2015 IL App (1st) 131142-U

No. 1-13-1142

Fourth Division
August 27, 2015

IN THE

APPELLATE COURT OF ILLINOIS

FIRST DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS, Plaintiff-Appellee, v. DELANEY JARVIS, Defendant-Appellant.	)	Appeal from the Circuit Court of Cook County. No. 12 CR 18658 Honorable Frank Zelzinski, Judge, presiding.

JUSTICE COBBS delivered the judgment of the court.
Presiding Justice Fitzgerald Smith and Justice Howse concurred in the judgment.

O R D E R

¶ 1 *Held*: Trial court did not err in failing to render jury instructions regarding identification testimony to the jury because the absence of the instruction was not a substantial defect. Defendant failed to prove ineffective assistance of counsel where counsel adequately attacked the weaknesses in the witness's identification testimony. Finally, defendant's bare assertions of ineffective assistance of counsel at trial did not entitle him to a preliminary *Krankel* hearing.

¶ 2 Defendant, Delaney Jarvis, was found guilty of aggravated leaving the scene of an accident involving death or personal injury. One of the State's witnesses, Phillip Ashworth, identified defendant as the driver of a vehicle that struck and killed the driver of a

motorcycle. On appeal, defendant argues that the court erred in failing to tender to the jury Illinois Pattern Jury Instruction, Criminal, No. 3.15 (4th ed. 2000)(hereinafter, IPI Criminal 4th No. 3.15), which details the factors a jury should consider when confronted with a witness's identification testimony. Alternatively, defendant argues that his trial attorney was ineffective for failing to offer the jury instruction. Finally, he argues that the court erred in failing to conduct a preliminary hearing investigating his claim of ineffective assistance of counsel in a post-trial hearing. For the following reasons, we affirm.

¶ 3 BACKGROUND

¶ 4 The following evidence was presented in the State's case in chief. Phillip Ashworth testified that Shane Kreke was riding his motorcycle on Lincoln Highway and stopped at a red light at the intersection of Lincoln Highway and Brookwood Road. When the light turned green and he proceeded into the intersection, a green car driving on Brookwood struck Kreke's motorcycle and Kreke fell off, rolled onto the hood of the car behind him, and hit the ground. Ashworth was driving his car behind Kreke and witnessed the accident. Ashworth observed the driver of the green car exit his vehicle and examine his own car. The driver then began to make his way back inside his vehicle. Ashworth exclaimed to the driver that he hit and injured Kreke. The driver responded that he did not care, and drove off. Ashworth testified that he was 25-30 feet away from the driver and that conditions were "duskish." He then pursued the driver and called the police, but eventually lost pursuit.

¶ 5 Officer Scott Metzger, of the Village of Olympia Fields Police Department, testified that he arrived on the scene of the accident and noticed a green car bumper lying on the road with a Kia emblem. Metzger was approached by Ashworth who had returned to the scene of the accident. Ashworth described the driver of the green vehicle as a six-foot tall black male

with curly hair in a ponytail, wearing a light shirt and blue jeans, weighing approximately 200 pounds.

¶ 6 Daniel Fernandez testified that he contacted Detective Corporal Mark Akiyama of the Olympia Fields Police Department on June 21, 2011, and left him two voicemails. In the voicemails, Fernandez stated that in May of 2011, he sold a green Kia to defendant and that a few days earlier, defendant called him and warned him not to tell anyone about the sale of the car.

¶ 7 Detective Akiyama testified that after listening to Fernandez's voicemails, he showed a photo array to Ashworth on June 22 which included a picture of defendant. Ashworth failed to identify defendant as the driver of the green car. However, Ashworth identified defendant as the driver of the car in another photo array conducted on July 7, 2011. Detective Aykima testified that the photo of defendant used in the first photo array was from 2007, while the photo used in the second photo array had been taken of defendant only a few days beforehand. Ashworth also identified defendant in a line-up on July 17, 2011.

¶ 8 The State also called Emily Kaye, who verified that a recording of Ashworth's 911 call was accurate. Finally, the State called Beth Kreke, Shane's mother who testified that her son was healthy prior to the accident and died from his injuries in the hospital.

¶ 9 Defendant's sole witness was his sister, Leticia Jarvis. Jarvis testified that while she frequently saw defendant ride a bike, she had not seen him drive a car in over five years. She did not know where defendant was at the time of the accident.

