2017 IL App (4th) 140818-U

NO. 4-14-0818

FILED
March 22, 2017
Carla Bender
4th District Appellate
Court, IL

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from
Plaintiff-Appellee,	)	Circuit Court of
v.	)	McLean County
RONALD EUGENE WHITE,	)	No. 14CF388
Defendant-Appellant.	)	
	)	Honorable
	)	Robert L. Freitag,
	)	Judge Presiding.

JUSTICE POPE delivered the judgment of the court.
Justices Steigmann and Knecht concurred in the judgment.

ORDER

¶ 1 *Held*: (1) The trial court did not err in denying defendant's *Batson* challenge.

(2) The evidence was sufficient to prove beyond a reasonable doubt defendant delivered a controlled substance within 1,000 feet of a church.

(3) The trial court did not err by not inquiring into the ineffective-assistance claims contained within defendant's *pro se* motion to file an appeal.

¶ 2 In July 2014, a jury convicted defendant, Ronald Eugene White, of two counts of unlawful delivery of a controlled substance (heroin) (720 ILCS 570/407(b)(1) (West 2014); 720 ILCS 570/401(c)(2) (West 2014)). In September 2014, the trial court sentenced him to seven years' imprisonment.

¶ 3 Defendant appeals, arguing (1) the trial court erred in denying his *Batson* challenge (*Batson v. Kentucky*, 476 U.S. 79, 89 (1986)); (2) the evidence was insufficient to prove beyond a reasonable doubt he delivered heroin within 1,000 feet of a church; and (3) the court erred in

failing to conduct an inquiry into posttrial claims of ineffective assistance of counsel pursuant to *People v. Krankel*, 102 Ill. 2d 181, 464 N.E.2d 1045 (1984). We affirm.

¶ 4 I. BACKGROUND

¶ 5 On April 3, 2014, a grand jury indicted defendant on two counts of unlawful delivery of a controlled substance. The indictment alleged (1) defendant unlawfully delivered heroin (720 ILCS 401(c)(2) (West 2014)) (count II) and (2) did so within 1,000 feet of a church (720 ILCS 570/407(b)(1) (West 2014)) (count I).

¶ 6 A. Pretrial Ineffective-Assistance Claims

¶ 7 Prior to jury selection, defendant's trial counsel informed the trial court defendant wanted a continuance so he could hire private counsel. The court asked defendant what steps he had taken to retain counsel. Defendant told the court his family was going to try to get money together but they had not yet contacted any attorneys about representing him.

¶ 8 When the trial court asked why he waited until the morning of trial to raise the issue, defendant responded he was not procrastinating. Defendant explained he was surprised to learn the trial was going to start and was unhappy with his appointed counsel's representation. Defendant stated he sent a letter to the public defender's office regarding complaints he had about his counsel's performance. At that point, the court asked defendant about his concerns. Defendant told the court he wanted his counsel to file "some motions" to get the case dismissed. Defendant also wanted his counsel to present an entrapment defense, which counsel told the court he had filed and would present "as best we can." Defendant also complained his counsel had only visited him twice in jail and once in a conference room at the courthouse to discuss a plea offer from the State.

¶ 9 Following questioning of defendant's trial counsel and additional discussion with defendant, the trial court found none of the issues raised warranted a continuance to hire private counsel. The July 14, 2014, docket entry states defendant's oral motion to continue to hire private counsel was heard and denied following a *Krankel* inquiry into defendant's allegations of neglect.

¶ 10 B. Jury Selection

¶ 11 During *voir dire*, the trial court asked the venire if anyone had "any serious business, personal[,] or medical concerns that would interfere" with their ability to serve as a juror. One of the potential jurors, Nicole Flowers, an African-American, responded she was a single mother and had a "very sick daughter" at home who was being taken care of by her teenage son. She indicated if she received a call during trial regarding her daughter, she would need a few minutes to call the girl's father. The court stated it would allow her that opportunity if such a situation arose. The following colloquy then took place between the assistant State's attorney and Flowers:

> "[ASSISTANT STATE'S ATTORNEY]: You indicated that your daughter is sick right now?
>
> [FLOWERS]: Yes.
>
> [ASSISTANT STATE'S ATTORNEY]: And I think you indicated that she's very sick?
>
> [FLOWERS]: Well, she has extreme allergies. Anything that you test for outside, anything you test for inside[,] and all food allergies.

[ASSISTANT STATE'S ATTORNEY]: Those are really acting up?

[FLOWERS]: Yes. *** I do the nebulizer and two other inhalers and she's on eight different medications, and the nebulizer needs to be round the clock, and I will not leave that in the hands of my teenage son to do, so...

[ASSISTANT STATE'S ATTORNEY]: Well, if you're selected to be a juror on this case, would it be fair to say that while you're listening to evidence that might be something that's weighing on [the] back of your mind?

[FLOWERS]: I can't lie as a mom, because [my son] doesn't know everything to look out for, you know.

