

No. 1-12-0367

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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. 09 CR 2787
)	
JOSÉ ESTRELLA,)	Honorable
)	Timothy J. Joyce,
Defendant-Appellant.)	Judge Presiding.

JUSTICE FITZGERALD SMITH delivered the judgment of the court.
Presiding Justice Howse and Justice Lavin concurred in the judgment.

ORDER

- ¶ 1 **Held:** Where defendant was not prejudiced by the admission of his co-defendant's statement, counsel was not ineffective for declining to sever defendant's trial from that of his co-defendant; affirmed.
- ¶ 2 Following a joint bench trial, defendant José Estrella was convicted of first degree murder and sentenced to 22 years in prison. On appeal, defendant contends his counsel was ineffective for declining to sever his trial from that of his co-defendant, Rafael Padilla. We affirm.

¶ 3 The record reveals that defendant, Padilla, and four other people were charged with first degree murder for their involvement in the beating death of the victim, Juan Reyes. The beating was allegedly a gang violation, which the victim incurred after he argued with a relative of another gang member within the Spanish Cobras. Defendant and Padilla were tried together in a joint bench trial.¹ Among the evidence admitted at the trial was a transcript of Padilla's interview with the police, in which he confessed to participating in the beating and mentioned defendant at various points. The State also presented witnesses who testified they observed defendant strike the victim. Defendant did not contest that he was at the scene, but maintained he was separate from the group that inflicted the beating.

¶ 4 At a proceeding prior to trial, the issue of a severance was raised when the State noted that it expected to use Padilla's statement in evidence. In response, the court stated that as a matter of course, it "would pretty much have to grant" a severance and "might even do it *sua sponte*" because defendant was not able to cross-examine Padilla's statement. However, there was no further mention of a potential severance at that point.

¶ 5 When trial began, the issue of a severance arose again. There, when the court mentioned Padilla's statement and asked whether either defendant requested a severance, both defendant's and Padilla's attorneys declined. The State presented the testimony of police officers and three eyewitnesses—Kenneth Holowka, Ermelida Luera, and Jackson Gomez.

¶ 6 For the State, Officer Mario Segoviano testified that around 9:30 p.m. on July 23, 2007, he responded to a call of a battery in progress at 2748 West Haddon in Chicago. When he

¹ This court affirmed Padilla's conviction in a separate appeal. *People v. Padilla*, No. 1-12-0366 (2013) (unpublished order under Supreme Court Rule 23), *appeal denied*, No. 117062 (January 29, 2014).

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arrived, he observed a large crowd gathered around a person lying on the ground, later identified as the victim. Initially, the officer was told that the victim was only drunk, but he was eventually informed that the victim had been beaten. Officer Segoviano called for an ambulance and spoke to Kenneth Holowka, who pointed out one of the offenders. Officer Segoviano gave chase, but was unable to apprehend him.

¶ 7 Kenneth Holowka, who had known the victim for 23 years and knew he was a Spanish Cobra, had spent the afternoon and evening of July 23 with the victim. In the afternoon, Holowka picked up the victim in Holowka's Crown Victoria from the 2700 block of West Haddon and the two men went to an Applebee's restaurant for lunch. There, they met a waitress who the victim knew and two women who were also having lunch. After socializing for a while, Holowka, the victim, and the women went to a bar.

¶ 8 After a few hours at the bar, where Holowka had between two and four drinks, the group went to the 2700 block of West Haddon and socialized with other people who were present. At one point, Holowka observed the victim arguing with a woman. After the victim walked away and the woman entered a house, a man in a truck pulled up and asked the victim to leave. Holowka also advised the victim to leave, and as Holowka, the victim, and two of the women they had met earlier returned to Holowka's car, a group of teenagers approached the car and removed the victim. Holowka tried to call 911, but was told the situation did not concern him and to put down his phone. As two people stood by Holowka, about seven or eight others beat the victim with their hands and feet. One or two minutes later, when the two people watching him had left, Holowka got into his car, called 911, and drove to pick up the women, who had

since left the car and walked away. When Holowka returned to the victim, he was lying on the ground and looked unconscious.

