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2018 IL App (5th) 150371-U

NO. 5-15-0371

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

NOTICE  
This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

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THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Randolph County.
	)	
v.	)	No. 15-CF-18
	)	
COREY L. WILSON,	)	Honorable
	)	Richard A. Brown,
Defendant-Appellant.	)	Judge, presiding.

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PRESIDING JUSTICE BARBERIS delivered the judgment of the court. Justices Welch and Chapman concurred in the judgment.

**ORDER**

¶ 1 *Held:* The defendant was not denied effective assistance of counsel where trial counsel presented a defense and cross-examined the State's witnesses.

¶ 2 After a bench trial, the defendant, Corey L. Wilson, was convicted of one count of aggravated domestic battery (720 ILCS 5/12-3.3(a-5) (West 2014)), a Class 2 felony (*id.* § 12-3.3(b)), and was sentenced by the circuit court of Randolph County to seven years' imprisonment in the Illinois Department of Corrections, and to four years of mandatory supervised release (MSR). On appeal, the defendant argues that he was denied his right to effective assistance of counsel when trial counsel failed to prepare a defense, properly cross-examine witnesses, and introduce evidence at trial. We affirm.

¶ 3

## I. Background

¶ 4 On January 26, 2015, the defendant was charged by information with one count of domestic battery (720 ILCS 5/12-3.2(a) (West 2014)), a Class 4 felony (*id.* § 12-3.2(b)), for using his hands and fists to strike and grab the head and neck of his girlfriend, Kaitlyn Yockey, on January 24, 2015. On March 5, 2015, the State amended the information to include an additional count of aggravated domestic battery (*id.* § 12-3.3(a)), a Class 2 felony (*id.* § 12-3.3(b)), for "causing great bodily harm" to Yockey by placing his hands around her neck and restricting her airway on January 24, 2015. The State alleged that the defendant, if convicted of aggravated domestic battery, would be subject to a mandatory term of imprisonment and eligible for an extended term sentence because he had a prior aggravated domestic battery conviction in Sangamon County, Illinois (11-CF-956). *Id.* § 12-3.3(b).

¶ 5 A jury trial was set to commence on March 23, 2015. On March 20, 2015, the State amended the additional aggravated domestic battery count to allege that the defendant intentionally strangled Yockey on January 24, 2015, by putting his hands around her neck, or throat, and thereby impeding her normal breathing. *Id.* § 12-3.3(a-5). On the morning the trial was set to begin, the State informed the circuit court and trial counsel of the amendments that had been made to the additional aggravated domestic battery count but expressed that the amendments were technical and minor. The State also informed the court and trial counsel that it had received photographs of Yockey's purported injuries that morning but agreed that the photographs could not be used as evidence at trial due to the late disclosure. Trial counsel then informed the court that the

defendant had decided to waive his right to a jury trial and the case proceeded to a bench trial.

¶ 6 Yockey, the State's first witness, testified to the following details. Yockey dated the defendant for approximately one year. During that time, she and her four minor children lived with the defendant at his home in Sparta, Illinois. After she was involved in an altercation with the defendant on January 24, 2015, Yockey moved with her children to Louisville, Kentucky.

¶ 7 Yockey then testified to the events leading to and surrounding the January 24, 2015, altercation. At approximately 12 p.m., the defendant, Yockey, and her children walked from their home to a nearby park where the children played for several hours. While the children were playing, Yockey and the defendant drank vodka and conversed with another couple at the park. Although Yockey consumed approximately one pint of vodka at the park, she did not get "wasted" but was "feeling" the effects of the alcohol. They left the park after one of Yockey's children invited his friend, E.G., to play at their home. Yockey believed the defendant's facial expressions during the walk home indicated that he was upset with her.

¶ 8 At approximately 3:30 p.m., Yockey, the defendant, her children, and E.G. returned home. The defendant directed Yockey to their bedroom where he accused her of attempting to "sleep with the girl at the park," which resulted in an argument. During the argument, the defendant slapped Yockey and placed his hands around her throat with such force that she had difficulty breathing and her vision became blurred. When Yockey begged the defendant to stop, the defendant told her to "shut up" because E.G. was in the

living room. The physical altercation continued in their bedroom for approximately 20 minutes until the defendant went to the bathroom. Yockey ran out of the house while the defendant was in the bathroom, but he caught up with her while she was running down the street. The defendant then knocked her to the ground, grabbed her hair and throat with his hands, and attempted to drag her down the street. As a result of the altercation, Yockey had red marks on her neck and face, bruising on her ear, and she experienced difficulty swallowing for three days. Yockey gave a written statement to the police and allowed the responding officers to photograph her injuries.

