2018 IL App (4th) 160052-U

NO. 4-16-0052

FILED
July 17, 2018
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.	)	Macon County
JOSHUA PIERRE KING,	)	No. 14CF1238
Defendant-Appellant.	)	
	)	Honorable
	)	Thomas E. Griffith Jr.,
	)	Judge Presiding.

JUSTICE HOLDER WHITE delivered the judgment of the court.
Justices DeArmond and Turner concurred in the judgment.

ORDER

¶ 1 *Held*: The appellate court affirmed, concluding (1) the trial court did not err by denying defendant's motion to suppress, and (2) defendant did not receive ineffective assistance of counsel.

¶ 2 In October 2014, the State charged defendant, Joshua Pierre King, with aggravated battery to a child, in that he knowingly caused great bodily harm to his son, J.W. (born August 9, 2007), by forcefully submerging J.W.'s hands in hot water, causing severe burns. The information further alleged defendant's conduct was accompanied by exceptionally brutal or heinous behavior indicative of wanton cruelty. In November 2015, the trial court found defendant guilty of aggravated battery to a child, including the allegation that defendant's conduct was indicative of wanton cruelty. In December 2015, the court sentenced defendant to 12 years' imprisonment.

¶ 3 Defendant appeals, arguing (1) the trial court erred by denying his motion to suppress statements he made to the police, where he was not read his *Miranda* rights (see *Miranda v. Arizona*, 384 U.S. 436, 444 (1966)) and a reasonable person would not have felt free to ask the officers to leave; and (2) his trial counsel was ineffective for failing to object to certain evidence and failing to properly cross-examine a witness.

¶ 4 I. BACKGROUND

¶ 5 In October 2014, the State charged defendant with aggravated battery to a child, his son, J.W., by forcefully submerging J.W.'s hands in hot water, causing severe burns. The information further alleged defendant's conduct was accompanied by exceptionally brutal or heinous behavior indicative of wanton cruelty. In November 2015, the trial court found defendant guilty of aggravated battery to a child, including the allegation that defendant's conduct was indicative of wanton cruelty. In December 2015, the court sentenced defendant to 12 years' imprisonment.

¶ 6 The charge arose from an incident on October 2, 2014, when defendant placed an emergency 911 call to the Decatur police department and reported his son had a chemical burn on his hands. According to Officer Brent Morey's sworn statement, he arrived at defendant's residence at approximately 12:53 a.m. At that time, Officer Morey observed J.W. jumping up and down on his bed, screaming, and crying. J.W. told Officer Morey defendant held his hands under hot water as a punishment for using "the soap" and lying about it. Officer Morey saw skin falling off of J.W.'s hands. After an ambulance transported J.W. to the hospital, defendant told Morey the burns were caused by a household cleaner stored under the sink. According to the officer's sworn statement, Morey did not find anything that would cause these burns and explained as much to defendant. Defendant then told Morey that J.W. used a lot of soap and lied

about it, which upset defendant. Defendant filled the sink and helped J.W. wash his hands by holding them under the water. Defendant stated J.W. complained the water was too hot, and defendant told J.W. the water was not too hot. Defendant then realized the water was too hot, ran cold water over J.W.'s hands, continued to scrub, and observed skin falling off J.W.'s hands.

¶ 7 A. Motion *in Limine*

¶ 8 In July 2015, defendant filed a motion *in limine* seeking to have statements he made to police officers suppressed. The motion alleged defendant made certain statements while undergoing a custodial interrogation and the police officers did not advise him of his *Miranda* rights. Specifically, the motion alleged the circumstances were such that a reasonable person would not have felt free to leave where (1) several officers responded to defendant's 911 emergency call; (2) officers twice denied defendant's requests to accompany his son to the hospital; (3) during the interrogation, an officer escorted defendant to the bathroom; and (4) an officer repeatedly advised defendant of inconsistencies in his statements. At the hearing on the motion to suppress, the trial court heard the following testimony.

¶ 9 1. *Defendant*

¶ 10 Defendant testified that, on October 2, 2014, he called the police regarding injuries his son, J.W., suffered. Initially, two officers responded. One officer spoke briefly with defendant and then proceeded to the back room where he found J.W. Approximately five minutes after the officers arrived, an ambulance transported J.W. to the hospital. Defendant asked if he could accompany his son to the hospital in the ambulance, and the officer told him "no." Instead, the officer told defendant to "sit down," "back up," and "have a chill pill." According to defendant, the officer had his hand on his weapon, as though prepared to draw the

weapon if defendant refused to comply. Defendant testified he sat down next to his wife on the couch.