¶ 10 The court admonished defendant of his right to testify and reviewed the tendered jury instructions. Defendant rested and both sides made closing arguments. During deliberations, the jury sent a note asking "[w]hat pictures did Phil see on both occasions? Were they faded

like these ones? Were they black and white?" Defendant requested that the court respond that the photos in evidence were "copies of copies." The State argued that there was no evidence that the photo arrays in evidence were "copies of copies." The court agreed and responded that the jury had all the evidence in front of them, and should decide accordingly.

¶ 11 The jury found the defendant guilty of aggravated leaving the scene of an accident involving death or personal injury. During a hearing on defendant's motion for a new trial, defense counsel informed the court that after he had filed the motion for new trial, defendant gave him two *pro se* motions alleging ineffective assistance of counsel. One of plaintiff's motions sought a new trial, and the other requested the court's appointment of a "bar association attorney." Counsel suggested a continuance in order to give defendant an opportunity to speak to the public defender. However, the court determined that the case would first proceed on counsel's motion for new trial and sentencing. Afterwards, if defendant wished to present his motions for new trial and bar association attorney, he would be allowed to do so. The court stated that it refused to hear the two motions at that time because defendant had no right to file his own motions when he was represented by counsel. Nonetheless, the court allowed the two motions to be filed.

¶ 12 The court denied the motion for new trial on January 23, 2013, and a sentencing hearing occurred on March 7. Defendant was sentenced to 19 years' imprisonment due to his status as a Class X offender. The court informed defendant of his right to appeal and to file a motion for reconsideration. Defendant's counsel reminded the court that defendant wished for counsel to no longer represent him in the matter, and that counsel did not want to slow down the appeals process. The court responded that the presiding judge would likely provide defendant with an attorney from the State Appellate Defender's office upon notice of appeal.

¶ 13 Defendant appeals, arguing that the court erred in failing to tender IPI Criminal 4th No. 3.15 to the jury. Additionally, defendant argues that his counsel was ineffective in failing to offer the same jury instruction for the court to consider. Finally, he argues that the court erred in failing to provide defendant with a hearing pursuant to *People v. Krankel*, 102 Ill. 2d 181 (1984), after he alleged that his counsel was ineffective.

¶ 14 ANALYSIS

¶ 15 Plain Error

¶ 16 Defendant first argues that because defendant's conviction hinged upon Ashworth's testimony identifying defendant as the driver of the green car, it was plain error for the court to fail to tender IPI Criminal 4th No. 3.15. IPI Criminal 4th No. 3.15 states:

"When you weigh the identification testimony of a witness, you should consider all the facts and circumstances in evidence, including, but not limited to, the following:

[1] The opportunity the witness had to view the offender at the time of the offense.

[2] The witness's degree of attention at the time of the offense.

[3] The witness's earlier description of the offender.

[4] The level of certainty shown by the witness when confronting the defendant.

[5] The length of time between the offense and the identification confrontation. "

¶ 17 The committee comments state that IPI Criminal 4th No. 3.15 should be given "when identification is an issue."

¶ 18 Defendant claims that had the jury been issued IPI Criminal 4th No. 3.15, the jury would have found him not guilty. He characterizes Ashworth's level of certainty as questionable, considering he did not identify defendant in the first photo array on June 22, 2011. Moreover,

Ashworth's first positive identification of defendant was nearly a month after the accident. Further, defendant claims the first and third factors in IPI 3.15 are implicated by Ashworth's description of the driver as a black male, because defendant alleges that he has lighter colored skin, and that Ashworth only saw the driver briefly, in "duskish" conditions.

¶ 19 The State responds that the court was under no obligation to give IPI Criminal 4th No. 3.15 *sua sponte*. The State posits that the court, on its own, giving the instruction might have interfered with defense counsel's strategy because parts of IPI Criminal 4th No. 3.15 actually bolster the State's case. Further, the jury instruction tendered, Illinois Pattern Jury Instructions, Criminal, No. 1.02 (4th ed. 2000) (hereinafter, IPI Criminal 4th No. 1.02), covered the applicable law adequately.

