

No. 1-11-2814

**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  
FIRST DISTRICT

---

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County
	)	
v.	)	No. 05 CR 21453
	)	
JAMES MEDLEY, JR.,	)	
	)	Honorable
Defendant-Appellant.	)	Thaddeus L. Wilson,
	)	Judge, Presiding.

---

PRESIDING JUSTICE HOFFMAN delivered the judgment of the court.  
Justices Hall and Lampkin concurred in the judgment.

**ORDER**

- ¶ 1 *Held:* The trial court's denial of the defendant's post-trial motion alleging ineffective assistance of trial counsel is affirmed where counsel investigated an expert witness and made a tactical decision not to present her testimony.
- ¶ 2 Following a bench trial, the defendant, James Medley, Jr., was convicted of first degree murder (720 ILCS 5/9-1(a)(2) (West 2004)), and sentenced to 39 years' imprisonment. On appeal, the defendant argues his trial attorneys were ineffective for failing to investigate an expert witness and call her to testify at trial. For the reasons that follow, we affirm.

¶ 3 In August 2005, a grand jury indicted the defendant for two counts of first degree murder (720 ILCS 5/9-1(a)(1), (a)(2) (West 2004)), in connection with the strangulation death of his girlfriend, Ethel Adams.

¶ 4 The defendant's jury trial commenced on May 6, 2008. At trial, the State presented evidence that, at approximately 7:30 p.m. on August 11, 2005, the defendant was driving eastbound on 15th Street in the vicinity of Kedvale and Komensky Avenue on the west side of Chicago. Adams was also in the car riding in the front passenger seat. Cecilia Redditt testified that she was walking down the street on the way to her mother's house when she observed a gray vehicle swerving down the street. As the car drove passed Redditt, Redditt observed the male driver, later identified as the defendant, grab the back of the female passenger's head and bang it into the dashboard three times. The vehicle came to a stop when it hit a curb near an alley. Redditt testified that she, along with 10 to 20 other people in the area, approached the vehicle and noticed the female passenger was laying facedown over the passenger seat with her legs hanging out of the door. People in the crowd began screaming because the woman was not moving or breathing; the defendant responded by saying, "can't nobody help her but me, leave her alone, don't call 911." Redditt testified that the defendant never tried to help the woman and, when the fire department arrived, he attempted to flee but was prevented from doing so by some men who grabbed him and held him until the police arrived.

¶ 5 Floyd Spencer testified that on August 11, 2005, at approximately 7:30 p.m., he was sitting in the foyer of Deliverance Temple (a church) when he saw a gray vehicle come to an awkward stop. Spencer ran out of the church to see if the passengers needed help. As he approached the vehicle, Spencer noticed the female passenger's feet hanging out of the door and the defendant was holding the woman by her collar, trying to pull her into the vehicle. Spencer

corroborated Redditt's testimony that the woman was not moving or making any noise; that people in the crowd were screaming at the defendant, telling him that the woman could not breathe; and that the defendant said "she [*sic*] just drunk and trying to get some attention." Spencer added that some people from the crowd hit the defendant, knocking him out. When the defendant regained consciousness, he attempted to flee the scene, but Spencer stepped in front of him and held him down until the police arrived.

¶ 6 Myron Sloan, another eyewitness, testified and substantially corroborated the testimony of Redditt and Spencer. He added, however, that the defendant crawled over the woman, exited the front passenger door, and started slapping the woman's face. Sloan further testified that someone from the crowd tried to take the woman's pulse, but the defendant said, "don't touch her." The defendant also attempted to "snatch" a phone out of someone's hand because they were trying to call 911. At that point, several people from the crowd confronted the defendant and hit him until he was knocked unconscious. About four minutes later, an ambulance and fire truck arrived. The defendant was restrained by a few men and was arrested when the police arrived.