[ASSISTANT STATE'S ATTORNEY]: And so do you think that that would make it maybe so it would be difficult?

[FLOWERS]: Watching the clock and tapping my foot, maybe.

[ASSISTANT STATE'S ATTORNEY]: Thank you for your honesty. I have no further questions, thank you."

¶ 12 The following exchange took place during defense counsel's questioning of Flowers:

"[DEFENSE COUNSEL]: Miss Flowers, you indicated that you worry about your daughter?

[FLOWERS]: Yeah, this is really recent. Usually she's really under control, but it's been too much of the outside environment going on with her right now.

[DEFENSE COUNSEL]: You're expecting it to pass when you get it under control?

[FLOWERS]: Yes, yes.

[DEFENSE COUNSEL]: You've been very attentive and given quick answers today, so, would you be able to be as attentive [during] the trial if we need you to do that?

[FLOWERS]: I would really try.

[DEFENSE COUNSEL]: You talked about [how] you would be concerned. I took it [to mean] you would be concerned if we run too late?

[FLOWERS]: Well, today, yes. I mean I've been here since 8 o'clock this morning. I didn't expect—you know, I didn't understand the process, so it would be imperative for me to call her father.

[DEFENSE COUNSEL]: But if we can *** convince the Judge to quit on time, that would work out for you?

[FLOWERS]: Well, I don't know what quit[ting] time is. I *** would need to contact him before four to tell him to—

[DEFENSE COUNSEL]: As long as we give you a break, you could come back in?

[FLOWERS]: Yes.

[DEFENSE COUNSEL]: And you can pay attention to the case?

[FLOWERS]: Yes.

[DEFENSE COUNSEL]: It will give us an excuse to try to quit early."

¶ 13 At the conclusion of the parties' questioning, the State moved to strike Flowers for cause, arguing she would be inattentive during trial due to her daughter's sickness. Specifically, the State argued the following:

"[W]hen I asked her about her sick daughter, she indicated that [she] was very sick. It's allergies, so it doesn't appear to be a life-threatening condition, but it's something I think that's more common than usual; and she's indicated that [it] would be on her mind *** the whole time and I believe it's something that would keep her from being able to, as she indicated, to listen very attentively to the evidence as [it] is presented, which is something important that we would need our jurors to do."

¶ 14 Defendant's trial counsel argued Flowers should not be stricken because her daughter's situation would not be a "major distraction" as long as the trial ended on time and she was allowed to call her daughter's father if she needed to. Counsel also stated, "frankly, she

might be the only African[-]American who sits on the jury; and I would be hesitant to eliminate her for what may be a pretty minor reason." The trial court denied the State's motion to strike.

¶ 15 Flowers was then tendered to the State with the third panel of jurors. At that point, the State used a peremptory strike to excuse her from the jury. Defendant's counsel stated, "I think before [we accept the panel], I think we have to have a reason stated on Miss Flowers because there is potentially a *Batson* problem there that there is only two African[-]Americans on the venire, and we may not even reach the other." The court responded as follows:

> "All right, well, before there can be—I mean I understand the challenge, but there has to be a pattern of discrimination shown by the [State]. Given the fact that the State made a motion for cause on that particular juror and argued what I consider to be a valid reasons for that argument, the fact that this is the first minority individual, African[-]American individual, who has been challenged by the [State,] I don't think there is a pattern at this point of racial exclusion, so I am not going to call upon the State to make a racially neutral explanation at this point."

The court then struck Flowers from the panel.

¶ 16 C. Defendant's Trial

¶ 17 During trial, Curtis Kitchen testified he worked for the police as a confidential informant. Kitchen testified defendant agreed to meet him on April 3, 2014, and buy approximately three to four grams of heroin for $660 (Kitchen testified defendant "needed 20 dollars for gas and then the sale purchase price for the heroin was 640 dollars."). Kitchen and

Luke Scaglione, a Normal police detective with the vice unit, went to meet defendant at a McDonald's parking lot. Kitchen met with defendant and another man, who was traveling with defendant, in the bathroom of the Qik-n-EZ attached to the McDonald's. Inside the bathroom, defendant gave Kitchen a small bag of heroin and Kitchen gave defendant $660 in marked bills. The second man asked Kitchen if he was interested in buying some crack cocaine. Kitchen told him he did not have any more money and left. Kitchen returned to Scaglione's vehicle and handed him a bag containing heroin. The parties stipulated the substance in the bag defendant gave to Kitchen was 1.4 grams of heroin.

¶ 18 Scaglione testified a surveillance team was set up in the parking lot during the transaction. After defendant left the bathroom, he and the other individual were observed going into the McDonald's before getting back in defendant's vehicle and driving away. A short time later, the police pulled defendant over. An individual later identified as Cedric Gary was in the vehicle with defendant at the time of the stop. Scaglione testified police recovered $60 in marked bills from defendant. When police searched Gary, they found $400 of the $660 in marked bills, as well as crack cocaine. Scaglione testified he believed defendant purchased food at the McDonald's with the marked bills. After defendant was arrested police went back to the McDonald's and recovered one of the marked $100 bills from the cash register.

