

¶ 4 Prior to trial, there was a great deal of media coverage surrounding these events. Thus, during *voir dire*, numerous prospective jurors stated that they had read about the case in the newspaper. This appeal involves the questioning of two venire members who were ultimately chosen to serve as jurors—Sandra Steinman and Douglas Starwalt. Because our resolution of this case turns on the words used by these two jurors, we will set out their responses in detail.

¶ 5 Steinman indicated during questioning by the court that she had read about the case in the newspaper. The following exchange then took place:

"COURT: *** The real question, and this is what you have to tell us, what is in your mind and heart. Can you decide the case based upon the evidence and not what you read in the paper or have you already formed an opinion that you are going to disregard the evidence?"

MS. STEINMAN: No. I don't think I've formed an opinion because I realize that was the newspaper report that was the allegations.

COURT: Right. Okay. So are you telling me that you are willing to decide the case based upon the evidence that you hear that may or may not be different than what you read in the paper? *** You can put aside what you read in the newspaper; is that what you are telling me?"

MS. STEINMAN: I would hope so. I've never really been in this position before. So it's really hard to say yeah, I have done that, but I would certainly try to.

COURT: Okay. Let me try and give you a specific example. Let's say that it's a piece of evidence comes out and that's not the same as what you read in the newspaper. Are you going to struggle and say, well the newspaper said this, but the evidence on the witness stand was contrary, are you going to struggle there with that problem?"

MS. STEINMAN: No, I don't think so.

COURT: So you will just disregard what you read in the newspaper and go with what you heard on the witness stand; is that what you were saying?

MS. STEINMAN: (Inaudible response)."

¶ 6 Similarly, Starwalt indicated that he had read about the case in the newspaper and heard about it in a radio newscast. The court asked Starwalt whether, if the evidence at trial were different from what he had read in the paper, he would "be willing to put aside what [he] read in the paper and decide the case based solely on the evidence" presented at trial. Starwalt responded, "Yes." However, when the State's attorney questioned Starwalt, the following exchange took place:

"MS. KOESTER [State's attorney]: Mr. Starwalt, based on what you had heard, have you formed an opinion as to the guilt or innocence of the defendant?

MR. STARWALT: Well, I honestly, I probably would have to say yes, I have.

MS. KOESTER: Do you believe[,] even though you formed that opinion[,] that if you were asked to be seated as a juror in this case you could put aside that opinion and judge the guilt or innocence of the defendant based on the evidence that will be presented here at trial?

MR. STARWALT: I believe I could maybe have an open mind, yeah."

Defense counsel then asked Starwalt, and the following colloquy occurred:

"MR. HOFFEDITZ [defense counsel]: You said you kind of formed an opinion. *** Are you saying that you believe that you formed an opinion [that the victims] were hit in the head with a hammer by my client or have you formed an opinion [that] my client was trying to kill them?

MR. STARWALT: I would say that he had hit them. I am not saying maybe he intended to kill them, but that he did hit them.

MR. HOFFEDITZ: Would it be fair to say your mind is still open on the issue of what anyone's intent was?

MR. STARWALT: I guess on the intent it would still be open, yes."

¶ 7 At trial, the sole issue was the defendant's intent. The defendant admitted that he struck his estranged wife, Shana Rolfe, and her boyfriend, Steve Stout, with the hammer, although he testified that he did not remember encountering Shana's mother, Robyn Spicer, and attacking her. He testified that he engaged in "mutual combat" with Stout and that he only intended to scare Shana because he was angry over her affair with Stout. The jury returned verdicts of guilty on all counts. The court subsequently sentenced the defendant to consecutive sentences of 22 years in prison for the home invasion charge, 9 years for the attempted murder of Robyn Spicer, and 7 years each for the charges of attempted murder of Shana Rolfe and Steve Stout. The defendant was also sentenced to 30 months of probation for aggravated battery, to be served consecutive to his prison terms.

¶ 8 The defendant filed a direct appeal. The only issues raised were the court's imposition of consecutive sentences and the propriety of a nonpattern jury instruction that was given. *People v. Rolfe*, 353 Ill. App. 3d 1005, 1006, 820 N.E.2d 468, 469 (2004). This court affirmed the defendant's convictions and sentences. *Rolfe*, 353 Ill. App. 3d at 1014, 820 N.E.2d at 475.

¶ 9 The defendant then filed a petition pursuant to the Post-Conviction Hearing Act (725 ILCS 5/122-1 to 122-8 (West 2004)). He alleged that trial counsel was ineffective for failing to move to dismiss Steinman and Starwalt for cause or to use his peremptory challenges to excuse them. Counsel was appointed to represent the defendant. Counsel filed two amended petitions on behalf of the defendant, adding an allegation that appellate counsel was ineffective for failing to raise the issue of the two jurors on direct appeal. The amended petitions also raised additional issues of ineffective assistance of trial and appellate counsel

that are not relevant to this appeal.