¶ 11 One police officer asked defendant questions, took notes, and spoke with another officer. At some point, a third officer told defendant's wife to go outside. Defendant asked to use the bathroom and, according to defendant, the officer appeared skeptical. However, defendant was allowed to use the bathroom with the door open. While he was in the bathroom, the officer stood in the hallway with his hand on his service weapon. Defendant again asked to go to the hospital, and again his request was denied. Other than twice asking to go to the hospital, defendant never asked or attempted to leave the house. When asked why he did not attempt to leave, defendant responded, "I mean, maybe I just watched too many TV shows that you get up, get shot." According to defendant, the officer was agitated. Defendant further stated, "He was upset. Told me he didn't believe me, I like to torture kids and all kind of things and spitting and cussing at me and just disrespecting me."

¶ 12 According to defendant, there were two or three officers constantly present in his home and more officers outside. The officers kept defendant at his house for approximately one hour after J.W. left for the hospital. Defendant testified one officer asked him a steady stream of questions, which defendant answered. The officer told defendant he did not believe defendant's answers on a "couple different occasions." Defendant was never told he had the right to remain silent, the right to an attorney, or that his answers could be used against him.

¶ 13 Defendant testified he was 28 years old and had received a high school equivalency diploma from Lincoln's Challenge Academy. Defendant had never been diagnosed with a mental illness or a learning disability, and he testified he did not suffer from any mental illness or intellectual disability.

¶ 14 2. *Yahne King*

¶ 15 Defendant's wife, Yahne King, testified she was J.W.'s stepmother. On the night of the incident, King testified she was sitting on the couch when officers responded to defendant's 911 call. King went out on the porch to cool off, but she then went back inside and sat beside defendant on the couch. According to King, she was allowed to sit with defendant for approximately 15 minutes before an officer escorted her outside. At least four officers responded to the 911 call and defendant was never left alone. King testified she was occasionally left alone but an officer made sure she did not go anywhere. Defendant did not attempt to get up from the couch without asking. When defendant asked to use the bathroom, the officers hesitated before letting him go. According to King, an officer waited in the hallway approximately four or five feet from defendant while he used the bathroom with the door open.

¶ 16 3. *Officer Morey*

¶ 17 Officer Morey, a Decatur police officer, testified that, on October 2, 2014, he was dispatched to defendant's house at approximately 12:53 a.m. According to Morey, defendant and his wife were both calm when he arrived. Morey testified he made contact with J.W., who was screaming and crying. J.W. had obvious bad burns on his hands and arms, and Morey observed skin falling off J.W.'s hands as he jumped on a bed. At an earlier hearing on the State's motion *in limine* to admit hearsay statements, Morey testified he asked J.W. what happened, and J.W. said he used some of his stepmother's soap and lied about it. J.W. said his father punished him by holding his hands under hot water. At the hearing on defendant's motion to suppress, Morey affirmed this prior testimony.

¶ 18 Morey testified defendant's demeanor "remained calm, almost dis-concerned" after J.W. was transported to the hospital. Morey could not recall whether other officers were

present immediately after J.W. left, but he acknowledged there were other officers present on occasion thereafter. According to Morey, defendant was seated on the couch while they spoke and he was not handcuffed. Morey could not recall if defendant requested to go in the ambulance with J.W. or otherwise asked to leave the house. Nor could Morey recall defendant using the restroom at any point in time.

¶ 19 Morey testified he first looked in the bathroom for chemicals that may have caused J.W.'s burns. Morey did not find any chemicals that could have caused the burns. When Morey exited the bathroom, he told defendant he did not believe his explanation that chemicals caused the burns on J.W.'s hands. Officer Morey continued to ask questions for approximately one hour, but the conversation also involved defendant's religious convictions and J.W.'s upbringing with his biological mother.

