

No. 15-1845

**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).

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IN THE  
APPELLATE COURT OF ILLINOIS  
FIRST DISTRICT

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IN THE INTEREST OF JOSHUA B., a minor,	)	Appeal from the Circuit Court
	)	of Cook County.
(The People of the State of Illinois,	)	
	)	
Petitioner-Appellee,	)	
	)	No. 14 JD 984
v.	)	
	)	
Joshua B.,	)	
	)	Honorable Stuart Katz
Respondent-Appellant.)	)	Judge Presiding

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

**ORDER**

¶ 1 *Held:* The trial court was not required to hold a *Krankel* hearing because respondent was represented by new counsel for the posttrial proceedings. The trial court did not misapprehend the evidence so as to entitle defendant to plain error relief.

¶ 2 Respondent Joshua B. was found guilty of breaking into the complainant's apartment, stealing a number of items while threatening the complainant with a knife, and cutting her with the knife during a struggle. The trial court sentenced respondent to five years probation and 40 hours of community service. Respondent appeals and we affirm.

¶ 3

## BACKGROUND

¶ 4 On January 2, 2014,<sup>1</sup> the complainant, Jessie Simmon, was awoken by a noise in her apartment. Simmon was a medical student at the time and lived across from Jackson Park Hospital. When she ventured out of her bedroom to find out the source of the disturbance, she observed an individual in her kitchen holding a knife. The individual was standing near her refrigerator, and her window and the window screen were wide open. Simmon was sure that all of her windows were closed before she went to sleep. It was January 2nd and Chicago was in the middle of a "polar vortex."<sup>2</sup> Simmon testified that the individual put the knife to her neck and told her to go through her refrigerator and freezer. She had two bottles of wine that the perpetrator told her to put in a backpack. Simmon was then led to her bedroom and she offered that her stethoscope hanging on the door was worth a lot of money. He took that as well as her iPhone and its charger. The individual was just 18 inches away from her the entire time and she was facing him, making sure not to turn her back to him. Nothing was covering the individual's face.

¶ 5 After going through the rest of the unit with the knife still held to her, the perpetrator forced Simmon back to her bedroom and told her to lay face down. She began to scream for her upstairs neighbor and a struggle ensued. She was cut on the arm by the knife. She continued to yell and to strike the perpetrator and he ran off, out through the same window from which he entered. Simmon went to a neighbor's place to call the police (her phone had just been stolen).

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<sup>1</sup> The pertinent events mainly occurred in the early morning hours of January 3, 2014. Simmon was awoken around 1:30 a.m.

<sup>2</sup> In early January 2014, Chicago experienced a period of extreme cold due to the southward movement of arctic air. The cold was preceded by a large snowfall over a period of days that included January 2nd. See Weather Underground, Weather History for KORD, January 2, 2014, available at <http://www.wunderground.com/history/airport/KORD/2014/1/2/DailyHistory.html> (last visited Nov. 5, 2015).

No. 15-1845

¶ 6 When the police arrived, Simmon told them what happened and she showed them the wounds that she sustained in the struggle. Approximately two weeks later, a detective showed Simmon two photo arrays, but she told the detective that none of the pictures were that of her assailant. A month or so later, the detective showed Simmon another photo array. This time Simmon identified respondent, a 16 year old. Simmon subsequently went to the police station and she picked respondent out of a lineup "right away."

¶ 7 The State petitioned to have respondent adjudicated delinquent and he was charged with home invasion, armed robbery, residential burglary, burglary, theft, aggravated battery, battery, and two counts of criminal trespass to a residence. At the close of the State's case, respondent moved for a directed finding arguing that the State failed to prove respondent was the perpetrator as there was no physical evidence and Simmon's identification was unreliable because she was in a stressful situation. The judge denied the motion.

¶ 8 Respondent called one witness, his cousin, Mariah McNeal. McNeal testified that she lived with respondent and their aunt, and that on January 2, 2014, she was at the residence with respondent as well as her boyfriend, her aunt, and her aunt's boyfriend. She further testified that it was very cold that night so no one left the house and they all stayed in and watched all four seasons of *The Vampire Diaries* on Netflix until 8:00 in the morning. On cross examination, McNeal acknowledged that *The Vampire Diaries* is an hour-long show and that the entire four seasons consist of 49 episodes. She then stated that they did not watch all of the episodes that night. McNeal testified that she did not originally tell the police that she was with respondent that night because she told her aunt and assumed that her aunt would tell respondent's lawyer.