¶ 10 The court granted the State's motion to dismiss the defendant's petition. The defendant filed a motion to reconsider that ruling, which the court denied. This appeal followed.

¶ 11 The Post-Conviction Hearing Act provides an avenue for a defendant to raise claims that his conviction resulted from a substantial deprivation of constitutional rights. *People v. Coleman*, 183 Ill. 2d 366, 378-79, 701 N.E.2d 1063, 1070-71 (1998). To survive a motion to dismiss at the second stage of postconviction proceedings, the defendant must make a substantial showing of a deprivation of constitutional rights. *Coleman*, 183 Ill. 2d at 381, 701 N.E.2d at 1072. On appeal from a second-stage dismissal of a postconviction petition, we assume all of the allegations in the petition are true and construe them in the light most favorable to the defendant. *Coleman*, 183 Ill. 2d at 389, 701 N.E.2d at 1075. We review the court's determination *de novo*. *Coleman*, 183 Ill. 2d at 382, 701 N.E.2d at 1072.

¶ 12 Here, the defendant argues that trial counsel was ineffective for failing to challenge jurors Sandra Steinman and Douglas Starwalt and that appellate counsel was ineffective for failing to raise this issue on direct appeal. Claims of ineffective assistance of both trial and appellate counsel are governed by a standard set out in *Strickland v. Washington*, 466 U.S. 668 (1984). Under that standard, a defendant must demonstrate both that (1) counsel's performance fell below an objective level of reasonableness and (2) but for counsel's deficient performance, a different result was reasonably probable. *Strickland*, 466 U.S. at 688. Appellate counsel is not required to raise every conceivable issue; rather, counsel must exercise professional judgment to determine which claims have merit. *People v. Williams*, 209 Ill. 2d 227, 243, 807 N.E.2d 448, 458 (2004).

¶ 13 If claims of ineffective assistance of counsel can be disposed of on the ground that the defendant cannot demonstrate prejudice—that is, that a different result was not reasonably

probable—we need not consider whether counsel's performance was deficient. *People v. Metcalfe*, 202 Ill. 2d 544, 562, 782 N.E.2d 263, 275 (2002) (citing *People v. Johnson*, 128 Ill. 2d 253, 271, 538 N.E.2d 1118, 1125 (1989)). In *Metcalfe*, our supreme court applied this standard to a claim that trial counsel was ineffective for failing to challenge a prospective juror who expressed a general distrust of the legal system. The court found that the defendant failed to demonstrate prejudice because there was no evidence that the juror was biased against the defendant as opposed to the State. The court explained that there was thus no evidence that the result would have been different had she not served on the jury. *Metcalfe*, 202 Ill. 2d at 562-63, 782 N.E.2d at 275. Here, as we will explain, we find no evidence to suggest that a different result was reasonably probable had Steinman and Starwalt not served on the jury.

¶ 14 A defendant has a right to be tried by a fair and impartial jury. The process of *voir dire* is intended to protect this important right by giving counsel an opportunity to " 'filter out prospective jurors who are unable or unwilling to be impartial.' " *People v. Johnson*, 215 Ill. App. 3d 713, 723, 575 N.E.2d 1247, 1253 (1991) (quoting *People v. Washington*, 104 Ill. App. 3d 386, 390, 432 N.E.2d 1020, 1023 (1982)). This court will reverse a conviction if one or more jurors expressed doubts during *voir dire* about their ability to be fair and impartial. *Johnson*, 215 Ill. App. 3d at 724, 575 N.E.2d at 1253. However, "[a]n equivocal response by a prospective juror does not necessitate striking the prospective juror for cause where the prospective juror later states that he will try to disregard his bias." *People v. Hoblely*, 159 Ill. 2d 272, 297, 637 N.E.2d 992, 1003 (1994).

¶ 15 The defendant first argues that Steinman equivocated in her responses to questions about her ability to set aside what she had read about the case in the newspaper and render a decision based solely on the evidence presented at trial. We disagree.

¶ 16 In *Hoblely*, one venire member stated that she "might be influenced" by the fact that

a witness is a police officer. *Hobley*, 159 Ill. 2d at 296, 637 N.E.2d at 1002. She explained that she had been raised to believe that police officers were honest. However, when asked if she would find the testimony of a police officer more or less credible than the testimony of other witnesses, she said that she would "try" to treat an officer the same as any other witness. *Hobley*, 159 Ill. 2d at 296, 637 N.E.2d at 1002. She further stated that she would "try to follow applicable law." *Hobley*, 159 Ill. 2d at 297, 637 N.E.2d at 1003. Another venire member stated that she "guessed" she could treat a police officer's testimony the same as that of other witnesses (*Hobley*, 159 Ill. 2d at 296, 637 N.E.2d at 1003) and that she "guessed she could follow applicable law" (*Hobley*, 159 Ill. 2d at 297, 637 N.E.2d at 1003).

