2020 IL App (1st) 181739-U

SIXTH DIVISION
September 25, 2020

No. 1-18-1739

IN THE

APPELLATE COURT OF ILLINOIS

FIRST DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County.
	)	
v.	)	No. 16 CR 16819
	)	
MICHAEL REDD,	)	Honorable
	)	Mary Margaret Brosnahan,
Defendant-Appellant.	)	Judge presiding.

JUSTICE CONNORS delivered the judgment of the court.
Presiding Justice Mikva and Justice Griffin concurred in the judgment.

ORDER

¶ 1 *Held*: Defendant failed to establish that his trial counsel was ineffective for failing to request a jury instruction on aggravated robbery and for failing to request redaction of defendant's interrogation video that was played for the jury during the State's rebuttal case.

¶ 2 Following a jury trial, defendant Michael Redd was found guilty of armed robbery with a firearm (720 ILCS 5/18-2(a)(2) (West 2016)) and sentenced to 21 years in prison, which included a 15-year firearm enhancement. On appeal, defendant contends that his trial counsel was

ineffective for failing to request a jury instruction for aggravated robbery and for failing to request redaction of certain parts of his interrogation video that was shown to the jury. We affirm.

¶ 3 I. Background

¶ 4 Defendant's conviction arose from an incident that took place on October 9, 2016, in which the victim, Bilinger Delinois, was robbed near his home. Delinois's vehicle, cell phone, and wallet were taken from him. Defendant was charged with armed robbery, aggravated unlawful restraint, and aggravated vehicular hijacking. Codefendant, Donte Smith, was charged with possession of a stolen motor vehicle.[1] The State proceeded at trial against defendant on one count of armed robbery in that he knowingly took Delinois's property by the use of force or by threatening the imminent use of force and he carried or was otherwise armed with a firearm.

¶ 5 At trial, Delinois testified that, at about 2:30 a.m. on October 9, 2016, he parked his Lincoln Town Car in the parking lot in the back of his apartment on the west side of Chicago. The gate to his backyard was locked so he walked through an alley to get to the front of his building. When he was walking in the alley, a car with a "bad muffler" drove towards him and stopped next to him. The area was "pretty well lit" and there was a streetlamp about five feet from Delinois. Three men were in the car and two of the men exited. One man was slim and had long hair. The other man, identified at trial as defendant, was taller, heavy set, and was wearing a gray jacket. Defendant and the other man came about two feet away from Delinois. Defendant then "pulled out a gun," pointed the gun at Delinois's face, and stated "[g]ive me everything you got." Delinois described the gun as a black revolver. Asked how close the gun came to his face, Delinois testified that he "was looking at the barrel" and it was about one foot away from him. Defendant held the gun in

[1] Smith is not a party to this appeal.

Delinois's face while defendant and the other man took his wallet, watch, car keys, remote to his car, and iPhone. Defendant and the other man then told Delinois to run. Delinois ran to the front of his house and hid by the basement door. A few minutes later, Delinois heard the remote of his car being activated, after which he heard his car and the car with the loud muffler drive off.

¶ 6 Delinois did not have keys to his apartment so he rang the doorbell and his roommate, Curtis Lewis, let him in. Lewis used the "Find my iPhone" application feature on his cell phone to track Delinois's iPhone. The police arrived, but they could not go to the location where Delinois's phone had been last located using Lewis's app because it was outside of their district. After the police left, defendant and Lewis drove to the area on the south side of Chicago where Delinois's phone had been located on the app. While they were in that area, they saw a sergeant in a squad car sitting at a Walgreens. Delinois told the sergeant what had happened and described his car. After some time had passed, the sergeant called Delinois and told him they found his car. Delinois and Lewis drove to the location where his car had been located. Delinois identified his car and immediately recognized defendant, who was in custody, as the person who robbed him.

¶ 7 Curtis Lewis, who was defendant's roommate in October 2016, testified that at about 2:30 a.m. on October 9, 2016, Delinois rang the doorbell to their apartment and told him that he had been robbed. Lewis called the police and attempted to locate Delinois's phone using the "Find My iPhone" application on his phone. Lewis and Delinois drove to the area on the south side of Chicago where Delinois's phone had been activated using the application and eventually saw a sergeant sitting at a Walgreens. They told the sergeant what had happened and about five minutes later the police called and informed them that Delinois's car had been found at 8733 South Cregier Street.