¶ 19 Scaglione also testified he went back to the scene and measured the distance between the McDonald's restaurant and Our Savior Lutheran Church, which was located across the street. According to Scaglione, he used a calibrated device to measure the distance, which was approximately 578 feet and 2 inches. Scaglione testified he was familiar with the church and it was operating as such on the date of the drug transaction.

¶ 20 Defendant testified Kitchen was a friend of his and they used to "get high" together. According to defendant, Kitchen contacted him on April 3, 2014, and asked him to bring him some heroin because Kitchen was "sick and really needed something bad." Defendant testified he and Gary went to meet Kitchen so Gary could sell Kitchen heroin. Defendant denied being a drug dealer and insisted he was just helping a friend because he had been sick on drugs before and "it's not a real good feeling." When asked on cross-examination if it would be fair to say Kitchen knew defendant was a person he could call to help him get drugs, defendant responded, "Yeah, he always knew it was a possibility." When the State asked if he was the middleman between Gary and Kitchen, defendant responded, "I wouldn't call it the middleman. I would call it the casual thing that we always does." The State then asked specifically about Gary and the following colloquy took place:

> "[Q.] How do you know Cedric Gary?
>
> A. He's a drug dealer that I buy drugs from sometime[s].
>
> Q. And it's fair to say on April 3rd you contacted him in order to essentially fulfill the order for drugs, specifically heroin, that Curtis Kitchen had made on that day. Correct?
>
> A. Yes."

¶ 21 During its closing argument, the State argued, in part, the following:

> "Now, we know that there was 660 dollars used for this transaction. 400 of it was found on the acquaintance, what the defendant referred to as his drug dealer. There was a hundred of it that was found at the McDonald[']s and then there was also the 60

dollars on his person and we know that there was a hundred dollars that was never found. So we don't know where that went, we can only speculate. But one thing I think that may be somewhat informative is towards the end of the video, when you see the defendant walking out of the Qik-n-EZ, he has a drink in his hand and you're going to see that he has a paper sack that appears to be a McDonald[']s sack. So it's clear that he made a purchase from McDonald[']s. I think what would maybe account for the other missing hundred dollars was he spent a good deal of time in there after the deal was over, you could see from the video that it was pretty much at the very beginning of the video when [he] and [Kitchen] went into the bathroom and then [Kitchen] left right away but the defendant went to the McDonald[']s and then spent a deal of time inside the Qik-n-EZ before he left. So I think it might be safe to say that the defendant's cut for this drug deal was 260 dollars. A hundred dollars that he got change for at McDonald[']s. Hundred dollars that he got change for at the Qik-n-EZ and then the 60 dollars that he still had on him, a 50 dollar bill and a 10 dollar bill when he was arrested. And then obviously his source, supplier, the person that has the connections to get all the heroin got the biggest cut, the four hundred dollars."

¶ 22 Prior to its deliberation, the jury was given an accountability instruction. Thereafter, it found defendant guilty of both charged counts.

¶ 23 D. Motion for a New Trial

¶ 24 On August 6, 2014, defendant filed a motion for a new trial. In the motion, defendant argued, *inter alia*, the trial court erred in allowing the State to argue facts not in evidence. Specifically, defendant contended the State improperly argued police recovered more funds from defendant than the evidence showed.

¶ 25 Following a September 4, 2014, hearing, the trial court denied defendant's motion for a new trial. In denying the motion, the court found the State's argument police recovered more than $60 from defendant proper because, according to the court, Scaglione testified defendant was in possession of $400 when he was arrested. (In fact, Scaglione testified Gary was found with $400 and police recovered $60 from defendant.) Thereafter, the court sentenced defendant to seven years in prison.

¶ 26 E. Motion To Appeal

¶ 27 On September 9, 2014, defendant *pro se* filed a letter titled "Motion for the county clerk's office to file an appeal on behalf of defendant Ronald White," in which defendant requested an appeal be filed on his behalf. In the filing, defendant alleged, *inter alia*, counsel (1) was ineffective for not adequately communicating with him regarding his defense before trial, (2) refused to pursue an entrapment defense, (3) did not cross-examine Kitchen in an effective manner, and (4) was ineffective at the hearing on the motion for a new trial because he failed to correct the trial court's "inaccurate" statement Scaglione testified defendant was found in possession of $400.

¶ 28 The September 16, 2014, docket entry reflects the trial court acknowledged defendant's September 9 filing and directed the clerk to file defendant's notice of appeal. The court did not hold a hearing on the claims defendant raised in that filing.

¶ 29 This appeal followed.

¶ 30 II. ANALYSIS

¶ 31 On appeal, defendant argues (1) the trial court erred in denying his *Batson* challenge, (2) the evidence was insufficient to prove beyond a reasonable doubt he sold drugs within 1,000 feet of a church, and (3) the court erred in not conducting a *Krankel* inquiry on his posttrial ineffective-assistance-of-counsel claims.

