

2013 IL App (2d) 120566-U  
No. 2-12-0566  
Order filed December 23, 2013

**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  
SECOND DISTRICT

---

THE PEOPLE OF THE STATE	)	Appeal from the Circuit Court
OF ILLINOIS,	)	of Winnebago County.
	)	
Plaintiff-Appellee,	)	
	)	
v.	)	No. 09-CF-3257
	)	
RANDY S. BOWMAN,	)	Honorable
	)	John R. Truitt,
Defendant-Appellant.	)	Judge, Presiding.

---

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

**ORDER**

- ¶ 1 *Held:* Defense counsel was not ineffective for failing to impeach a witness with a prior conviction: the impeaching evidence was not strong, and counsel reasonably chose not to use it where the witness's testimony largely supported defendant's theory of the case.
- ¶ 2 Following a jury trial, defendant, Randy S. Bowman, was convicted of two counts of aggravated battery with a firearm (720 ILCS 5/12-4.2(a)(1) (West 2008)), and he was sentenced to concurrent terms of 30 years' imprisonment. On appeal, defendant argues that his trial counsel was

ineffective, because counsel failed to impeach one of the State's two occurrence witnesses with a prior conviction she had. We affirm.

¶ 3 The following facts are relevant to resolving the issue raised in this appeal. Before defendant's trial began, he filed a motion *in limine*, seeking to impeach the testimony of Jessica Williams with a 2005 conviction she had for retail theft. The trial court granted that motion.

¶ 4 The evidence presented at defendant's trial revealed that, on October 11, 2009, at 8:05 p.m., Williams, whom defendant used to date, spoke to defendant's cousin. Williams asked defendant's cousin to tell defendant and defendant's girlfriend to stop calling her.

¶ 5 At around 8:20 p.m. that night, defendant and his cousin went to Williams' house. At that time, Williams was at home with her husband, Jimmy Lewis; her three children; and her sister. Williams received a phone call, and, based on what was said, she went to her front door. Lewis went with her.

¶ 6 When Williams opened the door, she saw defendant's cousin, and, once she exited her house, she saw defendant. At that time, both Williams and Lewis, who disliked defendant, were standing on the front porch. Defendant and Lewis got into a verbal argument, and, during that exchange, defendant told Lewis that "he wasn't there to fight." Williams and Lewis told defendant and his cousin to leave, and then Williams and Lewis walked down some of the stairs in front of their home. Defendant pulled out a gun from his coat pocket, and he and his cousin proceeded to walk away from the couple's house. However, instead of facing forward, defendant walked backward, away from the home.

¶ 7 Williams and Lewis walked down all of the stairs in front of their house and were standing on the sidewalk when they saw defendant fire the gun in the air. Williams testified that Lewis

laughed. According to Lewis, he then pushed Williams down on the ground and defendant pointed the gun at him. Lewis indicated that he then “came off to the side, \*\*\* got a little closer to [defendant] and [defendant] shot [Lewis]” in the leg. Williams stated that she was pushed down on the ground after defendant fired the second shot. Williams also asserted that, after defendant fired the second shot, Lewis ran toward defendant, who was a short distance away.

¶ 8 Williams then indicated that defendant and Lewis began to fight. Williams was asked whether she heard the gun fire again while defendant and her husband were fighting, and she said that she did. Lewis stated that he was shot the second time while he was still “a little far back, not close to [defendant.]” According to Lewis, after the third shot was fired, he “grabbed [defendant] around his neck and his mouth and tried to smother him to death.” Williams then heard sirens, defendant ran away from the scene, and the police arrived.

¶ 9 At no time during Williams’ testimony was she impeached with her prior conviction of retail theft. During Lewis’s testimony, it was revealed that he had been convicted of and had pending against him several charges involving violence. No eyewitnesses other than Williams and Lewis testified about what transpired that night, and no evidence was presented regarding at what distance defendant fired any of the shots.