¶ 7 Chicago police officer Jason Acevedo testified that, shortly after 7:30 p.m. on August 11, 2005, he was on routine patrol with his partner when he received a radio message reporting a battery in progress near 15th Street and Komensky Avenue. Upon arrival, he observed two or three males holding the defendant and shouting that he had beaten the female passenger. Acevedo detained the defendant, walked him back to his squad car, and inquired what happened. The defendant stated he was arguing with his girlfriend, they started to fight, and "he put his hands on her a little bit." Acevedo arrested the defendant and transported him to the police station. Redditt, Spencer, and Sloan also went to the police station and identified a photograph

of the defendant as the driver of the vehicle. Redditt, Spencer, and Sloan again identified the defendant in open court during the course of trial.

¶ 8 Dr. Claire Cunliffe, an assistant medical examiner for Cook County, testified for the State as an expert in the field of forensic pathology. Cunliffe performed external and internal examinations on Adams' body, as well as a toxicology screening. She also relied on a case report prepared by an investigator regarding the circumstances surrounding Adams' death. Cunliffe testified that Adams was 5' 7" tall and weighed 209 pounds. In addition to various abrasions and bruises on Adams' head, nose, shoulders, left arm, right wrist, and right knee, Cunliffe also observed "faint" bruising around the front, left, and right sides of Adams' neck. Cunliffe's internal examination revealed hemorrhaging in Adams' neck muscles and deep subcutaneous tissue, as well as petechial and sclera hemorrhaging in her right eye. Cunliffe also found multiple petechial and subgaleal hemorrhages in Adams' scalp which is consistent with Adams' head having contact with a flat foreign object. Cunliffe further noted that Adams had an enlarged heart, weighing about 563 grams, and her left anterior descending artery and right coronary artery showed 90 percent narrowing. Adams also had metal stints in place and the myocardial muscle in her heart was thickened. Cunliffe testified that she did not see any evidence that Adams died of a heart attack or as a result of heart disease. Finally, the toxicology report revealed that Adams' blood-alcohol level was 0.14, over one and-a-half times the legal limit. Cunliffe opined that the cause of Adams' death was homicide by strangulation.

¶ 9 On cross-examination, Cunliffe explained the difference between manual strangulation and ligature strangulation. Manual strangulation involves the use of hands, while "ligature" strangulation occurs when a person is strangled with clothing or some other article. Cunliffe testified she could not determine whether Adams was manually strangled or strangled with some

sort of ligature. Cunliffe stated that she was given a v-neck shirt that Adams was wearing, and that the injuries to Adams' neck are consistent with someone pulling the back of a v-neck shirt. She said that there are anecdotal reports of people dying from strangulation in a matter of seconds, but there are no studies to pinpoint how long it takes to strangle someone to death. Cunliffe testified that, if someone pulled hard enough on Adams v-neck shirt, it could cause strangulation. Cunliffe further testified that Adams' neck cartilage and hyoid bone were intact, but explained that an intact hyoid bone does not necessarily mean Adams did not die of strangulation because the hyoid bone can remain flexible and certain methods of strangulation do not result in a broken hyoid bone. Cunliffe did not find any evidence that Adams had been held by her hair or that her hair had been pulled back and forth.

¶ 10 The defendant testified that he started dating Adams shortly after they met in 2001. On August 11, 2005, he and Adams were drinking at a friend's house near 16th Street and South Tripp Avenue. At approximately 7:30 p.m., he and Adams left their friend's house and entered his vehicle. The defendant testified that, as he was driving, he and Adams began to argue about \$10 that Adams apparently lost. He stated that Adams became "hysterical" and threatened to jump out of the vehicle. When they approached 15th and Karlov, Adams removed her seat belt, opened the door, and tried to jump out of the car which was traveling 15 or 20 miles per hour. The defendant testified that he grabbed the back of Adams' shirt to prevent her from jumping, but Adams was "bouncing all around," pulling him in a north-south direction, causing him to swerve the vehicle. When the vehicle came to a stop, Adams broke free from his grip, stepped out of the car, fell to her knee, and slumped backward onto the front seat, lying face down. The defendant stated that he tried to pull Adams back into the car by grabbing her arm but was too tired. He asked Adams to "get up," but she did not move. The defendant testified that a crowd started to