¶ 32 A. *Batson* Challenge

¶ 33 Defendant argues the trial court erred in denying his *Batson* challenge. Specifically, defendant contends the court "mismanaged the *Batson* hearing where it failed to conduct the three-step process" and instead just found there was no pattern of racial exclusion on the part of the State. Defendant maintains, while the lack of a pattern is a factor for the court to consider, it is not by itself dispositive. According to defendant, the court should also have considered the other factors relevant to whether he established a *prima facie* case of purposeful racial discrimination. Defendant requests this court "remand for a proper and full *Batson* hearing to determine whether the State purposefully excluded juror Flowers because she was an African[-]American."

¶ 34 In *Batson*, the United States Supreme Court held "the Equal Protection Clause [of the United States Constitution (U.S. Const., amend. XIV, § 1)] forbids the prosecutor to challenge potential jurors solely on account of their race or on the assumption that black jurors as

a group will be unable impartially to consider the State's case against a black defendant." *Batson*, 476 U.S. at 89. Under *Batson*, the trial court conducts a three-step analysis to determine whether there has been purposeful racial discrimination during jury selection. *Batson*, 476 U.S. at 96-99.

¶ 35 As the first step, "the defendant must make a *prima facie* showing that the prosecutor has exercised peremptory challenges on the basis of race." *People v. Williams*, 209 Ill. 2d 227, 244, 807 N.E.2d 448, 459 (2004). During the second step, once the trial court determines defendant has established a *prima facie* case, the burden shifts to the State to provide a race-neutral explanation for excluding the potential jury members. *Williams*, 209 Ill. 2d at 244, 807 N.E.2d at 459. Defendant may then rebut the proffered reason as pretextual. *Williams*, 209 Ill. 2d at 244, 807 N.E.2d at 459. Finally, during the third step of the *Batson* hearing, the trial court must determine whether the defendant has met his burden of showing purposeful discrimination in light of the parties' submissions. *Williams*, 209 Ill. 2d at 244, 807 N.E.2d at 459.

¶ 36 In denying defendant's challenge, the trial court, albeit impliedly, found defendant failed to establish a *prima facie* case of purposeful discrimination. Thus, while defendant argues on appeal the trial court's ruling was incorrect as a matter of law, the real issue is whether defendant successfully established a *prima facie* case sufficient to advance to the second step of the analysis. See *Williams*, 209 Ill. 2d at 244, 807 N.E.2d at 459 (establishing a *prima facie* case of discriminatory use of peremptories is the first step in a *Batson* analysis). We note, however, defendant does not endeavor to make such an argument on appeal. Instead, defendant focuses only on his argument the court failed to conduct the three-step *Batson* process.

¶ 37 Defendant argues our decision in *People v. Shaw*, 2014 IL App (4th) 121157, 21 N.E.3d 802, controls the outcome of this issue. In *Shaw*, the defendant raised a *Batson* challenge after the State excused the first African-American venire member. *Shaw*, 2014 IL App (4th) 121157, ¶ 8, 21 N.E.3d 802. In support of his challenge, counsel alleged the juror was the only African-American in the panel thus far, and there were " 'no facts or other relevant circumstances that would raise an inference that [the challenge] was anything other than for race.' " *Shaw*, 2014 IL App (4th) 121157, ¶ 8, 21 N.E.3d 802. Before the trial court could respond, however, the State argued defense counsel was not following the correct procedure; counsel had to establish a pattern with regard to challenges based on race. *Shaw*, 2014 IL App (4th) 121157, ¶ 8, 21 N.E.3d 802. The court then ruled on the challenge, stating only, " 'Defendant has not established a pattern under *Batson*.' " *Shaw*, 2014 IL App (4th) 121157, ¶ 8, 21 N.E.3d 802.

¶ 38 On appeal, we held it was "unclear whether the trial court found defendant established a *prima facie* case of discrimination" because the court did not follow the well-established three-step procedure for addressing *Batson* claims. *Shaw*, 2014 IL App (4th) 121157, ¶ 26, 21 N.E.3d 802. We specifically ruled, "[The three-step] procedure was not followed here and, as a result, the record is insufficient for us to conduct a meaningful review of defendant's *Batson* challenges." *Shaw*, 2014 IL App (4th) 121157, ¶ 30, 21 N.E.3d 802. We noted a pattern is only one of several factors a trial court should consider in determining whether a defendant has established a *prima facie* case of purposeful discrimination. *Shaw*, 2014 IL App (4th) 121157, ¶ 26, 21 N.E.3d 802.

¶ 39 However, in *People v. Sanders*, 2015 IL App (4th) 130881, ¶ 36, 34 N.E.3d 219, we clarified, "[o]ur point in *Shaw* was simply to emphasize the importance of the three-step

process and to remind the trial court to consider all relevant factors—not to transfer the burden of establishing a *prima facie* case from the defendant to the trial court." As stated above, the real issue in this case centers on whether defendant successfully established a *prima facie* case under *Batson*. For the reasons that follow, we find he did not.