¶ 9 On cross-examination, Yockey recalled that the defendant fled after their neighbor, E.G.'s mother, came outside yelling that she had called the police. Yockey also recalled that she initially told the responding officers that she did not want to press charges against the defendant. Yockey further acknowledged that the written statement she had provided to the police included her statement that she was intoxicated and had difficulty recalling details from the incident. In addition, Yockey admitted that she did not initially inform the police that the defendant had strangled her.

¶ 10 The State's next witness was nine-year-old E.G., who testified to the following details. E.G. was friends with one of Yockey's children. In January, E.G. was playing with Yockey's children at their home when he heard yelling, screaming, and crying coming from a bedroom. E.G. immediately left and returned to his home. Once at home, E.G. heard yelling outside of his bedroom window and observed the defendant and Yockey in a nearby yard. The defendant was yelling at Yockey and grabbing her by the hair and neck. After E.G. told his mother, E.G.'s mother informed Yockey and the

defendant that she had called the police.

¶ 11 E.G.'s mother, Catherine Goble (Goble), testified to the following details. Goble lived in the same neighborhood as Yockey and the defendant. On January 24, 2015, she immediately called the police after E.G. informed her of an ongoing fight in a nearby yard. Goble, along with E.G., then went outside where she observed the defendant and Yockey engaged in a physical altercation. Goble initially observed the defendant's left hand on the back of Yockey's neck and his right hand on Yockey's shoulder. When Yockey resisted, the defendant grabbed her by the hair and attempted to drag her down the street. The defendant left after Goble yelled that she had called the police.

¶ 12 Gary Steele, a Sparta police officer, testified to the following details. On January 24, 2015, Steele responded to a report of a domestic dispute. Upon arrival, Officer Steele located Yockey and observed red marks on the side of her face, as well as fingerprint marks and scratches on her neck. On cross-examination, Officer Steele clarified that he did not observe the physical altercation between Yockey and the defendant, and he did not call emergency personnel to treat Yockey's injuries.

¶ 13 Jason Juenger, a Sparta police officer, testified to the following details. On January 24, 2015, he responded to a report of a domestic dispute. Upon arrival, he observed red marks on the left side of Yockey's neck and the right side of her face. Yockey informed Officer Juenger that the defendant had caused the red marks.

¶ 14 After introducing a certified copy of the defendant's prior conviction for aggravated domestic battery, the State rested. Trial counsel then moved for a directed verdict on both counts, which the circuit court denied.

¶ 15 The defendant then testified to the following details. On January 24, 2015, the defendant and Yockey walked with Yockey's children to a nearby park. Before they left for the park, Yockey had consumed a 12-ounce drink containing vodka and flavored water, while the defendant had consumed approximately 6 ounces of the same mixed drink. Yockey continued drinking at the park for several hours and became overly intoxicated.

¶ 16 At approximately 3:30 p.m., they left the park and walked home. Once at home, the defendant placed the bottle of vodka on top of the medicine cabinet in the bathroom to prevent Yockey from consuming more alcohol. As a result, Yockey became upset with the defendant and left the house while he was in the bathroom. The defendant went outside and found Yockey sitting on a porch down the street from their home. When he walked towards her, she stood up and started to walk through a neighbor's yard but fell into a ditch. Although the defendant grabbed her arm in an attempt to assist her, Yockey belligerently fought him and directed him to leave. Minutes later, Goble came outside and yelled that she had called the police. The defendant left and returned home. The defendant testified that he never struck, slapped, or strangled Yockey on January 24, 2015. The defendant also denied ever grabbing Yockey by the neck or hair. On cross-examination, the defendant claimed that he and Yockey never argued or fought in their bedroom on January 24, 2015. The defense then rested.

¶ 17 After closing arguments, the circuit court found the defendant guilty of aggravated domestic battery. After noting that the evidence clearly established that Yockey and the defendant resided together, the court stated that the case rested on "the credibility of the

witnesses and the believability of Kaitlyn Yockey." The court found Yockey's testimony credible and indicated that it had "placed great weight" on E.G.'s testimony, which corroborated Yockey's testimony regarding the argument in the bedroom.

