶ 11 When Woolsey was asked if he subsequently learned anything from dispatch, he responded that "[t]he dispatch, after running the vehicle, let me know that the vehicle was actually a stolen vehicle, and it was stolen out of our department." Defense counsel raised no objections to this testimony. Woolsey went on to explain that dispatch was unable to contact the car's registered owner, so he called for a tow truck and had another officer take defendant to the station for booking. Woolsey stayed with the car until the tow truck arrived. Although he referenced the car's "registered owner," Woolsey did not specifically mention Cardenas's name on direct examination.

¶ 12 On cross-examination, defense counsel questioned Woolsey about his attempts to contact the car's registered owner, specifically asking, "[a]nd at some point you did, in fact, make contact with Lisette Cardenas?" After Woolsey confirmed that he had contacted Cardenas via telephone, defense counsel asked him whether Cardenas had mentioned that three suitcases and a tablet computer were missing. Woolsey did not recall that Cardenas discussed any missing items at that time.

¶ 13 The State's third witness was Aurora police officer Lisa Hernandez. She testified that she processed defendant when he was brought to the station on December 18, 2014. She

identified a property receipt that was signed by defendant and confirmed that a pair of gloves was listed.

¶ 14 The State's fourth and final witness was Aurora police officer Christopher Grandchamp. He testified that he met Cardenas at Panchos on December 13, 2014, in response to Cardenas's report of a stolen vehicle. Grandchamp prepared a sheet with the car's information to be entered by dispatch into the Law Enforcement Agency Data System. He took no further actions into the investigation until December 18, 2014, when Cardenas retrieved her car from the tow yard. Grandchamp testified that he photographed the car and its contents. He also processed the car for fingerprints, but he was unable to recover any fingerprints from inside the car.

¶ 15 On cross-examination, Grandchamp acknowledged that Cardenas never reported the missing suitcases or tablet computer. Also, Cardenas reported only two sets of keys to her car; she never said anything about a third key inside the car. Grandchamp testified that he would have photographed the partially broken key if he had seen it, but he took no such photographs.

¶ 16 The parties stipulated that latent fingerprint examiner Julie Smith processed Cardenas's car and its contents. She found 13 fingerprints on the National Geographic compact discs. Twelve of these fingerprints matched the fingerprints of Cardenas. There was also one fingerprint that did not match the fingerprints of Cardenas, Cardenas's sister, or defendant.

¶ 17 The defense moved for a directed finding, arguing that the State had failed to establish that defendant was pulled over while driving the same car that Cardenas had reported stolen. The prosecutor disagreed, briefly arguing that Cardenas had identified her car and its contents at the tow yard. The trial court denied the motion for directed verdict, commenting only that "there's been sufficient evidence presented at this point."

¶ 18 Defendant elected to testify on his own behalf. He denied having any knowledge as to whether the car was stolen or who owned the items that were recovered from the car. He testified that he did not go to work on December 18, 2014, as he was recovering from a leg injury that required a hospital visit. Instead, he was drinking alcohol with Miguel Zamora and other unknown individuals at an abandoned house in Aurora. He had met Zamora just once before at a different party. Defendant testified that the group inside the abandoned house sent him to get more beer using the only car available. Although there were liquor stores nearby, he was instructed to go to a specific liquor store that was farther away. When defendant noticed that the car had a broken window, he asked Zamora to explain. According to defendant, Zamora claimed to have broken out the window after he locked his key inside the car. The jury was instructed that Zamora's purported out-of-court statement was not to be considered for the truth of the matter asserted, but only for limited purpose of showing the effect on the listener, that being defendant.

¶ 19 Defendant testified that Zamora gave him a partially broken key which he used to start the car. He acknowledged that there was a "bunch of stuff" in the car, but maintained that he "had no knowledge of the stuff that was in there." Defendant explained that he ran from the car after he was pulled over because he had just gotten out of jail and his license had been revoked "for some years already." Regarding his statements to Woolsey back at the squad car, defendant explained that he was very nervous after having just been arrested at gunpoint. At this point, the following exchange took place between defense counsel and defendant:

"Q. At the squad car, did Officer Woolsey ask you about the car?