¶ 20 In Morey's recollection, defendant gave him permission to attempt to test or feel the temperature of the water. Morey also spoke to defendant's wife before asking defendant further questions. Defendant's demeanor did not change during this time, and Morey did not observe defendant crying or acting distressed. At approximately 2:01 a.m., Officer Morey decided to place defendant under arrest. At that time, Morey asked defendant to step outside onto the porch because the living room was "rather confined." Morey then placed defendant in handcuffs. At no point was defendant handcuffed while he was inside his home, and Morey did not recall asking defendant any further questions after placing him under arrest and handcuffing him. Defendant was never advised of his *Miranda* rights while Officer Morey was at the residence.

¶ 21 4. *Trial Court's Ruling*

¶ 22 The trial court denied the motion to suppress. The court first noted Officer Morey was concerned with J.W.'s medical emergency and needed to understand what happened to ensure proper treatment for J.W. The court also considered the fact that defendant was questioned while he sat on a couch in his own home. Although the entire interview lasted an hour, other things were occurring during that time. "The questioning was done in an informal manner where the defendant was questioned on the couch. The officer would leave for brief periods of time, and then come back and continue." Defendant was told he could not go to the hospital in the ambulance, but the court found that understandable under the circumstances. The court noted two or three officers were present, but so was defendant's wife. Additionally, there was no show of force, no weapons drawn, no handcuffing, and defendant was surrounded by the officers. The court also noted defendant was questioned in his own home, so he arrived there on his own. Finally, the court considered the fact that defendant was 28 years old, had a high school degree, and appeared to be of above average intelligence. After considering the relevant factors, the court found "that objectively the defendant was not in custody and would have felt free to leave."

¶ 23 B. Bench Trial

¶ 24 In October and November 2015, the trial court conducted a bench trial on two nonconsecutive days. We summarize only the evidence necessary for the resolution of the issues raised in this appeal.

¶ 25 1. *Channing Petrak*

¶ 26 Channing Petrak, an expert in child abuse pediatrics, testified she was the medical director of the Pediatric Resource Center. On October 3, 2014, the Pediatric Resource Center received a referral regarding J.W., and Petrak performed an examination of J.W. in January

2015. Petrak testified she reviewed medical reports from the Decatur Ambulance Service, St. Mary's Hospital, and St. John's Hospital, as well as the Decatur police department report and photographs taken by various personnel. J.W. was transferred almost immediately from St. Mary's Hospital to St. John's Hospital, where he was diagnosed with "second and third degree burns to his hands. The left hand was circumferential, meaning [it] went all the way around his hand. The right hand was confined more just to the back of the hand." When asked how the right hand palm not being burned could be explained, Petrak responded, "It depends on how the hand is being held under water. So if the water is running over the top, it may not run on the bottom side. It's going to run off the top."

¶ 27 Petrak opined J.W.'s burns "were inflicted due to, partially, the history that was provided as well as just the circumferential nature and the depth of injury on the hands." The history J.W. provided was that his hands were held under hot water. Petrak further testified that a child would reflexively withdraw from pain and would not leave their hands in hot water voluntarily for the length of time required to cause second and third degree burns. According to Petrak, accidental burns tend to be random with splash marks, while "[i]nflicted burns typically have a line of demarcation because the hand is being held in hot water or under running hot water so you have a very clear line of demarcation and then the depth of injury below that." Initial photographs of J.W.'s burns showed lines of demarcation and did not show splash marks or other indications the injury was accidental.

¶ 28 In one photograph of J.W., Petrak pointed out a raised, red horizontal mark on the lower abdomen. In Petrak's opinion, because the mark was raised, the horizontal injury was acute. Petrak testified this injury, in connection with J.W.'s burns, could have been caused by pressure. Petrak stated, "So if someone is holding [J.W.]'s hands under the hot water and

standing behind him—[h]e would have fought because it is hot water; you don't want your hands under the hot water—[a]nd so pushing him against the edge of the vanity or the sink could've caused that edge or that red mark on his abdomen."

¶ 29 Petrak testified she received information that the water in the sink where J.W. was burned was "130 degrees or ranged from 100 to 134 [degrees]." In Petrak's opinion, J.W.'s hands would have had to be submerged in water that temperature for approximately 10 seconds to cause the degree of injury he suffered. Petrak testified natural pain reflexes would have caused a child to pull their hands out from under hot water "the minute it starts to hurt." According to Petrak, she looked at photographs of the chemicals in the bathroom and none of those chemicals would have caused a chemical burn. Petrak opined J.W.'s burns were consistent with his hands being held forcefully under water by an adult.

