2018 IL App (1st) 170128-U

No. 1-17-0128

Order filed July 30, 2018

FIRST DIVISION

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IN THE

APPELLATE COURT OF ILLINOIS

FIRST DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County.
	)	
v.	)	No. 14 CR 5827
	)	
ALEXANDER SCOTT,	)	Honorable
	)	Charles P. Burns,
Defendant-Appellant.	)	Judge, presiding.

JUSTICE HARRIS delivered the judgment of the court.
Justices Mikva and Griffin concurred in the judgment.

ORDER

¶ 1 *Held*: We affirm defendant's conviction for first degree murder over his contentions that the State failed to prove him guilty beyond a reasonable doubt and that his trial counsel was ineffective.

¶ 2 Following a bench trial, defendant Alexander Scott was convicted of first degree murder (720 ILCS 5/9-1(a)(1) (West 2014)), and sentenced to 55 years' imprisonment. Defendant's 55-

year sentence included a 25-year enhancement for personally discharging a firearm that proximately caused the victim's death. 730 ILCS 5/5-8-1(a)(1)(d)(iii) (West 2014). On appeal, he argues that the State failed to prove him guilty of first degree murder beyond a reasonable doubt and that his trial counsel was ineffective. We affirm.

¶ 3 Defendant was indicted for six counts of first degree murder, stemming from the February 27, 2014, shooting death of Eric Woods. Defendant waived his right to a jury and the case proceeded to a bench trial.

¶ 4 Michelin Vasquez testified that she has three children, all boys, with defendant. At the time of the shooting, she and her three children lived with Woods, her boyfriend, in the first floor apartment of a two-flat apartment building. On the morning of February 27, 2014, Vasquez arranged with defendant to take the children to school. Vasquez and Woods dropped the children off at defendant's home and then Woods drove Vasquez to her job. When Vasquez's shift ended, a co-worker dropped her off at the school attended by two of her children. There, she saw defendant waiting in front of the school building. Vasquez asked defendant what he was doing there, to which he replied that he wanted to speak with Woods. After waiting for a few minutes, defendant told Vasquez that they should pick up their third child from school. Defendant drove Vasquez to their oldest child's school where they picked him up. About this time, Vasquez called Woods, who told her that he would meet her at their home.

¶ 5 When Vasquez arrived home, she saw Woods exiting his van, which was parked in front of their apartment. Defendant parked across the street from Woods' van. Defendant and two of the children exited the car. The third child was asleep in the backseat and Vasquez stayed behind to tend to him. She heard people running and saw Woods running into their apartment followed

by defendant. Vasquez explained that in order to enter the apartment one needs to go through three doors: an outer door, which is followed by a second door that opens to a common hallway, and then, finally, her apartment door. Vasquez followed Woods and defendant into the building, but the door to her apartment was locked. Vasquez stated that the door can only be locked by manually turning the lock. She heard gunshots inside and called the police.

¶ 6 Vasquez returned to the front of the building and saw Woods, two houses away, walking toward her. She explained that her apartment has a back door that leads to an alley. Woods was limping and Vasquez helped him into the hallway of their building. She saw defendant's car drive away. As she helped Woods inside, she saw that he was bleeding. She also noticed that he was having difficulty breathing. Eventually, an ambulance and police arrived on the scene. Woods was transported to a hospital where he was pronounced dead. Vasquez spoke with responding officers at the scene, but did not inform them that defendant was the shooter because she was scared of "the whole situation."

¶ 7 On cross-examination, Vasquez testified that Woods did not have a gun and holster in their apartment. She stated that her youngest son did not complain of a shoulder injury. Vasquez did not see a weapon in defendant's hand when he ran after Woods. She only heard one gunshot and never saw any shots fired.

¶ 8 On redirect-examination, Vasquez testified that her youngest son was not acting strange on the day in question, nor did he complain of any pain. She did not see a weapon in Woods's hands before he ran into the building.