¶ 8 Chicago police sergeant Claire Van Slyke testified that, at 3:45 a.m. on October 9, 2016, she was at the Walgreens near 87th Street and Stony Island Avenue when Delinois and Lewis approached her. They told her what had happened and that the stolen cell phone had been last located at a nearby intersection. Van Slyke drove to the last two addresses where the phone had been located. When she was sitting at a traffic light, a vehicle matching the description of Delinois's car drove past her. She followed that vehicle until it stopped at about 8733 South Cregier. Two men were inside the vehicle and, at trial, Van Slyke identified one of the men as defendant. After other officers arrived, defendant was detained. The police did not find any contraband in the vehicle or on defendant's person. Delinois arrived at the scene and identified defendant.

¶ 9 Mahmood Abdulqader, a cashier at an Amstar gas station on Cottage Grove Avenue, testified that on October 9, 2016, the police retrieved video footage from the gas station and asked him about a customer that had been there during the early morning hours on that day. Abdulqader remembered that a customer in a gray sweatshirt came into the store to buy tobacco using a credit card. Abdulqader refused to sell to the customer because he did not have identification and it was store policy to refuse the transaction if the card did not match the identification. After Abdulqader refused the transaction, the customer attempted to use the ATM machine. The State played video footage from the gas station on October 9, 2016, which showed Abdulqader refusing to complete the tobacco transaction for this same customer who then attempted to use the ATM machine.

¶ 10 Chicago police detective Geoffrey Woitel testified that, during his investigation of the armed robbery on October 9, 2016, he and Chicago police detective Neil Francis interviewed Delinois and obtained information about the stolen debit card. He then went to an Amstar gas station on Cottage Grove Avenue to look for a vehicle matching the description of Delinois's

vehicle. Woitel spoke with Abdulqader and obtained video surveillance footage from the gas station taken during the early morning hours on October 9, 2016. The State played the video footage at trial. Woitel testified that the footage taken from outside the gas station showed a Lincoln Town car matching the description of Delinois's vehicle pull up to the gas station. A man, identified in court as defendant, exited the vehicle and walked over to a police car that had just pulled up. Defendant then walked inside the gas station. Woitel testified that the other man in the vehicle was Donte Smith.

¶ 11 Ferneice Burkley, defendant's aunt, testified for defendant. On October 9, 2016, she lived on a first-floor apartment with her husband, defendant, and her two sons Javon Burkley and Willie Burkley.[2] Defendant started living with her at the end of June or July of 2016. Willie's and Javon's bedrooms were located in the back of the first-floor apartment. Christopher Burkley, who was her oldest son, lived in the basement apartment in that same building. On October 8, 2016, Ferneice was home in bed all day watching television. Around 5 or 6 p.m. that day, defendant came home with Willie, Javon, and Smith, whom she called "Tay." Defendant spoke with Ferneice and then went to Christopher's apartment in the basement. From about 5 p.m. to 2:40 a.m. Ferneice heard the boys "partying" in the basement. At about 2:40 a.m., defendant knocked on her door and asked her if she needed anything at the store. Ferneice heard defendant leave because he slammed the door to her apartment. On cross-examination, Ferneice denied telling Chicago police detective Neil Francis that, on October 9, 2016, defendant, Smith, Willie, and Javon were watching television and playing a game in the back room of her apartment.

[2] Ferneice Burkley, Javon Burkley, and Willie Burkley all share the same last name. We will therefore refer to these witnesses by their first name.

