

No. 1-11-1302

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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. 10 CR 17598
)	
WILLIAM A. ROUSE, II,)	Honorable
)	Thomas P. Fecarotta, Jr.,
Defendant-Appellant.)	Judge Presiding.

JUSTICE PUCINSKI delivered the judgment of the court.
Presiding Justice Hyman and Justice Mason concurred in the judgment.

ORDER

¶ 1 *HELD:* Defendant's aggravated criminal sexual assault conviction upheld where he received effective assistance of trial counsel and where the State proved him guilty of the charged offense beyond a reasonable doubt.

¶ 2 Following a jury trial, defendant William Rouse was convicted of three counts of aggravated criminal sexual assault and was sentenced to three consecutive terms of 6 years' imprisonment, for a total sentence of 18 years' imprisonment in the Illinois Department of Corrections. On appeal, defendant challenges his conviction and the sentence imposed thereon,

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arguing: (1) he was denied his right to effective assistance of trial counsel; and (2) the State failed to establish his guilt beyond a reasonable doubt. For the reasons explained herein, we affirm the judgment of the circuit court.

¶ 3

I. BACKGROUND

¶ 4 In 2010, defendant was charged with three counts of aggravated criminal sexual assault. Specifically, he was charged with using force or threat of force to penetrate, the victim, G.K.,¹ vaginally, anally, and orally.

¶ 5 Defendant retained private counsel and elected to proceed by way of a jury trial. During the jury selection process, defense counsel exercised six peremptory challenges to strike six potential jurors from the jury pool. After the sixth challenge was made, the court subsequently informed counsel that he had one peremptory challenge left. Counsel interjected and expressed his mistaken belief that he was entitled to 10 challenges "per statute." The court however, reiterated: "You got seven, you got seven. You don't have more than that." As the *voir dire* process continued, defense counsel exercised his final peremptory challenge. After the seventh challenge, however, defense counsel attempted to make two additional peremptory challenges. Because defense counsel had used all seven of his peremptory challenges, his requests to strike two additional potential jurors were denied. Ultimately, twelve jurors and two alternates were selected to hear the evidence in the case. Two of the jurors that defense counsel had attempted to strike were seated on the jury.

¹ Throughout this disposition, we will use the victim's initials in lieu of her full name to preserve her privacy. See, e.g., *People v. M.D.*, 213 Ill. App. 3d 176, 180 (1992).

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¶ 6 At trial, G.K., the victim, testified that she worked as a dog groomer at PetSmart, and that Kelly Rouse, defendant's wife, was her manager. G.K. was friendly with Kelly outside of work and explained that they had socialized at defendant's house on several prior occasions. On three or four of those occasions, G.K. would stay overnight at the Rouse's residence to avoid driving home after consuming alcohol since she had a previous DUI conviction.

¶ 7 On September 10, 2010, G.K. and Kelly left work together and drove to the Rouse residence. The plan was for G.K. to spend the night and for Kelly to drive them both to work the following morning. Once she and Kelly arrived, they began to drink wine and smoke cigarettes on the patio while defendant prepared the meal. G.K. recounted that she drank a glass of wine prior to dinner and another glass with her meal. Later that evening, Joseph Perez, a friend of defendant's, stopped by the house. Perez and defendant began drinking cocktails made with vodka and juice while G.K. and Kelly continued drinking wine. G.K. acknowledged that she had been prescribed various medications by a psychiatrist, including Adderall, Zoloft, Trazodone and Clonazepam, and was aware that she was not supposed to ingest her medication and drink alcohol. G.K., however, admitted that she took her prescribed Adderall dosage while she was drinking at defendant's house, but denied that she or anybody else snorted Adderall that evening.

¶ 8 Sometime between midnight and 1 a.m., on September 11, 2010, Kelly retired to her bedroom to sleep and G.K. continued to socialize with defendant and Joseph Perez for several more hours and until Perez left. Once G.K. was alone with defendant, they began watching television. G.K. explained that they initially both sat on opposite ends of the same couch in the Rouse's living room, but that she started leaning towards the center of the couch to get more

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comfortable.

