

SIXTH DIVISION
February 15, 2013

No. 1-11-0813

NOTICE: This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

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.)	07 CR 7066
)	
ALVIN CAYOLLE,)	Honorable
)	Thomas V. Gainer Jr.,
Defendant-Appellant.)	Judge Presiding.

JUSTICE HALL delivered the judgment of the court.
Presiding justice Lampkin and Justice Reyes concurred in the judgment.

ORDER

HELD: None of defendant's claims of ineffective assistance of trial counsel warrant reversal or a new trial.

¶ 1 This appeal arises from the stabbing death of Robert Emil inside a motel room at the Barbara

No. 1-11-0813

Ann Motel located on 76th Street and Cottage Grove Avenue in Chicago, Illinois. Following a jury trial, defendant Alvin Cayolle was convicted of first-degree murder for fatally stabbing Emil. Defendant was sentenced to 24 years' imprisonment. On appeal, defendant raises several claims of ineffective assistance of trial counsel, none of which warrant reversal.

¶ 2 The State presented the following evidence at trial. On March 10, 2007, Debra Hagerman-Hines was a witness to a verbal altercation between defendant and Emil in the motel room minutes before the fatal stabbing. Hagerman-Hines was dating Emil at the time.

¶ 3 Hagerman-Hines testified that on March 8, 2007, a couple of days before the fatal stabbing, she met up with defendant and they went to a neighborhood park where they sat and talked. Hagerman-Hines testified that she had known defendant for approximately eight years from around the neighborhood. According to Hagerman-Hines, defendant had been homeless and he hung around the neighborhood panhandling.

¶ 4 Hagerman-Hines decided to rent a motel room at the Barbara Ann Motel where she planned to invite Emil. Hagerman-Hines stated that she and Emil had been to the motel together on several prior occasions. She also testified that she had gone to the motel with defendant on one prior occasion, but could not remember when this occurred.

¶ 5 Hagerman-Hines asked defendant to accompany her to a cash machine where she withdrew money to rent the motel room. Hagerman-Hines testified that after she withdrew the money, she asked defendant to accompany her to the motel because she had trouble with the stairs.

¶ 6 Hagerman-Hines and defendant went to the Barbara Ann Motel and she checked into a room. She had purchased a fifth of vodka, a six-pack of beer, and some cigarettes. Hagerman-Hines then

No. 1-11-0813

called Emil to see if he could come to the motel. According to Hagerman-Hines, Emil responded that he could not meet her at the motel because he did not have carfare.

¶ 7 Hagerman-Hines and defendant stayed overnight in the motel room. She testified that they drank, watched T.V., and talked. She stated that she slept in the bed while defendant slept on the floor. The next morning they checked out of the motel room.

¶ 8 Hagerman-Hines decided to rent a motel room for a second night in the hope that Emil could join her. Hagerman-Hines and defendant went to a cash machine and she withdrew more money. The two of them returned to the Barbara Ann Motel where they checked into another motel room. Hagerman-Hines called Emil and told him that she had rented a motel room for one more day and asked if he could meet her at the motel. Emil agreed to meet Hagerman-Hines at the motel.

¶ 9 Hagerman-Hines and defendant watched T.V. and drank alcohol while waiting for Emil to arrive. Emil arrived at the motel in the afternoon, carrying a half-pint of vodka. The three drank, talked, and watched T.V. Hagerman-Hines testified that she did not get drunk that evening. At some point, Emil told defendant he wanted to be alone with Hagerman-Hines. Defendant did not respond, so Emil repeated the request a couple of more times. When defendant continued refusing to respond, Emil asked Hagerman-Hines to say something to defendant.

¶ 10 Hagerman-Hines asked defendant to leave and he complied. Defendant returned about half an hour later, and Hagerman-Hines let him into the room. Emil jumped up and started arguing with defendant about coming back to the motel room. Hagerman-Hines testified that while the men were in a "heated argument," she went to use the bathroom. Hagerman-Hines testified that while she was in the bathroom, it got quiet.

No. 1-11-0813

¶ 11 Hagerman-Hines testified that when she exited the bathroom, she saw defendant repeatedly hitting Emil in the face, while Emil just stood there. Hagerman-Hines told defendant to stop hitting Emil, and he complied. Emil then laid down on the bed, flat on his back, and he closed his eyes.

¶ 12 Hagerman-Hines saw a little blood on Emil's shirt and observed a small cut on the bottom of his stomach. She did not see a weapon in defendant's hands. However, the day before, she had seen defendant with a four-inch folding knife. Hagerman-Hines claimed defendant had pulled the knife on her in jest. Hagerman-Hines asked defendant what he had done. Defendant did not respond, but just stood there looking at Emil.