¶ 17 On appeal, the supreme court found no error in the trial court's refusal to grant the defendant's motions to strike these two jurors for cause. The court explained that neither prospective juror "expressed reservation concerning their ability to follow the law." *Hobley*, 159 Ill. 2d at 297, 637 N.E.2d at 1003.

¶ 18 Steinman's "equivocal" responses are similar to those of the prospective jurors challenged in *Hobley*. Like the prospective jurors there, Steinman expressed no particular bias or opinion based on what she had read about the case in the newspaper. In fact, she specifically stated that she understood that what was reported in the paper was merely "the allegations." She stated that although she believed she could decide the case based solely on the evidence presented at trial, she had never served as a juror so it was hard to say yes, she had done so. Absent an expression of some sort of bias, we find that her choice of language alone does not show equivocation or doubt about her ability to act as a fair and impartial juror.

¶ 19 We acknowledge that, as the defendant points out, the First District reached the opposite conclusion in *Johnson*, even though prospective jurors there used language very similar to that used by Steinman and the prospective jurors in *Hobley*. There is one very key

distinction, however—the three prospective jurors in the *Johnson* case had all been victims of crimes or had close friends or family members who had been the victims of violent crimes. *Johnson*, 215 Ill. App. 3d at 725, 575 N.E.2d at 1254. All three prospective jurors were asked whether their experiences would impact their ability to be fair and impartial if selected as jurors. The first replied, "I hope not." *Johnson*, 215 Ill. App. 3d at 717, 575 N.E.2d at 1249. The second stated that his experience would "[n]ot really" impact his ability to be fair and impartial. *Johnson*, 215 Ill. App. 3d at 717, 575 N.E.2d at 1249. The third "hesitated and replied, 'I don't think so.'" *Johnson*, 215 Ill. App. 3d at 717, 575 N.E.2d at 1249. The trial court denied the defendant's challenges to all three for cause. *Johnson*, 215 Ill. App. 3d at 717, 575 N.E.2d at 1249.

¶ 20 The First District found these decisions to be against the manifest weight of the evidence. *Johnson*, 215 Ill. App. 3d at 724, 575 N.E.2d at 1253. The court explained that the three jurors should have been dismissed for cause because all three had been victims of crime and "they equivocated when first asked whether they could be fair and impartial." *Johnson*, 215 Ill. App. 3d at 725, 575 N.E.2d at 1254. This is a significant distinction. Being the victim of a crime—particularly a violent crime—is likely to have a more significant impact than simply reading media coverage in the newspaper. Simply put, there was nothing in Steinman's responses that showed a bias—or a potential bias—that needed to be overcome. Because there is nothing to suggest Steinman had any bias, there is no reason to find that a different result was reasonably probable had she not served on the jury.

¶ 21 The defendant contends that counsel's failure to challenge Starwalt for cause was "even more egregious." As the defendant points out, Starwalt specifically admitted that he had formed an opinion based on the media coverage he had been exposed to. As previously discussed, Starwalt stated that he thought the defendant hit the victims with the hammer, but he had not formed an opinion as to whether the defendant intended to kill them. Starwalt

later said that he could "maybe have an open mind" about whether the defendant hit the victims. As previously discussed, however, the defendant's intent was the only issue at trial; the defendant admitted hitting the victims.

¶ 22 Due to extensive media coverage of the events involved in this case, finding jurors who had not been exposed to the reports was difficult. Several jurors were dismissed for cause, and the defendant had already used most of his peremptory challenges. Defense counsel specifically asked Starwalt to clarify whether he had formed an opinion about the defendant's intent. Under the circumstances, we believe this constituted sound trial strategy. Moreover, because Starwalt stated unequivocally that he did not have an opinion as to the defendant's intent, there is nothing to suggest he had any preconceived notion or bias on the only disputed issue. Thus, it is not reasonably probable that the result would have been different had Starwalt not served on the defendant's jury.

¶ 23 Because there is nothing in the record to show that either Steinman or Starwalt had a bias related to anything actually at issue in the trial, appellate counsel would not have been successful had the issue been raised in the defendant's direct appeal. Thus, we conclude that the postconviction court properly dismissed the defendant's petition.

¶ 24 For the reasons stated, we affirm the court's judgment dismissing the defendant's petition.

¶ 25 Affirmed.