¶ 9 Deante Scott, defendant's 12 year old middle son, testified that Woods was nice to him and that he called Woods by his first name. On the day that Woods was shot, defendant drove

Scott and his brothers home from school. They arrived at the apartment at the same time as Woods. Defendant parked across the street from the apartment and Woods parked in front of the apartment. Woods exited his vehicle and walked toward the steps of the building. Defendant exited his car, approached Woods, pulled out a gun, and fired at Woods. Scott heard Woods yell that he "didn't do nothing" and then run into the building with defendant giving chase. Scott heard "little sounds" coming from the building and then saw Woods "c[o]me back around." When Woods returned, Scott saw that he was limping. As Vasquez helped Woods into the building, defendant drove away.

¶ 10 On cross-examination, Scott testified that his younger brother did not complain to him that Woods hurt his shoulder. He also stated that he never saw a gun in their apartment.

¶ 11 Chicago police evidence technician Eileen Donohoe testified that she was assigned to process the scene of the shooting. After arriving there, Donohoe videotaped her walkthrough of the area. That video was played in open court as she explained what the video depicted.[1] Donohoe explained that a live bullet was recovered in front of the residence. She also pointed out various blood stains on the steps leading to the building and also in the hallway leading to Woods' first floor apartment. Inside the apartment, Donohoe noted that an empty holster was visible on a table. Donohoe pointed out two spent shell casings in the apartment, one near the kitchen and another in the enclosed porch in the rear of the kitchen. She also noted that the kitchen table was overturned. In the lot adjacent to Woods' building, Donohoe discovered footprints in the snow, blood, and a third spent shell casing.

[1] The video is not included in the record on appeal.

¶ 12 On cross-examination, Donohoe testified that the leather holster she found at the scene was for a handgun. Following a question from the court, she confirmed that a weapon was not recovered from the scene.

¶ 13 Chicago police officer Thomas McNamara testified that, at approximately 7 p.m., he responded to a call at 2206 North Campbell. When he arrived, defendant was seated on the porch of a residence. McNamara approached and defendant raised his hands in the air. Defendant confirmed to McNamara that he was not armed and then admitted that he had "shot somebody today." He was placed into custody and transported to the police station. Later that evening, defendant agreed to lead detectives to the gun that he used to shoot Woods. McNamara transported defendant, while detectives followed in a separate car. Defendant directed McNamara to the 600 block of South Karlov Avenue. Defendant indicated that the weapon was located on this block, which McNamara relayed to the trailing car. The detectives searched the area and recovered a handgun, which defendant identified as the gun he used to shoot Woods.

¶ 14 Chicago police detective Adrian Garcia testified that he was in the car following McNamara and defendant. Garcia, along with other detectives, searched the area and recovered a handgun. Defendant was shown the weapon, which he identified as the gun that he used earlier in the day. Garcia then called an evidence technician to retrieve the gun.

¶ 15 Illinois State police forensic analyst Marc Pomerance testified that he examined the following pieces of evidence in connection to the shooting death of Woods: a .25 caliber semi-automatic firearm; three fired .25 caliber cartridge cases; the fired .25 caliber bullets; and one unfired .25 caliber cartridge. Pomerance determined that the unfired cartridge was ejected from

the gun recovered in this case. He also concluded that the three fired cartridges and bullets were also from the same gun.

¶ 16 Cook County assistant medical examiner Eric Eason testified that he performed Woods's autopsy and prepared a report of postmortem examination. Eason described that Woods had two injuries consistent with gunshot wounds: one in his upper right chest and the other in his lower right abdomen. He explained that the bullet causing the wound to the upper right chest traveled downward, passing through Woods' left lung, and terminated in the musculature on his left side. Eason opined that the course of the wound was consistent with someone turning around at the time that they were shot and that the injury to the lung would have impaired Woods' breathing. Eason testified that this wound, on its own, would have been fatal to Woods. Eason explained that the bullet that caused the wound to the abdomen also traveled in a downward trajectory. Eason did not find any evidence that the weapon was fired at close range. Eason was able to recover both bullets from Woods's body.