¶ 40 "To establish a *prima facie* case under *Batson*, a defendant must demonstrate that relevant circumstances give rise to an inference of purposeful discrimination on behalf of the State." *Sanders*, 2015 IL App (4th) 130881, ¶ 28, 34 N.E.3d 219 (citing *People v. Davis*, 231 Ill. 2d 349, 360, 899 N.E.2d 238, 245 (2008)). In evaluating whether a defendant has established a *prima facie* case, the trial court "must consider 'the totality of the relevant facts' and 'all relevant circumstances' surrounding the peremptory strike to see if they give rise to a discriminatory purpose." *Davis*, 231 Ill. 2d at 360, 899 N.E.2d at 245 (quoting *Batson*, 476 U.S. at 94, 96-97).

¶ 41 The supreme court has explained the trial court should consider the following relevant factors when determining whether a *prima facie* case exists:

> "(1) [the] racial identity between the party exercising the peremptory challenge and the excluded venirepersons; (2) a pattern of strikes against African-Americans on the venire; (3) a disproportionate use of peremptory challenges against African-Americans; (4) the level of African-American representation in the venire compared to the jury; (5) the prosecutor's questions and statements of the challenging party during *voir dire* examination and while exercising peremptory challenges; (6) whether the excluded African-American venirepersons were a heterogeneous group sharing race as their only

common characteristic; and (7) the race of the defendant, victim and witnesses." (Internal quotation marks omitted.) *Davis*, 231 Ill. 2d at 362, 899 N.E.2d at 246.

¶ 42 We review a trial court's finding a defendant failed to establish a *prima facie case* of purposeful discrimination to determine whether it was against the manifest weight of the evidence. *People v. Furdge*, 332 Ill. App. 3d 1019, 1029, 774 N.E.2d 415, 424 (2002). " 'A judgment is against the manifest weight of the evidence only when an opposite conclusion is apparent or when findings appear to be unreasonable, arbitrary, or not based on evidence.' " *People ex rel. Ryan v. Bishop*, 315 Ill. App. 3d 976, 978, 735 N.E.2d 754, 757 (2000) (quoting *Bazydlo v. Volant*, 164 Ill. 2d 207, 215, 647 N.E.2d 273, 277 (1995)).

¶ 43 The extent of defendant's *Batson* argument before the trial court consisted of the following statement: "I think before [we accept the panel], I think we have to have a reason stated on Miss Flowers because there is potentially a *Batson* problem there that there is only two African-Americans on the venire, and we may not even reach the other." Thus, defendant's *Batson* objection relied entirely on the fact the State used a peremptory challenge to exclude one African-American juror. However, "[w]here evidence of a pattern is an irrelevant factor, such as when there has only been one African-American challenged, a defendant must set forth other evidence which gives rise to an inference of discrimination." *Sanders*, 2015 IL App (4th) 130881, ¶ 40, 34 N.E.3d 219 (citing *People v. Davis*, 345 Ill. App. 3d 901, 910, 803 N.E.2d 514, 522 (2004) (a "pattern of strikes" is an irrelevant factor in determining whether the defendant established a *prima facie* case of discrimination under *Batson* where there is only one African-American in the venire)).

¶ 44 Here, defendant's entire *Batson* argument centered around the fact the State exercised a peremptory challenge on Flowers. Defendant did not advance any other evidence from which the trial court could infer discrimination. The fact the court did not *sua sponte* address other factors not raised by defendant does not change the fact defendant failed to satisfy his initial burden. Indeed, "the trial court is not tasked with establishing defendant's *prima facie* case for him." *Sanders*, 2015 IL App (4th) 130881, ¶ 41, 34 N.E.3d 219. As a result, defendant failed to satisfy his burden of establishing a *prima facie* case of purposeful discrimination on the part of the State. Because defendant did not meet the first-stage requirement, advancement to the second stage was unwarranted. Accordingly, the court's denial of defendant's *Batson* challenge was not against the manifest weight of the evidence.

¶ 45 B. Insufficient-Evidence Claim

¶ 46 Defendant argues the evidence was insufficient to prove beyond a reasonable doubt he sold drugs within 1,000 feet of a church. Specifically, defendant contends the State failed to prove Our Savior Lutheran Church was an active church on the date of the offense. Defendant maintains, as a result, we should reduce his conviction on count I to simple unlawful delivery of a controlled substance as in count II and remand for resentencing.

¶ 47 When reviewing the sufficiency of the evidence in a criminal case, the relevant inquiry is whether, when "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." *People v. Ward*, 215 Ill. 2d 317, 322, 830 N.E.2d 556, 559 (2005). The trier of fact has the responsibility to determine the credibility of witnesses and the weight given to their testimony, to resolve conflicts in the evidence, and to draw reasonable inferences from the

evidence. *People v. Jackson*, 232 Ill. 2d 246, 281, 903 N.E.2d 388, 406 (2009). "[A] reviewing court will not reverse a criminal conviction unless the evidence is so unreasonable, improbable[,] or unsatisfactory as to create a reasonable doubt of the defendant's guilt." *People v. Rowell*, 229 Ill. 2d 82, 98, 890 N.E.2d 487, 496-97 (2008).

