

2011 IL App (2d) 091144-U
No. 2—09—1144
Order filed June 29, 2011
Modified upon denial of rehearing August 3, 2011

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IN THE
APPELLATE COURT OF ILLINOIS
SECOND DISTRICT

THE PEOPLE OF THE STATE)	Appeal from the Circuit Court
OF ILLINOIS,)	of Lake County.
)	
Plaintiff-Appellee,)	
)	
v.)	No. 09—CF—1337
)	
DAVID A. MILLER,)	Honorable
)	Daniel B. Shanes,
Defendant-Appellant.)	Judge, Presiding.

JUSTICE BURKE delivered the judgment of the court.
Justices Schostok and Hudson concurred in the judgment.

ORDER

Held: Defendant was proved guilty beyond a reasonable doubt of two counts of aggravated discharge of a firearm into a building and in the direction of a vehicle (see 720 ILCS 5/24—1.2(a)(1), (a)(2) (West 2010)), and trial counsel did not render ineffective assistance when he failed either (1) to move for suppression of a gun holster found in defendant’s rented room or (2) to present a theory of self defense or defense of another.

¶ 1 A firearm was discharged from the driveway of a home where defendant, David A. Miller, and other people rented rooms. Two bullets struck an occupied home across the street, and one bullet struck an occupied car that was parked on the street near defendant’s home. Defendant was

identified as the shooter, and following a bench trial, he was convicted of two counts of aggravated discharge of a firearm. See 720 ILCS 5/24—1.2(a)(1), (a)(2) (West 2010). The trial court imposed two concurrent 10-year prison terms.

¶ 2 Defendant appeals, arguing that (1) he was not proved guilty beyond a reasonable doubt and (2) trial counsel rendered ineffective assistance for failing to move to suppress a gun holster and failing to present a defense of self defense or defense of another. We affirm.

¶ 3 **FACTS**

¶ 4 The incident occurred on a Friday evening on March 13, 2009, in the 600 block of May Street in Waukegan. In early 2009, defendant moved into 621 May Street, where he rented an upstairs room near a bathroom. Also residing in the house were Miguel O’Conner, his ex-wife, and his three children. Latasha Timmons, who described herself as Miguel’s girlfriend, and her child also lived there. A woman named Angela and her boyfriend lived there as well.

¶ 5 Eugenio Rivera, the victim, lived across the street at 612 May Street. Rivera testified that, at 9:25 p.m. on March 13, 2009, he was sitting in the dining room with his wife drinking coffee. The lights in the house were on. Rivera heard gunshots fired, and the glass in the living room window, which faced the street, “flew in pieces.” When the police arrived, they found two holes in the exterior of the house that had not been there before. Rivera testified that he did not go outside and did not know where the bullets came from.

¶ 6 Timmons testified that she was in the kitchen of 621 May Street at approximately 9:30 p.m. when she saw defendant run in through the front door and upstairs to his room. Defendant quickly returned downstairs with a gun in his right hand, and he exited through the back door. Five minutes after defendant left the house, Timmons heard several shots fired, but she did not see who fired them.

Defendant entered the house, looked through a window onto the driveway, and talked about how he was “going to get them.” Timmons took the children upstairs to hide. Defendant was in his room with the door locked when the police arrived. Timmons did not speak to the police on the night of the shooting, and she did not see defendant speak with them either.

¶ 7 Timmons testified that the police gang unit came to 621 May Street about two weeks later, on March 30, 2009. The police told Timmons that they “had” defendant outside, and she cooperated with the investigation. Timmons testified that the police told her that O’Conner had given permission to search the house. Timmons led the police to defendant’s room and allowed them to open the door, even though it was locked. Timmons had never been in defendant’s room, and defendant did not give her permission to enter or tell her to allow the police inside. Timmons admitted to making inconsistent statements to the police about O’Conner’s whereabouts during the incident, claiming both that he was outside and in the house with her.

¶ 8 Fredis Saldivar testified that, on the night of the shooting, he hosted a party at his house at 617 May Street, which was next door to and shared a driveway with defendant’s home. Guests at the party included several members of the Norteno gang, who had been in a fist fight with the Surenos gang in McAlister Park earlier that day. Just before the shooting, Saldivar’s friends, Antonio Diaz, Andres Santano, and someone named Manny, were sitting in Saldivar’s black Honda Civic, which was parked at the curb in front of 617 May Street.