¶ 9 Holowka further testified that during the beating, he had an opportunity to observe the offenders and got a good look at some of their faces. When the police arrived, in addition to pointing out the offender who was then chased, Holowka told the police that the offenders consisted of "[t]hree blacks [and] seven Hispanics" and described what the offenders were wearing. At trial, Holowka made an in-court identification of defendant as one of the offenders and stated he observed defendant strike the victim numerous times. Holowka also identified defendant from a lineup on November 14, 2007. Holowka admitted his background included a conviction for financial identity theft and other theft convictions.

¶ 10 Ermelida Luera, one of the women that Holowka and the victim had met at Applebee's, testified that when the group arrived on Haddon, the block was "filled with people." Luera was introduced to a man in a wheelchair and a few other people who were standing with him. At one point, Luera went to a gas station to use a rest room and when she returned, the victim walked toward her, followed by a woman who was cursing at him. The victim told the woman he did not care "who she was or who she knew" and the woman responded, "well,***you'll see what happens" and walked away.

¶ 11 A couple minutes later, a truck and a van pulled up in the middle of the street and several men jumped out from the vehicles and spoke to the woman. Two big men had their hands folded and looked in the direction where Luera was standing with the victim and Holowka. Because the victim was "already pretty drunk," Luera told Holowka they should leave and take the victim home. When the victim was halfway in the car, three teenagers approached, yanked him out, and

dragged him to a nearby tree. Suddenly, more than a dozen teenagers jumped on the victim and kicked, punched, and stomped on him. After one or two minutes, the offenders walked away.

Luera testified that she could see the faces of some of the people involved.

¶ 12 A certified nursing assistant, Luera could see that the victim was gasping for air and checked his pulse, which she could barely feel. When the police arrived, an officer told Luera to get away from the victim. Luera waited nearby to make sure an ambulance came for the victim and then left, not knowing how serious the victim's condition was. A few days later, after Luera learned that the victim had died, she called the police and told them what happened. On July 30, 2007, Luera identified defendant as one of the offenders from a photo array. On November 14, 2007, she viewed lineups and identified defendant and Padilla as individuals involved in the beating. Luera also made an in-court identification of both defendant and Padilla as individuals who beat the victim.

¶ 13 Jackson Gomez, who lived at 2748 West Haddon on the date of the offense, testified that he observed the beating from his third-floor window. Jackson testified that he was a former Spanish Cobra and had not been affiliated since 2005. Around 7:30 or 8 p.m. on July 23, Gomez heard arguments coming from outside his apartment and looked out the window, where he observed the victim arguing with a woman. Gomez returned to his couch, but 15 minutes later he heard commotion again and observed that defendant was on the phone saying "we have to call somebody." Gomez believed that someone called the woman's brother, who was a ranking member of the Spanish Cobras known as Brother Ray.

¶ 14 Subsequently, a van pulled up in front of the woman's house and a group of people got out, including Brother Ray and Padilla. At some point, the victim tried to leave, but he was

dragged out of a car and told to stay. The victim stood on the sidewalk for 10 minutes before the beating began. After someone approached the victim and hit him in the temple, the entire group rushed in and struck the victim with their hands and feet. According to Gomez, defendant and Padilla were among the people beating the victim. Gomez testified that he could "see everybody perfect." After about two minutes, someone yelled to stop and the group dispersed.

¶ 15 Gomez did not speak with the police until he was arrested a few days later after the police executed a search warrant at his home and found cocaine and bullets. At the police station, Gomez was asked about what happened outside his building. Gomez told the police what he saw, but was not offered a deal in exchange and was later sentenced to three years in prison for his offense. On November 14, 2007, Gomez viewed a lineup and identified defendant and Padilla as participants in the beating. Gomez acknowledged that his background included convictions for possession of a controlled substance, unlawful use of a weapon, and aggravated unlawful use of a weapon.