¶ 48 On appeal, defendant does not challenge his unlawful-delivery-of-a-controlled-substance conviction (count II). Rather, defendant argues the evidence was insufficient to convict him on count I, *i.e.*, delivery of that controlled substance within 1,000 feet of a church. To prove the unlawful delivery of a controlled substance as alleged in count I, the State must prove, beyond a reasonable doubt, defendant delivered between 1 and 15 grams of heroin within 1,000 feet of Our Savior Lutheran Church and the church was " 'used primarily for religious worship' " on the date of the offense. *People v. Sims*, 2014 IL App (4th) 130568, ¶ 106, 9 N.E.3d 621 (quoting 720 ILCS 570/407(b)(2) (West 2010)). In his appellate brief, defendant explains he is not arguing the State failed to prove Our Savior Lutheran Church was a church. Instead, defendant contends the State failed to prove it was an active church on the date of the offense because "the bare fact Detective Scaglione was a narcotics officer with 1 1/2 years of experience was insufficient evidence."

¶ 49 In so arguing, defendant maintains this court should follow the Second District's decision in *People v. Cadena*, 2013 IL App (2d) 120285, ¶ 17, 994 N.E.2d 219, and find the State had to present testimony from someone with personal knowledge to show the church was active on the date of the offense. The defendant in *Cadena* acknowledged he unlawfully delivered a controlled substance but challenged the jury's finding that he committed the offenses within 1,000 feet of a church. *Cadena*, 2013 IL App (2d) 120285, ¶ 4, 994 N.E.2d 219. At trial,

a police officer testified the drug purchases took place near " 'the Evangelical Covenant Church' " and the church was an " 'active church'." *Cadena*, 2013 IL App (2d) 120285, ¶ 6, 994 N.E.2d 219.

¶ 50 On appeal, the defendant argued the State had failed to present sufficient evidence the Evangelical Covenant Church was a "church" as set forth in section 407(b)(1) of the Illinois Controlled Substances Act (720 ILCS 570/407(b)(1) (West 2008) ("real property comprising any church, synagogue, or other building, structure, or place used primarily for religious worship")). *Cadena*, 2013 IL App (2d) 120285, ¶ 10, 994 N.E.2d 219. The *Cadena* court found just having the word "church" in the name of the building did not establish it was being operated as a church. *Cadena*, 2013 IL App (2d) 120285, ¶ 13, 994 N.E.2d 219. According to the Second District, the officer's testimony was insufficient to establish the building was being used as a church on the dates of the offenses when he responded in the affirmative to the question, " '[I]s that a church that is an active church?' " *Cadena*, 2013 IL App (2d) 120285, ¶ 16, 994 N.E.2d 219. Because the question was posed in the present tense and without temporal context, the officer's response was insufficient to establish the church was active on the dates of the offenses. *Cadena*, 2013 IL App (2d) 120285, ¶ 16, 994 N.E.2d 219.

¶ 51 However, this court has already expressly declined to follow *Cadena*. See *Sims*, 2014 IL App (4th) 130568, ¶ 133, 9 N.E.3d 621. In *Sims*, an officer's testimony supported the inference the defendant delivered narcotics within 1,000 feet of a church in Bloomington. *Sims*, 2014 IL App (4th) 130568, ¶ 138, 9 N.E.3d 621. The officer specifically testified there was an active church, on the date of the offense, within 696 feet of the location of the narcotics transaction. *Sims*, 2014 IL App (4th) 130568, ¶¶ 66, 70, 9 N.E.3d 621. The officer explained he

had worked as a police officer in Bloomington for the past 10 years, and for the last 5 1/2 years as a narcotics officer. *Sims*, 2014 IL App (4th) 130568, ¶¶ 51, 66, 9 N.E.3d 621. He testified he was familiar with the neighborhood where the church was located. *Sims*, 2014 IL App (4th) 130568, ¶ 66, 9 N.E.3d 621. In finding the officer's testimony was sufficient, we found, "it seems reasonable to infer that, in [the officer's] particular line of work, one would become familiar with Bloomington, such that one could say whether a given church was active. Bloomington is not so large that such knowledge would be unattainable or implausible." *Sims*, 2014 IL App (4th) 130568, ¶ 138, 9 N.E.3d 621. The court concluded a rational trier of fact could have believed the officer's testimony he was familiar with the neighborhood and the building was used as a church on the date of the offense. *Sims*, 2014 IL App (4th) 130568, ¶ 138, 9 N.E.3d 621.