¶ 9 Saldivar was looking for a sober driver to drive his friends home when he saw O’Conner and defendant in the driveway shared by 617 and 621 May Street. Saldivar went into the house at 617 May Street and came back outside. While standing in the driveway, defendant showed Saldivar a

gun, which defendant claimed was a .45 caliber. Defendant told Saldivar that some people were “creeping” around the house.

¶ 10 A gray Dodge Durango and red pickup truck were stopped next to Saldivar’s car in the street. Some people with a long metal pipe exited the Durango and began smashing the windows of Saldivar’s car, with his friends still inside. Defendant shot at the car and “everyone” was shooting, so Saldivar ran to the rear of his house. Saldivar saw that defendant was pointing the gun toward the street. When he checked his car later, Saldivar saw a bullet hole in the front tire on the passenger side, and the windows were shattered from the pipe.

¶ 11 Saldivar told the police different stories about the shooting. He variously claimed that he slept through the entire incident, he was too drunk to know what happened, and finally, that he saw only one shot fired before he ran. Saldivar admitted that, initially, he did not tell the police that defendant was shooting, just that “they” were. Saldivar admitted he was angry about his windows but not enough to shoot anyone over it. He saw defendant shoot once but later saw O’Conner holding the gun. Defendant later apologized to Saldivar for shooting his car. Saldivar testified that he did not immediately identify defendant as the shooter because he was “buzzed and scared at the same time.”

¶ 12 O’Conner testified that, a short time before the shooting, he was sitting in the living room at 621 May Street when he saw five cars with gang members circling the block several times. O’Conner was not sure what was happening but suspected the gang members in the cars were going to start shooting at his house. O’Conner recognized one of the men as the person who had stabbed him in the neck several times on a previous occasion.

¶ 13 O’Conner testified that he saw defendant go upstairs and return with his right hand in the pocket of the black hooded sweatshirt he was wearing. Defendant exited through the back door. O’Conner testified that he never saw defendant with a gun. O’Conner led his ex-wife and kids upstairs, and he returned to the first floor.

¶ 14 O’Conner continued to look out the front window, and he saw a gray pickup truck stop next to a black Honda parked at the curb next door at 617 May Street. A person O’Conner identified as “Travieso” exited the truck and opened fire once toward defendant’s location in the driveway. A second person exited the truck with a pipe in his hand and used it to smash the Honda’s windshield and driver’s side window. Defendant immediately shot back toward the truck, which still was stopped in the street. Defendant was alone in the driveway. After firing 10 to 12 shots, defendant ran through the backyard. O’Conner went upstairs to his wife and kids and did not know whether defendant returned home that night. O’Conner testified that he never went outside during the incident.

¶ 15 O’Conner testified that, on March 30, 2009, he overheard defendant speaking to a man named “Thunder” at a funeral for a fellow gang member. Defendant told Thunder “[T]hey were going to shoot the house,” so he “responded.” O’Conner returned home, and the police arrived.

¶ 16 Waukegan police officer Chad Lawrence testified that, on the night of the incident, O’Conner told him that the passengers in the truck were arguing with the passengers in the car and that a man in the car exited and began shooting at the truck. O’Conner said that an Hispanic male, weighing about 200 pounds, standing 5-foot-10-inches tall, and wearing black pants and a hoodie, fled through the driveway and jumped over the backyard fence. O’Conner did not tell the police that someone from his house returned fire or shot at anything. O’Conner told the police that someone got out of

a gold car on May Street and began shooting at the pickup truck, but the police found no evidence that shots were fired from May Street.

¶ 17 At trial, O’Conner identified a gun holster that he saw “in or on” a speaker in defendant’s room at some point after the shooting and before the police searched the house on March 30, 2009. O’Conner also identified an envelope with two pieces of paper that was addressed to defendant. One of the papers was a firearms brochure. O’Conner testified that he found the envelope and papers in the ceiling during a plumbing repair and that he gave them to the police on March 30, 2009, when he met with them. O’Conner identified defendant’s room for the police. O’Conner testified that defendant had told him that he was a “Four Corner Hustler” gang member. O’Conner admitted that he was a member of the Latin Kings gang and had a criminal history of burglary and domestic battery.

¶ 18 Waukegan police officers found five shell casings on the driveway of defendant’s home and two shell casings 10 feet away in the front yard of 617 May Street. The police discovered one bullet hole in the front window and another in an exterior wall of Rivera’s house across the street. A bullet hole and a discharged bullet were found near the front passenger-side tire of Saldivar’s car. The car and Rivera’s home were in the same line of sight from the driveway of 621 May Street.

