2019 IL App (1st) 161979-U
Order filed: June 28, 2019

FIRST DISTRICT
FIFTH DIVISION

No. 1-16-1979

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County.
	)	
v.	)	No. 15 CR 1733
	)	
ANDRE BROWN,	)	Honorable
	)	Matthew E. Coghlan,
Defendant-Appellant.	)	Judge, presiding.

PRESIDING JUSTICE ROCHFORD delivered the judgment of the court.
Justices Hall and Lampkin concurred in the judgment.

ORDER

¶ 1 *Held*: Defendant's first-degree murder conviction is affirmed, where he failed to establish that defense counsel was ineffective for failing to file a motion to suppress his statements based on allegedly inadequate *Miranda* warnings.

¶ 2 Following a bench trial, defendant-appellant, Andre Brown, was convicted of first-degree murder and sentenced to a term of 30 years' imprisonment. On appeal, defendant contends that defense counsel was ineffective for failing to file a motion to suppress defendant's statements made after allegedly facially invalid *Miranda* warnings. For the following reasons, we affirm.[1]

[1] In adherence with the requirements of Illinois Supreme Court Rule 352(a) (eff. July 1, 2018), this appeal has been resolved without oral argument upon the entry of a separate written order stating with specificity why no substantial question is presented.

¶ 3 I. BACKGROUND

¶ 4 Defendant was charged by indictment with – *inter alia* – first-degree murder and aggravated robbery of his mother, Damita Collins on January 5, 2015. The defendant waived his right to a jury and elected a bench trial.

¶ 5 Prior to trial, defense counsel filed a motion to suppress the defendant's videotaped confession, alleging that the electronic recorded interview (ERI) malfunctioned, which necessitated a pretrial hearing to determine whether defendant's statements should be suppressed under section 103-2.1(b) of the Code of Criminal Procedure (725 ILCS 5/13-2.1(b) (West 2016)). This section creates a presumption that statements taken in first-degree murder investigations are inadmissible unless they are recorded. *Id*.

¶ 6 The trial court held a hearing and denied defendant's motion. The court concluded that the failure of the video feed during the initial interrogation did not render the ERI inadmissible because a recording of the interrogation's audio was preserved and there was no evidence presented to show that police malfeasance caused the video to fail.

¶ 7 At trial, the State presented evidence that the victim died as a result of multiple stab wounds to her head, neck, and chest. It was undisputed at trial that, sometime between the hours of 7:00 p.m. and 9:00 p.m., on January 5, 2015, defendant and Mrs. Collins took part in an altercation, which ended with her lying in a pool of blood on her bedroom floor. The primary issue at trial was whether or not defendant should be convicted of first-degree murder, with the defendant arguing that he should be convicted of – at most – second degree murder.

¶ 8 Defendant lived with Mrs. Collins in her home at 3505 West 77th Place, Chicago, Illinois 60652 (the "home"), and his stepfather, Kevin Collins. Mrs. Collins was formerly married to

Curtis Brown, defendant's biological father. Mrs. Collins met Mr. Collins at work, sometime in 2000. They later married and Mr. Collins moved into the home.

¶ 9 The home consisted of three levels: a basement, first-floor, and second-floor. The first-floor contained defendant's bedroom near the kitchen as well as a sitting room and an additional bedroom. Mr. and Mrs. Collins's master bedroom, master bathroom, and small sitting room made up the second-floor.

¶ 10 Mr. Collins testified that Mrs. Collins and defendant had a "good relationship;" Mrs. Collins "always worked for [defendant] and wanted the best for [him] and she helped him in every endeavor in his life as far as getting his education, checking around helping him find a job, motivate him to get his life off the ground." Mr. and Mrs. Collins financially supported defendant and provided him with his own car – a silver Kia Forte. They also owed a silver Kia Sorento and a black Kia Optima.