¶ 20 We must first decide our standard of review in determining whether a court erred in failing to issue a jury instruction. The State argues we should apply an abuse of discretion standard. In support of its position, the State relies on *People v. Hammonds*, 409 Ill. App.3d 838 (2011), *People v. Mohr*, 228 Ill. 2d 53 (2008), and *People v. Alexander*, 408 Ill. App. 3d 994 (2011) all of which reviewed the claimed instructional error under an abuse of discretion standard. However, those cases recite the standard of review relative to the sufficiency of evidence to justify a jury instruction. Here, the State does not argue that the facts of the case do not justify the use of IPI Criminal 4th No. 3.15. Rather, the question before this court is whether the instructions that were tendered fully and accurately conveyed the law. Thus, the standard of review in this case is *de novo*. *People v. Parker*, 223 Ill. 2d 494, 501 (2006).

¶ 21 Generally, a court is under no duty to tender jury instructions that were not requested by counsel. *People v. Springs*, 51 Ill. 2d 418, 425 (1972). Defendant admits that he did not claim that the jury was not instructed properly at trial, but argues that he is entitled to a new

trial under the plain-error test. Illinois Supreme Court Rule 451(c) provides that a criminal defendant does not waive "substantial defects" in jury instructions if required by the "interests of justice." Ill. S. Ct. R. 451(c) (eff. Apr. 8, 2013); *People v. Herron*, 215 Ill. 2d 167, 175(2005). This exception is limited to "grave errors" in certain basic jury instructions which "fundamental fairness requires." *Herron*, 215 Ill. 2d 167 at 175. These basic instructions include instructions on the elements of an offense. *People v. Ogunsola*, 87 Ill. 2d 216, 222 (1981).

¶ 22 Rule 451(c) works together with Illinois Supreme Court Rule 615(a) (eff. Jan. 1, 1967), which details the plain-error test. *Ogunsola*, 87 Ill. 2d at 222. Rule 615(a) provides that an error "which does not affect substantial rights shall be disregarded." Ill. S. Ct. R. 615(a). "Plain errors or defects affecting substantial rights may be noticed although they were not brought to the attention of the trial court." *Id.*

¶ 23 The plain-error test allows the court to review unpreserved error either where the evidence is close, even if the error is not serious, or when the error is serious, despite the evidence not being close. *Herron*, 215 Ill. 2d 167 at 186. Under the first prong, "the defendant must show both that there was plain error and that the evidence was so closely balanced that the error alone severely threatened to tip the scales of justice against him." *Id.* at 187. Otherwise, the defendant must prove the plain error was so serious, that the fairness of the trial and the integrity of the judicial process were compromised. *Id.* The first step in the plain-error analysis is determining whether an error actually occurred. *Piatkowski*, 225 Ill. 2d at 551.

¶ 24 In *People v. Joyner*, the trial court failed to instruct the jury on a lesser-included offense of voluntary manslaughter and the jury convicted the defendant of murder. 50 Ill. 2d 302,

306 (1972). Our supreme court held there was a substantial defect in the jury instructions, which required a new trial. *Id.* In its review, the court found that the jury believed it had to no choice but to find the defendant guilty of murder or let him go free. *Id.* The jury did not understand however, that it could have found the defendant guilty of a lesser-included offense. See *Id.* Similarly, in *People v. Grant*, the trial court erred in failing to instruct the jury on the mental state required to be guilty of assault and criminal trespass to land. 101 Ill. App. 3d 43, 48 (1981). The appellate court ordered a new trial because the mental state was an essential element of both crimes and the failure to instruct the jury on an essential element amounts to plain error. *Id.*

¶ 25 Here, unlike *Joyner* or *Grant*, the missing jury instruction does not concern an element of an offense. We do not find any case in which the court's failure to issue IPI Criminal 4th No. 3.15 on its own resulted in reversible error, and defendant points to none.

¶ 26 We believe that our case is more similar to *People v. Underwood*, 72 Ill. 2d 124 (1978). In *Underwood*, the trial court's failure to provide the jury with an instruction that defined the term "reasonably believes" in a self-defense instruction was held not to be a substantial defect. *Id.* at 130. The defendant's counsel offered a non-IPI instruction to define the term, which the trial court properly rejected. *Id.* at 128-29. The defense counsel failed to offer the IPI instruction and the jury was not instructed on the definition of "reasonably believes." *Id.* at 128. Our supreme court found that it would be a substantial defect if the trial court failed to instruct on the elements of a substantive offense, as in *Joyner*, or failed to instruct the jury on the elements of self-defense. *Id.* at 130. However, the court found the missing instruction was not so essential and basic that its absence was a substantial defect in the jury instruction. *Id.*