¶ 19 Officer John Szostak, an evidence technician, collected the shell casings, which had head stamps marking them as Winchester .40 caliber casings. Officer Szostak did not attempt to retrieve bullets from Rivera’s house because he did not want to damage the house further. Officer Szostak did not link the casings to any specific bullets, and he did not know what specific firearm shot the bullets into the house.

¶ 20 Gary Lind, a crime lab technician, determined that all the shell casings were fired from one .40 caliber semi-automatic pistol. However, because Lind had no gun for comparison, he could not identify the gun that fired the bullets. Lind testified that .40- and .45-caliber weapons are different.

¶ 21 Detective Rigoberto Amaro testified that, on March 30, 2009, he went to 621 May Street, where he encountered defendant in the front yard. Defendant identified himself and admitted living there but said the owner was not home. Detective Amaro testified he obtained consent to search the house, but he did not specify who gave him that consent. Detective Amaro admitted that he did not ask defendant for consent to search.

¶ 22 Detective Amaro testified that Timmons identified defendant's room, which was unlocked and open. Detective Amaro walked in and saw a nylon shoulder holster that was hanging on the back of the door. No weapon, casings, gang literature, firearm owner's identification (FOID) card, or other incriminating items were found in defendant's room. The rest of the house was searched, and Detective Amaro returned to the police station where he spoke with O'Conner, who gave him the envelope and firearms brochure that he had brought with him.

¶ 23 Detective Amaro testified that he next spoke with defendant, who waived his *Miranda* rights and produced a FOID card. Defendant changed his story several times during the interview. Defendant denied living at 621 May Street on the date of the incident, but when confronted with the envelope addressed to him, defendant told the police that he had only lived there two weeks and was not present when the shooting occurred. Eventually, defendant admitted witnessing the incident, saying that he saw a group of Nortenos and Surenos shooting at each other.

¶ 24 The trial court found defendant guilty of two counts of aggravated discharge of a firearm and imposed 2 concurrent 10-year prison terms. This timely appeal followed.

¶ 25

ANALYSIS

¶ 26

A. Sufficiency of the Evidence

¶ 27 When a criminal conviction is challenged based upon the sufficiency of the evidence, a reviewing court does not retry the defendant. *People v. Smith*, 185 Ill. 2d 532, 541 (1999). “When reviewing the sufficiency of the evidence, ‘the relevant question is whether, after viewing the evidence in the light most favorable to the prosecution, *any* rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.’ ” (Emphasis in original.) *People v. Bishop*, 218 Ill. 2d 232, 249 (2006), quoting *Jackson v. Virginia*, 443 U.S. 307, 319 (1979); *People v. Collins*, 106 Ill. 2d 237, 261 (1985). Under this standard, a reviewing court must allow all reasonable inferences from the record in favor of the prosecution. *People v. Cunningham*, 212 Ill. 2d 274, 280 (2004). This standard applies in all criminal cases, regardless of the nature of the evidence. *Cunningham*, 212 Ill. 2d at 279. “Testimony may be found insufficient under the *Jackson* standard, but only where the record evidence compels the conclusion that no reasonable person could accept it beyond a reasonable doubt.” *Cunningham*, 212 Ill. 2d at 280.

¶ 28 It is the province of the fact finder to assess the credibility of witnesses, weigh the evidence, decide what inferences it supports, and settle any conflicts in it. *People v. Ortiz*, 196 Ill. 2d 236, 259 (2001). In a bench trial, it is the judge, as the trier of fact, who makes these determinations. *People v. Mullen*, 313 Ill. App. 3d 718, 724 (2000). Our duty is to carefully examine the evidence while giving due consideration to the fact that the finder of fact heard the witnesses. The testimony of a single witness, if it is positive and the witness credible, is sufficient to convict. *Smith*, 185 Ill. 2d at 541. While the credibility of a witness is within the province of the trier of fact, and the finding on such matters is entitled to great weight, the fact finder’s determination is not conclusive. We will

reverse a conviction where the evidence is so unreasonable, improbable, or unsatisfactory as to create a reasonable doubt of defendant's guilt. *Smith*, 185 Ill. 2d at 542.