¶ 52 In this case, Detective Scaglione testified he worked more than five of his six years as a police officer for the Normal police department. At the time of the trial, Scaglione was working for the vice unit. During the trial, the following colloquy took place between the State and Scaglione:

> "Q. This is Our Savior Lutheran Church, you're familiar with that church?
>
> A. Yes.
>
> Q. Was it operating as a church or place of worship back on April 3rd of 2014 when this controlled buy occurred?
>
> A. Yes it was."

¶ 53 While the State did not present evidence directly establishing *how* Scaglione knew Our Savior Lutheran Church was being used as a church on the date of the offense, a rational juror could have reasonably inferred from his testimony he knew it to be so. Such an inference would not be unreasonable given the size of Normal and the nature of Scaglione's employment. See *Sims*, 2014 IL App (4th) 130568, ¶ 138, 9 N.E.3d 621 (finding it reasonable to infer the officer would know the church was active given his line of work and the fact the city where he worked (Bloomington) was not so large that such knowledge would be unattainable or implausible). Viewing the evidence in the light most favorable to the State, as we must, we find a rational trier of fact could have believed Scaglione's testimony he was familiar with the church and it was used as such on the date of the offense. See *Sims*, 2014 IL App (4th) 130568, ¶ 138, 9 N.E.3d 621. Thus, defendant's argument the evidence was insufficient to convict him beyond a reasonable doubt on count I fails.

¶ 54 C. *Krankel* Inquiry

¶ 55 Defendant argues the trial court erred in failing to conduct a *Krankel* hearing on his posttrial ineffective-assistance-of-counsel claims. The State argues the court correctly declined to conduct the hearing.

¶ 56 "The common law procedure developed in *Krankel* and subsequent cases is intended to promote consideration of *pro se* ineffective assistance claims in the trial court and to limit issues on appeal." *People v. Patrick*, 2011 IL 111666, ¶ 41, 960 N.E.2d 1114. "[W]hen a defendant presents a *pro se* posttrial claim of ineffective assistance of counsel, the trial court should first examine the factual basis of the defendant's claim." *People v. Moore*, 207 Ill. 2d 68, 77-78, 797 N.E.2d 631, 637 (2003). "[I]f the allegations show possible neglect of the case, new

counsel should be appointed" to independently investigate and represent the defendant at a separate hearing. *Moore*, 207 Ill. 2d at 78, 797 N.E.2d at 637. New counsel and a hearing are not required, however, in each case a defendant presents a *pro se* posttrial motion claiming ineffective assistance of counsel. *Moore*, 207 Ill. 2d at 77, 797 N.E.2d at 637. When the trial court finds a claim lacks merit or pertains only to matters of trial strategy, the appointment of new counsel is unnecessary and the defendant's claim may be denied. *Moore*, 207 Ill.2d at 78, 797 N.E.2d at 637. Whether the trial court should have conducted a *Krankel* inquiry presents a legal question and is subject to *de novo* review. *People v. Jolly*, 2014 IL 117142, ¶ 28, 25 N.E.3d 1127.

¶ 57 On September 9, 2014, after sentencing, defendant filed a *pro se* "Motion for the clerk's office to file an appeal on behalf of defendant Ronald White" requesting an appeal be filed on his behalf and raising several complaints regarding, *inter alia*, his appointed counsel's performance. Specifically, defendant alleged his counsel (1) was ineffective for not adequately consulting with him regarding his defense, (2) refused to pursue an entrapment defense, (3) did not cross-examine Kitchen in an effective manner, and (4) was ineffective at the hearing on the motion for a new trial because he failed to correct the trial court's incorrect statement Scaglione testified defendant was found in possession of $400.

¶ 58 On appeal, defendant focuses his argument on the following two claims: counsel (1) did not cross-examine Kitchen in an effective manner, and (2) failed to correct the trial court during the hearing on his motion for a new trial regarding the amount of money in marked bills the testimony showed he was arrested with. The parties agree the trial court did not conduct any inquiry into defendant's claims contained in his request for the clerk to file an appeal on his

behalf. Instead, the September 16, 2014, docket entry reflects the court acknowledged defendant's September 9 filing and directed the clerk to file a notice of appeal.

¶ 59 We recognize in *People v Ayres*, 2017 IL 120071, ¶ 9, the supreme court recently considered whether the defendant's bare allegation of "ineffective assistance of counsel" contained in a posttrial motion to withdraw his guilty plea and vacate his sentence triggered the trial court's duty to conduct a preliminary *Krankel* inquiry, even though that allegation lacked any explanation or supporting facts. The supreme court concluded a defendant's "clear claim asserting ineffective assistance of counsel, either orally or in writing, *** is sufficient to trigger the trial court's duty to conduct a *Krankel* inquiry." *Ayres*, 2017 IL 120071, ¶ 18.

