

No. 1-11-2637

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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. 11 C4 40328
)	
JOHN F. GUILTY,)	Honorable
)	Noreen V. Love,
Defendant-Appellant.)	Judge Presiding.

JUSTICE HALL delivered the judgment of the court.
Presiding Justice ROCHFORD and Justice LAMPKIN concurred in the judgment.

ORDER

¶ 1 *Held:* Defendant's conviction for theft is affirmed where trial counsel's failure to object to specific testimony was not ineffective assistance, and where a statement contained in defendant's presentence investigation report was not a posttrial claim of ineffective assistance of counsel which required a *Krankel* hearing.

¶ 2 Following a jury trial, defendant John Guilty was convicted of theft for stealing a gun from his friend's apartment while he was an overnight guest. The trial court sentenced defendant to an extended term of five years' imprisonment based upon his criminal history. On appeal, defendant contends his trial counsel rendered ineffective assistance because counsel failed to

challenge testimony that defendant stole a vehicle after taking the gun as inadmissible evidence of other crimes. Defendant also contends his case must be remanded for further proceedings pursuant to *People v. Krankel*, 102 Ill. 2d 181 (1984), because the trial court failed to conduct an inquiry into his posttrial claim of ineffective assistance of counsel, contained in his presentence investigation report (PSI). We affirm.

¶ 3 The day before trial, the State filed a motion *in limine* arguing, *inter alia*, that it should be allowed to present evidence of defendant's prior convictions to impeach his credibility if he chose to testify. While objecting to the admission of those convictions, defense counsel stated that there may be attempts to elicit trial testimony that defendant left the scene in someone else's car without the owner's permission, and that such testimony would be more prejudicial to defendant than probative of his credibility. The court granted the State's motion to introduce defendant's prior convictions, but did not address counsel's concern about testimony that defendant took someone's vehicle in this case. Counsel did not pursue his concern any further.

¶ 4 At trial, Edward Beecham testified that he had known defendant for many years, defendant and Beecham's sister had a 21-year-old daughter together, and defendant was "like a brother" to him. In early January of 2011, Beecham took defendant's daughter and granddaughter to a hospital emergency room because the child was ill. Defendant also arrived at the hospital. In the waiting room, defendant asked Beecham if he was interested in buying a jacket. Beecham declined, and defendant then asked him for \$40 so he could return to the place where he was staying. Beecham did not have any money, but invited defendant to stay at his apartment for a few days to get himself together. Defendant accepted the invitation, and a day or two later, arrived at Beecham's apartment with only the clothes he was wearing. Defendant stayed at Beecham's apartment for three or four days. During that time, there were a few occasions when Beecham went out and left defendant alone in the apartment.

¶ 5 On January 15, 2011, Beecham told defendant he could no longer stay and would have to leave the apartment the next day. When Beecham went to bed around midnight, defendant was lying on the couch in the living room watching television. A short time later, the doorbell rang and Beecham left his apartment and went down the hall and downstairs to answer the door. Beecham talked with his friend at the door for 10 to 15 minutes, then returned to his apartment and went directly to his bedroom, closing his bedroom door. Defendant was still lying on the couch watching television.

¶ 6 About 15 minutes after he returned to bed, Beecham heard his apartment door open. Beecham jumped out of bed, ran to the living room, and saw defendant was no longer in the apartment. Beecham ran back to his bedroom and looked out the window which was partially open. He saw defendant about 10 feet away running through the parking lot, carrying Beecham's gun in his right hand. The gun had been stored on the top shelf of Beecham's bedroom closet in a black gun case. Beecham repeatedly asked defendant what he was doing, and yelled at defendant to return his gun. Defendant looked back at Beecham and continued running. Beecham testified that defendant ran to Beecham's girlfriend's Kia truck, and drove away. The keys to the truck had been on the end table in Beecham's apartment. Beecham jumped into his own car and searched for defendant, but could not find him. He repeatedly called defendant on his cell phone, but defendant did not answer. A short time later, defendant called Beecham. Beecham's gun was never returned. Later that morning, Beecham went to the police station and reported the theft. Beecham subsequently identified defendant in a photo array as the man who stole his gun.