¶ 29 In this case, defendant was convicted of aggravated discharge of a firearm in that he knowingly or intentionally (1) discharged a firearm at or into a building he knew or reasonably should have known to be occupied and the firearm was discharged from a place or position outside that building (see 720 ILCS 5/24—1.2(a)(1) (West 2010)) and (2) discharged a firearm in the direction of another person or in the direction of a vehicle he knew or reasonably should have known to be occupied by a person (see 720 ILCS 5/24—1.2(a)(2) (West 2010)). Defendant's convictions were based on the shots fired into Rivera's home (see 720 ILCS 5/24—1.2(a)(1) (West 2010)) and into Saldivar's Honda Civic (see 720 ILCS 5/24—1.2(a)(2) (West 2010)).

¶ 30 On appeal, defendant challenges the conviction related to the discharge of a firearm into Rivera's home. Defendant argues that he was not proved guilty beyond a reasonable doubt because (1) the evidence was insufficient to prove he knowingly discharged a firearm into the building, (2) there was no evidence that defendant knew or reasonably should have known the building was occupied, and (3) no evidence was presented that the bullet lodged in Rivera's home was capable of being fired from a gun owned by defendant. We disagree.

¶ 31 First, there was ample evidence that defendant knowingly discharged a firearm into Rivera's home. Rivera testified that, at 9:25 p.m. on March 13, 2009, bullets were fired into his home as he was sitting with his wife in the dining room with the lights on. Timmons testified that, a short time before the shooting began, defendant retrieved a gun from his room at 621 May Street and ran out the back door. Five minutes later, Timmons heard several shots fired. Defendant re-entered the

house, looked through a window onto the driveway of the house, and talked about how he was “going to get them.”

¶ 32 Consistent with Timmons’ testimony, Saldivar identified defendant as the shooter. Saldivar testified that he saw defendant and O’Conner in the driveway shared by 617 and 621 May Street. Saldivar testified that defendant showed him a gun, and he watched defendant fire one shot toward the men in the Dodge Durango and red pickup truck in the street. When he later checked his car, Saldivar saw a bullet hole in the front tire on the passenger side.

¶ 33 O’Conner, another eyewitness, testified that defendant fired shots from the driveway to the street, which had a line of sight to Saldivar’s car and Rivera’s home. O’Conner testified that he looked out the front window of 621 May Street and saw a gray pickup truck stop next to Saldivar’s black Honda parked at the curb next door at 617 May Street. A person O’Conner identified as “Travieso” exited the truck and opened fire once toward defendant’s location in the driveway, and defendant immediately shot back toward the truck, which still was stopped in the street. O’Conner testified that defendant fired 10 to 12 shots from the driveway toward the street.

¶ 34 O’Conner further testified that, on March 30, 2009, he overheard defendant discussing his “response” to the gang members’ attack of Saldivar’s friends in the car. Also, Saldivar testified that, after the shooting, defendant apologized for shooting the car. Defendant’s statements corroborate the testimony of the eyewitnesses who saw him discharge the firearm from the driveway toward the occupied vehicles and Rivera’s home across the street.

¶ 35 Second, the State presented evidence that defendant knew or reasonably should have known the building was occupied. Rivera testified that, at the time of the shooting, he was sitting in the dining room with his wife drinking coffee and that the lights in the house were on. The court heard

testimony and the photographs admitted into evidence showed that the 600 block of May Street is a residential area with occupied, single-family homes. The admitted photographs also showed that the homes in the area were not abandoned.

¶ 36 Even though a person might illuminate an unoccupied home as a crime deterrent, we are not compelled to conclude that defendant should not have reasonably known that Rivera's home was occupied. The lights in the building were a reasonable indication that someone was home. Thus, when defendant fired shots toward the vehicles which he knew were occupied, he also knew or reasonably should have known that the house behind the car was inhabited at that time of night.

¶ 37 Third, defendant's conviction of aggravated discharge of a firearm under section 24—1.2(a)(1) did not require proof that the bullets lodged in Rivera's home were fired from defendant's gun. The failure of the police to recover the weapon or the bullets fired into Rivera's home does not warrant reversal of the finding of guilt because the court heard eyewitness testimony that defendant fired shots from the driveway toward the street, which the photographs show is in the direction of Rivera's home. The court heard conflicting evidence of the caliber of the gun used in the shooting. Saldivar testified that defendant told him the gun was a .45-caliber weapon, and .40-caliber shell casings were recovered from the scene. However, the discrepancy is minor, considering the overwhelming evidence of defendant's guilt. The inconsistency suggests that defendant's description of the weapon as .45 caliber was inaccurate, not that defendant was not the offender.