¶ 17 On cross-examination, Eason testified that he was unaware if Woods was wearing an overcoat because none was provided with the body. He agreed that, if Woods had been wearing an overcoat, the evidence of close range firing would have been on the overcoat.

¶ 18 Defendant testified on his own behalf. He acknowledged that he had five prior felony convictions: two for controlled substance related offenses and the other three for unlawful use of a weapon. He stated that he saw his three children every weekend and he would occasionally take them to school. He had known Woods for two or three years. A few months prior to the shooting, defendant had spoken to Woods about "putting his hands" on defendant's middle child.

Defendant asked Woods to not "put his hands" on his children, but to "let him know" if one of his children was misbehaving.

¶ 19 On the weekend before the shooting, only two of defendant's children came to stay with him although he was expecting all three. No reason was provided for why his third son did not make the trip. On the morning of the shooting, Vasquez dropped off the three children so that defendant could drive them to school. Defendant stated that Deandre, the son who did not spend the previous weekend with him, was "not his normal self" and was "leaning to one side while he was watching cartoons." Deandre had ink from a marker on his hands and, when defendant attempted to wash it off, Deandre told him to stop because his shoulder hurt. Later in the day, defendant went to pick his children up from school. When he arrived, Vasquez was already there. Vasquez told defendant that Woods was scheduled to pick up the children, but did not do so. Defendant then drove Vasquez and their three children home. While driving, he asked Vasquez to call Woods because he wanted to speak with him.

¶ 20 When he arrived at Vasquez's apartment, Woods was already there and exiting his vehicle. Defendant approached Woods and asked if he "put hands" on his children, to which Woods responded "n***er what you say?" Woods then turned "real fast" with his hand at his waistband. Defendant could not recall if he saw a gun in Woods's possession, but Woods moved so fast that defendant "thought" he had a gun. Defendant stated that Woods had previously tried to sell him a gun while defendant was at Vasquez's apartment. The State objected to this information, arguing that it had never been tendered in discovery. The court admonished defense counsel that "[w]e don't have trail by ambush here in our country." Defense counsel responded that there "was a holster on the discovery that was tendered to me" and that counsel "believe[d]

there was a gun inventoried and destroyed." Following an in camera discussion, the State renewed its objection to the line of questioning because "seeing a gun or buying a gun is not proper *Lynch* material." The court overruled the objection.

¶ 21 Defendant admitted that, when Woods turned toward him, he fired at Woods. Defendant then followed Woods into the apartment and called his name to "try to cool things down." He admitted that "at some point" another shot was fired. He eventually left the apartment and called the police to report what he had done. He also admitted that he directed the police to where he abandoned the gun.

¶ 22 On cross-examination, defendant testified that he did not report Woods's suspected abuse to any authorities. He explained that he kept the loaded gun in the glove compartment of his car and that, before his children and Vasquez entered his car that afternoon, he moved it to his coat pocket. He also admitted that he was angry with Woods that morning and that he remained angry with him throughout the day. Defendant admitted that he shot at Woods, but was unsure if he actually struck him, and so he followed him into the apartment. Once inside the apartment, defendant denied shutting and locking the apartment door. He acknowledged following Woods to the kitchen, and firing a second shot at Woods when Woods ran toward him from the back door. Defendant denied that he told police that he shot Woods a second time while Woods struggled to open the back door. When Woods made it into the backyard, he jumped over the chain link fence and ran through the alley. Defendant denied shooting at Woods a third time and explained that, when he got to the backyard, he slipped and fell, which caused the gun to discharge. Defendant then jumped over the chain link fence, went through the alley, returned to

his car, and drove away. He denied that he told police that he did not know if Woods had a weapon because Woods's hands were in his pockets.

¶ 23 After leaving the scene, defendant disposed of the gun through the window of his car. He then drove home and waited for approximately two-and-a-half-hours before calling the police. The State played a recording of a 9-1-1 conversation[2] and defendant admitted that it was his voice on the call.