¶ 27 In our case, IPI Criminal 4th No. 3.15 certainly applies, and it states the correct law. *People v. Tomei*, 2013 IL App (1st) 112632, ¶ 37. However, it is not essential an instruction that its absence risked the trial being fundamentally unfair. Similar to *Underwood*, there is no contention that the jury was not properly instructed on the elements of any crime or defense. Defendant argues that the jury was simply not instructed on the proper lens through which they should view Ashworth's testimony. However, the jury was given IPI Criminal 4th No. 1.02, which states:

> "Only you are the judges of the believability of the witnesses and the weight to be given to the testimony of each of them. In considering the testimony of any witness, you may take into account his ability and opportunity to observe, his memory, his manner while testifying, and any interest, bias, or prejudice he may have and the reasonableness of his testimony considered in light of all the evidence in the case."

¶ 28 The instruction touches on many of the factors in IPI Criminal 4th No. 3.15. IPI Criminal 4th No. 1.02 includes the witness's "ability and opportunity to observe" which is similar to the first and second factors in IPI Criminal 4th No. 3.15. It also instructs the jury to take into account the witness's memory and manner of testimony, similar to the fourth factor in IPI Criminal 4th No. 3.15, which includes the level of certainty the witness exhibits. All of the factors in IPI Criminal 4th No. 3.15 are included in the IPI Criminal 4th No. 1.02 instruction to consider the reasonableness of a witness's testimony. In fact, until 1992, when the Illinois Supreme Court Committee had a "change of mind," Illinois courts rejected the idea of a separate jury instruction on identification. *People v. Gonzalez*, 326 Ill. App. 3d 629, 638 n.1 (2001). In *People v. Wheatley*, 183 Ill. App. 3d 590, 606 (1989) the court held that IPI Criminal 4th No. 1.02 and Illinois Pattern Jury Instructions, Criminal, No. 2.03 (4th ed.

2000), both of which were tendered to the jury in this case, are sufficient in instructing the jury on the law of witness identification. Thus, we find that the failure to instruct the jury to consider the factors of IPI Criminal 4th No. 3.15 did not rise to the level of a "substantial defect" in the jury instructions.

¶ 29 Defendant relies on *People v. Durr* as support for his contention that the court's failure to tender IPI Criminal 4th No. 3.15 was in error. 215 Ill. 2d 283 (2005). In *Durr*, the trial judge rejected defendant's tender of IPI Criminal 4th No. 2.01 in favor of a non-IPI instruction. *Id.* at 290. The trial court took issue with the language in the IPI instruction because he found it "confusing." *Id.* Our supreme court held that the court erred as trial judges should not "second-guess the drafting committee where the instruction in question clearly applies." *Id.* at 301. In any case, unlike in *Durr*, the trial judge in the present case never rejected a tendered IPI instruction in favor of a separate instruction. No party ever tendered IPI Criminal 4th No. 3.15.

¶ 30 Defendant also cites to *People v. Sargent*, where the supreme court found the trial court erred for failing to tender an instruction governing hearsay evidence. 239 Ill. 2d 166, 190 (2010). However, the jury instruction at issue in *Sargent* was specifically required by a statute which mandated that "the court shall instruct the jury" regarding the hearsay evidence. *Id.* at 188; 725 ILCS 5/115-10(c) (West 2006). There is no similar statute concerning a jury instruction on identification testimony.

¶ 31 In support of its defense trial strategy argument, the State points out that some of the factors in IPI Criminal, 4th No. 3.15 may be construed against defendant. Ashworth had a fair opportunity to view the offender, as he saw the driver exit his vehicle and look around, and Ashworth even exchanged a few words with the driver. Moreover, Ashworth gave a

detailed description of the events surrounding the accident, suggesting he paid a great deal of attention at the time of the offense. Further, Ashworth's description of the driver to the police closely matches a description of the defendant. Finally, when Ashworth identified defendant in the second photo array, in a line-up, and at trial, he showed no hesitation. The State argues that it was not for the trial court to second-guess defense counsel's strategy and tender its own instruction.