¶ 18 A "Pretrial Motion For Discovery" was filed by trial counsel three weeks after trial. The defendant subsequently obtained new counsel for the posttrial proceedings. The defendant's newly obtained counsel (posttrial counsel) filed a motion for a new trial alleging, *inter alia*, that the defendant had received ineffective assistance of counsel. Specifically, posttrial counsel alleged that, prior to trial, trial counsel failed to interview witnesses, did not file any motions, or prepare an adequate defense. Additionally, posttrial counsel alleged that trial counsel had failed to present certain evidence and properly cross-examine witnesses.

¶ 19 At the motion hearing, the defendant testified to the following details. Although trial counsel was appointed on January 26, 2015, the defendant discussed the case with trial counsel for the first time when trial counsel met him at the jail three days before the trial. At that meeting, the defendant learned that trial counsel had not interviewed any witnesses and there was no discussion of trial strategy or waiving the defendant's right to a jury trial. Trial counsel attempted to call the State to work out a plea deal, but the defendant informed trial counsel that he did not want to plead guilty. While the defendant claimed that trial counsel never reviewed the State's evidence with him, he acknowledged that trial counsel allowed him to briefly review the police reports and the written statements of Yockey, E.G., and Goble during the meeting. The defendant was unable, however, to thoroughly review all documents during the 10- to 15-minute meeting.

Consequently, the defendant was unaware that there were photographs of Yockey's injuries or that Yockey had given an audio-recorded statement alleging that the defendant had strangled her.

¶ 20 On cross-examination, the State sought to introduce an exchange of emails between the defendant's mother, Jeanette Wilson, and trial counsel. According to the State, the emails purportedly showed that Wilson had informed trial counsel that the defendant had elected to waive his right to a jury trial. Because the defendant denied discussing his right to a jury trial with Wilson, the circuit court precluded the State from admitting the email exchange.

¶ 21 Trial counsel then testified to the following details. Contrary to the defendant's testimony, trial counsel stated that he met with the defendant at the jail on four occasions prior to trial. Trial counsel also claimed that he met with the defendant for extended periods of time following several hearings at the courthouse. The defendant and trial counsel discussed the jury trial issue for several weeks before trial. Wilson informed trial counsel, via email, that the defendant had decided to waive his right to a jury trial several days before trial. The defendant was present at the hearing where the State provided Yockey's audio-recorded statement as supplemental discovery. Trial counsel reviewed all of the written statements with the defendant and, although trial counsel informed the defendant of Yockey's audio-recorded statement, the defendant had indicated that he did not want to hear the audio-recorded statement. The defendant had also expressed to trial counsel his belief that none of the State's witnesses, particularly Yockey, would appear to testify against him at trial. Trial counsel was aware that a similar charge against the



defendant had been dismissed in 2014 when Yockey failed to appear at trial. Trial counsel did not interview Yockey, E.G., or Goble, as he believed an interview would prepare or encourage them to appear to testify at trial.

¶ 22 On cross-examination, trial counsel was unable to recall the specific dates he met with the defendant at the jail but recounted that the shortest visit was approximately 10 minutes. Trial counsel admitted that he did not file any pretrial motions. Trial counsel explained that he felt it was unnecessary to file a motion for discovery because the State had provided all pertinent discovery in a timely fashion. While trial counsel acknowledged that a motion for discovery had been filed after trial, he claimed that the motion had been filed by mistake. While none of the discovery materials provided by the State included a specific reference to fingerprint marks on Yockey's neck, trial counsel made no objection to Officer Steele's testimony because he did not want to further highlight the reference to fingerprint marks. Moreover, trial counsel was not surprised by Officer Steele's testimony because it was consistent with other evidence in the case.

¶ 23 Trial counsel acknowledged that, although he was aware that Yockey had provided several inconsistent statements to the police regarding the incident, he did not introduce any of Yockey's prior inconsistent statements as substantive evidence. According to trial counsel, it was unnecessary to introduce the statements as substantive evidence because he had impeached Yockey with her inconsistent statements during cross-examination. Trial counsel further explained that he did not call Wilson to testify that Yockey was "highly intoxicated" because Yockey's intoxication level had been established during cross-examination.

¶ 24 After considering the evidence, the circuit court found that the defendant failed to establish ineffective assistance of counsel. While the court agreed that it was "disturbing" that a motion for discovery had been filed in the weeks after the defendant's trial, the court found that the State had furnished discovery in advance of trial and that the State had made no attempt to use discovery not provided to trial counsel. Additionally, the court found no evidence to show that the State had failed to provide evidence that would have affected the outcome of the defendant's trial. Accordingly, the court denied the motion for a new trial and sentenced the defendant to seven years' imprisonment with four years of MSR. This appeal followed.