¶ 16 In December 2008, Gomez signed an affidavit with defendant's counsel that essentially contradicted his testimony. During an interview with counsel while Gomez was in jail and at which the affidavit was written and signed, Gomez stated that he told the police he had information about the beating because the police had threatened to charge him with possession of drugs that were not his. Gomez told counsel he did not see the victim's beating and he gave police information he had learned on the street. In his affidavit, Gomez averred that when the beating occurred, he was at McDonald's with his girlfriend.

¶ 17 At trial, Gomez testified that this affidavit was false and he had signed it out of fear for his life. He testified that while he was in jail, eight men came to his cell with homemade knives

and told him he had to "sign this affidavit" or his "life is going to be a waste." The men gave Gomez a blank piece of paper to sign and said he would receive a visit from a "lawyer for who I am testifying against" and he had to sign an affidavit with her as well or the men would try to kill him.

¶ 18 Detective Roberto Garcia, who investigated the victim's homicide, testified that Padilla was interviewed at the police station following Padilla's and defendant's arrests on November 13, 2007. The parties stipulated to the transcript of Padilla's interview at the police station. The court again raised the issue of a severance, leading to the following colloquy about Padilla's interview:

"MS. BYRNE [Defense Counsel]: We would be asking that any mention of [defendant] by [Padilla] should not [be] considered by you against [defendant]. It is a collateral matter, Judge, nevertheless I think***we are still in a position even without a severance to be asking the Court not to consider anything that [Padilla] says relative to [defendant].

THE COURT: Which is why I think I broached the issue of severance in the first place.

At the same time, it's a bench trial—so I take it you're actually asking for severance now on [defendant's] behalf. Because if it's a single trial, all the evidence is admitted as to all the defendants. It may have lesser or greater weight to one or the other, but it is a single trial. I don't know what's in the statement.

MS. BYRNE: As I say, Judge, it is on a collateral matter that [Padilla] mentions [defendant's] name.

THE COURT: A collateral matter, you mean something unrelated to the alleged beating of [the victim]?

MS. BYRNE: That's right, it's just peripherally related to it, Judge.

I mean, I've been under the impression that the Court could not consider that sentence or two that [Padilla] states in this transcript that concerns [defendant]. If the Court—if I was mistaken about that, then we are asking for a severance at this time as this comes in.***"

The court then asked for the State's position on a potential severance. The prosecutor responded that he did not believe that Padilla inculpated defendant "in any meaningful fashion." While Padilla "might have mentioned [defendant's] name in passing once or twice," Padilla "certainly wasn't blaming it on him or anything like that."

¶ 19 Defense counsel asked to be excused to consider the matter and after a brief recess, she withdrew her request for a severance. The court stated it "certainly won't do that *sua sponte*" as it had "no knowledge what the statement says at this time."

¶ 20 Summarized below, the lengthy transcript of Padilla's videotaped interview at the police station reveals that Padilla initially denied participating, then stated he merely supervised the violation, and eventually confessed to striking the victim.

¶ 21 At first, Padilla maintained he was at a nearby store when the beating occurred and when he arrived at the scene, a crowd had gathered. He claimed that had he been present, he would have defended the victim. The victim was like an uncle to Padilla and the two had "been through

so much." Padilla explained that the beating was a "violation went wrong." A detective asked Padilla who else was present when he arrived at the scene. Padilla named his brother, his cousin, a "white dude" who had been with the victim, and "a lot of females too." When pressed for more names, Padilla added "White Boy," "White Chocolate," and "then it was Shorty—Shorty C."²

¶ 22 Padilla later explained that a person named Ray Dog had ordered the violation against the victim after the victim had a conflict with Ray Dog's sister or niece. Padilla was told to supervise the violation to make sure it did not get out of hand. Padilla asserted his sisters had been present and would confirm that he did not touch the victim, and was instead "the one helping when [the victim] was on the floor." Padilla stated he was close to the victim so it looked like Padilla was hitting him as well. Padilla additionally stated he "took a couple swings***to get them off him." Discussing the police investigation of the beating, Padilla mentioned defendant, stating, "Other people are like—like I ain't going to say no names but like Shorty, you know what I'm saying, he probably uh—I ain't do nothing."