¶ 12 Javon Burkley testified for defendant. On October 9, 2016, he lived with Ferneice, Willie, and defendant. On October 8, 2016, Javon and his brothers helped plan a family gathering in Christopher's apartment to celebrate Christopher's girlfriend's birthday. About five to seven people came to the gathering, including defendant, Willie, Christopher, and "Tay." Defendant was at the party throughout the evening of October 8, 2016, and into the early morning hours of October 9, 2016. He remembered defendant being there because he was playing cards with defendant, Willie, and Christopher. At some point, Javon asked defendant to get him a sandwich from Subway. At that time, they all decided to head upstairs to hang out for the night. Javon gave defendant money and defendant left to get him Subway. On cross-examination, Javon testified that everyone stayed in the basement apartment the whole night. He denied that anyone played dice that night. He did not remember if he told the detectives that he had been watching television and playing games with Smith, Willie, and defendant in the back room of the first-floor apartment and he did not recall whether he told them that they were having a party in the basement apartment.

¶ 13 Defendant testified that in October 2016 he lived with his aunt, Ferneice. He slept in the back room in the first-floor apartment with Willie and Javon. On October 8, 2016, at about 6 or 7 p.m., he went to the basement apartment with Javon and Willie to get ready for a party. At the party, he played cards and dice with Willie. At about 2 or 3 a.m., Javon told defendant that he wanted something to eat at Subway. Defendant agreed to get Subway for Javon because it was too dangerous for Javon to go out at that time of the night. Defendant then went upstairs to check on Ferneice. He also contacted an individual named "Mitch" and made plans to buy marijuana from him.

¶ 14 Defendant left Ferneice's house at about 2:40 or 2:45 a.m. He knew he left at that time because that is when he had last contacted Mitch. Defendant had planned to walk to Subway, but

as he was leaving, Smith, who was Willie's friend, drove up. Defendant had previously seen Smith sometime between about 5 to 8 p.m. that evening. Smith offered defendant a ride. Smith and defendant drove to a gas station on Cottage Grove Avenue because defendant needed to buy cigars for the marijuana. Smith gave defendant his debit card to purchase the cigars. Defendant got out of the car and, as he was walking to the store, a police officer pulled up and called defendant over to his car. The officer told defendant that he wanted to speak to Smith because Smith had been speeding. Defendant went to get Smith and they both had a conversation with the officer, after which the officer told Smith and defendant to go home because it was late. After the conversation with the officer, defendant went into the gas station to buy the cigars and attempted to use the debit card Smith gave him. The clerk would not take the card because defendant did not have identification. Defendant tried to use the ATM machine to get some money, but the PIN number that Smith gave him did not work. Defendant never looked at the debit card and assumed it was Smith's card because Smith gave it to him.

¶ 15 Smith and defendant left the gas station, driving in the opposite direction as the police car. They drove to another gas station on Maryland Avenue, which was about four houses away from Mitch's house, to buy the cigars. The gas station did not have the cigars, so defendant purchased a "Swisher" for 99 cents. Defendant then walked to Mitch's house, purchased the marijuana, and returned to Smith's car. Thereafter, Smith and defendant drove to Subway and got Javon a sandwich. Smith told defendant he wanted to go to another place. Defendant did not complain or tell Smith to take him home because Smith had given him a free ride. When they were near 89th Street and Cregier Avenue, Smith parked the car. A police officer appeared behind them, approached them, and told them not to move. Defendant followed the orders and was subsequently handcuffed and taken to the police station. Defendant testified that he did not leave Ferneice's

house between 1 and 2:45 a.m. He never pointed a weapon at anyone and did not take part in any robbery on October 9, 2016. Smith drove the car the entire night and defendant did not know where Smith got the keys from.

¶ 16 On cross-examination, defendant testified that in October 2016, he had been living with Ferneice for about one week because he did not have enough money to fix his bicycle and could not get himself to work. He testified that he hung out with Smith "[a]ll the time" and called him a cousin. Defendant acknowledged that he told the detectives after he was arrested that he did not know Smith very well. The marijuana he purchased that night was in his pocket when he was arrested, and he was not charged with possession of a controlled substance.

¶ 17 In rebuttal, the State called Chicago police detective Neil Francis to testify. Francis testified that on October 9, 2016, he interviewed Ferneice at the police station. Ferneice told him that Willie, Javon, defendant, and Smith were watching television and playing games in the back room of her apartment the entire night. Francis also spoke with Javon, who stated that he had been watching television and playing games with defendant, Smith, and Willie in the back room of his apartment. He told Francis that defendant and Smith went to Subway around 2:45 or 3 a.m. Javon never told Francis that he had been downstairs in Christopher's apartment or that there had been a family party for Christopher's girlfriend.