¶ 60 Here, however, the letter filed by defendant can reasonably be construed as a notice of appeal containing allegations regarding, *inter alia*, counsel's performance. While a motion's substance, not its title, determines it character, in this case, both the title of defendant's filing and its contents indicated he wished to take an appeal based on the claims contained within. See *People v. Smith*, 371 Ill. App. 3d 817, 821, 867 N.E.2d 1150, 1154 (2007). Indeed, in *Ayers*, the supreme court made clear not every *pro se* communication to the trial court necessitates a *Krankel* inquiry as "*Krankel* is limited to posttrial motions." *Ayres*, 2017 IL 120071, ¶ 22. We note defendant had already filed a posttrial motion, which the trial court denied, at the time he filed his motion for an appeal. Even assuming, *arguendo*, defendant's *pro se* filing could properly be considered a posttrial motion for *Krankel* purposes, the record in this case is sufficient to conclude the ineffective-assistance claims defendant raised therein are meritless. Thus, for the following reasons, we conclude any error committed by the trial court in that regard was harmless.

¶ 61 Our supreme court has noted "[a] trial court's failure to appoint new counsel to argue a defendant's *pro se* posttrial motion claiming ineffective assistance of counsel can be harmless beyond a reasonable doubt." *Moore*, 207 Ill. 2d at 80, 797 N.E.2d at 639. However, to do so, there must exist a record demonstrating the meritless nature of the defendant's claims. *Moore*, 207 Ill. 2d at 80-81, 797 N.E.2d at 639. Without such a record, "it is simply not possible to conclude that the trial court's failure to conduct an inquiry into those allegations was harmless beyond a reasonable doubt." *Moore*, 207 Ill. 2d at 81, 797 N.E.2d at 639.

¶ 62 Here, the record reflects the trial court addressed and disposed of most of defendant's claims in his motion to appeal before trial. As such, the court was not required to revisit those claims again after trial. See *People v. Washington*, 2012 IL App (2d) 101287, ¶¶ 24-25, 970 N.E.2d 43 (trial court not required, posttrial, to revisit defendant's pretrial ineffective-assistance claims). With regard to defendant's two new claims, we find the record before us sufficient to conclude any failure to inquire into those claims was harmless as they are without merit.

¶ 63 Defendant's claim involves his contention trial counsel failed to effectively cross-examine Kitchen in a way that would support an entrapment defense. We note, during the pretrial hearing on defendant's ineffective-assistance claims, he vacillated back and forth regarding his desire to pursue an entrapment defense. For example, during that hearing, the following exchange took place:

> "THE DEFENDANT: *** [Counsel] did not repeatedly go over anything with me, and I did not tell him I want to go with [an] entrapment defense. I did not say that.

THE COURT: You just told me you did. You don't want to do that?

THE DEFENDANT: Sir, I'm not—I might be saying things wrong out of my mouth.

THE COURT: Okay.

THE DEFENDANT: But what I'm saying is what I said was I felt like I was being entrapped, you know. I didn't say anything about [an] entrapment defense."

Regardless of defendant's representation to the court, the record shows entrapment was not a viable defense. In fact, the trial court denied an instruction on entrapment. The evidence presented supports such a denial. According to the evidence, the police pursued the controlled buy only after Kitchen told them defendant was someone from whom he could purchase heroin. "The absence of a defendant's predisposition to commit a crime is one of the crucial elements of an entrapment defense." *People v. White*, 249 Ill. App 3d 57, 64, 618 N.E.2d 889, 895 (1993). Here, the evidence shows defendant already possessed such a predisposition. When asked on cross-examination if it would be fair to say, based on their prior relationship, Kitchen knew defendant was a person he could call to help him get drugs, defendant responded, "Yeah, he always knew it was a possibility." Thus, because defendant's underlying contention is affirmatively refuted by the record, his claim is meritless.

¶ 64 Defendant's claim regarding counsel's failure to correct the trial court during the hearing on his motion for a new trial is similarly without merit. Defendant is essentially arguing, but for his counsel's failure to correct the court's misstatement regarding how much buy money

was found in his possession, he would have been granted a new trial. However, the record does not support this argument. Underlying defendant's argument was his contention in his motion he should get a new trial because he believed the State improperly argued he was found with more buy money than police actually recovered from him. Police provided Kitchen with $660 in marked bills. Scaglione testified police recovered $60 from defendant and $400 from Gary. All the State did during its closing argument was to offer an explanation as to where the balance of the funds could have gone. See *supra* ¶ 21. The State's theory defendant purchased items at McDonald's was not only reasonable, it was supported by the evidence. Indeed, Scaglione testified he believed defendant purchased food at McDonald's with the marked bills. Further, after defendant was arrested, police went back to the McDonald's and did in fact recover one of the marked $100 bills from the cash register. Because the State's argument was proper and supported by the evidence, counsel's failure to correct the court's misstatement regarding how much buy money was found on his person had little bearing on the decision to deny the motion for a new trial.

¶ 65 III. CONCLUSION

¶ 66 For the reasons stated we affirm the trial court's judgment. As part of our judgment we award the State its $50 statutory assessment against defendant as costs of this appeal.

¶ 67 Affirmed