¶ 23 Eventually, Padilla confessed, stating that after a first person punched the victim, others began striking the victim as well. Padilla noticed that he was being watched, "[I]ike ain't you gonna do something," so he punched the victim. After the beating, an ambulance arrived. At some point, Padilla thought "it's Shorty woo-woo-woo it's Shorty (inaudible). I'm thinking right***and I remembered see [the victim] died on the way to the hospital. He ain't die right there."

² "Shorty" was defendant's nickname.

¶ 24 During the interview, the detectives directly questioned Padilla about defendant's participation in the beating. After being asked whether defendant was "in the violation," Padilla and the detectives had the following exchange:

"A. I don't even—I ain't even see straight.

Q. Okay.

A. He probably was.

Q. I know probably (inaudible).

A. Or he was.

Q. All right.

A. But from what I saw I saw a bunch of black dudes. I saw—you saw a whole bunch of black dudes.***"

¶ 25 The detectives also asked whether defendant received a violation. When a detective stated, "I heard Shorty got violated," Padilla responded, "He got violated?" and "I didn't see him get violated. That's what he's saying." When the detective asked again, Padilla responded, "Not that I know of." However, at a later point in the interview, Padilla acknowledged that defendant had received a violation and added "for what though***you know it could've been anything." A detective prompted Padilla that the violation occurred because "[s]upposedly***[defendant] didn't do what he was supposed to do or some nonsense and he got violated by the Cobras***". Padilla responded, "But I (inaudible) all the hitting it wasn't—". Padilla also discussed his sister, Eileen, who had been at the scene and was now afraid because she was being threatened by several men, including defendant.

¶ 26 Returning to the trial testimony, Deputy Chief Medical Examiner Mitra Kalelkar testified that she conducted the victim's autopsy and observed that the victim had 18 injuries about his body. Dr. Kalelkar further testified that the victim died of multiple blunt force injuries and the manner of death was homicide. Additionally, the toxicology report revealed that the victim's blood alcohol level was .297 and this amount of alcohol would have rendered him "pretty inebriated."

¶ 27 The parties stipulated that a forensic investigator lifted seven fingerprints from Holowka's car and sent them to the Illinois State Police Crime Lab for testing and analysis. There, a forensic scientist concluded that one fingerprint taken from the rear passenger window of the car was made by defendant.

¶ 28 After the State rested, defendant presented witnesses who testified about the events of July 23 and about conversations defense counsel had with Luera and Gomez.

¶ 29 Israel Torres, who was legally blind and in a wheelchair due to multiple sclerosis, testified that he was a former Spanish Cobra member and that the victim had been his best friend. On July 23, at around 1 or 2 p.m., he and the victim were on the sidewalk near Haddon and California "chilling" when defendant and Holowka came by. Shortly afterward, the victim, defendant, and Holowka went to look at Holowka's car. Upon their return to Torres, the victim and Holowka left to play pool.

