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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 Kane County.
)	
Plaintiff-Appellee,)	
)	
v.)	No. 07-CF-1112
)	
DOUGLAS A. CAMERON,)	Honorable
)	Timothy Q. Sheldon,
Defendant-Appellant.)	Judge, Presiding.

PRESIDING JUSTICE BURKE delivered the judgment of the court.
Justices McLaren and Spence concurred in the judgment.

ORDER

¶ 1 *Held:* The trial court properly summarily dismissed defendant's postconviction petition, which alleged that trial counsel was ineffective for failing to more thoroughly impeach the State's witnesses: the evidence that counsel allegedly should have used was collateral, speculative, or inadmissible, did not exist at the time of trial, or was reasonably withheld in light of the substantial impeachment already perfected.

¶ 2 Following a bench trial, defendant, Douglas A. Cameron, was convicted of residential burglary (720 ILCS 5/19-3(a) (West 2006)). He filed a postconviction petition, which the trial court summarily dismissed. He appeals, contending that the petition stated the gist of a claim that his trial counsel was ineffective for failing to more thoroughly impeach prosecution witnesses. We affirm.

¶ 3 Defendant was charged with burglarizing the apartment of Sean Scheffler. Scheffler testified at trial that he returned home from work one day and discovered that a .22-caliber rifle that he kept in a closet was missing. Scheffler initially suspected Mike Elkington, a neighbor with whom he had had problems in the past. He went to Elkington's apartment, but did not find the rifle. Elkington testified that he worked at the Meijer store in St. Charles, where he was friends with several people, including defendant and Margot Laag. In April 2007, someone stole a PlayStation from Elkington's apartment, and he suspected that Scheffler was responsible. He mentioned these concerns to defendant, who had previously claimed to be an undercover police officer. Defendant said that he would "take care of it."

¶ 4 Later that night, Elkington got home after dark, about 8:30 or 9 p.m., and watched television. He heard two loud "bangs" on Scheffler's door and thought that it was a friend of Scheffler's. When Scheffler got home around 10:30 or 11 p.m., he knocked on Elkington's door and said that someone had broken into his apartment and that his rifle was missing. Elkington denied knowing anything about the rifle.

¶ 5 Laag testified that she and defendant shared a house in Sycamore in early 2007. One day in April 2007, she talked to Elkington about a PlayStation of his that was missing. Elkington in turn talked to defendant, who said that he would "check things out" in Scheffler's apartment. After work that night, Laag and defendant went to Scheffler's apartment building. Defendant went inside while she waited in the car. Defendant eventually came out with something under his shirt, although Laag never saw what it was. Defendant asked her to "pop the trunk," which she did. Defendant then put the object in the trunk and they drove back to Sycamore.

¶ 6 Two or three days later, Laag saw a rifle in a garbage can in the garage. Laag became angry about the rifle, telling defendant to get rid of it. Later, he told her that he had put it in the attic. On

April 20, police responded to a domestic violence report at the Sycamore house, where they arrested Laag for allegedly battering defendant. As she was sitting on the curb in handcuffs, she told the officers that defendant had hidden a rifle in the attic. She consented to a search. After police located the rifle and drugs in the house, they released Laag and arrested defendant.

¶ 7 Laag admitted that she had a felony charge of driving under the influence (DUI) pending in Kane County. She denied being addicted to drugs but admitted that she “had a problem with them.” She had previously been addicted to cocaine and had done methamphetamine. She stated that she was around cocaine every day when she lived in Sycamore, but that her addiction ended after she moved away.

¶ 8 On September 1, 2009, the trial court found defendant guilty, finding that Laag was “a good witness,” and sentenced him to six years’ imprisonment. On direct appeal, this court affirmed. *People v. Cameron*, No. 2-09-1228 (2011) (*Cameron I*) (unpublished order under Supreme Court Rule 23).

¶ 9 Defendant filed a postconviction petition in which he argued that, although Laag’s testimony was critical to his conviction, his trial counsel, Gary Johnson, did not use readily available evidence to impeach her. Numerous documents were attached to the petition. However, the trial court summarily dismissed it, finding that how to impeach Laag was trial strategy. Defendant timely appeals.

¶ 10 Defendant contends that his petition stated the gist of a claim that Johnson was ineffective for failing to use numerous specific pieces of evidence to discredit Laag and Elkington. Before discussing defendant’s specific contentions, we briefly note the following.

¶ 11 The Post-Conviction Hearing Act (the Act) (725 ILCS 5/122-1 *et seq.* (West 2010)) provides a method for a criminal defendant to assert that his or her conviction was the result of “a substantial

denial of his or her rights under the Constitution of the United States or of the State of Illinois or both.” 725 ILCS 5/122-1(a)(1) (West 2010); see *People v. Hodges*, 234 Ill. 2d 1, 9 (2009). The Act provides for three stages of proceedings. *Hodges*, 234 Ill. 2d at 10. At the first stage, a petition alleging ineffective assistance may not be summarily dismissed if (1) it is arguable that counsel’s performance fell below an objective standard of reasonableness and (2) defendant was arguably prejudiced. *Id.* at 17. We review *de novo* the dismissal of a petition without an evidentiary hearing. *People v. Mars*, 2012 IL App (2d) 110695, ¶ 13.