¶ 32 We agree. While some of the IPI 3.15 factors may weigh in favor of defendant, such as the length of time between the incident and the identification, others clearly weighed against him. Given that, it is conceivable that defense counsel's failure to tender IPI 3.15 was a matter of trial strategy. In that regard, we note that a court should be cautious when giving jury instructions *sua sponte* as it risks erroneously interfering with defense counsel's strategy and thus committing error. *People v. Requena,* 105 Ill. App. 3d 831, 837 (1982) (citing *People v. Spataro,* 67 Ill. App. 3d 69 (1978)). "[I]t is not error for a trial court to refrain from giving an instruction to the jury which might interfere with defense strategy." *People v. Garcia*, 188 Ill. 2d 265, 281 (1999).

¶ 33 In his reply brief, defendant further argues that the issue is not whether the trial court erred in failing to *sua sponte* instruct the jury, but whether error occurred. This is nonsensical, because if neither party tenders the instruction, and yet error is claimed for the jury having deliberated without the instruction, the only remaining option to find error would be the trial court's failure to *sua sponte* tender the instruction.

¶ 34 Regardless, we find the court did not err in failing to instruct the jury. Because we find no error, we need determine whether there was plain error. Accordingly, the issue is forfeited.

¶ 35 Ineffective Assistance of Counsel

¶ 36 Defendant further argues that an effective counsel would have tendered IPI Criminal 4th No. 3.15 for the court to consider, and that if counsel had done so, the outcome at trial would likely have been different. He argues that his counsel should have tendered the instruction for the same reasons given above as to why the court should have offered the jury instruction, namely to cast doubt on Ashworth's identification of defendant as the driver of the green car.

¶ 37 The State responds that the failure to tender IPI Criminal 4th No. 3.15 was sound strategy on defense counsel's part, as not all the factors listed are in his favor. Moreover, defense counsel strongly argued the points that were in his favor throughout trial.

¶ 38 Ineffective assistance of counsel occurs where counsel's performance falls below an objective standard of reasonableness and there is a reasonable probability that if counsel's performance was reasonable, a different outcome would have been reached at trial. *Strickland v. Washington*, 466 U.S. 668, 688-94 (1984). A defendant need not conclusively establish that the result would have been different, and reasonable probability exists even where the chances of a different result are significantly less than 50 percent. *People v. McCarter*, 385 Ill. App. 3d 919, 935 (2008). Accepting *arguendo* the State's strategy argument, we note that there is a strong presumption that an attorney's strategic decisions reflect sound strategy and not incompetence. *People v. Wiley*, 165 Ill. 2d 259, 289 (1995). A reviewing court must give great deference to an attorney's strategy and should be careful not to second-guess a particular decision. *Strickland*, 466 U.S. at 690. The fact that defense counsel's strategic decision to forego a jury instruction was unsuccessful does not mean the attorney rendered ineffective assistance. *People v. White*, 2011 IL App (1st) 092852, 2011 IL App (1st) 092852.

¶ 39 Moreover, it appears from our review of the record that defense counsel adequately argued the weaknesses in Ashworth's testimony that defendant alleges IPI criminal 4th no. 3.15 would have brought to light. In *People v. Houston*, the defendant alleged ineffective assistance of counsel because his attorney did not tender IPI Criminal 4th No. 3.15 to instruct the jury on how to consider the witness's identification of the defendant. 363 Ill. App. 3d 567, 576 (2006). The court found that defendant failed to meet the prejudice prong of the *Strickland* test because his counsel adequately attacked the identification of defendant in his arguments to the jury and during examination of the witnesses. *Id.* at 575.

¶ 40 Similar to the attorney in *Houston*, defendant's counsel more than adequately attacked Ashworth's identification of defendant as the driver. In his opening statement, on his cross-examination of Ashworth, and during closing arguments, counsel argued that the jury should give little weight to Ashworth's testimony because he could not identify defendant on June 22, eleven days after the accident, and only identified defendant later.

¶ 41 Defendant argues this case is similar to *People v. Lowry*, 354 Ill. App. 3d 760 (2004). In *Lowry*, the court found defendant's counsel was ineffective for failing to offer the IPI instruction on the definition of "knowingly" when the jury requested a definition of the term and expressed confusion as to its meaning. *Id.* at 765. Here, unlike *Lowry*, there is no unanswered request for clarification from the jury. Moreover, the instruction in *Lowry* involved an element of the crime, unlike IPI Criminal 4th No. 3.15.