¶ 30 John Vergara testified that he was a volunteer interrupter for Cease Fire, an organization that sends volunteers to prevent gang violence. He knew both the victim and defendant. After receiving a phone call from the Cease Fire office at about 8:30 p.m. on July 23, Vergara went to the 2700 block of West Haddon, where he observed a little crowd under a tree and a Crown

Victoria that soon drove off. Defendant walked over to Vergara. When asked what was going on, defendant replied that he did not know and that "[s]omething was going on" with the victim. When the fight broke out, Vergara suggested that he and defendant cross the street. After the fight, Vergara and defendant walked back and observed the victim on the ground, whereupon defendant tried to revive him. Two women approached and one yelled out that she was a nurse. Additionally, the Crown Victoria returned and the driver, "who appeared drunk out of his mind," yelled and screamed that everyone was going to jail. Vergara also testified that he saw Gomez that evening. After the ambulance arrived, Gomez drove onto Haddon with his girlfriend and asked Vergara what happened.

¶ 31 On cross-examination, Vergara stated that he could only see the silhouettes of the people involved in the fight "because it was so dark."

¶ 32 Leah Mayers, who sometimes assisted defense counsel with cases, testified about a conversation she was present for between defense counsel and Luera that took place on June 10, 2010 at the courthouse. Mayers testified that defense counsel asked Luera what she saw the night of July 23, and Luera replied that she "saw people" and "saw men or people kicking and punching someone on the ground." When defense counsel showed a picture to Luera and asked "what did this guy do[?]", Luera responded she did not remember and "[w]hatever I said before." When asked again, Luera replied, "I don't know. They all looked alike to me." Mayers further testified that in the hallway where the conversation took place, some men were present, including Vergara and a man in a wheelchair who had been at the scene of the beating. When defense counsel asked Luera if she recalled seeing the man in the wheelchair on July 23, Luera became physically upset and said she "[didn't] even want to be here" and left.

¶ 33 Rolando Galindo, who was an intern in defense counsel's office, testified about the conversation he was present for between defense counsel and Gomez while Gomez was in jail in December 2008. There, Gomez stated that he "did not want for [defendant] to do any time in prison for something he wasn't involved in." Gomez further stated that he had initially identified defendant to the police because the police had threatened him that "if he didn't come up with something big," Gomez would be charged with additional amounts of drugs. Galindo recalled that Gomez was polite, friendly, and very cooperative and engaging during the interview.

¶ 34 Following closing arguments, the court found defendant and Padilla guilty of first degree murder. In discussing the testimony of various witnesses, the court noted there was testimony that Holowka drank "some appreciable amount" while he was with the victim. The court referred to Gomez as "another individual who has got what we could again call baggage." Further, Gomez's testimony that the victim was removed from the car 10 minutes before the beating began "seems inconsistent with what we anticipate how people would conduct themselves." Additionally, while with the police, Gomez may have thought to himself "perhaps if I give them something this will all go better for me down the line," indicating a "potential bias to lie" and implicate others. As to Gomez's affidavit and his interview with defense counsel, the court stated it believed Galindo, but remarked, "I suppose there are Spanish Cobras in every division of the Cook County jail." Further, the court stated that the circumstances "make it clear that resolution of this case just based on the testimony of [Holowka] and [Gomez] as I indicated they've got some baggage."

¶ 35 The court also discussed Vergara's testimony, stating that "[i]f [Vergara] came in here this morning, took the witness stand again, swore an oath to testify and testified that my shirt was white, I would not believe him. And the record will reflect that my shirt is white."

¶ 36 Moving to Padilla's statement, the court stated that Padilla "[s]eemed almost as unenthusiastic as [Vergara] about discussing the involvement of any other persons. But the statement does tend to confirm that which [Gomez] said, perhaps [Luera] as well."

¶ 37 The court found Luera to be credible, stating she had "no connection to anybody," except for having spent the day with the victim and Holowka, whom she had just met. The court found Luera to be a witness with "no beef, no agenda, no motive, no bias to say yeah or nay about anyone." The court further stated that Luera's interaction with defense counsel in the courthouse had to be viewed in context, where "there were men in the hallway, including [Torres]." The court believed Luera's testimony and "believe[d] her identifications of [defendant] and [Padilla] without qualification," which "resolves much of the baggage."