¶ 25

## II. Analysis

¶ 26 On appeal, the defendant contends that he was denied effective assistance of counsel. Specifically, the defendant argues that trial counsel was ineffective when he failed to prepare a defense, properly cross-examine witnesses, and introduce evidence at trial. We disagree.

¶ 27 Our review of ineffective assistance of counsel claims is guided by the standards set forth in *Strickland v. Washington*, 466 U.S. 668 (1984), and adopted by our supreme court in *People v. Albanese*, 104 Ill. 2d 504 (1984). To succeed on a claim of ineffective assistance of counsel under the standard set forth in *Strickland*, a defendant must establish (1) that counsel's performance was deficient and (2) that counsel's deficient performance resulted in prejudice. *People v. Richardson*, 189 Ill. 2d 401, 410-11 (2000). A defendant must satisfy both prongs of the *Strickland* test in order to succeed on a claim of ineffective assistance of counsel; thus, a defendant's failure to establish either deficient

performance or prejudice will be fatal to the claim. *Richardson*, 189 Ill. 2d at 411.

¶ 28 To establish that trial counsel's performance was deficient under the first prong of the *Strickland* test, a defendant must show "that counsel made errors so serious, and that counsel's performance was so deficient, that counsel was not functioning as the 'counsel' guaranteed by the sixth amendment." *Id.* A defendant must overcome the presumption that the challenged conduct might be considered sound trial strategy under the circumstances. *People v. Snowden*, 2011 IL App (1st) 092117, ¶ 70. A defendant is entitled to competent, not perfect, representation, and mistakes in trial strategy or judgment will not, of themselves, render the representation ineffective. *People v. Nowicki*, 385 Ill. App. 3d 53, 81 (2008). A reviewing court must evaluate trial counsel's performance from counsel's perspective at the time rather than "through the lens of hindsight." *People v. Perry*, 224 Ill. 2d 312, 344 (2007).

¶ 29 To establish prejudice, a defendant must prove a reasonable probability exists that, but for counsel's unprofessional errors, the result of the proceeding would have been different. *Richardson*, 189 Ill. 2d at 411. A reasonable probability is one that sufficiently undermines confidence in the outcome of the proceeding. *People v. Barrow*, 195 Ill. 2d 506, 520 (2001). The defendant cannot rely on speculation or conjecture to justify his claim of incompetent representation. *People v. Holman*, 164 Ill. 2d 356, 369 (1995). Thus, a reviewing court may resolve an ineffective assistance claim based upon the prejudice component alone because a lack of prejudice renders irrelevant the issue of counsel's performance. *People v. Coleman*, 183 Ill. 2d 366, 397-98 (1998).

¶ 30 In the present case, the defendant contends that trial counsel's representation was

deficient in several respects and that the cumulative effect of counsel's failures rendered the proceedings prejudicial. The defendant recognizes that each claimed deficiency stems from his contention that trial counsel, by choosing a defense strategy that consisted of "waiting and hoping" that Yockey would not appear to testify at trial, purposely failed to develop the following defense for trial: (1) Yockey was unable to recall the events that occurred on January 24, 2015, due to her intoxication, (2) Yockey's testimony was unreliable, (3) the defendant neither struck nor strangled Yockey on January 24, 2015, and (4) Yockey suffered injuries from falling into a ditch. Although trial counsel presented the defendant's trial testimony in support of this defense, the defendant asserts that, due to trial counsel's lack of preparation and misunderstanding of Yockey's testimony, counsel failed to introduce additional evidence that would have corroborated his trial testimony while also diminishing Yockey's credibility. The defendant also argues that trial counsel was surprised by witness testimony as a result of his inadequate preparation for trial. We consider the defendant's contentions in turn.