¶ 38 While recovery of the firearm and proof of the weapon's ownership would have strengthened the State's case, the additional evidence is not necessary to sustain the conviction. As the finder of fact, the trial court could infer from the evidence that defendant discharged a firearm in the direction of Rivera's home, defendant knew or reasonably should have known the home to be occupied, and

defendant discharged the firearm from the driveway at 621 May Street. “Examining the trial evidence in the light most favorable to the State, we believe a rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.” See *People v. Jordan*, 218 Ill. 2d 255, 270 (2006).

¶ 39 B. Ineffective Assistance of Counsel

¶ 40 Defendant further alleges that defense counsel rendered ineffective assistance at trial. Both the United States and Illinois Constitutions guarantee a defendant the right to effective assistance of counsel. See U.S. Const., amend. VI; Ill. Const. 1970, art. I, §8. The purpose of this guarantee is to ensure that the defendant receives a fair trial. *Strickland v. Washington*, 466 U.S. 668, 684-85 (1984). The ultimate focus of the inquiry is on the fundamental fairness of the challenged proceedings. *Strickland*, 466 U.S. at 696. However, there is a strong presumption of outcome reliability, so to prevail, a defendant must show that counsel’s conduct “so undermined the proper functioning of the adversarial process that the trial cannot be relied on as having produced a just result.” *Strickland*, 466 U.S. at 686.

¶ 41 Under *Strickland*, defense counsel is ineffective only if (1) counsel’s performance fell below an objective standard of reasonableness; and (2) counsel’s error prejudiced the defendant. Failure to establish either prong defeats the claim. *Strickland*, 466 U.S. at 687. A court need not decide whether counsel’s performance was deficient before analyzing whether the defendant was prejudiced. *People v. Cortes*, 181 Ill. 2d 249, 295-96 (1998).

¶ 42 The burden is on the defendant to affirmatively prove prejudice. *Strickland*, 466 U.S. at 693. To establish prejudice, the defendant must show that “there is a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different.” *Strickland*,

466 U.S. at 694. “A reasonable probability is a probability sufficient to undermine confidence in the outcome.” *Strickland*, 466 U.S. at 694. The prejudice component of *Strickland* entails more than an “outcome-determinative test”; rather, the defendant must show that deficient performance of counsel rendered the result of the trial unreliable or the proceeding fundamentally unfair. *People v. Richardson*, 189 Ill. 2d 401, 411 (2000).

¶ 43

1. Suppression

¶ 44 Defendant argues that counsel was ineffective for failing to move to suppress the nylon gun holster on the ground that it was seized in violation of the fourth amendment. The fourth amendment guarantees “[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures.” U.S. Const., amend. IV. Article I, section six, of the Illinois Constitution also protects individuals from unreasonable searches and seizures. Ill. Const.1970, art. I, §6. Our supreme court has interpreted the search-and-seizure clause of the Illinois Constitution in a manner consistent with the United States Supreme Court’s fourth-amendment jurisprudence. *People v. Anthony*, 198 Ill. 2d 194, 201 (2001). The defendant bears the burden of demonstrating an illegal search or seizure. *People v. Kidd*, 175 Ill. 2d 1, 22 (1996).

¶ 45 Generally, police may not conduct warrantless searches. U.S. Const., amend. IV; Ill. Const.1970, art. I, § 6. However, a warrantless search of property is valid when conducted after obtaining voluntarily given consent from either the property owner or a third party possessing common authority over the premises. *People v. Parker*, 386 Ill. App. 3d 40, 44 (2007). Actual common authority is not dependent on the laws of property, such as whether a third party has a lease or shares ownership of the property. *People v. Pitman*, 211 Ill. 2d 502, 524 (2004). Instead, the Supreme Court has defined actual authority as “mutual use of the property by [third parties] generally

having joint access or control for most purposes.” *U.S. v. Matlock*, 415 U.S. 164, 171 n.7 (1974). “The third party’s degree of authority and control over the residence cannot be substantially inferior to that degree possessed by the defendant, and the third party’s right to occupy and use the residence must equal or exceed the defendant’s right of occupation.” *People v. Pickens*, 275 Ill. App. 3d 108, 112 (1995). Common authority exists in situations involving family, marital, or cohabitant relationships. *Pickens*, 275 Ill. App. 3d at 112.

¶ 46 The decision on whether to file a motion to suppress evidence is traditionally considered a matter of trial strategy and should be left to the trial counsel’s discretionary judgment. Thus, reviewing courts should avoid the temptation of using hindsight to second-guess counsel’s strategy. *People v. Mabry*, 398 Ill. App. 3d 745, 751 (2010). In this case, defense counsel’s decision to not file a motion to suppress did not fall below an objective standard of reasonableness.