¶ 13 Hagerman-Hines testified that she thought Emil had gone to sleep after what he just went through, so she laid down next to him and eventually went to sleep. She did not call the police. Defendant remained sitting in the room.

¶ 14 Hagerman-Hines testified that the next morning, she was awoken by a ringing telephone. Defendant was not in the room and she had not seen him leave. She answered the telephone and was informed that she needed to vacate the room because someone had checked out of the room.

¶ 15 Hagerman-Hines attempted to wake Emil, but got no response. Emil's body was cold to the touch and there was blood around his head. Hagerman-Hines got scared and left the room to get help. She found a housekeeper and asked for help. The housekeeper went to the room, looked at Emil, and then left the room.

¶ 16 Gwendolyn Carter is the housekeeper Hagerman-Hines went to for help. Her testimony differed somewhat from Hagerman-Hines' testimony.

¶ 17 Carter testified that on March 10, 2007, at around 8:30 a.m., she was working as a

No. 1-11-0813

housekeeper at the Barbara Ann Motel when she overheard Lillie Wallace, the front desk clerk, talking to a man who was checking out of room 25. The conversation drew her attention because checkout time for that room was not until noon. After the man checked out, Carter went upstairs to start cleaning rooms. When she entered room 25, she saw a man lying on the bed who appeared to be sleeping. Carter hollered out, and when she got no response, she shook the bed with her foot.

¶ 18 Carter shook the bed a second time and this time someone on the opposite side of the bed stirred under the covers. The person, who remained under the covers, stated in a female voice that checkout time was not until noon that day. Carter responded that someone had already checked out of the room and turned in the key, so they needed to leave the room. The female voice asked for a few minutes to get dressed. Carter left the room and began working on a room a few doors down.

¶ 19 Hagerman-Hines, whom Carter knew as a regular customer at the motel, soon appeared and asked for Carter's help in waking Emil. Carter returned to the room with Hagerman-Hines and shook the bed, but did not get a response. Carter then stated to Hagerman-Hines, "I think he's dead." Hagerman-Hines became "hysterical." Carter left the room and went and told Lillie Wallace to call 911.

¶ 20 Lillie Wallace testified that on March 8, 2007, she was working as a desk clerk at the Barbara Ann Motel when Hagerman-Hines and defendant checked into the motel for an overnight stay. Wallace had never seen defendant before, but she recognized Hagerman-Hines as a regular customer who came to the motel about once a month, usually accompanied by Emil.

¶ 21 Hagerman-Hines and defendant checked out of the motel the next day on March 9, 2007, but then, hours later, checked back into the motel. The next day, at around 8:30 a.m., defendant came

No. 1-11-0813

to the front desk and returned the key to the motel room, stating that he was checking out. Wallace gave defendant the \$5.00 key deposit and he left. Wallace then notified Carter that room 25 was available to be cleaned. Wallace denied calling the room and telling the occupants to leave.

¶ 22 Shortly thereafter, Carter called Wallace and asked her to come up to room 25. Wallace went up to the room and saw Hagerman-Hines lying in the bed next to Emil, who was deceased. Wallace asked Hagerman-Hines "what happened up here?" and then went to call the police. On March 11, 2007, Wallace went to the police station where she viewed a line-up and identified defendant as the man who checked out of room 25 early the previous morning.

¶ 23 Chicago Police Officer John Smith interviewed Hagerman-Hines in front of the motel. She provided the officer with a physical description of defendant, which was used to obtain a photograph of defendant from ICLEAR, a Chicago Police Department database containing photographs and physical descriptions. Hagerman-Hines identified a photograph of defendant. The police then focused their search for defendant in the area of 53rd Street and Hyde Park.

¶ 24 Hagerman-Hines went to the police station where she viewed a photo array and identified a photograph of defendant. She told detectives that defendant was a friend of hers and that he had killed Emil. Later that evening, defendant was arrested at a location where Hagerman-Hines told officers he could be found. At about 8:30 p.m., defendant was read his *Miranda* rights and was interviewed by detectives.

¶ 25 The next day, on March 11, 2007, Wallace and Carter were transported to the police station where they spoke to an assistant state's attorney (ASA), and Wallace viewed a physical line-up. Wallace picked defendant out of the line-up as the man who checked out of room 25 and returned

No. 1-11-0813

the key to the room. Hagerman-Hines also gave a statement to the ASA. At about 2:15 a.m., defendant was interviewed again by detectives and afterwards he was taken to the area of 7600 S. Cottage Grove, where detectives unsuccessfully attempted to locate the knife defendant used to fatally stab Emil.