¶ 42 Accordingly, defendant's ineffective assistance of counsel claim fails.

¶ 43 *Krankel* Hearing

¶ 44 Defendant next argues that the court erred in failing to make an inquiry into the merits of his *pro se* motions for a new trial and appointment of a bar association attorney based on his

ineffective assistance of counsel claims. In that regard, he points out that the court made no inquiry after granting defendant leave to file his motion through his attorney. The State argues that pursuant to *People v. Pecoraro*, 144 Ill. 2d 1 (1991), the court does not need to conduct a *Krankel* hearing when a defendant has privately retained counsel, as did defendant. The state further asserts that defendant's allegations of ineffective assistance of counsel were so conclusory and bereft of specificity that the court was under no obligation to conduct a *Krankel* hearing.

¶ 45 A defendant's allegation of ineffective assistance of counsel requires the court to conduct a preliminary inquiry into the facts surrounding the claim. *Krankel*, 102 Ill. 2d at 189. If the claim lacks merit or relates to matters of trial strategy, the court may deny the motion without appointing new counsel. *People v. Moore*, 207 Ill. 2d 68, 78 (2003). If the trial court's preliminary examination shows that counsel was possibly ineffective, the trial court should appoint new counsel to independently evaluate the defendant's claim to avoid a conflict of interest on the part of defendant's current counsel. *Id.* Whether the trial court made an adequate inquiry is a question of law, and subject to de novo review. *People v. Willis*, 2013 IL App (1st) 110233, ¶ 72.

¶ 46 In *Pecoraro*, our Supreme Court held that "*Krankel* is a fairly fact-specific case, and the circumstances in the case at hand, where defendant retained his own private counsel and did not request that he be represented by other counsel, do not warrant the application of *Krankel*." *Pecoraro*, 144 Ill. 2d at 15. Courts reviewing *Pecoraro* have reached different conclusions as to whether it holds that any defendant who is represented by private counsel is not entitled to a *Krankel* hearing. See *People v. Willis*, 2013 IL App (1st) 110233, ¶ 66 (2013) (noting the court's different conclusions on this issue); *People v. Shaw*, 351 Ill. App.

3d 1087 (2004) (holding that defendant was not entitled to a *Krankel* hearing because he was represented by private counsel); *People v. Johnson*, 227 Ill. App. 3d 800 (1992) ("[W]e do not believe *Pecoraro* stands for the proposition that a trial court is free to automatically deny a *pro se* request for new counsel simply because the defense counsel" was privately retained.). However, we need not resolve this conflict because we find that defendant's motions were insufficient to satisfy the requirements for a *Krankel* hearing regardless.

¶ 47 Though the threshold is low, a defendant must meet a minimum pleading standard to trigger the need for a *Krankel* hearing. *People v. Bobo*, 375 Ill. App. 3d 966, 985 (2007) (citing *People v. Ward*, 371 Ill. App. 3d 382, 431 (2007). "A bald allegation of ineffectiveness of counsel is insufficient; rather, the defendant should raise specific claims with supporting facts before the trial court is required to consider the allegations." *People v. Walker*, 2011 IL App (1st) 072889, ¶ 34 (citing *People v. Radford*, 359 Ill. App. 3d 411, 418 (2005)).

¶ 48 In *People v. Reed*, the defendant wrote a letter to the trial court after he was found guilty, complaining that his lawyer failed to subpoena witnesses who would have helped his defense, enclosing a list of 20 witnesses. 361 Ill. App. 3d 995, 998-99 (2005). The court found that no hearing was required under *Krankel*, because defendant failed to specify what the witnesses would have testified and how their testimony would have assisted his case. *Id.* at 1004.