¶ 7 Cicero police officer Dragisic testified that on January 16, 2011, he met with Beecham at the police station and completed a report regarding a possible stolen gun and vehicle. Cicero police detective Charles Welch testified, over defense counsel's objection, that in addition to looking for the gun, he was also looking for a silver Kia sport utility vehicle. Detective Welch

showed Beecham a photo array, and Beecham identified defendant, writing next to defendant's photograph "This is John Guilty. He stole my gun, and my friend's car." Over another objection from counsel, the detective testified that Beecham said defendant removed a firearm from his apartment and stole his girlfriend's car. Detective Welch testified that defendant was never charged with stealing the vehicle. When asked why, the court sustained defense counsel's objection based on relevance.

¶ 8 Following deliberations, the jury found defendant guilty of theft. The trial court subsequently sentenced defendant to an extended term of five years' imprisonment based upon his criminal history.

¶ 9 On appeal, defendant first contends his trial counsel rendered ineffective assistance because counsel failed to object to testimony from all three of the State's witnesses that defendant stole Beecham's girlfriend's vehicle after taking the gun. Defendant claims counsel should have argued that such testimony was inadmissible evidence of other crimes that was highly prejudicial. Defendant further argues that counsel could have offered a jury instruction limiting its consideration of the testimony to mitigate its prejudicial effect. Defendant asserts that counsel's failure to challenge the testimony was objectively unreasonable, that the testimony "could have influenced the jury to convict" him, and "likely contributed" to his conviction.

¶ 10 The State argues that defendant has failed to establish that counsel's performance was deficient, or that he suffered prejudice. The State notes that counsel objected to some testimony, and some of those objections were sustained. The State asserts that the testimony was part of a continuing narrative, and relevant to show how defendant left the scene with the gun; therefore, counsel's strategy to refrain from objecting to the properly admitted testimony was reasonable. The State further argues that defendant does not claim the result of his trial would have been different, but instead, merely speculates that the testimony "could" have influenced the jury,

which is insufficient to establish ineffective assistance of counsel. In addition, the State argues that the evidence against defendant was overwhelming.

¶ 11 Claims of ineffective assistance of counsel are evaluated under the two-prong test handed down by the United States Supreme Court in *Strickland v. Washington*, 466 U.S. 668 (1984). *People v. Henderson*, 2013 IL 114040, ¶ 11. To support a claim of ineffective assistance of trial counsel, defendant must demonstrate that counsel's representation was deficient, and as a result, he suffered prejudice. *Strickland*, 466 U.S. at 687; *People v. Givens*, 237 Ill. 2d 311, 331 (2010). Specifically, defendant must show that counsel's performance was objectively unreasonable, and that there is a reasonable probability the outcome of the proceeding would have been different if not for counsel's error. *Henderson*, 2013 IL 114040, ¶ 11. If defendant cannot prove he suffered prejudice, this court need not determine whether counsel's performance was deficient. *Givens*, 237 Ill. 2d at 331. Moreover, *Strickland* requires defendant to demonstrate actual prejudice, and mere speculation as to prejudice is not sufficient. *People v. Bew*, 228 Ill. 2d 122, 135-36 (2008) (and cases cited therein).

¶ 12 Here, defendant has failed to establish that he was prejudiced by counsel's failure to object to the testimony that he took Beecham's girlfriend's car after stealing the gun. Instead, defendant merely speculates that the testimony "could have influenced the jury to convict" him, and "likely contributed" to his conviction. Such general speculation, without a demonstration of actual prejudice, is insufficient to reverse a conviction based on a claim of ineffective assistance of counsel. *Bew*, 228 Ill. 2d at 135-36.