A. No, he didn't.

Q. Did he ask you to explain yourself?

A. He ask (sic) me when he came back and told me that if I had any knowledge that the car being (sic) stolen.

Q. What did you say?

A. I said, no, I don't. I was borrow (sic) the car to go to get beer and that's it.

Q. Did you know that—did you tell him whether or not you knew the name of the person who you borrowed it from?

A. He asked me whose car it was, I said a friend.

Q. Do you tell Officer Woolsey the name of the friend?

A. No, I didn't at the time because I was still nervous, and I didn't know what to do."

¶ 20 On cross-examination, defendant admitted that he could have simply walked to a nearby liquor store to buy the beer. The prosecutor noted that defendant was walking with a cane at the time of the trial, and asked whether defendant had taken any crutches or a cane when he drove to get the beer. Defendant responded, "[n]o. I left them." When asked why he did not brush away the shards of glass from the driver's seat of the car, defendant answered that he did not pay attention to the broken glass because it was not bothering him.

¶ 21 In rebuttal, the State offered certified copies of defendant's previous convictions for unlawful possession of a stolen motor vehicle, obstruction of justice, and burglary.

¶ 22 During closing arguments, the State argued that there was a "mountain of circumstantial evidence" establishing defendant's knowledge that he was driving a stolen car. The State focused on the pictures of Cardenas's car with the shattered window and the shards of glass, as well as Cardenas's testimony that the car stereo had been removed from the dashboard and was sitting on the passenger seat. The State argued that defendant's explanations for how he came into possession of the car were not credible. In support, the State pointed to defendant's

statements to Woolsey, arguing that they evidenced defendant's consciousness of guilt. According to the State, Woolsey had simply asked for an explanation as to why defendant ran from the car, but rather than explaining that he was afraid of going back to jail because of a revoked driver's license, defendant responded by offering an explanation as to how he came into possession of the car. Furthermore, the State argued, defendant's inability to remember who had lent him the car established that he simply "came up with an excuse on the fly."

¶ 23 Defense counsel argued to the jury that, although defendant had made a mistake by running from the car, the evidence was insufficient to prove beyond a reasonable doubt that he knew the car was stolen. Defense counsel argued that there were too many unanswered questions surrounding what happened to Cardenas's car during the five days that it was missing, pointing specifically to the random items that had accumulated in the car and the one fingerprint that could not be identified. After recounting the circumstances that led to defendant's arrest, defense counsel argued that defendant had offered a reasonable explanation for his actions during the encounter with Woolsey: he was nervous and afraid because he was driving on a revoked license and he did not want to go back to jail. Turning to the State's argument that defendant's statements to Woolsey helped establish his consciousness of guilt, defense counsel argued that defendant mentioned the car being loaned by a friend because he had just been arrested at gunpoint, and he "knew something was wrong because of what had just happened." Defense counsel made no attempt to argue that Woolsey had actually raised the issue of the car's ownership before defendant's statements about the car being loaned by a friend, as was testified by defendant.

¶ 24 The jury deliberated and returned a guilty verdict. After denying defendant's posttrial motion, the trial court sentenced defendant to a 13-year prison term based on his eligibility for

sentencing as a Class X offender. The trial court later denied defendant's motion to reconsider his sentence. Defendant filed a timely notice of appeal.

¶ 25 II. ANALYSIS

¶ 26 On appeal, defendant contends that defense counsel was ineffective in three instances relating to officer Woolsey's testimony. First, he argues that defense counsel should have filed a motion to suppress the custodial statements that he made to Woolsey after he was arrested. Second, he argues that defense counsel should have objected to Woolsey's testimony that dispatch informed him that the car was stolen. Third, he argues that defense counsel should not have elicited testimony from Woolsey establishing that Cardenas was the registered owner of the car that defendant was driving.

¶ 27 To prevail on a claim of ineffective assistance of counsel, a defendant must satisfy the two-prong test set forth in *Strickland v. Washington*, 466 U.S. 668 (1984). First is the performance prong. It must be shown that defense counsel's performance fell below an objective standard of reasonableness. Second is the prejudice prong. It must be shown that defense counsel's errors were prejudicial, meaning there is a reasonable probability that the result of the proceeding would have been different absent defense counsel's deficient performance. *Strickland*, 466 U.S. at 691-94. "A reasonable probability is a probability sufficient to undermine confidence in the outcome, namely, that counsel's deficient performance rendered the result of the trial unreliable or the proceeding fundamentally unfair." *People v. Enis*, 194 Ill. 2d 361, 376 (2000). When 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.