¶ 49 Similarly, in *Ward*, the defendant asserted to the court that his attorney failed to submit exculpatory evidence, including signed affidavits. 371 Ill. App. 3d at 394. The trial court responded that it would appoint the appellate defender to assist him in post trial motions or anything else he wished to present. *Id.* After admonishing the defendant of his right to

appeal, the defendant attempted to revisit the issue of his counsel's performance and stated that he "had a lot of evidence." *Id.* However, the court interjected that it was "not retrying the case today." *Id.* On appeal, the reviewing court held that defendant's statements were bald assertions, not sufficiently supported by facts to trigger even a preliminary *Krankel* hearing. *Id.* at 432. In affirming, the court also rejected the contention that the trial court did not allow the defendant to clarify his allegations by interrupting the defendant and stating that he would not retry the case. *Id.* at 433. The court found that defendant could have further specified his claims for ineffective assistance at a later point, but failed to do so. *Id.* at 433. We note that the Second District disagreed with this court's decision in *Ward*, holding that even bald assertions require some type of investigation by the trial court. *People v. Remsik-Miller*, 2012 IL App (2d) 100921, ¶ 16. However, we choose to follow our prior decision in Ward that a defendant must meet minimum requirements to trigger a need for a *Krankel* hearing. See also *People v. Rucker*, 346 Ill. App. 3d 873 (2003) (The defendant's assertion that he had inadequate representation by counsel was insufficient to require a hearing without any supporting facts or specific claims.); *People v. Harris*, 352 Ill. App. 3d 63 (2004) (The defendant's allegation that his attorney failed to inform him he was going to trial and therefore couldn't call his family as witnesses were insufficient to require a hearing.).

¶ 50 Here, defendant filed two *pro se* motions. The first, a motion for a new trial, contained 12 counts, all consisting of mere conclusionary assertions. The first five counts related to counsel's performance, as follows:

"1. Ineffective Assistance of Counsel, defendant cites, strickand VS Washington (1984), 466 us. 688,80 L.ED.2D 674, 104 sict. 2052.

2. failed to offer into Evidence Exculpatory facts that defendant feels may have Changed the Outcome of his Case.

3. Defense Counsel Failed to File any pre-trial Motions on the defendants behalf.

4. Defense Counsel Failed to Contact/Interviews Witnesses that Defendant believes would have offered Testimony that may have been able to prove the innocence of the defendant.

5. Failed to conduct an adequate factual and legal investigation on the defendant's behalf."

¶ 51 Defendant's motions consisted of bare, general assertions, and boilerplate language that lacked any of the particulars of his case. Although defendant asserted that defense counsel failed to offer evidence, contact witnesses, and file pre-trial motions, he fails to describe any of the evidence, witnesses or motions in even the slightest detail. We note in passing, that the remaining seven counts in defendant's motion for a new trial were similarly lacking in substance.

¶ 52 Defendant's allegations here are even weaker than those in *Reed*, where at least the defendant identified the witnesses that he alleged should have been called. 361 Ill. App. 3d at 998-99. A defendant's bare assertion that his counsel failed to offer certain evidence in his defense does not require a *Krankel* hearing if the defendant fails to describe the evidence in any way. See *Ward*, 371 Ill. App. at 433. Accordingly, we find defendant's bare claims insufficient to invoke *Krankel* and find no error on the part of the trial court.

¶ 53 Defendant argues that his case is distinguishable from *Ward* because he filed a written motion, while the defendant in *Ward* made his assertions orally. Further, he contends that the trial judge in his case improperly refused to consider his allegations until after sentencing.

Finally, he asserts that unlike *Ward*, the trial court permitted him to file his *pro se* motion through his attorney. Although we agree that aspects of *Ward* are factually distinguishable, those distinctions provide no basis to alter our conclusion on this issue. The court in *Ward* clearly did not base its decision on the fact that the defendant's motion was oral, as the court noted, "a formal, written presentation would not have been necessary to invoke a preliminary inquiry." *Ward*, 371 Ill. App. 3d at 433. Moreover, just as the defendant in *Ward* had an opportunity to further clarify his allegations of ineffective assistance of counsel, the trial court in the present case allowed the defendant to bring his motion for ineffective assistance of counsel after hearing the motion for new trial. He failed to do so. Finally, we do not find that the trial court's decision to allow defendant to file his motion through his attorney to have any effect on our analysis. As we have stated, defendant's motion was substantively deficient to trigger a *Krankel* hearing.

¶ 54 Defendant also cites to *People v. Jolly*, 2014 IL 117142. However, the sufficiency of defendant's allegations was not at issue in *Jolly* and we do not find the case relevant to our analysis.

¶ 55 Accordingly, we find the court did not err in failing to provide defendant with a preliminary *Krankel* hearing.

¶ 56 CONCLUSION

¶ 57 For the reasons stated, we affirm the decision of the circuit court of Cook County

¶ 58 Affirmed.