¶ 18 Francis and Woitel interviewed defendant at the police station after he was arrested. Francis advised defendant of his *Miranda* rights and defendant agreed to speak. Francis and Woitel spoke with defendant twice on October 9, 2016. The State compiled portions of defendant's two interviews into two video clips and played the clips to the jury for impeachment purposes. Defense counsel reviewed the portions of the interviews and did not object. The parties stipulated that the parts of the interviews that were played for the jury were portions of defendant's statement.

¶ 19 In the video clips, defendant told the detectives that during the night of the incident he had been at his aunt's house smoking weed and shooting dice. At about 3 a.m., he left his aunt's house to get more weed and Subway for his cousin Javon. During the interview, one of the detectives told defendant that "[a]ll these questions we are asking you, we already know the answers to. *** So we already know you are bull***" The detectives told defendant that the victim had positively identified him and then continued to ask defendant about the details of his night. Defendant continued to talk to them about what happened, including that he was at his aunt's house smoking weed and playing dice downstairs in Christopher's apartment with Christopher, Willie, and Javon. He stated he left his aunt's apartment at around 2:50 or 3 a.m. to get more weed and Subway for his cousin. At one point, one of the detectives told defendant that, "you understand there's a lot of holes in your story.*** there's a ton of holes in your story *** your stuff just doesn't make sense, man." One of the detectives stated that he did not doubt that defendant had gone to Subway that night, but doubted that defendant had not been part of the robbery. Defendant responded, "I wasn't part of that robbery," explaining he did not know how to drive. At one point, one of the detectives told defendant he wanted to know the truth, that he already knew it, and that defendant was not being fully honest.

¶ 20 Francis testified that during his interview, defendant never stated that he went to a gas station on Cottage Grove, tried to use Smith's debit card to purchase cigars, tried to use the ATM machine to get cash, or went to a second gas station to try to purchase cigars. On cross-examination, Francis testified that defendant never stated that he committed a robbery on October 9, 2016, was on the west side of Chicago that night, or had a weapon that night. Francis acknowledged that in the interview, he told defendant, "Your aunt alibied you up" and that this absolved him of the robbery. Defense counsel asked Francis whether "[t]hroughout the portion of

the video that you watched, were the majority of [defendant's] responses to you, in the form of yes, sir, no, sir, when he was asked a yes or no question?" and Francis responded, "I don't know if they were yes, sir or no, sir. They were responses, but —". Counsel then asked Francis, "Do you recall on the video you just watched, [defendant] saying yes, sir to you?" The court sustained the State's objection, noting that the "the video does speak for itself."

¶ 21 Before closing arguments, defense counsel asked the trial court to instruct the jury on the lesser-included offense of robbery. The court asked defense counsel what evidence showed that the case was anything other than armed robbery, stating that the evidence showed that the victim was stopped in an alley and that defendant "put a gun 12 inches from him, pointed it at his face, and demanded property." Defense counsel stated that if the jury took issue with whether there was a gun, then the jury could have concluded that only a robbery occurred. The court denied defendant's request for a robbery instruction, stating that there was no evidence supporting the instruction.

¶ 22 During closing argument, defense counsel argued that defendant did not commit the offense and that Ferneice provided an alibi for him. During jury deliberations, the jury sent the court a note, stating, "[C]ould we please have a copy of Bilinger Delinois[']s testimony from yesterday?" The court returned a note informing the jury that "you will receive the transcript shortly." The jury subsequently found defendant guilty of armed robbery.

¶ 23 Defendant filed a motion for a new trial arguing, *inter alia*, that Delinois's identification was unreliable and that the trial court erred when it denied defense counsel's request to instruct the jury on the lesser-included offense of robbery. The trial court subsequently denied defendant's motion for a new trial. With respect to defendant's argument regarding the robbery instruction, the court stated:

> "Certainly, there are cases where that instruction could be given based upon the testimony before the court. In this case the only testimony before the court was that there was in fact an armed robbery that was committed upon the victim. There is no testimony it was anything less else than an armed robbery. The testimony was that it was a weapon. *** In this case it was clearly either an armed robbery or not. That wasn't the issue. The issue was this the defendant who committed that offense."