¶ 13 Furthermore, we find that the evidence that defendant stole Beecham's gun was overwhelming. Defendant had been "like a brother" to Beecham for many years, and had been a guest in Beecham's house for a few days. The evidence showed that defendant needed money, had nowhere to stay, and had to leave Beecham's apartment the following day. Beecham had left

defendant alone in his apartment on a few occasions, including a time span of 10 to 15 minutes shortly before defendant left the apartment. Defendant then left the apartment in the middle of the night while Beecham was in his bedroom with the door closed. Immediately after defendant left, Beecham looked out his bedroom window and saw defendant just 10 feet away, running through the parking lot carrying Beecham's gun in his right hand. There is no indication in the record that the testimony that defendant left the scene in Beecham's girlfriend's vehicle had any influence on the jury's verdict. Based on this record, we find that the outcome of the trial would not have been different even if the challenged testimony regarding the vehicle had been omitted. Accordingly, counsel's failure to challenge the testimony did not constitute ineffective assistance.

¶ 14 Defendant next contends that his case must be remanded for further proceedings pursuant to *People v. Krankel*, 102 Ill. 2d 181 (1984), because the trial court failed to conduct an inquiry into his posttrial claim of ineffective assistance of counsel, contained in his presentence investigation report (PSI). The State argues that this court has previously held that a defendant is not entitled to a *Krankel* hearing based on a statement made to a probation officer included in the PSI. Defendant replies that counsel brought the statement to the trial court's attention during sentencing, which then gave the court a duty to inquire.

¶ 15 Where defendant raises a *pro se* posttrial claim that trial counsel rendered ineffective assistance, the trial court should examine the factual basis of the claim to determine if it has any merit. *People v. Moore*, 207 Ill. 2d 68, 77-78 (2003). Although the pleading requirements for raising such a *pro se* claim are relaxed, defendant must still meet the minimum requirements necessary to trigger a preliminary inquiry by the trial court. *People v. Bobo*, 375 Ill. App. 3d 966, 985 (2007). A statement by defendant, contained only in his PSI, does not, by itself, bring a claim of ineffective assistance of counsel to the trial court's attention such that further inquiry by the court is required. *People v. Harris*, 352 Ill. App. 3d 63, 71-72 (2004). Although a *pro se*

claim of ineffective assistance of trial counsel need not take a specific form, the trial court is not expected to divine such a claim where it is not even arguably raised. *People v. Reed*, 197 Ill. App. 3d 610, 612-13 (1990).

¶ 16 In this case, the PSI shows that when asked for his version of the offense, defendant told the probation officer that he asked counsel twice about cameras on Beecham's apartment building, and counsel said he would send an investigator to the scene. Defendant told the probation officer that he believed videotapes from the cameras would have shown he did not have the gun in his hands, and he would have been acquitted.

¶ 17 The report of proceedings shows that during the sentencing hearing, defense counsel stated that he reviewed the PSI with defendant. Counsel then stated:

"I reviewed his version of the offense where he indicates that he thought there should be videotapes. There were no videotapes presented at trial. We discussed that. There was argument – or there was argument made to the jury that they should consider the evidence, which were pictures of the scene as to whether or not they thought videotapes should exist."

¶ 18 Based on this record, we find that defendant did not present a *pro se* posttrial claim of ineffective assistance of counsel to the trial court. Defendant's statement to the probation officer researching his PSI was insufficient to trigger an inquiry by the court. Nor was counsel's notation of the statement during sentencing sufficient to bring a claim before the court. Counsel did not inform the court that defendant had raised a claim of ineffective assistance, nor was he required to do so. Defendant never raised the issue before the trial court by way of an oral or written motion. When he was given an opportunity to address the court during his sentencing hearing, defendant did not repeat his allegation or raise any concern with counsel's performance.

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Accordingly, we find that defendant did not raise a posttrial claim of ineffective assistance of counsel, and the trial court had no duty to conduct a *Krankel* hearing.

¶ 19 For these reasons, we affirm the judgment of the circuit court of Cook County.

¶ 20 Affirmed.