¶ 47 Detective Amaro testified that, on March 30, 2009, he went to 621 May Street, where he obtained consent to search the house. Detective Amaro did not specify who consented to the search, but Timmons testified that he told her that O’Conner had given permission to search. Detective Amaro and Timmons both testified that Timmons identified defendant’s room, but they disagreed about whether the door was locked or open. Timmons admitted that she gave the police permission to enter defendant’s room. Detective Amaro walked in and saw the nylon shoulder holster that was hanging on the back of the door.

¶ 48 Defense counsel reasonably could have concluded that a motion to suppress was unlikely to succeed because, at the time of the search, Detective Amaro had no reason to believe that O’Conner or Timmons lacked authority to consent to the search of defendant’s room. See *Illinois v. Rodriguez*, 497 U.S. 177, 188-89 (1990) (Supreme Court held that, even where the person granting consent to

search does not actually have common authority over the premises, the fourth amendment is not infringed if that person has “apparent authority” over the premises, *i.e.*, if the person is someone police reasonably believe has authority to consent to a search). O’Conner and Timmons were residents of the house with defendant and others. Moreover, defendant was present at 621 May Street and did not object when informed that his co-tenant had consented to a search of the premises.

¶ 49 Furthermore, defendant was not prejudiced by counsel’s decision not to move for suppression of the holster. At trial, O’Conner testified that he saw the holster in defendant’s room at some point after the shooting and before the police searched the house on March 30, 2009. The only evidence obtained from the search of defendant’s room was the holster, which was cumulative, circumstantial evidence of the eyewitness testimony that defendant discharged a firearm toward Saldivar’s car and Rivera’s house. We conclude that defense counsel’s failure to move for suppression of the holster did not amount to ineffective assistance.

¶ 50 2. Self Defense and Defense of Another

¶ 51 Defendant also argues that counsel was ineffective for failing to argue that defendant’s conduct was justified because he was acting in self defense or the defense of another. In Illinois, self-defense and defense of others are combined in section 7—1 of the Criminal Code defining justifiable use of force in defense of person, which provides that “[a] person is justified in the use of force against another when and to the extent that he reasonably believes that such conduct is necessary to defend himself or another against such other’s imminent use of unlawful force.” 720 ILCS 5/7—1(a) (West 2010). Defense of person is an affirmative defense. 720 ILCS 5/7—14 (West 2010). An affirmative defense has the legal effect of admitting that the acts occurred but denying responsibility. *People v. Brant*, 394 Ill. App. 3d 663, 671 (2009); see also *People v. Rodriguez*, 336

Ill. App. 3d 1, 15 (2002) (by raising self-defense as an affirmative defense to homicide, a defendant admits the offense, but denies criminal responsibility).

¶ 52 Matters of trial strategy are generally immune from claims of ineffective assistance of counsel (*People v. West*, 187 Ill. 2d 418 (1999)), but the failure to pursue a theory of self-defense constitutes ineffective assistance of counsel when such a failure is not the result of trial strategy (*People v. Wright*, 111 Ill. 2d 18, 26-27 (1986)). In this case, defense counsel's decision to forego a theory of self-defense or defense of another was a matter of trial strategy that did not fall below an objective standard of reasonableness. Rather than admitting the acts constituting the offense and denying criminal responsibility, counsel decided to challenge the identification of defendant as the offender, thereby asserting a claim of actual innocence. Counsel's strategy was reasonable, as the evidence showed that neither the weapon nor the bullets lodged in Rivera's home were recovered. During closing argument, defense counsel argued that the eyewitnesses were not credible. Counsel conceded that shots had been fired but argued that O'Conner was the offender and that Timmons, his girlfriend, was biased in his favor. The reasonableness of defense counsel's strategy is best illustrated by appellate counsel's decision to challenge the sufficiency of the evidence on appeal.

¶ 53 Simultaneously arguing the inconsistent positions of actual innocence and an affirmative defense would have undermined the defense's credibility and prejudiced defendant at trial. Moreover, admitting the acts of the offense might have backfired, as the State could have responded that defendant initiated the conflict or that wildly firing the gun several times in a residential area was not a reasonable act of self defense or defense of another. Under these circumstances, we conclude that trial counsel did not render ineffective assistance in presenting a defense of actual

innocence. Counsel's performance neither fell below an objective standard of reasonableness nor prejudiced defendant.

¶ 54 For the preceding reasons, the judgment of the circuit court of Lake County is affirmed.

¶ 55 Affirmed.