¶ 9 Defendant then grabbed G.K.'s hair, pushed her head down toward his exposed penis, and rubbed his penis on her face. She testified that defendant's penis went into her mouth several times, and caused her to gag and choke. As she tried to get away from him, she pushed against defendant's "crotch area." Defendant, however, was able to maneuver her so that she was bent over the couch with her face pressed against the couch's cushions. G.K. continued to struggle but stopped after defendant threatened to "break [her] fucking neck." Defendant then pulled down her pants and touched the tip of his penis to her vagina and anus. When G.K. used her hands to cover her anus, defendant inserted his penis into her vagina.

¶ 10 After approximately 20 minutes, G.K. was able to free herself and she ran out of the Rouse residence and into their garage where she grabbed a pipe. Although she knocked on the doors of several nearby houses to get help, nobody answered and she continued running until she reached a busy street. After she fell to the ground, a man named Anthony DiCaro stopped to help her. G.K. told DiCaro that she had been attacked and DiCaro called for assistance and waited with her until police arrived. When emergency response crews also reported to the scene, G.K. acknowledged that she was "freaked out" and testified that she had to be strapped down in the ambulance. Although she recalled speaking to the police officers and the EMT's who arrived to help her, G.K. did not remember telling anybody that she was "unsure" as to whether defendant had penetrated her. After she arrived at the hospital, G.K. spoke to a nurse and relayed what defendant had done to her. She remained frightened during her hospitalization because she believed that she kept hearing defendant's voice.

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¶ 11 DiCaro confirmed that he encountered G.K. at approximately 5 a.m. on September 11, 2010, near the intersection of Devon Street and Arlington Heights Road. He explained that he was driving home from work when he noticed a woman lying on the sidewalk and stopped his car to assist her. DiCaro observed that G.K. was disheveled, explaining that her shirt appeared to be ripped and that her pants were unzipped and unbuttoned. In addition, her hair was messy and she was crying. At that time, G.K. was not wearing shoes or socks and was not carrying a purse or cell phone. She was, however, holding a metal pipe. G.K. told him that she had been at a friend's house and that her friend's husband had attacked her after his wife had gone to sleep. She stated that the attack happened as they were sitting on a couch watching television. G.K. did not tell DiCaro that she had been partying or drinking and DiCaro testified that it did not appear as if she had been drinking or doing drugs. He did not notice any odor of alcohol. DiCaro gave G.K. a sweatshirt and called for help. Once police arrived, he relayed what G.K. had told him about her assault.

¶ 12 Doctor John Ortinau, an emergency room physician at Alexian Brother's Medical Center, testified that he treated G.K. on September 11, 2010. When G.K. was brought into the emergency room, she was visibly upset and she reported that she had been sexually assaulted and was experiencing soreness to her vagina and neck. She told him that a man had forced his penis into her mouth and that he also attempted to penetrate her vaginally and anally. The attack happened on a couch and G.K. said that her face had been pushed into couch cushions. Because the attack happened so quickly, G.K. was unsure whether there had been full vaginal or anal penetration; however, she was certain that defendant had forced his penis into her mouth.

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¶ 13 Doctor Ortinau performed a physical examination on G.K. and observed visible signs of bruising on her upper arms and forearms and redness at the base of her neck and on her knees. Although he did not observe any physical signs of trauma to G.K.'s anus or vagina, Doctor Ortinau explained that the lack of physical trauma was not uncommon in assault cases where the victim is not a virgin and where no foreign objects were used to achieve penetration. G.K. informed him that she had prescriptions for Trazodone, Clonazepam and Adderall, but Doctor Ortinau did not conduct any toxicology tests to determine what drugs were in her system at that time. In addition, he did not make any notations in G.K.'s medical chart as to whether she appeared to be intoxicated and testified that it was his normal practice to do so if a patient appeared to be impaired. Although a nurse had made a notation about the size of G.K.'s pupils in her medical chart, Doctor Ortinau testified that he did not observe anything unusual about G.K.'s pupils and found that they reacted appropriately to light. He further testified that the condition of G.K.'s eyes was consistent with what he would expect to find in a person who had been crying. He conceded however, that pupil dilation can be affected by methamphetamines. Doctor Ortinau recorded G.K.'s pulse rate on several occasions during the examination and found it to be elevated. While an elevated pulse rate would not be an unusual finding in a person who had been sexually assaulted, it would also be a finding that would also be expected if a patient had taken methamphetamines.