form and he exited the vehicle by crawling over Adams. According to the defendant, he realized something was wrong when he looked at Adams and noticed her eyes were fixed toward the back seat. The defendant stated that, at that point, he hit the hood of his car because he did not know what was happening. He asked if anyone called an ambulance and a woman in the crowd indicated she called 911. The defendant admitted he initially told people to not touch Adams, but later allowed a woman to perform mouth-to-mouth resuscitation. He testified that he stepped back to give her space when he was suddenly punched and knocked unconscious. He recalls lying on the ground near the rear of his vehicle; he was dizzy and tried to walk towards the man that hit him, but some other man grabbed him and said "come on away from here." The defendant denied grabbing the back of Adams head, slamming her face into the dashboard, placing his hands around her neck, or trying to strangle her. He also denied trying to flee the scene.

¶ 11 On cross-examination, the defendant explained that he applied steady pressure on the brakes of his vehicle and did not slam on the brakes because he did not want the door to hit Adams. When asked why he grabbed and pulled the back of Adams' shirt, the defendant explained, "[e]verything happened in six seconds" and "[i]t was defensive, just to reach out and grab."

¶ 12 Following closing arguments, the jury found the defendant guilty of first degree murder.

¶ 13 The defendant, through new counsel, filed a post-trial motion asserting that the trial court erred in failing to tender an involuntary manslaughter jury instruction. The trial court granted the defendant's post-trial motion, vacated the defendant's conviction for first degree murder, and ordered a new trial.

¶ 14 The defendant's second trial commenced on March 9, 2009. The defendant waived his right to a jury trial, and the parties stipulated to the testimony presented at the first trial, including the defendant's own testimony. The State also presented the testimony of Antoinette Brown.

¶ 15 Brown testified to a similar sequence of events as Redditt, Spencer, and Sloan. However, she added that, after the vehicle came to a stop, she observed the defendant choking the passenger by placing both of his hands around her neck for two to five minutes. After Brown testified, the parties stipulated that Brown had called 911 and reported that a man was choking and severely beating a woman.

¶ 16 In closing argument, the State argued that it proved the defendant guilty beyond a reasonable doubt because the evidence established that he used his hands to "[choke] the last breath out of [Adams] until she died." The defense argued that the evidence showed that Adams' death was an accident and urged the trial court to find the defendant not guilty. Alternatively, defense counsel asserted the defendant's attempt to pull Adams into the vehicle was reckless conduct warranting a finding of involuntary manslaughter.

¶ 17 After hearing arguments, the trial court found the defendant guilty of first degree murder.

¶ 18 The defendant hired a new attorney to handle his post-trial proceedings. Post-trial counsel filed a motion for a new trial alleging, *inter alia*, that the defendant was deprived of effective assistance of counsel at his second trial where his attorneys failed to properly investigate and present expert testimony that Adams was not strangled to death but, rather, died of heart disease precipitated by the stress of the altercation.

¶ 19 The trial court held an evidentiary hearing on the defendant's claim of ineffective assistance. At that hearing, the defendant called Dr. Shaku Teas, a forensic pathologist. Teas

testified that she reviewed Adams' medical records, the autopsy report, photos, histology slides, police and EMS reports, as well as Cunliffe's testimony. Teas stated that she did not find enough evidence of strangulation and opined that Adams died from "coronary atherosclerosis combined with hypertensive cardiovascular disease precipitated by the stress of the altercation." Teas further testified that she shared her findings with Steven Greenberg, the defendant's attorney from the first trial. Teas had several phone conversations with Greenberg in which she said she would testify that Adams' heart disease played a significant role in her death and that evidence of strangulation was lacking. However, Greenberg indicated that he could get that information out of the State's medical examiner, and he did not need Teas to testify at trial. Teas also testified that she spoke with Scott Frankel, one of the defendant's attorneys from the second trial, and she reiterated her opinion that Adams died of heart disease under the stress of the altercation.