¶ 28 Here, defendant argues that there is a reasonable probability that he would have been acquitted if defense counsel had not erroneously helped the State fill the evidentiary gaps in its

case. This calls into question the essential elements of the charged offense. To sustain a conviction for possession of a stolen motor vehicle, the State had to prove beyond a reasonable doubt that: (1) defendant was in possession of a motor vehicle; (2) the vehicle was stolen; and (3) defendant knew the vehicle was stolen. 625 ILCS 5/4-103(a)(1) (West 2014); see also *People v. Frazier*, 2016 IL App (1st) 140911, ¶ 12. There is no dispute that defendant was in possession of a car at the time of his arrest. However, defendant argues that the State would not have been able to prove the remaining elements beyond a reasonable doubt absent defense counsel's errors.

¶ 29 We begin by addressing defendant's second and third arguments, both of which relate to the issue of whether defendant was driving a stolen car. We will then address defendant's first argument, which relates to the issue of whether defendant knew that he was driving a stolen car.

¶ 30 On direct examination, Woolsey testified that dispatch "let me know that the vehicle was actually a stolen vehicle, and it was stolen out of our department." Defendant argues that defense counsel should have objected to this statement because it was inadmissible hearsay. In support, defendant asserts that the out-of-court statement from dispatch went directly to the matter in controversy, and that the jury should not have been allowed to consider it for the truth of the matter asserted.

¶ 31 On cross-examination, defense counsel elicited testimony from Woolsey that Cardenas was the registered owner the car that defendant was driving. This point had not yet been established, as Woolsey had referred only to the car's "registered owner" on direct examination. However, defense counsel asked Woolsey to confirm that he had made contact with Cardenas via telephone, and that Cardenas had said nothing of the missing suitcases or tablet computer. Although defense counsel's strategy was clearly to diminish Cardenas's credibility, and there is a strong presumption that this strategy was sound (see *People v. Perry*, 224 Ill. 2d 312, 341-42

(2007)), defendant argues that it was inexcusable for defense counsel to inadvertently help the State satisfy its burden of proving that he was driving a stolen car.

¶ 32 We need not consider whether trial counsel's performance in these two instances fell below an objective standard of reasonableness, as defendant cannot satisfy the *Strickland* prejudice prong. See *People v. Coleman*, 183 Ill. 2d 366, 397-98 (1998) (noting that courts may resolve ineffectiveness claims by reaching only the prejudice component of *Strickland*). As we will explain, it is unlikely that defense counsel's performance affected the jury's determination that defendant was in possession of a stolen car.

¶ 33 After carefully reviewing the record, we agree with defendant that the State did a poor job of establishing that defendant was indeed driving Cardenas's stolen car at the time of his arrest. Cardenas identified a series of pictures that were admitted into evidence. She testified that these pictures accurately depicted her car and its contents as they appeared when she retrieved her car from a tow yard on December 18, 2014. Thereafter, Woolsey testified that he arrested defendant on December 18, 2014. He explained that a tow truck retrieved the car that defendant was driving on that same day.

¶ 34 However, Woolsey was never prompted on direct examination to identify the car that defendant was driving as being the same car that belonged to Cardenas. This would not have been difficult. Ideally, the prosecutor would have asked Woolsey to identify the pictures of Cardenas's car that had already been admitted into evidence, including the picture of Cardenas's license plate. Woolsey would have presumably testified that defendant was pulled over while driving the same car that was depicted in the pictures. It seems likely that this type of scenario would have played out if the trial court had sustained an objection by defense counsel as to the admissibility of the information that Woolsey learned from dispatch. However, because defense

counsel registered no such objection, the jury was free to consider the out-of-court statement from dispatch for the truth of the matter asserted—that defendant was driving a stolen car. Any lingering doubt as to whether defendant was driving Cardenas's stolen car was alleviated when defense counsel asked Woolsey on cross-examination to confirm that Cardenas was the registered owner of the car that defendant was driving.