¶ 14 Elk Grove Village Police Officer John Suarez testified that he was dispatched to the intersection of Arlington Heights Road and Devon Avenue on September 11, 2010. When he arrived, he observed G.K., who was "crying, hyperventilating, and repeating that she was

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attacked." Her hair was messy and her clothes were in disarray; however, neither her shirt nor her pants appeared to be torn. After speaking with G.K., Officer Suarez then went to defendant's residence where he was met by defendant's wife Kelly. After entering the house, he observed defendant sitting on a couch in the living room wearing jeans, but no shoes, socks, or shirt. Defendant acknowledged that G.K. had been in his house and that they had been drinking alcohol; however, he told Officer Suarez that he had not known that G.K. had left the house. Officer Suarez testified that defendant was "accommodating" and "perfectly willing to cooperate" with the police, but indicated that he did not believe that defendant was being truthful.

¶ 15 Officer Suarez completed a police report about the incident. In the report, however, he did not include his observations that G.K. was crying and hysterical or that her hair and clothing appeared to be in disarray. Although Officer Suarez did indicate in his report that G.K. had admitted to drinking alcohol and that her eyes were glassy and that she smelled of alcohol, he did not include defendant's admission that he, too, had been drinking in the report.

¶ 16 Elk Grove Police Officer Brian Vivona testified that on September 11, 2010, he was dispatched to take photographs of G.K. while she was in the hospital and was assigned to complete a sexual assault kit. After doing so, Officer Vivona then went to defendant's residence to take photographs of the crime scene. Defendant's wife and mother-in-law were present in the residence while he took pictures and processed the scene. Officer Vivona denied manipulating anything in the home prior to taking any pictures.

¶ 17 Upon the conclusion of the aforementioned testimony, the State rested its case. Defense counsel made a motion for a directed finding, but the motion was denied. The defense then

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called the following witnesses.

¶ 18 Kelly Rouse, defendant's wife, confirmed that she and G.K. were friendly outside of work and that G.K. was intoxicated every time they socialized together. In addition, on multiple occasions, she and G.K. snorted Adderall together. On September 10, 2010, after finishing work, G.K. and Kelly arrived at Kelly's house around 3:30 p.m. and began drinking wine. Kelly estimated that she drank six glasses of wine that evening and testified that she and G.K. each snorted four Adderall capsules that night. She confirmed that she and G.K. both had prescriptions for the drug. Kelly could not recall if defendant or their friend Joseph Perez snorted any Adderall that night.

¶ 19 Kelly also confirmed that on September 11, 2010, police arrived at her residence to collect evidence and take pictures of the living room where assault was alleged to have taken place. She saw officers move some furniture around in her house prior to taking pictures. Thereafter, Kelly went to the police station where she spoke to several police officers and an Assistant State's Attorney. Although she signed a handwritten statement, Kelly acknowledged that she did not tell anybody investigating the matter that anyone had taken Adderall that night.

¶ 20 Doctor Alan Jaffe, a licensed clinical psychologist, testified that he was familiar with Adderall, which is a stimulant and an amphetamine. Because Adderall is a stimulant, Doctor Jaffe explained that someone who ingested 120 milligrams or more of Adderall would experience an increased heart rate. He further stated that people who ingest Adderall while drinking alcohol would likely experience some disorientation and would have difficulty in engaging in rational thinking. In addition, a person who consumes a combination of Adderall

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and alcohol could potentially experience auditory, visual and olfactory hallucinations.

¶ 21 Doctor Jaffe acknowledged that he did not speak to or treat G.K. and had no independent knowledge as to whether she was under the influence of Adderall at the time that the alleged attack occurred. He further acknowledged that G.K.'s medical records did not contain any notations indicating that she was delusional or hallucinating when she arrived at the hospital on September 11, 2010. Moreover, because no toxicology tests were run on G.K., he had no knowledge as to what substances, if any, were in her system at the time she sought treatment for the alleged assault. After viewing pictures taken of G.K., however, Doctor Jaffe testified that her pupils appeared to have been dilated, which is a symptom one would expect to find in a person who is under the influence of a methamphetamine.