¶ 11 On the evening of January 5, 2015, Mrs. Collins and defendant were at the home when Mr. Collins arrived from work around 6:30 p.m. It was snowing. Mr. Collins observed that the Kia Forte and the Kia Sorento were parked on the street in the front of the house and the Kia Optima was in the garage.

¶ 12 When Mr. Collins entered the home, Mrs. Collins had prepared dinner and defendant, wearing shorts and a t-shirt, made a plate of food to take to his room. Mr. Collins washed up and took his dinner plate down to the basement to watch the Bulls Game.

¶ 13 Around 6:56 p.m., Mrs. Collins called Mr. Collins's cell phone, from the second floor, which was not unusual, to discuss work and bill payments. He estimated that the conversation lasted about five minutes. About an hour and a half later, around 8:30 p.m., Mr. Collins heard what sounded like a familiar sound of defendant getting up off of his bed. He testified that the

floor was squeaky and that he first heard the bed and floor squeak and then heard feet hit the ground. Around 8:50 p.m., Mr. Collins testified that he heard a "boom". He believed the noise to be someone punching a hole through a wall. He also heard defendant's closet door rolling. At around 9:00 p.m. to 9:15 p.m. Mr. Collins headed upstairs. He noticed that the basement door was closed, which he considered very rare.

¶ 14 No one was on the first-floor, so Mr. Collins continued to the second-floor master bedroom. The door was locked, which was also very unusual. With the help of a tool on his key ring, he unlocked and pushed open the bedroom door.

¶ 15 Defendant was standing on the inside of the door close enough for Mr. Collins to grab him by the chest and neck. Defendant looked "deranged," but fully dressed in pants, a sweat jacket, and shoes. Over defendant's shoulder, he saw Mrs. Collins lying on the floor in a pool of blood. Defendant knocked Mr. Collins's hand off of his neck and ran down the stairs. Mr. Collins began chasing him and fell down the stairs. Defendant ran past the front door and ran through the house and out the back door. Once defendant went through the alley, Mr. Collins stopped chasing him and locked all of the doors. Mr. Collins went back upstairs and tried to "resuscitate" his wife, but "she was already gone." He called the police and an ambulance showed up shortly.

¶ 16 Juan Garcia, a next door neighbor at the time, had a video surveillance security with four cameras: one facing the front of the house; one facing the street; one facing the patio; and one inside the garage. The cameras captured defendant getting into the Kia Forte in the front of the house and driving off without clearing the heavy layer of snow from the windshield. Mr. Garcia provided this tape to the police and the prosecution published the video at trial.

¶ 17 Chicago Police Detective David Hickey supervised the processing of the scene. A video of the scene was published at trial. Detective Hickey testified that when he arrived at the home, he observed Mrs. Collins lying on her back near the base of the bed. He observed a large wound from the back of her neck to the front of her neck on the left side and what appeared to be a knife or puncture wound to her left chest area.

¶ 18 There was blood everywhere: a large concentration around the victim's head; splatter or drops of blood on the television, the television stand, and the back of the bedroom door; smears of blood on the knobs and drawers to the dressers; a bloody t-shirt on the dresser; bloody footprints – not shoeprints – in the walk-in closet; bloody footprints in the attached bathroom; a bloody rag on the counter next to the sink; blood and human hair in the drain; and a drop of blood on the top of the toilet. Going down the stairwell to the first-floor, there were smudges of blood along the wall and another smear at the base of the stairs. Officer Hickey observed blood stains in the front room of the house – on a pillow and a coat. In the bedroom near the kitchen, there were bloody footprints on the carpet and a bloody smear on the knob on the dresser. In the bathroom on the main level there was a paper towel roll with some blood and a bloody paper towel in the waste basket. In the kitchen, there was a drop of blood on the knife block and blood on the handle of a large, kitchen knife that was stuck in the knife block. The knife was silver with a black handle, about 13-inches long and serrated.