¶ 26 ASA Lauren Brown interviewed defendant on March 11, 2007, at approximately 10:30 p.m. The interview was audio and video recorded. During the interview, defendant confessed to stabbing Emil. The recording was played for the jury and subtitles to the conversation appeared in the recording. The jury was given a transcript of the subtitles and was instructed that the subtitles only represented what the transcriber believed was said on the tape. The jury was admonished that the recording constituted the actual evidence and would control if there was any inconsistency between the recording and the subtitles.

¶ 27 After the recording was played, the State informed the trial court, outside the presence of the jury, that it intended to rest. Defendant made a motion for a directed verdict, which the trial court denied.

¶ 28 Defense counsel then stated that for purposes of the record, she was informing the trial court that although defendant had always expressed a desire to take the stand in his own defense, she was advising him against it. Defense counsel acknowledged that the decision whether to testify rested solely with defendant. The trial court then advised defendant of his right to testify on his own behalf. Defendant responded that he had discussed the matter with his counsel, and was now electing not to testify in his own defense. The trial court determined that defendant had knowingly, intelligently, freely, and voluntarily waived his right to testify.

No. 1-11-0813

¶ 29 When the proceedings resumed before the jury, the State rested. The defense rested without presenting any testimony or substantive evidence.

¶ 30 The jury found defendant guilty of first-degree murder for fatally stabbing Emil. The trial court denied defendant's motion for a new trial and thereafter sentenced him to 24 years' imprisonment. Defendant now appeals.

¶ 31 ANALYSIS

¶ 32 All of defendant's claims on appeal are couched as ineffective assistance of counsel contentions. We will address each claim in turn, after setting forth the applicable principles of law.

¶ 33 Both the United States and Illinois Constitutions guarantee a criminal defendant the assistance of counsel. U.S. Const., amends. VI, XIV; Ill. Const. 1970, art. I, § 8. This requires not only that a person accused of a crime have the assistance of counsel for his or her defense, but also that such assistance be "effective." *United States v. Cronin*, 466 U.S. 648, 655-56 (1984).

¶ 34 The test for determining an ineffective assistance of counsel claim was established in *Strickland v. Washington*, 466 U.S. 668, 691-98 (1984), and adopted by our supreme court in *People v. Albanese*, 104 Ill. 2d 504, 526-27 (1984). The test is composed of two prongs: deficiency and prejudice.

¶ 35 In order for a defendant to obtain reversal of a conviction based on an ineffective assistance of counsel claim, he or she must show that: (1) counsel's performance was so deficient as to fall below an objective standard of reasonableness under prevailing professional norms, and (2) the deficient performance so prejudiced defendant that there is a reasonable probability that, absent the errors, the outcome would have been different. *People v. White*, 322 Ill. App. 3d 982, 985 (2001).

No. 1-11-0813

"The fundamental concern underlying this test is 'whether 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.' " *People v. Powell*, 355 Ill. App. 3d 124, 14 (2004) (quoting *Strickland*, 466 U.S. at 686).

¶ 36 A defendant must satisfy both prongs of the *Strickland* test to prevail on a claim of ineffective assistance of counsel. However, it is well settled that if the claim can be disposed of on the ground that defendant did not suffer prejudice from the alleged ineffective performance, then the court need not decide whether counsel's performance was constitutionally deficient. *Strickland*, 466 U.S. at 697; *People v. Griffin*, 178 Ill. 2d 65, 74 (1997); *People v. Flores*, 153 Ill. 2d 264, 283-84 (1992). Applying these principles to the instant case, we find that defendant has failed to show that counsel's performance was constitutionally deficient or that he was prejudiced.

¶ 37 Defendant first contends his trial counsel was ineffective for promising in opening statements that she would call him to testify at trial and then failing to call him to testify as promised. In general, the decision whether to call a particular witness is a matter of trial strategy that will not support a claim of ineffective assistance of counsel. *People v. Patterson*, 217 Ill. 2d 407, 442 (2005).

¶ 38 In this case, after the State presented its evidence, defense counsel advised defendant against taking the stand and then she explained to the trial court why she had given defendant such advice. The trial court advised defendant of his right to testify on his own behalf. Defendant responded that he had discussed the matter with his counsel and was electing not to testify. On this record, we find that trial counsel's decision not to call defendant as a witness was a matter of trial strategy that will not support a claim of ineffective assistance of counsel.

No. 1-11-0813

¶ 39 Defendant next contends that defense counsel provided ineffective assistance by failing to correct erroneous subtitles that accompanied the video recording of his conversation with the assistant state's attorney. Specifically, defendant maintains that on the video recording he stated, "after we got *to* arguing before I knew it with that booze in me I had upped that knife and I stabbed him." While the subtitles erroneously indicated that he stated, "after we got *through* arguing before I knew it with that booze in me I had upped that knife and I stabbed him." (emphasis in brief).