¶ 24 After defendant testified, the court asked defendant if he had spoken with his counsel about any witnesses that he may want called in his defense. Defendant replied that he had not and, after asking his counsel a question, told the court that he had no further witnesses he would like called. The court asked him if he "agree[d] with [counsel's] decision not to call any witnesses," to which he replied in the affirmative. The defense then rested.

¶ 25 In rebuttal, the State introduced certified copies of defendant's five felony convictions: one for possession of a controlled substance, one for possession with the intent to deliver, and three for unlawful use of a weapon.

¶ 26 Chicago police detective Brian Tedeschi testified in rebuttal that, on February 27, 2014, he sat on the opposite side of a two way mirror during the forensic interview of defendant's youngest son. Defendant's son did not show any signs of injury during the interview. The State then played a portion of the video recording[3] of Deandre's interview in open court.

¶ 27 On cross-examination, Tedeschi testified that he did not know where Vasquez, Deandre's mother, was during the interview, but he acknowledged that she was not in the room with him or with Deandre.

[2] The 9-1-1 recording is not included in the record on appeal.

[3] The video of Deandre's interview is not included in the record on appeal.

¶ 28 The State recalled Detective Garcia, who testified in rebuttal that he interviewed defendant on February 27, 2014. The State then played portions of the video recordings[4] of defendant's interview in open court. During the interview, defendant told Garcia that, due to information he learned from his children, he believed that Woods had a gun in the apartment. He also told Garcia that he never saw a gun in Woods's hands. Garcia testified that defendant did not mention that he ever saw a gun in the house, nor did he tell Garcia that Woods tried to sell him a gun.

¶ 29 Based on this evidence, the trial court found defendant guilty of first degree murder.[5]

¶ 30 On the next court date, according to the half sheets, defendant's trial counsel filed a motion for a new trial and defendant requested a new attorney. Defendant also filed a *pro se* motion, alleging his trial counsel provided ineffective assistance by not calling certain unnamed witnesses, not discussing the case with defendant until the day of the trial, and taking the case despite a conflict of interest. On April 9, 2015, new defense counsel filed an appearance on behalf of defendant. On November 12, 2015, new defense counsel filed an amended motion for a new trial, arguing that: (1) the State failed to prove defendant guilty beyond a reasonable doubt; (2) the court should have found him guilty of second degree murder based on either adequate provocation or a misplaced belief that his life was in imminent danger; and (3) various failures made by defendant's trial counsel amounted to ineffective assistance.

¶ 31 On November 23, 2015, the court held a hearing pursuant to *People v. Krankel*, 102 Ill. 2d 181 (1984). At the hearing, defendant's trial counsel testified regarding the numerous alleged

[4] The video of defendant's interview is not included in the record on appeal.

[5] The report of proceedings included in the record on appeal ends on February 11, 2015, and continues again on November 15, 2015. As a result, the record on appeal does not include: closing arguments; the trial court's finding of guilty on February 12, 2015; and several other posttrial court dates.

errors that defendant maintained amounted to ineffective assistance. Following argument by both sides, the court found that defendant's trial counsel was not ineffective and denied his motion for a new trial. Defendant was then sentenced to 55 years' imprisonment, which included a 25-year enhancement for personally discharging a firearm.

¶ 32 On appeal, defendant first argues that the court erred in finding him guilty of first degree murder. In setting forth this argument defendant asserts, generally, that: (1) the State failed to prove him guilty of first degree murder beyond a reasonable doubt; and (2) the court should have found him guilty of second degree murder because he established facts sufficient to support that his conduct was the result of adequate provocation or a misplaced belief that his life was in immediate danger.