¶ 35 But while the evidence in question was not admitted under ideal circumstances, we reject defendant's argument that this shortcoming affected the outcome of his trial. The indictment alleged that defendant unlawfully possessed "Lisette Cardenas' 1997 Toyota Corolla with an Illinois registration number V176156." It was never disputed that Cardenas's car was a 1997 Toyota Corolla, and Woolsey described the car that defendant was driving as "an older model, maybe late-90's edition, Toyota Corolla or Camry." Moreover, as we have discussed, Cardenas testified that she retrieved her car from a tow yard on the same day that Woolsey arrested defendant and had the car that he was driving taken to a tow yard. Finally, Cardenas testified that her car had a shattered driver's side window with shards of glass sprayed throughout the interior, while Woolsey testified that defendant was driving a car with the shards of broken glass glimmering on the bottom side of the driver's side window. Taking all of this into account, even without the testimony challenged by defendant, there was enough circumstantial evidence for the jury to make a reasonable inference that defendant was driving Cardenas's stolen car.

¶ 36 We acknowledge that there were some minor inconsistencies in the State's case with respect to the issue of whether defendant was in possession of a stolen car. For instance, it appears that Cardenas did not initially report the missing suitcases or tablet computer, and there are unanswered questions surrounding the partially broken key that Cardenas found in the car's ignition. Additionally, Cardenas described her car as tan, while Woolsey testified that defendant

was driving a silver car. Based on the pictures of Cardenas's car that were admitted into evidence, reasonable minds could differ as to whether the car is tan or silver. Finally, although it appears that defendant was wearing gloves at the time of his arrest, it remains that his fingerprints were not recovered from Cardenas's car or its contents.

¶ 37 However, these minor inconsistencies provided defendant with little basis to argue that he was not in possession of a stolen car. Although he contested the issue in his motion for a directed verdict, his theory of the case was that he did not *know* the car was stolen. Defendant pursued this theory, in part, by explaining his reaction to the conditions of the car that was loaned to him by Zamora. Because these conditions matched the conditions of Cardenas's car, defendant's theory of the case was based on the inherent concession that he was indeed driving Cardenas's stolen car.

¶ 38 In sum, there was overwhelming evidence that defendant was in possession of a stolen car at the time of his arrest. Ideally, the State would have proved this element by having Woolsey identify the car that defendant was driving as the same 1997 Toyota Corolla that Cardenas had reported stolen. However, the manner in which this evidence was actually presented to the jury did not undermine confidence in the outcome of the trial or render the proceeding fundamentally unfair. See *Enis*, 194 Ill. 2d at 376. Contrary to defendant's argument, the State could have easily established that defendant was in possession of a stolen car even if defense counsel had not allowed Woolsey to offer the out-of-court statement from dispatch or elicited testimony from Woolsey that Cardenas was the car's registered owner. For these reasons, we reject defendant's contention that he is entitled to a new trial due to defense counsel's errors with respect to the issue of whether he was in possession of a stolen car.

¶ 39 That brings us to defendant's argument with respect to the critical issue in this case: whether defendant *knew* that he was in possession of a stolen car. Defendant argues that defense counsel performed deficiently by neglecting to file a motion to suppress statements that were obtained by Woolsey in violation of *Miranda*. The statements in question were offered through Woolsey's testimony as he described what transpired after he handcuffed defendant. Woolsey testified that he asked defendant "if he had anything to say for himself." According to Woolsey, defendant responded by stating that "the car was loaned to him by a friend." Woolsey testified that he asked defendant for the name of his friend, but that defendant said he "did not know."

¶ 40 Under *Miranda*, a defendant's statements stemming from a custodial interrogation are inadmissible unless preceded by the defendant's knowing and intelligent waiver of his right not to be compelled to testify against or incriminate himself, and his right to have an attorney present during a custodial interrogation. *People v. Jordan*, 2011 IL App (4th) 100629, ¶ 16. In determining whether a defendant was in custody for purposes of *Miranda*, courts should consider whether a reasonable person in the defendant's position would have felt free to terminate the questioning by law enforcement personnel. *People v. Braggs*, 209 Ill. 2d 492, 506 (2003). In determining whether an interrogation has taken place under *Miranda*, courts should consider whether the actions and questions of law enforcement personnel were likely to elicit an incriminating response. *People v. Jones*, 337 Ill. App. 3d 546, 551 (2003).

¶ 41 In this case, the State concedes that "it is likely a suppression motion would have been successful" if it had been filed by defense counsel. This is based on Woolsey's testimony that he asked defendant to explain himself—without issuing any *Miranda* warnings—shortly after he chased defendant, drew his service weapon, forced defendant to the ground, and placed him in

handcuffs. The State argues, however, that defense counsel exercised sound trial strategy by allowing the admission of defendant's statements to Woolsey.