¶ 38 After the court issued its ruling, defendant filed a motion for a new trial or in the alternative, to reopen trial to present additional defense witnesses. At the hearing on the motion, defense counsel presented two witnesses who testified that defendant was not part of the group that beat the victim.

¶ 39 Jason Ares testified that he knew defendant from the neighborhood and learned on September 22, 2011 that defendant was in jail for the victim's beating. Defendant saw Ares in the courthouse and asked Ares to contact his attorney so that his attorney could talk to him about defendant's case. Ares further testified that on July 23, 2007, around 8:30 or 9 p.m., he observed the victim, Holowka, and two women on the 2700 block of West Haddon. At some point, the

victim got into a fight with a woman. When the woman said she was going to call her brother, Ares and defendant, who was also present, told the victim to leave. When the beating took place, defendant was with a person who worked for Cease Fire. Ares testified that he did not recognize any of the people who participated in the beating. On cross-examination, Ares admitted he had been intoxicated that night and when the prosecutor asked whether he was "drunk to the point where you don't know what was going on out there," Ares responded "[p]retty much, but I know that somebody got beaten."

¶ 40 The second witness, Jose Antonio Medina, testified that he was "confused with everything" and had "various problems" as a result of his impending testimony in court. Medina had met defendant's mother on the street when she was looking for people who knew about the incident. Medina had told her he had seen part of it and defendant's mother asked if he could testify. Medina testified that on the day of the beating, he was dropped off from work on West Haddon around 8 or 8:30 p.m. He observed the victim argue with a woman who then made a phone call. Medina also saw defendant, who asked Medina what was going on. Prior to the beating, defendant walked over to a man with tattoos, and defendant was still with that man when the beating ended. When shown a picture of defendant in court, Medina initially identified him as someone who was on the driver's side of a car at the scene. Medina also could not identify Padilla in court, did not remember seeing Padilla on July 23, and stated "there was a lot of them" on Haddon that night and because "it wasn't my area or anything," he "didn't [really] worry about them."

¶ 41 Following arguments, the court found that although defense counsel was diligent and could not have found Ares and Medina prior to trial, the two witnesses were not credible. The

court stated that, like Vergara, Ares and Medina testified that defendant did nothing, but were unable to offer other details about what any other people were doing during the beating. The court found Medina to be "as equally unbelievable as [Vergara] and [Ares]."

¶ 42 After a subsequent sentencing hearing, defendant was sentenced to 22 years in prison.

¶ 43 On appeal, defendant contends his counsel was ineffective because she declined to sever his trial from Padilla's, thus allowing Padilla's confession to be admitted as evidence against him. Defendant asserts that his counsel inaccurately recalled that defendant was only briefly mentioned on a collateral matter. According to defendant, Padilla's confession provided harmful evidence of defendant's guilt through statements that defendant participated in the beating and that defendant had threatened a witness with physical violence. Defendant argues that when his counsel repeatedly declined to sever the trials, she allowed this harmful evidence of defendant's guilt to be admitted through hearsay statements that he did not have the chance to confront. Defendant further asserts that the admission of Padilla's statement was prejudicial because the testimony of the State's witnesses had significant weaknesses, there was little physical evidence linking defendant with the incident, and the court relied on Padilla's confession in finding defendant guilty.

¶ 44 Claims of ineffective assistance of counsel are subject to a two-prong test: 1) the defendant must show that counsel's performance was deficient; and 2) the defendant must show that the deficient performance prejudiced the defense. *Strickland v. Washington*, 466 U.S. 668, 687 (1984). As to performance, a defendant must show that his counsel's performance fell below an objective standard of reasonableness. *People v. Evans*, 209 Ill. 2d 194, 220 (2004). A court must indulge a strong presumption that counsel's conduct falls within the wide range of