The court sentenced defendant to 21 years in prison, which included a 15-year firearm enhancement.

¶ 24 II. Analysis

¶ 25 Defendant argues that his trial counsel was ineffective because she failed to request a jury instruction on aggravated robbery. He asserts that aggravated robbery is a lesser-included offense of armed robbery and that the evidence at trial supported a conviction for aggravated robbery. He claims he was prejudiced by counsel's failure to request the aggravated robbery instruction because there was a reasonable probability that had the jury been given that option, the jury would have convicted him of the lesser-included offense of aggravated robbery.

¶ 26 We review claims of ineffective assistance of counsel under the standard set forth in *Strickland v. Washington*, 466 U.S. 668 (1984). *People v. Manning*, 241 Ill. 2d 319, 326 (2011). Under this standard, to establish a claim for ineffective assistance of counsel, a defendant must show that (1) counsel's performance was deficient and (2) the deficient performance prejudiced the defense. *Strickland*, 466 U.S. at 687. When determining whether counsel's performance was deficient, there is a strong presumption that counsel's action or inaction was the result of sound trial strategy. *People v. Carlisle*, 2015 IL App (1st) 131144, ¶ 72. "[T]he decision whether to tender a lesser-included offense instruction partakes of, and is unavoidably intertwined with, strategic

trial calculations, matters within the sphere of trial counsel." *People v. Medina*, 221 Ill. 2d 394, 406 (2006). Further, "identifying the existence of a lesser-included offense does not necessarily create an automatic right to an instruction on that offense." *People v. Greer*, 336 Ill. App. 3d 965, 978 (2003). Rather, a defendant is only entitled to have the jury instructed on a lesser-included offense if the evidence presented would permit a jury to rationally find him guilty of the lesser-included offense and acquit him of the greater offense. *Id*.

¶ 27 To establish prejudice, a defendant must show that, but for counsel's deficient performance, there was a reasonable probability that the result of the proceedings would have been different. *People v. Hicks*, 2015 IL App (1st) 120035, ¶ 52. A defendant must establish both prongs, *i.e.*, that his counsel was deficient and that he was prejudiced. *Strickland*, 466 U.S. at 697. We therefore may resolve an ineffective assistance of counsel claim based only on the prejudice prong. *People v. Patterson*, 2014 IL 115102, ¶ 81. Our review of this issue is *de novo*. *People v. Campbell*, 2014 IL App (1st) 112926, ¶ 38.

¶ 28 Proceeding directly to the prejudice prong, we conclude that defendant has not demonstrated that had his trial counsel requested the aggravated robbery instruction, there was a reasonable probability that the trial outcome would have been different.

¶ 29 To convict defendant of armed robbery, as charged here, the State had to prove that he (1) knowingly took the victim's property; (2) by the use of force or by threatening use of force; and (3) carried on his person or was otherwise armed with a firearm. 720 ILCS 5/18-1(a) (West 2016); 720 ILCS 5/18-2(a)(2) (West 2016). A firearm is defined in section 1.1 of the Firearm Owners Identification Card Act as "any device, by whatever name known, which is designed to expel a projectile or projectiles by the action of an explosion, expansion of gas or escape of gas," but excludes, among other devices, any pneumatic gun, spring gun, paint ball gun, or BB gun. 430

ILCS 65/1.1 (West 2016); 720 ILCS 5/2-7.5 (West 2016). The State need not present the firearm as evidence for the jury to find that the defendant possessed one. *People v. Jackson*, 2016 IL App (1st) 141448, ¶ 15. Rather, "unequivocal testimony that the defendant held a firearm constitutes circumstantial evidence sufficient to show the defendant was armed within the meaning of the statute." *Id.*

¶ 30 To convict defendant of aggravated robbery, the State must prove that defendant (1) knowingly took the victim's property; (2) by force of by threatening use of force; and (3) he indicated verbally or by his actions to the victim that he was presently armed with a firearm or other dangerous weapon. 720 ILCS 5/18-1(b)(1) (West 2016); *People v. Johnson*, 2015 IL App (1st) 141216, ¶ 41. For aggravated robbery, the State need not prove that the defendant had a firearm or other dangerous weapon in his possession when he committed the robbery. *Johnson*, 2015 IL App (1st) 141216, ¶ 41.