¶ 22 Joseph Perez testified that he arrived at defendant's home at approximately 8:30 p.m. on September 10, 2010. That evening, he saw both Kelly and G.K. drinking wine and snorting Adderall at defendant's house. He estimated that the women consumed an entire box of wine while he was there. Perez admitted that he also snorted Adderall that night and drank vodka. Although he did not remember how many drinks he had that night, he was certain that he was not intoxicated. When Perez left defendant's house at approximately 1 a.m. on September 11, 2010, G.K. was still drinking. She called him sometime after he left and he indicated that he believed that she was probably intoxicated when she made the call because she was slurring her words and could not hold a coherent conversation.

¶ 23 Perez received another phone call at approximately 6 a.m. on September 11, 2010, and was asked to report to the Elk Grove Village police station. After he arrived, Perez spoke to

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Detective Winkler about the events of the previous night. He reported that he had seen G.K. drink wine and believed that she had been intoxicated. Perez, however, did not inform Detective Winkler that Kelly and G.K. had been snorting Adderall. He explained that he did not provide that information to police because Kelly and defendant had a baby and he did not want to say anything that would trigger an investigation by the Illinois Department of Children and Family Services.

¶ 24 Officer James Chmelik responded to a call for assistance at the intersection of Devon and Arlington Heights Road on September 11, 2010, and testified that he encountered G.K. when he arrived at that location. He observed that she was crying and barefoot and her hair was disheveled. She also smelled of alcohol and appeared to be intoxicated. G.K. reported that she had consumed four to six drinks at her manager's house and that her manager's husband, William, attacked her. When asked to provide further details, G.K. stated that she had been sitting on a couch with defendant and that he began rubbing his arm and shoulder against her. He then forcibly pulled her head towards his groin and put his penis into her mouth. Defendant then pushed her against the couch, pulled her pants down and attempted to insert his penis into her anus. When he was unable to do so, he then inserted his penis into her vagina. Officer Chmelik confirmed that G.K. did not mention using drugs that evening.

¶ 25 Lisa Romanski, a registered nurse at Alexian Brother's Medical Center, treated G.K. when she arrived in the emergency room on September 11, 2010. At the time, G.K. was alert and able to communicate; however, she spoke in a low voice and was tearful during their conversation. G.K. did not seem to be delusional or experiencing any hallucinations, but

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Romanski did note that her pupils appeared to be dilated and that her hair was tangled.

Romanski also observed redness on both of G.K.'s knees and a bruise on G.K.'s left arm. G.K. provided Romanski with a list of medications that she was prescribed, but did not indicate that she had taken any medication the previous evening.

¶ 26 G.K. then informed Romanski that her manager's husband had forcibly inserted his penis into her mouth, anus and vagina. She reported that he had held her face-down on the couch as he tried to penetrate her vagina and anus. G.K. was unsure if defendant penetrated her digitally. She was also unsure whether she had masturbated defendant or whether there had been any kissing, licking or sucking to other parts of the body prior to the attack. G.K., however, denied that she had engaged in any other sex acts that night. After hearing G.K.'s account of the attack, Romanski drew blood from G.K. and completed a rape kit.

¶ 27 Detective George Winkler testified that he interviewed G.K. in the emergency room on September 11, 2010. She reported that she had consumed four to six glasses of wine the prior evening. Although G.K. did not tell him that she or anyone else had used drugs the night before, Detective Winkler acknowledged that he did not ask her about drug use. He also confirmed that neither Kelly nor Perez discussed drug usage when he interviewed them later that day and testified that he first became aware of potential drug usage when he was told so by defense counsel.

¶ 28 Detective Winkler confirmed that he also interviewed defendant prior to his arrest. Defendant was approximately 6 feet tall and weighed approximately 205 to 210 pounds. He did not observe any marks or signs of bruising on defendant's body at that time.

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¶ 29 John Lodewyk and Matthew Bonilla were two of the Elk Grove Village paramedics who attended to G.K. on September 11, 2010. Lodewyk did not remember whether G.K. had appeared to have been intoxicated at the time, but he did recall that she was not wearing shoes. Bonilla, in turn, recalled that G.K. had smelled of alcohol. He also remembered that it was difficult to get her into an ambulance because she was upset and afraid and was only comfortable with police officers.