¶ 33 We note that our review of defendant's appeal is hindered because he has not furnished this court with a complete record of the proceedings at trial. Specifically, this court does not have: (1) several key pieces of evidence presented at trial, such as defendant's 9-1-1 call, his police interview, and Deandre's interview; (2) a transcript of the parties closing arguments; or (3) a transcript of the court's oral pronouncement of defendant's guilt. It is well-settled that "an appellant has the burden to present a sufficiently complete record of the proceedings at trial to support a claim of error, and in the absence of such a record on appeal, it will be presumed that the order entered by the trial court was in conformity with the law and had a sufficient factual basis. Any doubts which may arise from the incompleteness of the record will be resolved against the appellant." *Foutch v. O'Bryant*, 99 Ill. 2d 389, 391–92 (1984); see also *People v. Fair*, 193 Ill. 2d 256, 264 (2000) (applying *Foutch* in the context of a criminal appeal). To the

extent that meaningful review is not precluded by the incomplete record on appeal, we find that the evidence presented was sufficient to establish defendant's guilt.

¶ 34 When a defendant challenges his conviction based upon the sufficiency of the evidence presented against him, we must ask whether, after viewing the evidence in the light most favorable to the State, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. *People v. Brown*, 2013 IL 114196, ¶ 48 (citing *Jackson v. Virginia*, 443 U.S. 307, 318-19 (1979)). All reasonable inferences from the record must be allowed in favor of the State. *People v. Lloyd*, 2013 IL 113510, ¶ 42. It is the responsibility of the trier of fact to resolve conflicts in the testimony, to weigh evidence, and to draw reasonable inferences from the facts. *Brown*, 2013 IL 114196, ¶ 48. We will not substitute our judgment for that of the trier of fact on issues involving the weight of the evidence or the credibility of the witnesses. *Brown*, 2013 IL 114196, ¶ 48. A defendant's conviction will not be overturned unless the evidence is so unreasonable, improbable, or unsatisfactory that there remains a reasonable doubt of the defendant's guilt. *Id.*

¶ 35 Here, defendant was found guilty of first degree murder. In order to sustain defendant's conviction for this offense the State was required to prove beyond a reasonable doubt that he intentionally shot and killed Woods while armed with a firearm and that he knew such acts would cause Woods's death. See 720 ILCS 5/9-1(a)(1) (West 2014).

¶ 36 After viewing the evidence in the light most favorable to the State, we conclude that a rational trier of fact could find that defendant intentionally shot and killed Woods while armed with a firearm beyond a reasonable doubt. Defendant was angry with Woods for allegedly physically disciplining his children. Before confronting Woods about the matter, defendant

armed himself. He then approached Woods, who was standing at the steps of his apartment building, and called out to him. As Woods turned to face him, he shot him. When Woods ran into the building, defendant pursued him. Inside Woods's apartment, defendant shot him a second time. Woods fled once again into the backyard and defendant continued to chase him. While defendant testified at trial that he believed Woods was armed, he told officers that evening that he did not see a gun in Woods's hands. Vasquez likewise testified that she did not see Woods with a weapon. After fleeing the scene, defendant called 9-1-1 and admitted that he shot Woods. He was apprehended and directed officers to the location of the gun that he used to shoot Woods.

¶ 37 Donohoe, an evidence technician, who processed the shooting scene, testified about various blood stains on the steps leading to the building and also in the hallway leading to Woods's first floor apartment. Inside the apartment, Donohoe found two spent shell casings, one near the kitchen and another in the enclosed porch in the rear of the kitchen. She also found a third spent shell casing in lot adjacent to the apartment building. Eason, a medical examiner testified that Woods suffered two gunshot wounds, one of which was consistent with him turning around at the time he was shot. Eason did not find any evidence that the gun was fired at close range. This evidence, and the reasonable inferences therefrom, is not so unreasonable, improbable, or unsatisfactory that there remains a reasonable doubt of defendant's guilt. Accordingly, this court will not reverse defendant's conviction for first degree murder.