¶ 12 We decide whether a defendant was denied the effective assistance of counsel pursuant to the standard of *Strickland v. Washington*, 466 U.S. 668 (1984). Under this test, “a defendant must show that (1) his counsel’s performance was deficient in that it fell below an objective standard of reasonableness, and (2) the deficient performance prejudiced the defendant in that, but for counsel’s deficient performance, there is a reasonable probability that the result of the proceeding would have been different.” *People v. Houston*, 226 Ill. 2d 135, 144 (2007). To establish deficient performance, a defendant must overcome a strong presumption that the challenged action or inaction was a matter of sound trial strategy. *People v. Smith*, 195 Ill. 2d 179, 188 (2000).

¶ 13 Whether and how to cross-examine or impeach a witness is a matter of trial strategy that will not support a claim of ineffective assistance of trial counsel. *People v. Pecoraro*, 175 Ill. 2d 294, 326 (1997). We evaluate counsel’s conduct from his perspective at the time of trial and not with the benefit of hindsight. See *People v. Salcedo*, 2011 IL App (1st) 083148, ¶ 50. In reviewing a claim of ineffective assistance of counsel, a court must consider counsel’s performance as a whole and not merely focus upon isolated incidents of conduct. *People v. Max*, 2012 IL App (3d) 110385, ¶ 65.

¶ 14 Applying these principles dooms defendant's arguments, for they do little more than second-guess counsel's strategic decisions with the benefit of hindsight, even to the extent of relying on evidence that was not available until after trial. Initially, we note that Laag was significantly impeached. Johnson got her to admit that, from her vantage point in the parking lot, she could not have seen defendant break down Scheffler's door, as she initially told police. She admitted that she had a felony DUI case pending. Although she did not admit to presently being a drug addict, she conceded that she had a "problem" with drugs and had been an addict in the past. Most significantly, Laag testified that she told police that defendant had stolen the rifle only after she had been arrested for domestic violence. After police found the rifle, they released Laag and arrested defendant. Thus, the defense argued that Laag accused defendant of stealing the rifle only to deflect attention from herself and onto defendant.

¶ 15 With this in mind, we consider defendant's specific contentions. Defendant first contends that Johnson should have used time records from the Meijer store where Laag and Elkington worked, to impeach their accounts of the timeline of the incident. Laag testified that she and defendant drove to Scheffler's apartment after work. Elkington testified that he got home after dark and was watching television when he heard two loud "bangs" on Scheffler's door. The Meijer time records show that Laag punched out at 8:19 p.m. and that Elkington left work at 9:12. Defendant, relying on Google maps, notes that Scheffler's apartment is approximately two miles from the Meijer store. Thus, he contends, assuming that Laag and defendant drove to Scheffler's apartment immediately after work, Elkington could not have been home when they arrived.

¶ 16 This evidence actually supports Laag's account, showing that she and defendant could have been in the vicinity of the crime about the time it occurred. At most, the evidence would have

impeached Elkington on a collateral point. As Elkington never claimed to have seen who was responsible for the banging on Scheffler's door, whether he was home at the time of the burglary is collateral to whether defendant was responsible for the break-in. Given its minimal impeachment value, Johnson's failure to use it was reasonable.

¶ 17 Defendant next contends that Johnson should have used further evidence that someone other than defendant was responsible for the theft. By way of background, Johnson attempted to introduce testimony by Dustin Needham that, about five hours after the domestic violence incident, he overheard Laag tell his girlfriend, Laurene Wright, that defendant did not know the rifle was in the house, that someone else had taken it, and that she hid it at the behest of a friend. The trial court excluded the evidence, finding it insufficiently reliable. On direct appeal, this court affirmed that ruling. *Cameron I*, slip order at 4-5.

¶ 18 Defendant contends that additional evidence was available to corroborate Needham's claim that Laag had confessed that she and an unknown male were involved in the theft. Attached to defendant's petition was a statement from a private detective who interviewed David Drewes. Drewes dated Laag for a few months in 2008. He claimed that Laag told him "that she and a guy she smokes crack cocaine with stole a rifle from Sean Sheffler's [*sic*] apartment and stashed the rifle where she was living at that time." Drewes related that Laag had pressed charges against him for domestic battery. The statements were contained in a letter to Johnson dated November 11, 2008. In October 2011, Drewes repeated his account in another statement, clarifying that "the guy she smokes crack cocaine with" was not defendant.