¶ 31 Initially, we note that defendant does not contest the sufficiency of the evidence with respect to whether he committed an offense. Rather, he argues that had the jury been given an aggravated robbery instruction, the jury could have questioned whether the gun to which Delinois testified was actually a firearm such that the jury could have found him guilty of only aggravated robbery.

¶ 32 Here, the evidence overwhelmingly showed that defendant was armed with a firearm when he robbed Delinois. Delinois testified in detail about the armed robbery and defendant's possession of a firearm. He testified that the area was well lit and that a streetlamp was about five feet away from him. He testified that defendant "pulled out a gun" and pointed it in his face as he told him to "[g]ive me everything you got." Defendant was about one foot away from Delinois when defendant put the gun in Delinois's face and Delinois testified that he was "looking at the barrel"

of the gun, which he described as a black revolver. Accordingly, Delinois provided unequivocal testimony that defendant possessed a firearm and pointed it within one foot of his unobstructed view.

¶ 33 Defendant does not dispute that Delinois believed that the object defendant pointed at him was a gun. Instead, he asserts that the State had to prove that the gun was actually a firearm as defined by Illinois law and that, other than Delinois's testimony, there was no evidence that a firearm was involved in the offense. We disagree. As discussed above, unequivocal testimony that the defendant held a firearm constitutes sufficient circumstantial evidence sufficient to show the defendant was armed within the meaning of the statute and the State need not prove that the gun was a firearm as defined by Illinois statute. *People v. Clark*, 2015 IL App (3d) 140036, ¶ 20.

¶ 34 Accordingly, given the overwhelming evidence that defendant possessed a firearm when he robbed Delinois, had counsel requested an instruction for aggravated robbery, there is no reasonable probability that the jury would have found him guilty of aggravated robbery rather than armed robbery. Thus, defendant has not established prejudice and so has failed to establish a claim for ineffective assistance of counsel based on counsel's failure to request an instruction for aggravated robbery.

¶ 35 Defendant next contends that trial counsel was ineffective when she failed to seek further redaction of his interrogation video that was shown to the jury during the testimony of the State's rebuttal witness, Detective Francis. He asserts that during the 30-minute video showing certain parts of his interrogation, the detectives accused him of lying at least 21 times. He argues that the video contained prejudicial opinion testimony regarding his veracity and invaded the province of the jury by making a credibility determination. Defendant argues that the evidence was closely balanced and the detectives' opinions that he was lying could have tipped the scales in favor of the

State. He asserts his counsel should have requested that the video be further redacted to eliminate the detectives' statements regarding his credibility.

¶ 36 As previously discussed, to establish a claim of ineffective assistance of counsel, a defendant must show that counsel's performance was deficient and that counsel's deficient performance prejudiced the defendant. *People v. Dunbar*, 2018 IL App (3d) 150674, ¶ 51.

¶ 37 Here, we find that trial counsel's decision not to request further redaction of the interrogation shown on the video clips was a matter of trial strategy. Further, even if counsel had requested further redaction of the interrogation, defendant cannot establish prejudice because the result of the trial would not have been different.

¶ 38 Generally, it is "improper to ask a witness on cross-examination whether an adverse witness's testimony is truthful." *People v. Kokoraleis*, 132 Ill. 2d 235, 264 (1989). However, statements of past opinions are admissible. *People v. Martin*, 2017 IL App (4th) 150021, ¶ 30. Further, statements made by police officers when questioning a defendant, as here, "including opinions and observations regarding the defendant's guilt or credibility, are generally relevant and admissible to demonstrate the statements' effects on the defendant, to provide context to the defendant's responses, or to explain the logic and course of the officers' interview or investigation." *People v. McCallum*, 2019 IL App (5th) 160279,¶ 56. Here, we initially note that Francis did not testify about his present opinion regarding defendant's credibility or innocence at trial. Rather, in the State's rebuttal case, the State played a video of portions of defendant's interrogation with Francis for impeachment purposes.