¶ 38 Defendant nevertheless argues that, given the evidence at trial, we should reduce his conviction to second degree murder. For a defendant to be guilty of second degree murder, the State must first prove the defendant guilty of first degree murder beyond a reasonable doubt. 720

ILCS 5/9–2(c) (West 2014). The burden then shifts to the defendant to prove the existence of the mitigating factor by a preponderance of the evidence. 720 ILCS 5/9–2(c) (West 2014).

¶ 39 Defendant maintains that the evidence was sufficient to prove either of two mitigating factors: (1) that, at the time of the killing, he was acting under a sudden and intense passion based on serious provocation by Woods; or (2) that he unreasonably believed that the circumstances justified using self-defense. Specifically, defendant argues that learning Woods injured his son provoked him into a sudden and intense passion and, alternatively, that he unreasonably believed that his life was in imminent danger because Woods had a weapon either on his person or in his home.

¶ 40 The determination of whether the defendant is guilty of first or second degree murder is a question of fact for the trier of fact. *Simon,* 2011 IL App (1st) 091197, ¶ 52. However, a review of the record at bar demonstrates that this evidence was presented to the trier of fact, but without the benefit of the court's oral pronouncements, we cannot determine what findings the court made with regard to this defense. As mentioned, any doubts which may arise from the incompleteness of the record will be resolved against the appellant." *Foutch v. O'Bryant*, 99 Ill. 2d 389, 391–92 (1984); see also *People v. Fair*, 193 Ill.2d 256, 264 (2000) (applying *Foutch* in the context of a criminal appeal). We can only conclude, therefore, that the court found defendant's evidence on these issues to have been insufficient to prove the presence of a mitigating factor.

¶ 41 This conclusion is supported by the court's oral pronouncement, denying defendant's motion for a new trial. In doing so, the court stated that Scott's "clear, credible, and convincing testimony" did "not support any type of an allegation that this was an unreasonable belief of self-

defense or any type of – or any self-defense at all." Indeed, defendant's testimony that he believed Woods had a gun because Woods once tried to sell one to him was contradicted by his interview with police where he stated that he believed Woods had a gun based on information his sons had told him. At trial, Vasquez and Scott both testified that they had never seen a gun in the apartment and Donohoe testified that a weapon was not recovered at the scene.

¶ 42 Additionally, with regard to defendant's argument that, at the time of the shooting, he was under a sudden and intense passion provoked by Woods, the evidence showed that defendant learned of the alleged injury to his son when he drove him to school that morning. Defendant did not confront and shoot Woods until seven hours later. Defendant did not see Woods injure his son, nor was his son in any danger by the time he shot Woods. See *People v. Sipp*, 378 Ill. App. 3d 157, 167 (2008) (explaining that defendant was not entitled to a second degree murder jury instruction because he was not present at the time when the victim threatened his daughter, significant time had elapsed between the threat and the shooting, and defendant's daughter was no longer in any danger at the time of the shooting). Furthermore, prior to confronting Woods, defendant transferred his loaded gun from the glove compartment into his jacket pocket, which indicates premeditation. *People v. Harmon*, 2015 IL App (1st) 122345, ¶ 93 ("The fact that defendant purposefully brought his gun with him that evening points to premeditation and not a simple unreasonable belief he was acting in self-defense or defense of others or 'acting under a sudden and intense passion.' "). Under these circumstances, notwithstanding the incompleteness of the record at bar, we would be hard pressed to conclude that the trial court erred in determining that defendant failed to prove the existence of either mitigating factor by a preponderance of the evidence.

¶ 43 Defendant next contends that his trial counsel provided ineffective assistance. In setting forth this argument, defendant, throughout his brief, highlights several instances of alleged errors that he maintains amount to ineffective assistance of trial counsel. Specifically, he argues that counsel committed the following errors: (1) failing to pursue the defense of second degree murder until closing arguments; (2) failing to file a motion pursuant to *People v. Lynch*, 104 Ill. 2d 194 (1984); (3) failing to cross-examine numerous witnesses; (4) failing to make certain objections; and (5) failing to investigate the facts of the case.