¶ 31 The defendant first argues that trial counsel's performance was deficient when counsel failed to call Wilson to testify that Yockey was "highly intoxicated" on January 24, 2015. Trial counsel's decision on whether to call a particular witness is generally viewed as a matter of trial strategy which cannot support a claim of ineffective assistance of counsel. *People v. Flores*, 128 Ill. 2d 66, 85-86 (1989). Here, as the State points out, Wilson did not testify at the ineffective-assistance hearing, and the defendant failed to submit an affidavit from Wilson setting forth the favorable information that she could have provided at trial. The defendant, instead, relies on a copy of an unsigned and

unsworn email that Wilson purportedly sent to trial counsel on March 20, 2015. Wilson purportedly claimed in the email that Yockey was "highly intoxicated" on "the day and at the time of the event that [the defendant] was accused of." However, there is no reference to the specific date on which she made this observation and no indication in the email that Wilson was willing to testify at the defendant's trial. Moreover, the email, which was sent to trial counsel just three days before the defendant's trial setting, concludes with Wilson's purported statement that she would be "very appreciative for what ever" trial counsel could do "to eliminate [the defendant's] having to be found guilty of this accusation." Thus, in our view, trial counsel's decision not to call Wilson to testify at trial could be viewed as reasonable trial strategy, given that Wilson was the defendant's mother and her credibility may have carried little weight. See *People v. Deloney*, 341 Ill. App. 3d 621, 635 (2003) (rejecting claim that alleged failure to call proposed alibi witnesses constituted ineffective assistance where the witnesses were cousins of the defendant, and as such, their credibility may have carried little weight).

¶ 32 Next, the defendant argues that trial counsel's performance was deficient when counsel failed to admit Yockey's prior inconsistent statements as substantive evidence at trial. According to the defendant, trial counsel should have admitted Yockey's written statement to police as substantive evidence, as permitted by section 115-10.1 of the Code of Criminal Procedure of 1963 (725 ILCS 5/115-10.1 (West 2014)). Trial counsel's decisions on what evidence to present at trial are generally considered a matter of trial strategy. *People v. Munson*, 206 Ill. 2d 104, 139 (2002). As previously noted, matters of trial strategy will not support a claim of ineffective assistance of counsel unless counsel

failed to conduct any meaningful adversarial testing. *People v. Patterson*, 217 Ill. 2d 407, 441 (2005).

¶ 33 The record, here, demonstrates that trial counsel conducted meaningful adversarial testing at trial. In addition to introducing the defendant's conflicting testimony, trial counsel vigorously cross-examined Yockey at trial. The record demonstrates that trial counsel emphasized that Yockey did not initially inform police, verbally or in her written statement, that she had been strangled by the defendant. The record also demonstrates that trial counsel highlighted the amount of alcohol Yockey had consumed prior to the January 24, 2015, altercation and that Yockey admitted she was feeling the effects of the alcohol. Although Yockey denied that she was heavily intoxicated, it appears from the record that trial counsel was able to impeach Yockey's testimony with her prior inconsistent statement during cross-examination. In particular, trial counsel asked Yockey to verify that she had given a written statement to police immediately after the altercation, and she stated that she did. Trial counsel was then allowed to read certain portions of the written statement aloud, specifically, Yockey's statement to police that she was intoxicated and unable to recall specific details of the altercation. In doing so, trial counsel was able to highlight these discrepancies to the trier of fact without also presenting the entire written statement, which would have included Yockey's potentially damaging statement that the defendant had grabbed her neck. Thus, trial counsel's decision not to admit Yockey's written statement as substantive evidence could be viewed as reasonable trial strategy under the circumstances.

¶ 34 Lastly, the defendant argues, without citing any legal authority, that trial counsel's

"other failings" relating to counsel's lack of preparation for trial constituted deficient performance. Specifically, the defendant asserts that trial counsel never requested discovery and only interviewed Officer Steele prior to trial, without interviewing Yockey, E.G., or Goble. The defendant maintains that, despite the interview, trial counsel was surprised by Officer Steele's trial testimony regarding fingerprint marks on Yockey's neck. Even assuming that trial counsel's "other failings" constituted deficient performance under *Strickland*, we note that the defendant makes no specific argument that these "other failings" resulted in prejudice. While the defendant argues that the cumulative effect of trial counsel's errors resulted in prejudice, he specifically references counsel's failure to call Wilson to testify and admit Yockey's written statement as substantive evidence. Because we have concluded that neither of those challenged actions amounted to deficient performance under *Strickland*, and the defendant has failed to argue that, but for trial counsel's "other failings," the result of the proceeding would have been different, he is unable to show prejudice and we need not consider his remaining claims. Therefore, the defendant has failed to establish a claim of ineffective assistance of counsel under the standard set forth in *Strickland*.

¶ 35

### III. Conclusion

¶ 36 For the foregoing reasons, we affirm the judgment of the circuit court of Randolph County.

¶ 37 Affirmed.