¶ 19 Chicago Police Officer Detective John Murray testified that he and other detectives went to the home of defendant's relative located at 7047 South Merrill in Chicago at 12:32 a.m. on January 6, 2015, observed the Kia Forte out front, and arrested defendant inside the home. The detectives found the keys to the Kia Forte on the defendant and recovered the car with blood on the seat, steering wheel, locking panel, shifter, indicator, and heat control.

¶ 20 At Area Central station, Detective Hickey observed fingernail scratches on defendant's face, a mark on his nose, an abrasion on his shoulder, a scratch mark on his chest, and cuts on his fingers and arm. Detective Hickey also noticed blood on defendant's socks and on the inside of his shoes.

¶ 21 Detective Kristi Battalini testified that at 1:19 a.m. on January 6, 2015, she and Detective Garza questioned defendant in interview room 4. Detective Battalini testified that she advised the defendant of his rights, which he waived.

¶ 22 In this interview, defendant said that "nothing happened, nothing major;" he told the detectives that his mom was having a discussion with him about him needing to find a girlfriend and a job. He then admitted that it was actually a small argument. He initially denied he was upset by his mother's comments, but later admitted he was a little angry. He eventually told the detectives that his mom scratched his face because she was angry and he "tried to fight her back, push her back," and "tussled with her," but he did not "hit her." He stated that he picked up a spatula, not a knife, to "defend [him]self." He said he told his mom to stop. He then admitted they were "both angry," and that he was trying to stay away from her. Defendant said there was "pushing, tussling." He stated that his mom cut herself. He then told the detectives that a knife "was placed in [his] hand," and his mom "probably got too close to the knife," and "it hit her." He also told the detectives that he hit her in her mid-section, on her chin, and her neck. He stated that his mom fell backwards and screamed at him, but he thought she looked like she was fine. Defendant told the detectives that he then left the house through the backdoor.

¶ 23 At about 1:40 a.m., the detectives were alerted that there was something wrong with the ERI; the video had gone dark, but the audio was still working. The detectives and defendant

moved to interview room 1 across the hall and Detective Battalini re-advised defendant of his rights, which he again waived, and they resumed the conversation.

¶ 24 In this interview, defendant repeated that he and his mom argued about him not having a job or a girlfriend. Here, he said that he had a knife in his hand from the knife block in the kitchen. He stated that the argument was "everywhere" in the house. During the argument upstairs, the defendant told the detectives that his mom got cut in the mid-section, the knife may have touched her chin, and if the knife hit her neck, she was "too close" to the defendant. Defendant saw blood coming from her neck, but she still "fought with [him]." Defendant did not know how many times he stabbed his mom in the neck while they were "tussling," but noted that "she scratched [him] up" as well. He said his mother was in a rage and was screaming and yelling trying to fight him. He claimed that he then backed away, went downstairs, put the knife back in the knife holder, cleaned up, got his jacket, went back upstairs, got his shoes, his mother's cell phone and keys to the car, and left the house. Defendant did not realize how bad he had cut his mom, but he thought "she looked like she was alright." But, he knew he did "something bad."

¶ 25 At about 6:00 p.m. the night of January 6, 2015, after additional investigation, Detectives Hickey and Garza interviewed defendant again, which was also videotaped. In it, defendant explained that the reason he killed his mother was "Anger. Anger. Just hot temper." He did not like the "way stuff was being handled," the way "it was brought to [him]." They "put [him] down."

¶ 26 Defendant described that he first stabbed her when he swiped his mother's throat while he was standing on her side. He admitted that he already had the knife in his hand when he went

upstairs to where his mom was "walking back and forth, pacing," and things "escalated." He did not think to call an ambulance after he stabbed her. He was just trying to "get away."

¶ 27 The parties stipulated that the autopsy revealed: a stab wound to the left temple about 1/8 of an inch deep; a six-inch long stab wound to the neck measuring an inch deep with six more stab wounds below it of various lengths, the longest being 9 inches, shortest, 1 ½ inches; a stab wound on the back of the neck ¼ inch deep; a stab wound to the heart, reaching the aorta; multiple incise wounds to the left hand; and various abrasions on the face, arms, and chest. The cause of death was multiple stab wounds and the manner of death was homicide.