¶ 30 2. *Tina Reel*

¶ 31 Tine Reel testified she was J.W.'s primary care nurse when he arrived at the St. Mary's Hospital emergency department. Reel asked J.W. what happened to his hands, and "[h]e said they were placed under hot water and that they were burned under hot water." Once J.W.'s pain was under control, Reel changed J.W. into a hospital gown and noticed a raised, red linear mark across his waistband. Reel also observed other bruises in different stages of healing on J.W.'s legs.

¶ 32 3. *Nettie Fowler*

¶ 33 Nettie Fowler, defendant's next door neighbor, testified that, on October 2, 2014, she was asleep in her chair in her living room with the windows open. That night, yelling coming from defendant's house woke Fowler up, and she recognized defendant's voice. According to Fowler, defendant sounded "very angry and upset." Fowler stated, "I remember

him saying [‘]you better get over here[,’] or [‘]you are not going to like it. I’m telling you to get over here.[’] He just kept saying [‘]get over here. Get over here.[’] And then that is when I heard screaming.” Fowler testified it was a small child screaming, and she also heard someone unfamiliar in the background saying, “Stop, stop, stop.” Fowler testified she was going to call the police when a fire engine pulled up. Because she saw the fire engine, Fowler did not call the police. However, Fowler testified she called the police a few days later to give a statement after she “heard what was going on.”

¶ 34 4. *Brent Morey*

¶ 35 Morey testified he was dispatched to a residence in reference to an injured child. Upon arriving at the residence, Morey first made contact with defendant and his wife, who were sitting on the couch and appeared to be calm and “disconcerned.” Defendant indicated the injured child was in the back of the residence. When Morey entered the back bedroom, he observed J.W. jumping up and down on a mattress and he appeared to be scared and in pain. J.W.’s fingers were swollen and blistering, and the skin on his hands was falling off up to his wrists. Morey considered the situation to be a medical emergency, and asked J.W. what happened to his hands. Morey testified, “[J.W.] had told me that he had told his father he didn’t use all the soap when, in fact, he was in the shower, and he had used soap that belonged to his stepmother and lied about it, and that upset his father and his father had done this to him.” J.W. indicated defendant placed his hands under hot water and held them there as a punishment. An ambulance arrived shortly after Officer Morey and transported J.W. to the hospital.

¶ 36 Defendant initially told Morey he thought J.W. burned his hands with some type of chemical in the bathroom and he attempted to help J.W. wash his hands. In response to this statement, Officer Morey first checked the contents of the bathroom cabinet and indicated to

defendant that he did not see any chemicals that might have caused J.W.'s injuries. Defendant then explained J.W. lied about using his stepmother's soap, which upset defendant. Defendant initially said he did not help J.W. wash his hands as he was seven years old and did not need assistance. However, after further questioning, defendant stated he did help J.W. wash his hands and he placed a rag in the sink to stop the sink up. Defendant further stated he began scrubbing J.W.'s hands and J.W. told him the water was too hot. Defendant told J.W. the water was not too hot. While defendant washed J.W.'s hands, J.W. was "screaming and telling him it was too hot and [at] one point in time [defendant] indicated to [Morey] that [J.W.] had vomited." At that point, defendant turned on cold water and continued washing J.W.'s hands until he observed the skin coming off.

¶ 37 Officer Morey testified he went into the bathroom and turned on the hot water in the sink to see if it was too hot to tolerate. Morey allowed the water to run for a couple of minutes before he observed steam coming from the water. According to Morey, the water appeared to be "unusually hot."

¶ 38 5. *James Wrigley*

¶ 39 James Wrigley, a juvenile detective with the Decatur police department, testified that, on October 4, 2014, he went to defendant's house to assist with processing the scene. Detective Wrigley purchased a thermometer from True Value to test the water temperature at defendant's house. Wrigley let the water in the bathroom sink run for one minute before filling a plastic cup and putting the thermometer in the cup. According to Wrigley, the water seemed hot and the thermometer read 130 degrees. Wrigley allowed the water to run for another 60 seconds and placed the thermometer back in the water. The second test showed the water temperature

was 134 degrees. Wrigley testified he observed the hot water heater thermostat was set half-way between "hot" and "very hot."