¶ 20 Frankel testified that he learned about Teas through conversations he had with Greenberg. Frankel then spoke with Teas on the phone, and Teas said that Adams suffered from heart disease which contributed to her death. After speaking with Teas, Frankel reviewed the trial transcripts, including Greenberg's cross-examination of Cunliffe, and discussed Teas proposed testimony with co-counsel, Stanley Hill. Frankel and Hill both agreed that Teas proposed testimony would not help the defense's case.

¶ 21 Hill testified that he never spoke with Teas because he was aware that Frankel spoke with Teas and Greenberg regarding Teas' proposed testimony. Hill stated that, based on his conversations with Frankel, Teas' proposed testimony would not add anything to the defense's case. Hill explained that the defense's theory was that the defendant's conduct—attempting to pull Adams into the vehicle by grabbing the back of her shirt—was accidental at best, reckless at worst. Hill believed that Cunliffe's testimony supported this theory of the case because she



testified that strangulation could occur in a matter of seconds and that Adams' may have died from a ligature strangulation—*i.e.*, her v-neck shirt being pulled around her neck. Hill stated, "we agreed to take a stipulated bench trial because we wanted the evidence to come in the same way that it had come in the first trial." Hill also noted that Teas' testimony would not help the defendant because "[y]ou take your victim like you found them," and, regardless of whether the defendant strangled Adams or caused her to suffer a heart attack, the outcome would be the same because his unlawful conduct caused Adams' death.

¶ 22 After hearing the evidence, the trial court found the defendant was not denied effective assistance of counsel at his second trial and denied his motion for a new trial. The court sentenced the defendant to 39 years' imprisonment. This appeal followed.

¶ 23 On appeal, the defendant asserts he was denied his constitutional right to effective assistance of counsel where his trial attorneys failed to investigate and call Teas as an expert witness to rebut the State's evidence that Adams died from strangulation, and not heart disease. The defendant argues that, had the trier of fact had such evidence before it, there is a reasonable probability the outcome of his trial would have been different, namely, the trier of fact would have found his conduct to be reckless. The State responds by arguing that defense counsel did investigate Teas as a possible witness, and counsels' decision to not call her as a witness constituted trial strategy.

¶ 24 Every defendant has a constitutional right to the effective assistance of counsel under the sixth amendment to the United States Constitution and the Constitution of Illinois. U.S. Const., amends. VI, XIV; Ill. Const. 1970, art. I, § 8. Claims of ineffective assistance are governed by the standard set forth in *Strickland v. Washington*, 466 U.S. 668, (1984). See *People v. Albanese*, 104 Ill. 2d 504 (1984) (adopting *Strickland*). To prevail on a claim of ineffective

assistance of counsel, a defendant must demonstrate that counsel's performance was deficient and that the deficient performance prejudiced the defendant. *Strickland*, 466 U.S. at 687. More specifically, a defendant must show that counsel's performance was objectively unreasonable under prevailing professional norms and 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. In reviewing a trial court's denial of a defendant's post-trial motion claiming ineffective assistance of counsel, we will reverse only if the trial court's action was manifestly erroneous. *People v. Tolefree*, 2011 IL App (1st) 100689, ¶ 25. "Manifest error" has been defined as error that is clearly plain, evident, and indisputable. *Id.*

¶ 25 Trial counsel has a professional duty to conduct reasonable investigations and failure to investigate fully can constitute ineffective assistance of counsel. *People v. Domagala*, 2013 IL 113688, ¶ 38. "Lack of investigation is to be judged against a standard of reasonableness given all of the circumstances, 'applying a heavy measure of deference to counsel's judgments.'" *People v. Kokoraleis*, 159 Ill. 2d 325, 330 (1994) (quoting *Strickland*, 466 U.S. at 691). However, "strategic choices made after thorough investigation of law and facts relevant to plausible options are virtually unchallengeable." *Strickland*, 466 U.S. at 690-91. Likewise, our supreme court has held that decisions concerning whether to call certain witnesses are matters of trial strategy, reserved to the discretion of trial counsel. *People v. Patterson*, 217 Ill. 2d 407, 442 (2005).