¶ 28 The State rested. Defendant's motion for acquittal was denied after the court reviewed the ERI videos and photographs. The defense rested without putting on any evidence.

¶ 29 In closing arguments, defense counsel argued that Mrs. Collins was angry with defendant, the two argued and tussled, and Mrs. Collins hit defendant first. Defendant was defending himself with the knife. She asked the court to find defendant guilty of second degree murder based on either provocation or unreasonable belief in self-defense. In making this argument, she relied on defendant's statements. The State in rebuttal argued that "the physical evidence did not match the [defense] version of events."

¶ 30 The trial court found defendant guilty of first degree murder; not guilty of armed robbery, and not guilty of felony murder. The trial court explained its finding of guilty of first degree murder. The trial court found that the evidence showed that on, January 5, 2015, the defendant got into an argument with his mother and, at some point, picked up a large kitchen knife and sliced and stabbed his mother to death in her bedroom. The trial court emphasized that Mrs. Collins had massive injuries to her neck, six incised wounds, defensive wounds to her hands, cuts on her arms, and a stab wound to her chest which penetrated her heart.

¶ 31 The trial court concluded that there was no evidence to suggest that the killing was either justified or an accident. The court believed that the State proved beyond a reasonable doubt that defendant intentionally without legal justification performed the acts which killed his mother because the nature of the acts showed that either he intended to kill her or do great bodily harm or he knew that such acts would cause death or great bodily harm. The court noted that the mother was in her bed clothes in her bedroom and there was no indication that she had any type of weapon. Although Mrs. Collins was bigger than defendant the trial court found that this fact did not support a finding that defendant had an unreasonable belief that he was acting in self-defense.

¶ 32 The trial court then reasoned that even if assuming that Mrs. Collins struck the first blow, defendant's response to the blow had to be in proportion to the manner of the provocation and the retaliation had to be in proportion to one another. The trial court found defendant's retaliation was so out of proportion to any attack that Mrs. Collins could have done that defendant did not meet his burden to show by a preponderance of the evidence that mitigating factors existed to reduce the charge to second degree murder.

¶ 33 Defendant's motion for new trial was denied and the trial court sentenced defendant to 30 years' imprisonment. A timely notice of appeal was filed.

¶ 34 II. ANALYSIS

¶ 35 On appeal, defendant asserts that he was denied a fair trial where defense counsel was ineffective "for failing to challenge the use of facially invalid warnings under *Miranda v. Arizona*, 384 U.S. 436, 444 (1966) prior to [his] custodial interrogations," and that "effective counsel would have argued that [his] statements were inadmissible."

¶ 36 Claims of ineffective assistance of counsel are evaluated under the two-pronged test announced in *Strickland v. Washington*, 466 U.S. 668 (1984). Under *Strickland*, a defendant must show that his counsel's representation fell below an objective standard of reasonableness and that the deficient performance prejudiced his defense. *Id.* at 678; *People v. Albanese*, 104 Ill. 2d 504, 525 (1984). When a defendant claims that counsel failed to file a proper motion to suppress, he must show both the merit of the unargued claim and a reasonable probability the trial court's outcome would have been different had the evidence been suppressed. *See People v. Henderson*, 2013 IL 114040, ¶ 15. The defendant has the burden of establishing both prongs of the *Strickland* test. *People v. Burks*, 343 Ill. App. 3d 775 (2003).

¶ 37 We first review whether the defendant's motion to suppress would have been meritorious but for counsel's alleged errors. "Where a defendant challenges the admissibility of his confession through a motion to suppress, the State has the burden of proving the confession was voluntary by a preponderance of the evidence." *People v. Braggs*, 209 Ill. 2d 492, 505 (2003) (citing 725 ILCS 5/114-11(d) (West 2000)).