¶ 42 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 satisfy the *Strickland* performance prong 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 this presumption 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).

¶ 43 Here, the State argues that defense counsel made a sound decision to refrain from filing a suppression motion in an attempt to establish consistency between defendant's custodial statements and his subsequent trial testimony. Although defendant told Woolsey that he did not know the name of the person who purportedly loaned him the car, only to later testify that the person was Zamora, the State argues that defense counsel minimized the prejudicial impact of this inconsistency by later arguing that defendant was nervous after being arrested at gunpoint.

¶ 44 Defendant disagrees, arguing in his reply brief that any benefit gained in terms of consistency was outweighed by the damage that the statements caused to his own credibility. According to Woolsey, defendant claimed to have borrowed the car from a friend without first being prompted that there was a question as to the car's ownership. The State picked up on this during closing arguments, arguing to the jury that defendant's response helped establish his consciousness of guilt.

¶ 45 We note that, while the point has not been made by the parties, the record reflects a dispute as to whether Woolsey asked defendant about the ownership of the car. Woolsey

testified that he simply asked defendant "if he had anything to say for himself." However, defendant testified that Woolsey asked him whether he had any knowledge of the car being stolen. Defendant's response that a friend had loaned him the car is viewed entirely differently depending on which version of events the jury accepted. However, during closing arguments, defense counsel justified defendant's response to Woolsey only on the basis that defendant "knew something was wrong because of what had just happened." Because defense counsel did not reference defendant's testimony that Woolsey asked him whether he had any knowledge of the car being stolen, we will assume that defense counsel conceded the veracity of Woolsey's testimony as to the content of his discussion with defendant.

¶ 46 With this in mind, to determine whether it was an exercise of reasonable trial strategy to allow defendant's custodial statements into evidence, we must consider the challenges that defense counsel faced in preparation for trial. We agree with the State that there was a substantial amount of circumstantial evidence which tended to show defendant's knowledge that the car was stolen. For instance, defendant was pulled over while driving a car with a broken-out driver's side window in the middle of December. Although defendant was in possession of a key to the car, he nonetheless fled the scene. The pictures admitted into evidence depict shattered glass scattered in piles on the driver's side seat and the floor of the car. Random items are strewn throughout the interior. Finally, while it is not clear from these pictures, the evidence established that the stereo had been removed from the dashboard. The State argues that, by not challenging the admissibility of defendant's custodial statements, defense counsel's strategy was to counter this circumstantial evidence and bolster defendant's explanation for how he came into possession of the car, thereby raising a reasonable doubt as to whether defendant knew that the car was stolen.

¶ 47 We agree with the State that defense counsel's strategy was reasonable. Our supreme court has made it clear that reviewing courts should be "highly deferential to trial counsel on matters of trial strategy, making every effort to evaluate counsel's performance from his perspective at the time, rather than through the lens of hindsight." *Perry*, 224 Ill. 2d 312 at 344. Here, defense counsel was armed with very few facts to combat the circumstantial evidence of defendant's knowledge that he was driving a stolen car. We will not fault defense counsel in hindsight for attempting to use defendant's custodial statements to his advantage. Defense counsel's decision in this regard was not "so irrational and unreasonable that no reasonably effective defense attorney, facing similar circumstances, would pursue such a strategy." *King*, 316 Ill. App. 3d at 916.

¶ 48 However, even if we were to find that defense counsel performed deficiently, defendant is still unable to satisfy the *Strickland* prejudice prong. We need not further detail the damaging circumstances surrounding defendant's arrest. Even if defense counsel had successfully suppressed defendant's custodial statements, we cannot say there is a reasonable probability that the outcome of defendant's jury trial would have been different. See *Enis*, 194 Ill. 2d at 376.

¶ 49 III. CONCLUSION

¶ 50 For the all of these reasons, we affirm defendant's conviction. As part of our judgment, we grant the State's request that defendant be assessed $50 as costs for this appeal. 55 ILCS 5/4-2002(a) (West 2016); see also *People v. Nicholls*, 71 Ill. 2d 166, 178 (1978).

¶ 51 Affirmed.