¶ 26 In the present case, the defendant cannot overcome the strong presumption that counsels' decision not to call Teas as a witness was objectively reasonable. The record reflects that Hill and Frankel were aware of Teas' testimony. Teas' testimony at the evidentiary hearing confirms that Frankel spoke to her prior to trial and that he discussed her potential testimony with her.

Hill and Frankel testified that they chose not to call Teas as a witness because her testimony would have had no probative value to a determination of guilt or innocence. Instead, counsel believed that Cunliffe's testimony that Adams died from strangulation was consistent with the defense's theory of the case: that the defendant accidentally (or recklessly) caused Adams' death when he grabbed the back of her shirt to prevent her from jumping out of a moving car. Counsel made a tactical decision not to call Teas as a witness and we find nothing objectively unreasonable in counsels' reasoning. See *People v. Ashford*, 121 Ill. 2d 55, 74-75 (1988) (trial counsel does not render ineffective assistance by failing to call a witness where "the circumstances show that the individual's testimony would likely have been harmful to the defendant or would have had no probative value to a determination of guilt or innocence.").

¶ 27 Nevertheless, the defendant argues that Hill, as the lead attorney, was ineffective for failing to conduct an independent investigation of Teas. The defendant cites no authority, and we have found none, to support the proposition that each attorney representing a defendant must conduct his own independent investigation. In this case, we find Hill's performance did not fall below an objective level of reasonableness where his co-counsel, Frankel, conducted a sufficient investigation into Teas proposed testimony and shared the results of his investigation with Hill.

¶ 28 We also reject the defendant's argument that Frankel was ineffective for failing to conduct "further" investigation into Teas' proposed testimony. The defendant fails to identify the information that such further investigation would reveal. It is axiomatic that trial counsel does not render ineffective assistance by failing to elicit testimony of which he is unaware. See *People v. Humphries*, 257 Ill. App. 3d 1034, 1043 (1994) ("An attorney cannot be said to be ineffective for failing to call a witness whose \*\*\* potential testimony [is], through no fault of the attorney, unknown to him or her.") In the instant case, counsels' decision to forgo further

investigation into Teas testimony, electing instead to rely on the testimony of Cunliffe, was trial strategy and was not unreasonable under the circumstances.

¶ 29 In sum, affording the appropriate deference to counsels' performance, we conclude that counsels' investigation was "well within the range of professionally reasonable judgments" (*Strickland*, 466 U.S. at 699), and that counsels' decision to not call Teas as an expert witness was also reasonable. Accordingly, trial counsels' performance was not constitutionally deficient.

¶ 30 Moreover, Teas testimony would have likely had no effect on the outcome of trial. To be guilty of murder, a defendant's acts are not required to be the sole and immediate cause of death: it is sufficient that the defendant's criminal acts contribute to the victim's death. *People v. Brackett*, 117 Ill. 2d 170, 176 (1987). Here, even if counsel had presented evidence that Adams died from heart disease "precipitated by the stress of the altercation," her death was still caused by the defendant's criminal acts. Nor do we find any reasonable probability that the trier of fact would have credited the defendant's argument that Adams heart disease showed that his conduct was reckless as opposed to intentional. As such, the defendant cannot show that he suffered prejudice by the absence of Teas testimony.

¶ 31 For the reasons set forth above, we affirm the trial court's denial of the defendant's post-trial motion.

¶ 32 Affirmed.