¶ 38 Defendant asserts that he received incomplete and defective *Miranda* warnings. The State maintains that defendant received proper warnings.

¶ 39 When defendant was placed in interview room 4, Detective Battalini gave defendant his *Miranda* rights prior to questioning as follows:

> "[DETECTIVE]: You have the right to remain silent. Do you understand?
>
> [DEFENDANT]: Yea
>
> [DETECTIVE]: Anything you say can be used in a court of law against you. Do you understand that?
>
> [DEFENDANT]: Yes

[DETECTIVE]: You have the right to have an attorney present while you are being questioned here with you. Do you understand that?

[DEFENDANT]: Yes.

[DETECTIVE]: If you can't afford an attorney, one will be provided for you free of charge. Do you understand?

[DEFENDANT]: Yes."

¶ 40 The ERI video of the second interrogation in interview room 1 shows that Detective Battalini gave defendant his *Miranda* rights before questioning as follows:

"[DETECTIVE]: You have the right to remain silent. Do you understand?

[DEFENDANT]: Yea.

[DETECTIVE]: Anything you say can be used in a court of law against you. Do you understand that?

[DEFENDANT]: Yea.

[DETECTIVE]: You have a right to have lawyer, an attorney present with you [*sic*] here with you during questioning. Do you understand that?

[DEFENDANT]: Yea.

[DETECTIVE]: If you cannot afford an attorney, one will be appointed for you free of charge. Do you understand that?

[DEFENDANT]: Yea.

[DETECTIVE 2]: Yes?

[DEFENDANT]: Yes.

¶ 41 In *Miranda v. Arizona*, 384 U.S. 436, 444 (1966), the Supreme Court held that prior to custodial interrogation, the police officers must advise the defendant that: he has a right to

remain silent, that anything he says may be used against him, that he a right to consult an attorney before and during interrogation, and that counsel will be appointed if he cannot afford one. However, there is no precise formula for conveying *Miranda* warnings. *Florida v. Powell*, 559 U.S. 50, 60 (2010); *People v. Macias*, 2015 IL App (1st) 132039, ¶¶ 44, 50 (2015). Rather, the inquiry is whether the words, read in their totality, reasonably conveyed to defendant his rights required by *Miranda*. *California v. Prystock*, 453 U.S. 355, 361 (1981); *Duckworth v. Eagan*, 492 U.S. 195, 202 (1989); *Powell*, 559 U.S. at 60.

¶ 42 Defendant challenges only the inadequacy of the third element of *Miranda*, his rights to an attorney. Both times, prior to questioning, the officers informed defendant that he had a right to an attorney during questioning (and that one would be appointed if he could not afford an attorney). Defendant asserts that his *Miranda* rights were defective because he was not "informed of his right to consult with an attorney *both* before and during any police questioning." (Emphasis added.)

¶ 43 The Supreme Court addressed the third element of *Miranda* in *Powell*, where the defendant was informed that he had the "right to talk to a lawyer before answering any questions." *Powell*, 559 U.S. at 54. The Court used a commonsense reading to answer the question of whether or not the warning "reasonably conveyed" to defendant that he had a right to an attorney *both* before and during questioning. *Id.* 62. The Court found that "a reasonable suspect *** would not come to the counterintuitive conclusion that he is obligated, or allowed to hop in and out of the holding area to seek an attorney's advice. Instead, the suspect would likely assume that he must stay put in the interrogation room and that his lawyer would be there the entire time." *Id.* at 62-63. The Court held that "[a]lthough the warnings were not the *clearest possible* formulation of *Miranda's* right to counsel advisement, they were sufficiently

comprehensive and comprehensible when given a common sense reading." *Id.* at 63 (emphasis in original).