¶ 30 Jolie McGrath, another PetSmart employee, testified that she socialized with G.K. outside of work and that they had gone out to bars together. On multiple occasions, G.K. would "get pretty drunk." McGrath estimated that she had seen G.K. experience a hangover on 10 to 15 occasions over the past two years. She had also seen G.K. come to work intoxicated on two occasions.

¶ 31 Defendant elected not to testify and the parties stipulated that the vaginal swabs that were taken from G.K. and included in the rape kit were tested, but did not contain a sufficient amount of DNA for analysis. Thereafter, the defense rested its case and the parties delivered closing arguments. Following deliberations, the jury returned with a verdict finding defendant guilty of three counts of aggravated criminal sexual assault. The trial court then presided over a sentencing hearing, and after hearing arguments advanced in aggravation and mitigation sentenced defendant to six years' imprisonment for each of the three counts, the sentences to be served consecutively for a total of 18 years' imprisonment. Defendant's posttrial motions were denied and this appeal followed.

¶ 32

II. ANALYSIS

¶ 33

A. Sufficiency of the Evidence²

¶ 34 On appeal, defendant argues that G.K.'s testimony was unreliable because there was evidence that she was intoxicated at the time of the purported assault. In addition, defendant observes that there was no physical evidence to substantiate her account that she had been violently assaulted anally and vaginally. Accordingly, defendant maintains he was not proven guilty beyond a reasonable doubt.

¶ 35 The State responds that defendant's challenge to the sufficiency lacks merit "because the victim credibly testified regarding the sexual assault committed against her and her testimony was corroborated by the injuries documented at the hospital, evidence recovered at the crime scene, and her immediate and consistent outcries."

¶ 36 Due process requires proof beyond a reasonable doubt to convict a criminal defendant. *People v. Ross*, 229 Ill. 2d 255, 272 (2008). In reviewing a challenge to the sufficiency of the evidence, it is not a reviewing court's role to retry the defendant; rather, we must view the evidence in the light most favorable to the prosecution and determine whether any rational trier of fact could have found each of the essential elements of the crime beyond a reasonable doubt. *People v. Ward*, 215 Ill. 2d 317, 322 (2005); *People v. Hayashi*, 386 Ill. App. 3d 113, 122 (2008). The trier of fact is responsible for evaluating the credibility of the witnesses, drawing reasonable inferences from the evidence, and resolving any inconsistencies in the evidence (*People v. Bannister*, 378 Ill. App. 3d 19, 39 (2007)), and a reviewing court should not substitute

² We note that we will address the issues raised by defendant in a different order than the issues are discussed in his appellate brief.

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its judgment for that of the trier of fact (*People v. Sutherland*, 223 Ill. 2d 187, 242 (2006)).

Ultimately, a reviewing court will not reverse a defendant's conviction unless the evidence is so improbable or unsatisfactory that it creates a reasonable doubt as to his guilt. *People v.*

Carodine, 374 Ill. App. 3d 16, 24 (2007).

¶ 37 A person commits the offense of aggravated criminal sexual assault "if that person commits criminal sexual assault and any of the following aggravating circumstances exist during the commission of the offense * * * (3) the person acts in a manner that threatens or endangers the life of the victim or any other person." 720 ILCS 5/11-1.30(a)(3) (West 2010). A person commits the offense of criminal sexual assault "if that person commits an act of penetration and: (1) uses force or threat of force * * *." 720 ILCS 5/11-1.20(a)(1) (West 2010). Sexual penetration is defined as "any contact, however slight, between the sex organ or anus of one person and an object or the sex organ, mouth, or anus of another person, or any intrusion, however slight, of any part of the body of one person or of any animal or object into the sex organ or anus of another person, including, but not limited to, cunnilingus, fellatio, or anal penetration. Evidence of emission of semen is not required to prove sexual penetration." 720 ILCS 5/11-0.1 (West 2010).