¶ 19 The same detective also interviewed Laurene Wright, who said that Laag told her that she and an unidentified male, who may have moved out of state, stole drugs, drug paraphernalia, and a

gun, and hid them in her Sycamore home. These statements were included in a letter to Johnson dated September 23, 2009. Defendant contends that these statements would have corroborated Needham's proposed testimony, making a stronger case for admitting the statements.

¶ 20 We perceive several shortcomings in this argument, not the least of which is that the proposed evidence did not exist—or at least its true import could not have been understood—until after trial. To be effective, counsel need not be clairvoyant. As defendant concedes, Wright did not make her statement to the detective until after trial. Given that we evaluate counsel's conduct from his perspective at the time of trial (*Salcedo*, 2011 IL App (1st) 083148, ¶ 50), it is difficult to see how Johnson could be faulted for not introducing a statement that had not yet been made.

¶ 21 In a similar vein, although Drewes' original statement was available to Johnson before trial, its description of a "guy she smokes crack cocaine with" was arguably consistent with defendant.¹ It was not until October 2011, long after the trial and direct appeal had concluded, that Drewes clarified his statement to add the fact that the unidentified male was not defendant. Thus, at the time of trial, Drewes' statement was consistent with defendant having committed the crime.

¶ 22 In any event, the evidence would almost certainly have been inadmissible for the same reason Needham's proposed testimony was inadmissible. As we noted on direct appeal, an extrajudicial declaration, not under oath, by the declarant, that he, and not the defendant on trial, committed the crime is generally inadmissible as hearsay even though the declaration is against the declarant's penal interest. *Pecoraro*, 175 Ill. 2d at 306. "Such a declaration will be admitted, however, when justice requires." *Id.* Where sufficient indicia of trustworthiness are present, such statements may

¹In the direct appeal, we observed that Needham's vague description of a male with whom Laag was acquainted was consistent with defendant. *Cameron I*, slip order at 4.

be admitted under the statement-against-penal-interest exception to the hearsay rule. *Chambers v. Mississippi*, 410 U.S. 284, 302 (1973). The so-called *Chambers* factors are that (1) the statement was made spontaneously to a close acquaintance shortly after the crime occurred; (2) the statement was corroborated by other evidence; (3) the statement was self-incriminating and against the declarant's interest; and (4) there was adequate opportunity for cross-examination of the declarant. *Pecoraro*, 175 Ill. 2d at 307 (citing *Chambers*, 410 U.S. at 300-01).

¶ 23 On direct appeal, we held that the third and fourth factors favored the admissibility of Needham's testimony, but not strongly, and that the first and second factors militated against admission. *Cameron I*, slip order at 5-6. Defendant argues that the additional statements would satisfy the requirement of corroboration, tipping the balance in favor of admissibility. Assuming that the complete statements had been available at the time of trial, and that Drewes and Wright would have been willing to testify to them, the fact remains that they were made months or years after the crime. We noted in the earlier appeal that a two-week delay likely was too long, and these statements were made many months later. Further, although the statements, vague as they are, tend to jibe with each other, defendant points to no other evidence in the case that points to involvement by anyone other than defendant.

¶ 24 Defendant further contends that Johnson should have called various witnesses to testify to Laag's drug use and her poor reputation for veracity. Defendant attached to his petition affidavits from numerous witnesses attacking Laag's character. The affidavits detailed instances of bad behavior by Laag and called her a liar. One witness stated that she continued to use drugs and was in fact under the influence of drugs while she testified.

¶ 25 Defendant concedes that much of this evidence would have been inadmissible, as evidence of specific bad acts by a witness is inadmissible. Michael H. Graham, *Handbook of Illinois Evidence* §608.5, at 479 (10th ed. 2010); see also Ill. R. Evid. 608 (eff. Jan. 1, 2011). However, he contends that evidence of her reputation for dishonesty and of her continued drug use would have been relevant.

¶ 26 It is sufficient to say that Johnson could have impeached Laag in this manner but reasonably chose not to. As noted, Johnson adduced significant impeachment related to the specific facts of this case. Additional evidence of Laag's general reputation might have diluted the impact of this other evidence.

¶ 27 Defendant claims that Johnson should have called defendant's parents to testify that the scratches on Laag's wrists, which she claimed defendant caused, "were just as likely caused by her cat." As defendant does not claim that his parents witnessed Laag being attacked by a cat, and he does not claim that they are medical experts, such testimony would have been sheer speculation.

¶ 28 Finally, defendant contends that Johnson should have called the owner of the apartment building where Elkington lived to testify that Elkington was a bad tenant who often drank to excess, damaged the apartment, and, after being evicted, threatened the landlord. These are merely more examples of inadmissible bad acts by the witness and impeachment on collateral matters.

¶ 29 Therefore, we hold that the trial court properly summarily dismissed defendant's postconviction petition.

¶ 30 The judgment of the circuit court of Kane County is affirmed.

¶ 31 Affirmed.