¶ 40 When asked about the difference in temperature, Wrigley theorized that running hot water heated up the pipes, causing the second temperature test to be hotter than the first. Defense counsel noted Wrigley's test "wasn't exactly a scientific experiment," but asked, "if someone had been in the shower, for example, and the pipes had heated up while that person was in the shower and then a few minutes later you turned the sink on, the water could be hotter than what you would anticipate simply because the pipes are hot?" Wrigley acknowledged that was a possibility.

¶ 41 6. *Yahne King*

¶ 42 King testified the family attended bible study the evening before the incident and then returned home for J.W. to do his homework. King fell asleep on the couch and, at some point, woke up to see J.W. still working on his homework. King told J.W. it was time to take a shower and then fell back asleep. According to King, the bathroom light had a fan attached to it and the noise from the fan woke her up for the second time. King went to the bathroom and observed J.W. jumping up and down, shaking his hands, and calling out, "Mama Ne, Mama Ne, help, help." J.W. ran around the house frantically, jumped on his bed, and banged his head against the wall. King attempted to calm J.W. down while defendant called 911.

¶ 43 King testified there was a bag packed with J.W.'s old clothes. According to King, she had new clothes for J.W. and had not yet figured out what to do with the old clothes, but she planned to donate them to Goodwill or someone in need at her church. King denied packing the suitcase to send with J.W. in the ambulance because she did not want him coming back. King also denied telling officers J.W.'s screams woke her up.

¶ 44 7. *Defendant*

¶ 45 Defendant testified J.W.'s mother had custody of him from the time he was born until March 2014, when defendant was awarded custody. According to defendant, he seldom had visitation with J.W. before March 2014, and he otherwise had little experience with child rearing. At the time the incident occurred, defendant had been renting his home for approximately 10 months. Defendant testified he had no familiarity with the hot water heater and had never adjusted the controls on the water heater.

¶ 46 Defendant agreed with King's version of events that evening. Defendant did not know what time J.W. went to take a shower, but he remembered that it was late. According to defendant, J.W. spent approximately 30 minutes in the shower, which was longer than his usual 10 to 15 minute showers. Defendant smelled something out of the ordinary and told J.W. to stop messing around and get out of the shower. According to defendant, J.W. made a "B-line straight to his room."

¶ 47 Defendant called J.W. back and noticed J.W.'s eyes were bloodshot and his breath smelled. Defendant testified he thought J.W. had gotten into something and gotten the substance in his eyes and mouth. Defendant tried to wash out J.W.'s mouth with baking soda, and J.W. vomited. After J.W. threw up, defendant testified, "I just turned on the water. I thought I turned on enough cold water, you know, to wash his mouth out and wash his hands off [be]cause whatever he had on his hands had to get in his eyes so I was trying to, you know, wash everything off." Defendant testified there was a hair relaxer kit, neutralizer shampoo, and various other chemicals in the bathroom, and he did not know what J.W. had gotten in to.

¶ 48 After J.W.'s hands were burned, defendant called 911. Defendant acknowledged making a comment about not wanting to go to jail during that call. According to defendant, he

was worried he might get into trouble for J.W. getting into a dangerous chemical and for the burns on his hands. Defendant testified he was relieved when responders arrived at his house to take care of J.W.

¶ 49 8. *Rebuttal*

¶ 50 In rebuttal, the State recalled Officer Morey, who testified defendant never mentioned J.W. had bloodshot eyes or a strange odor on his breath. According to Morey, King told him she woke up because J.W. was screaming "[s]omething to the effect of [']it is too hot.[']" King also told Morey she and defendant were tired of J.W.'s behavior and she had packed his suitcase to send with the ambulance because they did not want J.W. coming back.

¶ 51 Detective Todd Koester testified that, on October 2, 2014, he spoke with King and she stated she was awakened by defendant yelling at J.W. and J.W. screaming. King further told Koester that J.W. was having a fit and she asked him if he wanted to live at her house anymore. According to Koester, King told him she often said that to J.W. because it calms him down.

¶ 52 C. Verdict and Sentence

¶ 53 Following the close of evidence, the trial court found the State proved defendant guilty beyond a reasonable doubt of aggravated battery to a child, including the allegations that defendant's conduct was indicative of wanton cruelty. At the sentencing hearing, the State noted the court's finding of "heinous behavior indicative of wanton cruelty," and recommended a sentence of 40 years' imprisonment. Defense counsel highlighted defendant's rehabilitative potential and recommended a minimum six-year term of imprisonment. The court sentenced defendant to 12 years' imprisonment, followed by a 3-year term of mandatory supervised release.

