

No. 1-12-1443

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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. 08 CR 18618
)	
DAHTANUN COMBEST,)	Honorable
)	Timothy Joseph Joyce,
Defendant-Appellant.)	Judge Presiding.

JUSTICE SIMON delivered the judgment of the court.
Presiding Justice Harris and Justice Pierce concurred in the judgment.

O R D E R

¶ 1 *Held:* Defendant's claim of ineffective assistance of counsel must fail when he cannot establish that the outcome of his trial would have been different absent counsel's alleged errors.

¶ 2 Following a bench trial, defendant Dahtanun Combest was found guilty of aggravated battery with a firearm and the unlawful use of a weapon by a felon. He was sentenced to six years in prison for aggravated battery with a firearm and to a concurrent term of two years for unlawful use of a weapon by a felon. On appeal, defendant contends that he was denied the

effective assistance of counsel because trial counsel elicited "damaging" information during cross-examination. We affirm.

¶ 3 Defendant's arrest and prosecution arose out of a September 2008 incident during which the victim, Perry Coleman, was shot in the abdomen.

¶ 4 At trial, the victim testified that he was standing on the sidewalk in front of a restaurant when he heard three or four gunshots and "ducked" inside the building. At that point, someone told the victim that he was bleeding. The victim discovered that he had been shot in the abdomen. During cross-examination, the victim testified that there were other people on the street at the time of the shooting.

¶ 5 Officer Calvin Winners testified that he and his partners, Officers Weatherly and Williams, were in an unmarked vehicle when they heard "one loud report," which sounded like a gunshot or explosion. When Winners looked around to see where the noise had come from, he observed defendant, who was walking through a well-lit McDonald's parking lot, firing a gun. Defendant was traveling in a "southeasterly" direction while his face and the arm which held the gun were facing a "northeasterly" direction. Standing next to defendant was a man in a red outfit. Winners saw defendant fire the gun four times. As Winners drove around a corner, he observed the man in red run into a building and shut a door in defendant's face. Defendant responded by "rolling the gun out of his hand like it was a basketball" and walking away. Winners activated the emergency lights on the car and then secured the weapon. At the same time, his partners detained defendant. During cross-examination, Winners testified that as he looked around to see where the shots were coming from, he saw people "scattering."

¶ 6 Officer Renee King Williams testified that she did not see who fired the gun. However, as the car turned, she saw defendant facing away from a door and then walking down an alley. When Williams went to area businesses in search of witnesses, she met the victim, who was bleeding from the abdomen. During cross-examination, Williams testified that when she heard the first shot she saw people running.

¶ 7 In finding defendant guilty of aggravated battery with a firearm and the unlawful use of a weapon by a felon, the trial court noted that in addition to the victim, there were "other persons" in the area, which was a "very relevant consideration" to the court. The court acknowledged that Winners was the only person to see defendant with a gun, but found Winners to be credible.

¶ 8 Defendant filed a motion for a new trial, arguing, *inter alia*, that there was no evidence that he aimed the firearm at anyone. In denying the motion, the trial court relied in part on the victim's testimony that he was not the only person on the street at the time of the shooting. The court stated that a person firing a gun multiple times toward a group of people standing on a well-lit sidewalk would "normally" be presumed to have seen those people and that such an action had the likelihood that someone would be struck by the bullets fired. Ultimately, defendant was sentenced to six years in prison for aggravated battery with a firearm and to a concurrent two-year term for the unlawful use of a weapon by a felon.

¶ 9 On appeal, defendant contends that he was denied the effective assistance of counsel when trial counsel elicited, during cross-examination, the "damaging" information that there were other people on the sidewalk at the time of the shooting. He argues that this information undermined the defense's theory that the victim was struck by a "ricochet bullet" that was not fired at anyone.

¶ 10 To establish a claim of ineffective assistance of counsel, a defendant must show that counsel's performance fell below an objective standard of reasonableness and that, but for counsel's errors, a reasonable probability exists that the result of the proceeding would have been different. *Strickland v. Washington*, 466 U.S. 668, 687-88 (1984). If the defendant fails to establish either prong, his ineffective assistance claim must fail. *Strickland*, 466 U.S. at 687. "If it is easier, a court may proceed directly to the second prong of *Strickland* and dismiss an ineffective assistance claim on the ground that it lacks sufficient prejudice, without first determining whether counsel's performance was deficient." *People v. Valladares*, 2013 IL App (1st) 112010, ¶ 70; *People v. Johnson*, 128 Ill. 2d 253, 271 (1989). To establish prejudice, the defendant must show a reasonable probability that, absent counsel's alleged error, the trial's outcome would have been different. *People v. Evans*, 209 Ill. 2d 194, 220 (2004). "A reasonable probability of a different result is not merely a possibility of a different result." *Id.*

¶ 11 Here, defendant contends that he was prejudiced by trial counsel's decision to elicit testimony, during cross-examination of the State's witnesses, which established that there were other people on the street at the time of the shooting because this information compromised his defense that he acted recklessly by firing a gun into an empty street. In other words, defendant contends that absent testimony indicating that there were multiple people on the street, the result of his trial would have been different.

¶ 12 Initially, this court notes that allegations of ineffective assistance of counsel based on counsel's conduct during cross-examination are not subject to review, as they fall within the purview of trial strategy. *People v. Harris*, 123 Ill. 2d 113, 157 (1988); see also *People v. Tolefree*, 2011 IL App (1st) 100689, ¶ 34 (counsel's decision as to when and how to cross-

examine a witness is generally a matter of trial strategy that will not support an ineffective assistance of counsel claim). However, even if this court were to accept defendant's contention that trial counsel's questions regarding whether other people were on the street were objectively unreasonable, defendant's claim of ineffective assistance must fail because he cannot establish how he was prejudiced by these questions.

¶ 13 In the case at bar, defendant cannot show prejudice when the State established, through the victim's testimony, that there was at least one person on the street at the time of the shooting. The victim testified, on direct examination, that he was standing outside a restaurant when he heard gunshots and ducked back inside, and Winners testified that he saw defendant walking through a parking lot with an extended arm firing a gun. Thus, the State established that defendant discharged a firearm multiple times and that the victim was shot in the abdomen while standing on the sidewalk. See 720 ILCS 5/12-4.2(a) (West 2008) (a defendant commits aggravated battery with a firearm when he, in committing a battery, knowingly or intentionally, by means of discharging a firearm, caused any injury to another person).

¶ 14 Although defendant argues that absent trial counsel's questions the State could not have established that there were people on the street and that the evidence would have shown that defendant's conduct was merely reckless when he fired a gun into an empty street, defendant ignores the victim's testimony establishing that there was at least one person, *i.e.*, the victim, on the street. Accordingly, we reject defendant's speculative assertion that the outcome of the trial would have been different had the evidence merely established the presence of one person on the street at the time of the shooting as opposed to multiple people. See *People v. Bew*, 228 Ill. 2d 122, 135 (2008) ("*Strickland* requires actual prejudice be shown, not mere speculation as to

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prejudice"). Therefore, because defendant has failed to show a reasonable probability that, absent counsel's alleged error, the outcome of his trial would have been different (*Evans*, 209 Ill. 2d at 220), his claim of ineffective assistance of counsel must fail (see *Strickland*, 466 U.S. at 687).

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

¶ 16 Affirmed.