¶ 40 Defendant argues that defense counsel's failure to draw a distinction between "to" and "through" amounted to ineffective assistance because it left the jury with the damaging impression that he stabbed Emil in an unprovoked manner after they had finished arguing. We do not believe that defense counsel was ineffective in this regard. The distinction as to whether defendant fatally stabbed Emil after they got *to* arguing or only after they got *through* arguing is of no consequence where defendant admitted he stabbed Emil during the course of an alcohol fueled verbal argument during which Emil never made a physical move toward defendant.

¶ 41 Moreover, the trial court admonished the jury that the recording constituted the actual evidence and that it would control if there was any perceived conflict or inconsistency between the recording and the subtitles. Thus, the jury had the tools to correct any error in the subtitles and did not require intervention by defense counsel.

¶ 42 Defendant next contends that defense counsel was incompetent for allowing the State to introduce a mugshot of him bearing an arrest date concerning an unrelated matter. "We agree that the introduction of 'mug shots' into evidence can be prejudicial as evidence of other criminal activities." *People v. Adams*, 22 Ill. App. 3d 665, 668 (1974). However, on the record before us, we

No. 1-11-0813

cannot say that defense counsel's failure to ensure that the State removed the objectionable evidence from the mugshot before it was entered into evidence, was so prejudicial as to amount to ineffective assistance of counsel.

¶ 43 Defendant admitted stabbing Emil. Emil died as a result of these stab wounds. Moreover, neither the State nor defense counsel mentioned defendant's prior record during trial or in closing arguments. Under these circumstances, we cannot presume that the jury ignored the evidence at trial and instead found defendant guilty on the basis of a prior arrest. See *People v. Warmack*, 83 Ill. 2d 112, 128-29 (1980); *People v. Arman*, 131 Ill. 2d 115, 124 (1989). This leads us to the conclusion that a different trial result would not have been reached even if the objectionable evidence related to the mugshot had not been introduced into evidence.

¶ 44 Defendant next contends that defense counsel rendered ineffective assistance by eliciting damaging testimony from occurrence witness Hagerman-Hines, who testified on cross-examination that defendant had playfully pulled a knife on her a day before Emil was stabbed. Defendant maintains that in an effort to ameliorate the prejudicial impact of this testimony, defense counsel should have moved to strike the reference to the knife as being non-responsive and then asked the trial court to instruct the jury to disregard the testimony.

¶ 45 Defendant claims that at no point during Hagerman-Hines' direct testimony did she mention seeing him with a knife. He argues that defense counsel's cross-examination of Hagerman-Hines put a possible murder weapon in his hands.

¶ 46 Although we are inclined to agree that defense counsel's elicitation of the damaging testimony on cross-examination was questionable trial strategy, we do not believe that there is a

No. 1-11-0813

reasonable probability that, but for counsel's alleged errors, the jury would have decided differently. The jury was presented with evidence that on March 9, 2007, Hagerman-Hines, Emil, and defendant were drinking alcohol beverages together in a motel room.

¶ 47 Hagerman-Hines testified that she had rented the room so that she could spend some time with Emil. At some point, Emil requested defendant to leave the room because he wanted to be alone with Hagerman-Hines. When defendant continued refusing to respond to the requests, Emil asked Hagerman-Hines to say something to defendant. Hagerman-Hines asked defendant to leave the room and he complied.

¶ 48 Defendant left only to return shortly thereafter and resume drinking. Emil started arguing with defendant about coming back to the motel room. Hagerman-Hines testified that while the men were in a "heated argument," she went to use the bathroom. Hagerman-Hines testified that while she was in the bathroom, it got quiet.

¶ 49 Hagerman-Hines testified that when she exited the bathroom, she saw defendant hitting Emil in the face, while Emil just stood there. Hagerman-Hines told defendant to stop hitting Emil, and he complied. Emil then laid down on the bed, flat on his back, and he closed his eyes. Hagerman-Hines saw a little blood on Emil's shirt and observed a small cut on the bottom of his stomach.

¶ 50 Defendant admitted in the video recording conversation with the ASA that during his argument with Emil, he produced a knife and stabbed Emil. The medical examiner examined Emil's body and discovered that he sustained five stab wounds that caused extensive internal damage and Emil's death.

¶ 51 In light of this evidence, we cannot say that there is a reasonable probability that the result

No. 1-11-0813

of the trial would have been different had defense counsel not elicited testimony regarding the knife. This claim of ineffective assistance of counsel is therefore without merit because defendant cannot establish the requisite prejudice. And since we find no reversible error on any issue, there is no cumulative error warranting a new trial.

¶ 52 For the foregoing reasons, we affirm the judgment of the circuit court of Cook County.

¶ 53 Affirmed.