¶ 44 Illinois courts have also previously considered claims that a defendant's *Miranda* rights were defective based on the specific advice given about the right to have an attorney present before and during questioning. See *Macias*, 2015 IL App (1st) 132039, ¶ 42 (where informing the defendant that he had "the right to have an attorney" was sufficient to reasonably convey to defendant his *Miranda* rights); *People v. Martinez*, 372 Ill. App. 3d at 750, 754 (2007) (where informing the defendant that he "had the right to an attorney" and "that he had the right to an attorney and have him present during any questioning" was sufficient); *People v. Walton*, 199 Ill. App. 3d 341, 343 (1990) (where informing the defendant that he "had a right to consult with a lawyer" was sufficient).

¶ 45 In *Walton*, the police officers informed the defendant that he had "the right to have an attorney." *Id.* at 343. At the suppression hearing, the police officer testified that he gave the defendant his *Miranda* rights "conversationally." *Id.* at 342. The prosecutor then asked the officer if he gave each of the individual rights, and the officer answered that he had, but he did not know if he specifically advised the defendant he could have a lawyer present during questioning. *Id.* at 343. The trial court denied the defendant's motion to suppress. The Fourth District found:

> "[T]he *Miranda* warnings given to defendant in this case, in their totality, were sufficient in that they 'reasonably conveyed' to defendant his rights as required by *Miranda*. In so holding, we note that defendant was specifically informed that he 'had a right to consult with a lawyer.' While the better practice would be for the police to make explicit that defendant's right to consult with a lawyer may be both before and during any

> police interrogation, we hold that the language used in this case was sufficient to imply the right to counsel's presence during questioning." *Id.* at 344.

The court further reasoned that "to hold otherwise would be to import a rigidity to the *Miranda* warnings and to require a 'talismanic incantation,' both of which actions have been explicitly disapproved by the Court." *Id.* at 345.

¶ 46 In *Martinez*, the police officers at first informed the defendant that he "had the right to an attorney" and later at an additional interview informed him that he "had the right to an attorney and have him present during any questioning." *Martinez*, 372 Ill. App. 3d at 754. The defendant asserted that his *Miranda* rights were fatally defective because he was not advised of his right to have an attorney present before and during questioning. *Id.* This court observed that the Supreme Court has never insisted that *Miranda* rights must be given exactly, but, rather, "*Miranda* warnings must reasonably convey to a suspect his rights." *Id.* (citing *Duckworth*, 492 U.S. 195, 203). The *Martinez* court relied on the holding in *Walton* and found that the "defendant has failed to show that the trial court erred in denying his motion to suppress under *Miranda*." *Id.* at 755.

¶ 47 In *Macias*, the defendant was similarly advised that he had "the right to have an attorney." Defendant contended that he was never informed he had a right to have an attorney present prior to or during questioning. *Macias,* 2015 IL App (1st) 132039, ¶ 43. The court, relying on *Walton* and *Martinez*, held that the warnings given "reasonably convey[ed]" the defendant's *Miranda* rights, and that "the failure to include that the defendant could have an attorney present before and during question does not render *Miranda* rights fatally defective." *Id.* at ¶ 50.

¶ 48 Here, defendant, prior to interrogations, was advised that he had the right to remain silent, he had the right to an attorney with him while he was being questioned, and if he could not afford an attorney one would be appointed for him. As the courts in *Walton*, *Martinez*, and *Macias* found, the failure to specifically state that the defendant could have an attorney present both before and during questioning does not render the *Miranda* rights fatally defective.

¶ 49 Defendant contends we should not follow the decisions in *Macias*, *Martinez*, and *Walton* because they contradict the Supreme Court decisions in *Miranda*, *Prystock*, *Duckworth*, and *Powell* that a defendant must be explicitly informed of his right to consult an attorney both before and during questioning. However, the court in *Macias* addressed this argument and found that "the decisions in *Walton* and *Martinez* adhere to the [Supreme] Court's position that *Miranda* rights do not have to be precisely recited, but must 'reasonably convey' a defendant's rights." *Macias*, 2015 IL App (1st) 132039 ¶ 50. Applying these holdings and all of the circumstances surrounding defendant's questioning in this case, we find no reasonable probability that a motion to suppress would have been successful.