¶ 39 Defense counsel's cross-examination of Francis about the interview and her comments in closing argument demonstrate that she used the portion of defendant's interview played at trial to show that he maintained his innocence throughout the interview and that he had an alibi.

¶ 40 During cross-examination with respect to the interrogation shown on the video, Francis acknowledged that defendant never admitted during the interview that he committed robbery, was on the west side of Chicago that night, or had a weapon. Francis also acknowledged that he told defendant that, "Your aunt alibied you up" and that this absolved him of the robbery. In closing, defense counsel referred to what the jury saw on the video clips and asserted that defendant maintained his innocence throughout the questioning:

> "And what he never did is say, I committed this, not ever, not once. Throughout the entire hours of questioning, never did he say it. He also didn't leave out that he went to buy weed. *** He's telling the truth. He's telling what happened on that day. *** That's what he's doing. He's using his words, his way, because he's telling what happened. He says over and over, even after the Detective says you're lying. Even after the Detective says, we don't believe you. He says, over and over, I didn't do it. I didn't commit this robbery. I wasn't there. I wasn't on the West Side. I didn't do it. I did not do it, and he explained that over and over. And the Detective even said, you're Aunt alibied you. The Detective knew it. He also said to Michael, you're absolved from this robbery. *** So, maybe, his interview with the Detective wasn't perfect; but he told what he could tell; and he told it in his way; and he repeatedly said the same thing, which was, I didn't do it."

Accordingly, given defense counsel's use of the interview during cross-examination of Francis and closing arguments to show that defendant maintained his innocence throughout the questioning and had an alibi, the record shows that counsel's decision not to request further redaction was a matter of trial strategy. See *People v. Dunbar*, 2018 IL App (3d) 150674, ¶ 53 (concluding that defense counsel was not ineffective for failing to file a motion to suppress, finding that counsel's decision was a matter of trial strategy as counsel used "the contested portions of the

interview to highlight and disparage law enforcement's usage of interrogation techniques, while simultaneously painting defendant as calm, forthright, and truthful").

¶ 41 Nevertheless, defendant cannot establish prejudice because he cannot establish that the result of the trial would have been different had counsel requested further redaction of the video. As discussed above, Delinois provided unequivocal testimony that defendant possessed a firearm and pointed it in Delinois's face while demanding his property. The area was well lit, and defendant was within about one foot away from Delinois such that Delinois "was looking at the barrel" of the gun. Later that evening when Delinois's car had been located, Delinois went to that area and identified both his car and defendant as the person who robbed him. Given the jury's guilty finding, it necessarily found Delinois's testimony credible, which was its prerogative in its role as the fact finder. See *People v. Moody*, 2016 IL App (1st) 130071, ¶ 52. The testimony of one credible and positive witness is sufficient to convict, even if contradicted by the defendant. *People v. Williams*, 252 Ill. App. 3d 1050, 1060 (1993). Thus, Delinois's testimony alone was sufficient to support defendant's conviction.

¶ 42 Further, Sargent Van Slyke corroborated Delinois's testimony, as she testified that Delinois and another individual informed her that they were in the area looking for his stolen car and that his cell phone had been last located in that area, after which she saw a vehicle matching the description of Delinois's car drive past her. She identified one of the men inside the vehicle as defendant. Delinois arrived at the scene and identified defendant. Detective Woitel testified that he obtained video footage from the gas station from the early morning hours of October 9, 2016, which showed a vehicle matching the description of Delinois's vehicle pull up to the gas station and Delinois identified defendant as one of the men in that vehicle. Accordingly, considering the overwhelming evidence against defendant, defendant has not established that the result of the trial

would have been different had counsel requested further redaction of defendant's interrogation video. Thus, defendant has failed to establish prejudice, and therefore has failed to state a claim for ineffective assistance of counsel based on counsel's failure to request further redaction of the interrogation video played for the jury.

¶ 43 III. Conclusion

¶ 44 Defendant has failed to establish claims for ineffective assistance of counsel. For the reasons stated above, we affirm defendant's conviction.

¶ 45 Affirmed.