¶ 54 This appeal followed.

¶ 55 II. ANALYSIS

¶ 56 On appeal, defendant argues (1) the trial court erred by denying his motion to suppress statements he made to the police, and (2) his trial counsel was ineffective for failing to object to certain evidence and failing to properly cross-examine a witness. We address these arguments in turn.

¶ 57 A. Motion to Suppress

¶ 58 As noted, defendant argues the trial court erred by denying his motion to suppress statements he made to police, where he was not read his *Miranda* rights and a reasonable person would not have felt free to ask the officers to leave. The State contends defendant was not subjected to a custodial interrogation. The State does not dispute that defendant was not read his *Miranda* rights prior to making the statements at issue. Accordingly, the question becomes whether defendant's statements were the result of a custodial interrogation.

¶ 59 1. *Standard of Review*

¶ 60 "Suppression rulings present a mixed question of law and fact." *People v. Coleman*, 2015 IL App (4th) 140730, ¶ 25, 37 N.E.3d 360. We uphold a trial court's factual findings unless they are against the manifest weight of the evidence. *People v. Pitman*, 211 Ill. 2d 502, 512, 813 N.E.2d 93, 100 (2004). "However, a reviewing court remains free to undertake its own assessment of the facts in relation to the issues presented and may draw its own conclusions when deciding what relief should be granted. [Citation.] Accordingly, we review *de novo* the ultimate question of whether the evidence should be suppressed." *Id.* Additionally, we may consider the entire record—trial testimony included—in reviewing the trial court's ruling. *People v. Alfaro*, 386 Ill. App. 3d 271, 290, 896 N.E.2d 1077, 1094 (2008).

¶ 61 2. *Custody for* Miranda *Purposes*

¶ 62 In *Miranda*, 384 U.S. at, 444, the United States Supreme Court held that, prior to being subjected to an interrogation by law enforcement officers, a person must first "be warned that he has a right to remain silent, that any statement he does make may be used as evidence against him, and that he has a right to the presence of an attorney, either retained or appointed," so long as the person being questioned was taken into custody or otherwise deprived of his freedom in a significant way. These preinterrogation warnings "are intended to assure that any inculpatory statement made by a defendant is not simply the product of the compulsion inherent in custodial surroundings." (Internal quotation marks omitted.) *People v. Slater*, 228 Ill. 2d 137, 149, 886 N.E.2d 986, 994 (2008). Accordingly, "[t]he finding of custody is essential." *Id.*

¶ 63 To determine whether a person is in custody, thus requiring *Miranda* warnings prior to questioning, courts engage in a two-part inquiry. First, courts consider the circumstances surrounding the interrogation. *Coleman*, 2015 IL App (4th) 140730, ¶ 27. Second, a court should determine whether, given those circumstances, a reasonable person, innocent of any crime, would have felt that he or she could not terminate the interrogation and leave. *Id.* The supreme court has stated:

> "When examining the circumstances of interrogation, this court has found a number of factors to be relevant in determining whether a statement was made in a custodial setting, including: (1) the location, time, length, mood, and mode of the questioning; (2) the number of police officers present during the interrogation; (3) the presence or absence of family and friends of the individual; (4) any indicia of a formal arrest procedure, such as the show of weapons or force, physical restraint, booking or fingerprinting; (5)

> the manner by which the individual arrived at the place of questioning; and (6) the age, intelligence, and mental makeup of the accused." *Slater*, 228 Ill. 2d at 150.

¶ 64 In the present case, officers responding to defendant's 911 call questioned him in his own home. The questioning occurred at 1 a.m. and lasted for approximately one hour. The officer asked defendant questions to determine what exactly happened to J.W. to provide medical personnel with information to aid in J.W.'s treatment. There were multiple officers at the house that night; however, the testimony established that Officer Morey was the officer primarily questioning defendant. Additionally, testimony established that the other officers were occupied with J.W., medical personnel, and defendant's wife. There was no testimony that multiple officers surrounded or questioned defendant. Initially, defendant's wife was present, but she was later taken outside to the front porch.