¶ 38 Here, the jury heard G.K.'s account of the assault and her ingestion of alcohol and Adderall prior to the assault. G.K. testified that after defendant's wife went to sleep, defendant attacked her in the living room. He pushed her head down and forcibly put his penis into her mouth. Defendant then bent her over the couch, pressed her face into the couch cushions, and touched the tip of his penis to her vagina and anus, before he was able to forcibly penetrate her

vagina. Although G.K. testified that she initially struggled against defendant, she stopped after he threatened to "break [her] fucking neck." The accounts of her attack that she provided to the individuals who assisted and treated her following the assault were consistent. Moreover, the visible signs of injury that were documented by emergency room medical personnel, including bruising on G.K.'s upper arms and redness at the base of her neck and on her knees, corroborated G.K.'s account of the manner in which she was attacked. Although the jury heard evidence that a person who consumes Adderall and alcohol can experience disorientation and hallucinations, the fact finder evidently deemed G.K.'s testimony credible and found defendant guilty of aggravated criminal sexual assault. Viewing the evidence in the light most favorable to the State, we find that there is sufficient evidence to support defendant's conviction.

¶ 39 B. Ineffective Assistance of Counsel

¶ 40 Defendant next argues that counsel committed a number of errors during his trial and that, as a result, he was denied his constitutional right to effective assistance of counsel. He asserts that each of these errors, considered both singly and cumulatively, operated to deprive him of a fair trial. We will address each of his allegations of ineffective assistance in turn before turning to his cumulative error argument.

¶ 41 It is well-established that every criminal defendant has a constitutional right to receive effective assistance of counsel. U.S. Const., amends. VI, XIV; Ill. Const. 1970, art. I § 8; *Strickland v. Washington*, 466 U.S. 668, 685, 104 S. Ct. 2052, 2063, 80 L. Ed. 2d 674, 691-92 (1984). The right to effective assistance of counsel entails "reasonable, not perfect, representation." *People v. Wilborn*, 2011 IL App (1st) 092802, ¶ 79. To prevail on a claim of

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ineffective assistance of trial counsel, the defendant must satisfy the two-prong test set forth in *Strickland v. Washington*, 466 U.S. 668, 104 S. Ct. 2052, 80 L.Ed. 2d 674 (1984) and establish that: (1) counsel's performance fell below an objective standard of reasonableness, and (2) counsel's deficient performance prejudiced defendant. *People v. Albanese*, 104 Ill. 2d 504, 525 (1984); *People v. Baines*, 399 Ill. App. 3d 881, 887 (2010). With respect to the first prong, the defendant must overcome the "strong presumption" that counsel's action or inaction was the result of sound trial strategy. *People v. Jackson*, 205 Ill. 2d 257, 259 (2001); *People v. Shelton*, 401 Ill. App. 3d 564, 584 (2010). "In recognition of the variety of factors that go into any determination of trial strategy, * * * claims of ineffective assistance of counsel must be judged on a circumstance-specific basis, viewed not in hindsight, but from the time of counsel's conduct, and with great deference accorded counsel's decisions on review.'" *Wilborn*, 2011 IL App. (1st) 092802, ¶ 79, quoting *People v. Fuller*, 205 Ill. 2d 308, 330-31 (2002). To satisfy the second prong, the defendant must establish that but for counsel's unprofessional errors, there is a reasonable probability that the outcome of the trial court proceeding would have been different. *People v. Peeples*, 205 Ill. 2d 480, 513 (2002). A reasonable probability that the trial result would have differed is "a probability sufficient to undermine confidence in the outcome— or put another way, that counsel's deficient performance rendered the result of the trial unreliable or fundamentally unfair." *People v. Evans*, 209 Ill. 2d 194, 220 (2004). A defendant must satisfy both the performance and prejudice prongs of the *Strickland* test to prevail on an ineffective assistance of counsel claim. *Evans*, 209 Ill. 2d at 220; *People v. McCarter*, 385 Ill. App. 3d 919, 935 (2008).

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¶ 42 Defendant first argues that trial counsel was ineffective during the jury selection process because he "did not possess the basic knowledge of the number of peremptory challenges available in a felony criminal trial." The State concedes that counsel was mistaken as to the number of peremptory challenges that were permitted but asserts that this ineffective assistance claim has no merit because there is no evidence that defendant was tried by a biased jury.