¶ 50 Even if defendant could have succeeded on a motion to suppress his statements, we find no reasonable probability that the outcome of trial would have been different absent his statements.

¶ 51 Defendant was found guilty of first degree murder. He asserted at trial that he acted under an unreasonable belief in self defense or from serious provocation and at most should have been found guilty of second degree murder.

¶ 52 A person commits first degree murder when, in performing the acts which caused the death of an individual, without legal justification, he either intended to kill or do great bodily

harm to that person, or knew that such acts will cause death to that individual, or knew that such acts created a strong probability of death or great bodily harm. 725 ILCS 5/9-1(a) (West 2014).

¶ 53 A person commits second degree murder when he commits first-degree murder and one of either of the following mitigating factors exists: (1) the defendant was acting under an unreasonable belief that the killing was justified; or (2) the defendant was acting under a sudden and intense passion resulting from serious provocation by the individual killed but the defendant negligently or accidentally caused the death of the individual. 720 ILCS 5/9-2(a) (West 2014). Should the State meet its burden of proving a defendant guilty of first degree murder, the defendant has the burden of proving the existence of one of those mitigating factors by a preponderance of the evidence. *People v. Manning*, 2018 IL 112081, ¶ 18 (citing *People v. Jeffries*, 164 Ill. 2d 104, 114 (1995)).

¶ 54 The only categories recognized by this court to constitute serious provocation are substantial physical injury or substantial physical assault, mutual combat, illegal arrest, and adultery with the offender's spouse. *People v. Garcia*, 165 Ill. 2d 409, 429 (1995). Here, the only category that possibly fits and the one argued by defendant at trial is mutual combat. "[M]utual combat is a fight or struggle that both parties enter willingly or where two persons, upon a sudden quarrel and in hot blood, mutual fight upon equal terms and where death results from the combat." *People v. Sutton*, 353 Ill. App. 3d 487, 496 (2004) (quoting *People v. Austin*, 133 Ill. 2d 118, 125 (1989) (where there was no evidence of mutual combat where unarmed victim had spoken curtly to defendant and hit defendant with a punch; victim's conduct amounted to slight provocation disproportionate to the retaliatory violence of defendant who shot and killed the victim). "There is no mutual combat where the manner in which the accused retaliates is out of

proportion to the provocation, particularly where homicide is committed with a deadly weapon." *Sutton*, 353 Ill. App. 3d at 496 (citing *Austin*, 133 Ill. 2d at 125).

¶ 55 The physical and medical evidence and testimony in this case show that Mrs. Collins died from stab wounds and that the wounds were inflicted by defendant with a kitchen knife. Mrs. Collins's stab wounds were severe with one penetrating her heart and another penetrating deep into her neck with six more stab wounds below that one. Mrs. Collins also had been stabbed in her temple and left hand and suffered abrasions to various parts of her body. On the other hand, defendant had only minor cuts and scratches, with no indication that they were inflicted with a weapon by the victim. Mr. Collins found his wife in a pool of blood behind a locked bedroom door with defendant inside the room. Additionally, there was evidence of defendant's consciousness of guilty which supports a finding of first degree murder. Defendant locked the bedroom door, changed his clothes, attempted to clean up, and ran from the home with no apparent concern for his mother. There is no evidence showing that defendant and Mrs. Collins were on equal terms; he had the knife. Even if the unarmed Mrs. Collins was the initial aggressor, defendant clearly did not retaliate in proportion to any provocation when his minor injuries are compared to those of Mrs. Collins.

¶ 56 Based on the evidence, we conclude that there is no reasonable probability that the outcome of the trial would have been different without defendant's statements.

¶ 57 For these reasons, we find defendant has failed to carry his burden to show his counsel provided ineffective assistance under both *Strickland* prongs.

¶ 58 III. CONCLUSION

¶ 59 For the foregoing reasons, the judgment of the circuit court is affirmed.

¶ 60 Affirmed.