¶ 65 Although officers refused defendant's request to accompany J.W. in the ambulance and his later request to go to the hospital, the evidence showed no other indicia of formal arrest. There was no show of weapons or force. Defendant contends an officer escorted him to the bathroom and the officer rested his hand on his service weapon. However, no officer ever pulled their gun or verbally suggested they might pull their gun. Defendant was not physically restrained while he was questioned, and Officer Morey testified he did not ask further questions once he placed defendant under arrest and handcuffed him. Finally, defendant was 28 years old at the time of the incident, had the equivalent of a high school diploma, and had no mental or intellectual issues.

¶ 66 We turn first to the factors of location, time, length, mood, and mode of the questioning. As stated, defendant was questioned in his own home, a place that he was familiar

with and enjoyed considerable control over. Defendant was interviewed at approximately 1 a.m. Despite the late hour, there was no evidence defendant was fatigued or sleepy. Additionally, the questioning lasted only about an hour and was not constant. Morey asked defendant questions, and then left the room to investigate the bathroom or communicate with other first responders who accompanied J.W. to the hospital. The mood of the questioning was that of a medical emergency—Officer Morey tried to gather information that would help medical personnel provide J.W. with appropriate medical attention. The record shows the mode of questioning was relatively informal and not particularly accusatory. Defendant contends Officer Morey's questioning turned accusatory once he disputed defendant's version of events. However, the record shows Morey asked defendant what happened and then went to the bathroom to see if he could find a chemical that could have caused J.W.'s injuries. He then informed defendant no such chemical was in the bathroom and asked for more information about what happened to J.W. Again, the record shows Officer Morey attempted to gather accurate information to assist with J.W.'s medical treatment. Taken together, the factors of location, time, length, mood, and mode weigh in favor of finding defendant was not in custody.

¶ 67 The evidence regarding the number of officers also weighs in favor of finding defendant was not in custody. Although multiple officers were present, they were there in response to defendant's emergency 911 call. Only one officer questioned defendant and there was no evidence that officers surrounded defendant in an attempt to intimidate him. The presence or absence of family or friends is neutral in this case. Initially defendant's wife was present, which weighs in favor of finding defendant was not in custody. However, she was eventually taken out to the front porch. Although this might weigh in favor of finding defendant

was in custody, there was testimony that the home's living room was small and his wife remained just outside the front door.

¶ 68 As we noted above, there were no indicia of formal arrest. Defendant's strongest argument that a reasonable person would not have felt free to leave is the evidence that officers refused to allow him to accompany J.W. in the ambulance and denied his later request to go to the hospital. However, as the trial court found, that made sense given the circumstances. The evidence shows J.W. was frantic, running around, and jumping up and down on his bed. Officer Morey testified it was difficult to properly observe J.W.'s injuries because he would not stop moving. Additionally, the record shows medical personnel had difficulty getting J.W. into the ambulance. Clearly, this was a true emergency that required medical attention immediately. It makes sense that defendant would not be allowed to ride in the ambulance—that would further increase the chaos and delay J.W.'s treatment. Moreover, it allowed a trained officer to get as much information as possible from defendant and King in a much calmer setting than the emergency room.

¶ 69 The manner of arrival factor weighs in favor of finding defendant was not in custody, as the questioning occurred at his home and the officers did not transport him to that location. Finally, defendant's age, intelligence, and mental makeup weigh in favor of finding he was not in custody. Defendant was 28, had the equivalent of a high school diploma, and reported he had no mental-health problems or intellectual disabilities. Having considered the relevant factors, we conclude a reasonable person in these circumstances would have felt that he or she could terminate the interrogation. Accordingly, we find defendant was not in custody and *Miranda* warnings were not required. The trial court properly denied defendant's motion to suppress his statements, and we affirm the court's judgment.

¶ 70 B. Ineffective Assistance of Counsel

¶ 71 Defendant contends his trial counsel was ineffective for failing to (1) object to water temperature evidence relied on by the State's expert witness based on its lack of proper foundation and it being unreliable, and (2) properly cross-examine Officer Wrigley on his methods for determining the water temperature. Specifically, defendant contends Wrigley's measurement of the water temperature was inadmissible because there was no showing of the thermometer's reliability and the test was conducted under dramatically different circumstances than existed at the time of the incident. Defendant further contends Dr. Petrak relied on these unreliable and inadmissible measurements in offering her expert opinion that J.W.'s hands were exposed to the water for 10 seconds.