¶ 43 Here, there is no dispute that defendant was entitled to seven peremptory challenges rather than the ten challenges that counsel mistakenly believed were applicable during the *voir dire* process. See Ill. S. Ct. R. 434 (eff. February 6, 2013) ("A defendant tried alone shall be allowed seven peremptory challenges in a case in which the punishment may be imprisonment in the penitentiary"). It is well-settled that an attorney's decision whether to exercise a peremptory challenge is generally regarded as a matter of trial strategy that is immune from ineffective assistance of counsel claims. *People v. Metcalfe*, 202 Ill. 2d 544, 562 (2002); *People v. Bowman*, 325 Ill. App. 3d 411, 428 (2001). Here, however, it is not simply counsel's exercise of peremptory challenges that defendant is disputing; rather, it is counsel's lack of knowledge as to the number of peremptory challenges available. We agree with defendant that counsel's failure to familiarize himself with relevant *voir dire* procedure was not reasonable. See generally *People v. Pugh*, 157 Ill. 2d 1, 19 (1993) (recognizing that counsel can be deemed ineffective for failing to understand applicable controlling law); *People v. Steward*, 295 Ill. App. 3d 735, 742 (1998) (same). Nonetheless, we cannot conclude that defendant was prejudiced by counsel's mistake. Defendant suggests that he was prejudiced because he was "forced to accept jurors he could well have stricken;" however, to establish prejudice a defendant must show that he was tried by a

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biased jury and that the trial result would have been different had counsel exercised his peremptory challenges in a different manner. See *Metcalfe*, 202 Ill. 2d at 562-63; *Bowman*, 325 Ill. App. 3d at 428-29. Here, no such evidence of prejudice exists, and thus we find that counsel's misapprehension of the number of peremptory challenges available did not amount to ineffective assistance of counsel.

¶ 44 Defendant next argues that counsel was ineffective for failing to lay the necessary foundation to allow Doctor Alan Jaffe and Joseph Perez to provide testimony regarding the effect that snorting Adderall had on G.K.'s state of mind on the night of the alleged assault. Defendant argues that such testimony was necessary to support his theory of the case which was that "Adderall combined with alcohol, caused [G.K.] to experience is a psychotic event which rendered her recollection and her testimony unreliable."

¶ 45 An attorney's failure to establish the requisite foundation necessary to admit relevant important evidence can, in certain circumstances, constitute ineffective assistance of counsel. *People v. House*, 141 Ill. 2d 323 (1990); *People v. Vera*, 277 Ill. App. 3d 130, 139 (1995). Here, it was not defense counsel's inability to lay a proper foundation to elicit testimony that G.K. suffered a psychotic episode that was triggered by Adderall and alcohol consumption, rather it was the fact that there was no evidence to substantiate that claim which prohibited counsel from eliciting such testimony. In accordance with the trial court's ruling, Perez was permitted to testify that he observed G.K. consume a substantial quantity of wine and saw her snort Adderall capsules. Doctor Jaffe, in turn, was able to testify that the combination of alcohol and Adderall can cause a person to experience disorientation, difficulties in engaging in rational thinking, and

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auditory, olfactory, and visual hallucinations. Although Doctor Jaffe was properly precluded from opining that G.K. experienced a psychotic episode on the night in question, defense counsel was able to elicit testimony that supported defendant's theory of the case, which was to show that G.K. was under the influence of drugs and alcohol on the night of the alleged attack.

Accordingly, we do not find counsel's efforts prejudiced defendant, and thus, this ineffective assistance of counsel claim must also fail.

¶ 46 In a related claim, defendant also argues that counsel was ineffective due to his "repeated inability to lay evidentiary foundations without the direct assistance of the [trial] [c]ourt." The State acknowledges that counsel had difficulty laying foundations for witness testimony, but argues that defendant was not prejudiced since the trial court helped counsel to lay the necessary foundations. We agree with the State. As we have set forth above, counsel can be deemed ineffective for failing to familiarize himself with controlling legal authority and procedures. See *Pugh*, 157 Ill. 2d at 19; *Steward*, 295 Ill. App. 3d at 742. Here, it was evident that defense counsel repeatedly had difficulties laying proper foundations to elicit witness testimony from Doctor Jaffe and Joseph Perez about intoxication. In addition, counsel did not know how to properly refresh the memory of Nurse Lisa Romanski who treated G.K. in the emergency room after the assault. As a result, the circuit court interjected on multiple occasions to help counsel lay the proper foundations to elicit the testimony that he sought to present to the jury. Had it not been for the circuit court's intervention, the jury would not have been able to consider the testimony of the aforementioned witnesses. There is no evidence that the mere fact that counsel needed assistance from the circuit court to present certain evidence was so prejudicial that it

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affected the outcome of defendant's trial, especially because the circuit court instructed the jury that it was not to consider the conduct of the attorneys in its deliberations. Because defendant cannot establish prejudice, this ineffective assistance of counsel claim also fails.