reasonable professional assistance and that, under the circumstances, the challenged action might be considered sound trial strategy. *Strickland*, 466 U.S. at 689. As to prejudice, a defendant must establish that there is a reasonable probability that but for the error, the result of the proceeding would have been different. *People v. Albanese*, 104 Ill. 2d 504, 525 (1984). A reasonable probability of a different result is not merely a possibility of a different result, but is a probability sufficient to undermine confidence in the outcome. *Evans*, 209 Ill. 2d at 220. The benchmark for judging any claim of ineffectiveness is whether counsel's conduct so undermined the proper functioning of the adversarial process that the trial court cannot be relied on as having produced a just result. *Strickland*, 466 U.S. at 686. Additionally, because a defendant must satisfy both the performance and prejudice prongs, the failure to establish either is fatal to the claim. *People v. Caffey*, 205 Ill. 2d 52, 106 (2001).

¶ 45 Generally, defendants who are jointly indicted are to be jointly tried unless fairness to one of the defendants requires a separate trial to avoid prejudice. *People v. Bean*, 109 Ill. 2d 80, 92 (1985). Two types of prejudice are likely to require separate trials for jointly indicted defendants. *Id.* at 93. The first type occurs when a co-defendant made hearsay admissions that implicate the defendant, which can result in a denial of the defendant's constitutional right of confrontation if the hearsay admission is admitted against him and the defendant is unable to cross-examine the co-defendant. *People v. Daugherty*, 102 Ill. 2d 533, 541 (1984). See also *Bruton v. United States*, 391 U.S. 123 (1968). The second type occurs when defendants' defenses are so antagonistic that a severance is imperative to ensure a fair trial. *Daugherty*, 102 Ill. 2d at 542.

¶ 46 Here, defendant contends the first type of prejudice required a separate trial where Padilla's statement implicated defendant and Padilla did not testify. To infringe upon the right of confrontation, the confession or admission need not expressly state that the defendant was involved in the offense, and it is sufficient that the confession or admission clearly imply the defendant's guilt when considered in light of other evidence against the defendant. *People v. Duncan*, 124 Ill. 2d 400, 410 (1988). Here, Padilla's confession placed defendant at the scene of the beating—a fact that defendant did not contest at trial, as Vergara, Ares, and Medina also placed defendant at the scene, though separate from the group that actually beat the victim. When asked whether defendant actually participated in the beating, Padilla said defendant "probably was" or "he was." Padilla also told police that defendant threatened Padilla's sister, who had been present during the incident.

¶ 47 Even assuming that the content of Padilla's statement was such that counsel acted unreasonably in declining a severance, defendant cannot prevail because he was not prejudiced by the statement's admission. Padilla's statement was not a significant factor in defendant's conviction. After discounting Gomez's and Holowka's testimony, the court heavily relied on the testimony of Luera, who was seen as unbiased and identified defendant as an offender in a photo array, a line-up, and at trial. The court believed her identification "without qualification." As the court noted, Luera's hesitancy with defense counsel in June 2010 can be attributed to the presence of the men in the hallway. Because Luera's testimony alone was sufficient to convict defendant and the court relied on it so heavily, Padilla's statement played a minimal role in the outcome of the trial and a severance would not have changed the result. See *People v. Thomas*, 116 Ill. 2d 290, 303 (1987) (severance not required where the State presented other evidence of

the defendant's guilt apart from a co-defendant's statements and the statements did not add substantial weight to the State's case); *People v. Rosario*, 180 Ill. App. 3d 977, 982 (1989) (defendants were not denied effective assistance of counsel where statements were not crucial links in the State's case against them, which included eyewitness testimony); *People v. Carter*, 168 Ill. App. 3d 237, 250 (1988) (where there was sufficient evidence of defendant's guilt through other testimony, defendant failed to show the result would have been different had counsel moved for a severance). Because defendant has failed to show a reasonable probability of a different outcome if the trials had been severed, he has not shown he was prejudiced and therefore he was not denied effective assistance of counsel.

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

¶ 49 Affirmed.