¶ 72 We review claims of ineffective assistance of counsel under the standard set forth in *Strickland v. Washington*, 466 U.S. 668 (1984). To prevail under *Strickland*, the defendant must show defense counsel's performance was deficient and prejudice resulted from counsel's deficient performance. *People v. Houston*, 226 Ill. 2d 135, 143, 874 N.E.2d 23, 29 (2007). Specifically, "a defendant must show that counsel's performance was objectively unreasonable under prevailing professional norms and that there is a 'reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different.' " *People v. Domagala*, 2013 IL 113688, ¶ 36, 987 N.E.2d 767 (quoting *Strickland*, 466 U.S. at 694). Our review of counsel's performance is highly deferential. *Strickland*, 466 U.S. at 689. "[A] court must indulge a strong presumption that counsel's conduct falls within the wide range of reasonable professional assistance; that is, the defendant must overcome the presumption that, under the circumstances, the challenged action might be considered sound trial strategy." (Internal quotation marks omitted.) *Id.* A defendant is entitled to reasonable representation, and

a mistake in strategy or judgment does not, by itself, render the representation incompetent. *People v. Fuller*, 205 Ill. 2d 308, 331, 793 N.E.2d 526, 542 (2002). Both prongs of the *Strickland* test must be satisfied; therefore, a finding of ineffective assistance of counsel is precluded if a defendant fails to satisfy one of the prongs. *People v. Simpson*, 2015 IL 116512, ¶ 35, 25 N.E.3d 601. "A court may resolve a claim of ineffective assistance of counsel by reaching only the prejudice prong, as a lack of prejudice renders irrelevant the issue of counsel's alleged deficient performance." *People v. Hall*, 194 Ill. 2d 305, 337, 743 N.E.2d 521, 540 (2000).

¶ 73 We turn first to the prejudice prong, as we find it dispositive. Defendant contends Wrigley's allegedly inadmissible water temperature measurements and Dr. Petrak's expert opinion relying on those measurements were the basis for the entire theory that defendant held J.W.'s hands under the hot water for any extended period of time. We disagree.

¶ 74 Dr. Petrak estimated that 10 seconds of exposure would cause J.W.'s injuries at the temperatures taken by Wrigley. However, that was not the only basis for her expert opinion that J.W.'s injuries were intentionally inflicted. Dr. Petrak testified as to the appearance of accidental versus intentional burns, and noted there was no indication J.W.'s injuries were accidental. To the contrary, Dr. Petrak testified his injuries were consistent with intentional burns based on the clear line of demarcation. Additionally, Dr. Petrak testified at length about a child's reflexive reaction to pain and opined that no person would voluntarily keep their hands in water so hot it could cause these types of burns. Finally, Petrak also pointed to the injury on J.W.'s lower abdomen that appeared to be an acute injury and could have resulted from his being pushed against the edge of the sink while his hands were held under the water. Dr. Petrak's expert opinion that the burns were intentionally inflicted was not dependent on Wrigley's

allegedly unreliable measurements. Accordingly, we conclude defendant cannot show that the exclusion of this basis for her opinion would have changed the result of her testimony or the outcome of his trial.

¶ 75 We further note that defendant's argument ignores the other evidence in this case that defendant knowingly held J.W.'s hands under the faucet and knowingly caused J.W.'s injuries. The evidence was overwhelming that the water was obviously hot. Officer Morey testified he ran the water for just a couple of minutes and steam rose from it. Defendant's argument that the water might have been even hotter because J.W. recently took a shower does not help him—if anything, the steam would have been even more obvious. Additionally, Officer Morey testified J.W. specifically told him that defendant held his hands under the hot water as a punishment. Finally, we have defendant's confession that he held J.W.'s hands under the water. The evidence in this case demonstrates that, even if Wrigley's measurements or Dr. Petrak's testimony regarding those measurements had been excluded, there was no reasonable probability the result of defendant's trial would have been different. We conclude defendant cannot show prejudice and his ineffective assistance of counsel claim fails. Accordingly, we affirm the judgment of the trial court.

¶ 76 III. CONCLUSION

¶ 77 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. 55 ILCS 5/4-2002 (West 2016).

¶ 78 Affirmed.