¶ 10 The jury found defendant guilty, defendant was sentenced, and this timely appeal followed. On appeal, defendant argues that his trial counsel was ineffective for failing to impeach Williams with her prior conviction of retail theft.

¶ 11 Claims of ineffective assistance of counsel are governed by the standard set forth in *Strickland v. Washington*, 466 U.S. 668 (1984). Under *Strickland*, to prevail on an ineffectiveness claim, a defendant must establish that counsel’s performance was deficient and that the deficient

performance prejudiced the defendant. *Id.* at 687. Put another way, the defendant must demonstrate that counsel's performance was objectively unreasonable under prevailing professional norms, and, furthermore, that there is a "reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." *Id.* at 694; see also *People v. Domagala*, 2013 IL 113688, ¶ 36.

¶ 12 In establishing prejudice, a defendant cannot rely on speculation that, had his attorney acted differently, the outcome of his case might have been different. See *People v. Krankel*, 131 Ill. App. 3d 887, 892 (1985); see also *People v. Robinson*, 70 Ill. App. 3d 24, 27 (1979). Thus, although a defendant does not need to show that the outcome "would have been different" absent counsel's errors, he must establish that he was "actually prejudiced[.]" meaning that it is at least "plausible that the result of the trial would have been different absent counsel's errors." (Emphasis added.) *People v. Fillyaw*, 409 Ill. App. 3d 302, 312 (2011).

¶ 13 The examination or impeachment of a witness is generally considered to be trial strategy, which does not support a claim of ineffective assistance of counsel. *People v. Lacy*, 407 Ill. App. 3d 442, 463 (2011). Thus, "[t]he manner in which to cross-examine a particular witness involves the exercise of professional judgment which is entitled to substantial deference from a reviewing court." *People v. Pecoraro*, 175 Ill. 2d 294, 326-27 (1997).

¶ 14 Nevertheless, defendant insists that counsel's failure to present the impeaching evidence was ineffective, because "had the jury learned of [Williams'] prior conviction and its effect on her credibility, the jury would have had a reason to disbelieve [Williams'] testimony and then, left with ambiguous evidence surrounding the circumstances of the shooting, may have subscribed to [defendant's] self-defense theory." In assessing whether the failure to impeach Williams constituted

ineffective assistance, the “value of the potentially impeaching material must be placed in perspective.” *People v. Jimerson*, 127 Ill. 2d 12, 33 (1989).

¶ 15 Here, the value of the impeaching evidence—a single, relatively minor conviction—was not great. Thus, it is not reasonably probable that, had the jury heard that evidence, the jury would have discredited Williams’ testimony and accepted defendant’s theory, which he failed to support with any concrete evidence, that he acted in self-defense when he shot Lewis.

¶ 16 Moreover, and perhaps more importantly, we believe that Williams’ testimony actually supported defendant’s claim that he acted in self-defense. That is, Williams’ testimony revealed that, when defendant and his cousin came to the front door, Williams and Lewis exited their home. Defendant and Lewis, who did not like defendant, got into a verbal argument, defendant and his cousin were told to leave, and, in leaving, defendant pulled a gun from his pocket and began walking backward, away from the couple’s home. As defendant and his cousin were walking away, Lewis and Williams walked down the stairs and defendant fired a shot in the air. Lewis laughed and continued down the stairs until he was standing on the sidewalk, very close to where defendant was. At that point, defendant fired at Lewis, who had been advancing toward defendant despite the fact that, according to Williams, defendant told Lewis that he was not there to fight. After this second shot was fired, Lewis ran at defendant, and, according to Williams, defendant fired at Lewis a second time. Because Williams’ testimony supported defendant’s theory of self-defense, it could be inferred that defense counsel reasonably chose not to impeach her with her prior conviction.

¶ 17 Given the above, we must conclude that defendant has failed to establish either prong of the *Strickland* test. Accordingly, defendant’s claim that his counsel was ineffective for failing to impeach Williams with her prior conviction must fail.

¶ 18 For these reasons, the judgment of the circuit court of Winnebago County is affirmed.

¶ 19 Affirmed.