¶ 9 Respondent was found guilty on all counts. In making his ruling, the trial judge stated that

the identification evidence was very strong. He noted that Simmon must have been with the perpetrator for at least five minutes in her apartment with the lights on and that she was "literally face-to-face with that person for the entire time." The trial judge also found that her identification was strengthened by the fact that she was shown two photo arrays that did not include respondent and declined to identify anyone. Then, when shown another photo array later on, she picked out respondent. She also, without hesitation, picked respondent out of a lineup. The judge further noted that while McNeal was very nice, he did not find her testimony credible.

¶ 10 Respondent, previously represented by a public defender, retained private counsel to file a motion for a new trial. Respondent, by his new counsel, argued that the evidence was insufficient to prove him guilty and that his trial counsel was ineffective. On his ineffective assistance of counsel claim, respondent posited that his trial counsel should have questioned Simmon about her need for corrective lenses and should have tried to elicit evidence concerning respondent's distinctive features—a lisp and a gap in his teeth. The trial judge denied the motion. The trial judge explained that Simmon's opportunity to observe respondent was "probably the most solid case [he had] ever seen." The judge pointed out that the State had "more than met [its] burden beyond a reasonable doubt." The judge further explained that trial counsel was not deficient as counsel *did* challenge the identification testimony, and that there was "absolutely no reasonable probability" that the result would have been different if trial counsel had done what posttrial counsel suggested should have been done. The trial judge sentenced respondent to five years probation and 40 hours of community service. Respondent now appeals.

¶ 11

#### ANALYSIS

¶ 12 Respondent argues that this court should remand the case for a *Krankel* hearing because he

No. 15-1845

is entitled to explore his trial counsel's failure to impeach Simmon's identification testimony with evidence of Simmon's need for glasses and of respondent's lisp and the gap in his teeth. But *Krankel* applies to *pro se* claims of ineffective assistance of counsel. *People v. Krankel*, 102 Ill. 2d 181, 189 (1984). The goal and purpose of *Krankel* is to provide defendants who believe their trial counsel was ineffective with the right to seek a new trial for that claimed-ineffectiveness with the assistance of counsel other than their trial counsel. *Id.* Here, respondent was represented by private counsel during posttrial proceedings. Even if respondent fulfilled all of the requirements for relief under *Krankel*, all he would be entitled to would be counsel other than his initial public defender to prosecute his motion for a new trial. *Id.* But that is exactly what he had.

Respondent retained new, private counsel to address his posttrial claims of ineffective assistance. Perhaps respondent recognizes the futility of the argument because it is largely abandoned in his reply brief.

¶ 13 In any event, the trial court discussed and ruled on respondent's claims of ineffective assistance on their merits. To succeed on a claim of ineffective assistance of counsel, a defendant must show that his counsel's representation fell below an objective standard of reasonableness and that he suffered prejudice as a result. *People v. Scott*, 2015 IL App (1st) 131503, ¶ 27. The trial judge, who was the trier of fact in the case, explained that the identification evidence presented by the State was among the strongest he had ever seen and that there was absolutely no chance a different result would have been reached if respondent's trial counsel would have done the things respondent's posttrial counsel claims constituted ineffective assistance. Respondent gives us no reason to disturb that ruling.

¶ 14 Respondent also argues that his due process rights were violated because the trial court

No. 15-1845

misapprehended McNeal's testimony regarding the amount of television she claims they watched that night. Respondent construes the trial judge's comments to suggest that the court disbelieved McNeal's testimony on the basis that he thought she claimed to have watched 49 hours of television in one night. This claim was not raised in respondent's posttrial motion and is forfeited. *People v. Piatkowski*, 225 Ill. 2d 551, 564 (2007). Regardless, McNeal did testify that they finished the season. And when asked which one, she replied, all four of them. It is not necessarily unreasonable to construe her testimony as a claim that they watched every episode. However, even if the trial court did misapprehend that statement, it is clearly evident that it still would have found respondent guilty.

¶ 15 The only issue in the case was the identification of the perpetrator. The identification evidence was overwhelming and was not impeached or even remotely called into question. Simmon had an extensive opportunity to observe the perpetrator whose face was uncovered and who she observed face-to-face for several minutes. She did not identify a perpetrator in multiple photo arrays in which respondent's photograph was not present, and then she did identify him when his photograph was present. She then, without hesitation, identified him in a lineup. Simmon never wavered in her confidence that respondent was the perpetrator. The trial court committed no error in crediting that testimony and finding defendant guilty beyond a reasonable doubt.

¶ 16 CONCLUSION

¶ 17 Based on the foregoing, we affirm.

¶ 18 Affirmed.