¶ 47 Defendant next suggests that counsel was ineffective for questioning certain witnesses in a manner that was damaging to his case. Specifically, counsel elicited testimony from Nurse Romanski that she had declined to speak with him prior to trial. In addition, counsel elicited testimony from Detective Winkler that neither Joseph Perez nor defendant's wife volunteered information about drug use at defendant's residence prior to G.K.'s alleged attack. Finally, during counsel's examination of paramedic John Lodewyck, he permitted Lodewyck to testify that he had not noticed that G.K. was intoxicated when he arrived to provide assistance. The State responds that the manner in which defense counsel questioned these witnesses was reasonable trial strategy, and that counsel's representation did not prejudice defendant.

¶ 48 We note that the manner in which counsel elects to examine witnesses is regarded as a matter of trial strategy and will not support an ineffective assistance of counsel claim unless the chosen tactic is objectively unreasonable. See, e.g., *People v. Pecoraro*, 175 Ill. 2d 294, 326 (1997). Here, we are unpersuaded that the manner in which counsel questioned those witnesses was unreasonable. Moreover, even if counsel's tactics could be deemed unreasonable, defendant cannot show that he was prejudiced because the witnesses' testimonies were not inconsistent with the theory of defense. Given that defendant suffered no prejudice, this ineffective assistance of counsel claim also fails.

¶ 49 Defendant next argues that counsel was ineffective for failing to perfect the impeachment

of G.K. Like other decisions pertaining to the questioning of witnesses, decisions to impeach a witness are considered matters of trial strategy that are generally immune from ineffective assistance of counsel claims. See *Pecoraro*, 175 Ill. 2d 294 at 326. At trial, G.K. testified that defendant inserted his penis into her mouth, rubbed his penis against her anus and vagina and then penetrated her vagina. During cross-examination, she denied that she had told any of the responding paramedics that defendant had not penetrated her. Although we acknowledge that defense counsel did not ask either John Lodewyk or Matthew Bonilla whether G.K. ever denied penetration, there is no evidence in the record that they would have confirmed the lack of penetration. That is, there is no evidence that G.K. denied or expressed uncertainty about the details of the attack to the EMT's after they reported to the scene. Accordingly, defendant's ineffectiveness claim is based on pure speculation because there is nothing in the record to suggest that counsel would have been able to perfect the impeachment of G.K. had he attempted to do so. Thus, this ineffective assistance of counsel claim also lacks merit.

¶ 50 Finally, defendant suggests that the cumulative effect of counsel's errors deprived him of his right to a fair trial. This court has recognized that although a single error by counsel may not satisfy the two-prong *Strickland* test, counsel's cumulative errors may have rendered the proceedings unreliable under the standard enunciated in *Strickland*. See, e.g., *People v. Vera*, 277 Ill. App. 3d 130, 141 (1996); *People v. Garza*, 180 Ill. App. 3d 263, 270 (1989); *People v. Bell*, 152 Ill. App. 3d 1007, 1011 (1987). Here, there is no dispute that counsel was mistaken as to the number of peremptory challenges to which he was entitled. In addition, the trial court had to advise counsel how to lay proper foundation to elicit opinion testimony about intoxication and

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its effect a person's behavior, how to properly refresh a witness's recollection and how to authenticate photographs. We are unpersuaded, however, that the cumulative effect of counsel's errors rendered the lower court proceedings unreliable given the strength of the evidence against defendant. We thus reject defendant's claim of cumulative error.

¶ 51

III. CONCLUSION

¶ 52 We affirm the judgment of the circuit court.

¶ 53 Affirmed.