¶ 44 We initially note that nearly all of defendant's claims of ineffectiveness were addressed by the trial court at the *Krankel* hearing. This aside, defendant's claims, as set forth in his brief, can best be described as cursory. First, defendant's contention that his counsel failed to pursue a theory of second degree murder is belied by the record and the testimony elicited. Second, defendant fails to articulate what *Lynch* material, if any, his counsel should have offered and how counsel's failure to do so prejudiced him. Third, while defendant faults his counsel for failing to challenge certain witnesses over alleged inconsistencies in their testimony, he fails to articulate what was inconsistent about their testimony. Finally, defendant makes repeated mention about an alleged weapon that was recovered from the apartment, inventoried, and destroyed, and that counsel should have done more with this information. However, the record does not reference this alleged weapon and Donohoe testified explicitly that a weapon was not recovered from the apartment. As mentioned, this court is entitled to have the issues on appeal clearly defined with pertinent authority cited and a cohesive legal argument presented. *Macias*, 2015 IL App (1st) 132039, ¶ 88.

¶ 45 That said, we evaluate claims of ineffective assistance of counsel under the two-prong approach set forth in *Strickland v. Washington*, 466 U.S. 668 (1984). See *People v. Givens*, 237 Ill.2d 311, 330–31 (2010). To prevail on a claim of ineffective assistance, a defendant must first demonstrate that counsel's performance was deficient by showing that "counsel made errors so serious that counsel was not functioning as the 'counsel' guaranteed the defendant by the Sixth Amendment." *Strickland*, 466 U.S. at 687; see also *People v. Coleman*, 183 Ill.2d 366, 397 (1998). In so doing, the defendant "must overcome the strong presumption that the challenged action or inaction of counsel was the product of sound trial strategy and not of incompetence." *Coleman*, 183 Ill. 2d at 397. Second, the defendant must show he was prejudiced by counsel's deficient performance, which means that that there must be a "reasonable probability" that, but for defense counsel's deficient performance, the result of the proceeding would have been different. *People v. Griffin*, 178 Ill.2d 65, 74 (1997). "A reasonable probability is a probability sufficient to undermine confidence in the outcome." *Id.* Failure to establish either prong precludes a finding of ineffective assistance of counsel. *People v. Henderson*, 2013 IL 114040, ¶ 11. A reviewing court need not examine counsel's performance where it may dispose of defendant's claim based on lack of prejudice. *People v. Haynes*, 192 Ill. 2d 437, 473 (2000).

¶ 46 Here, we conclude that defendant cannot establish that he was prejudiced by counsel's performance where, given the evidence presented, he cannot show that, but for his counsel's alleged errors, there is a reasonable probability that the outcome of his trial would have been different. As mentioned, there is no question that defendant shot and killed Woods. Defendant acknowledged that he was angry with Woods for allegedly physically disciplining one of his children. The record shows that defendant armed himself with a loaded gun, confronted Woods,

and shot him. Defendant then chased Woods as he fled and shot him again. Defendant's efforts to testify to a version of events that mitigated the offense to second degree murder were contradicted by the State's evidence. While defendant testified that he believed Woods kept a weapon in the apartment because Woods once tried to sell it to him, he was impeached with the video of his interview with police that showed him telling Garcia that he learned of Woods's alleged gun from his children. Both Vasquez and Scott disputed defendant's contention that Woods kept a weapon in the apartment. Donohoe also confirmed that a weapon was not recovered from the apartment. The State's witness also could not corroborate defendant's assertion that Woods caused a shoulder injury to one of defendant's children and a video depicting an interview with the allegedly injured child did not show signs of the injury defendant described.

¶ 47 Given these facts, none of counsel's alleged errors undermine our confidence in the outcome of defendant's trial. Accordingly, we reject defendant's claim of ineffective assistance of trial counsel.

¶ 48 For these reasons, we affirm the judgment of the circuit court of Cook County.

¶ 49 Affirmed.