2015 IL App (4th) 130441-U

NO. 4-13-0441

FILED
February 26, 2015
Carla Bender
4th District Appellate
Court, IL

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from
Plaintiff-Appellee,	)	Circuit Court of
v.	)	Macon County
JEFFREY A. DAVISON,	)	No. 05CF1669
Defendant-Appellant.	)	
	)	Honorable
	)	Timothy J. Steadman,
	)	Judge Presiding.

JUSTICE TURNER delivered the judgment of the court.
Presiding Justice Pope and Justice Steigmann concurred in the judgment.

ORDER

¶ 1 *Held*: Where defendant's trial testimony indicated for the first time he was forced to participate in the charged crime and that testimony was contradicted by most of the other evidence, the trial court properly denied defendant's postconviction ineffective-assistance-of-counsel claim based on counsel's failure to tender a compulsion instruction.

¶ 2 In June 2010, defendant, Jeffrey A. Davison, filed a *pro se* postconviction petition, alleging, *inter alia*, ineffective assistance of trial and appellate counsel related to the affirmative defense of compulsion. In October 2010, the State filed a motion to dismiss defendant's postconviction petition. The Macon County circuit court granted the State's motion to dismiss as to all claims except the ones related to compulsion. After an April 2013 evidentiary hearing, the court denied defendant's postconviction petition.

¶ 3 Defendant appeals the denial of his postconviction petition, asserting he was denied effective assistance of trial and appellate counsel. We affirm.

¶ 4 I. BACKGROUND

¶ 5 On December 9, 2005, the State charged defendant and Patrick DeBerry, Jeffrey DeBerry (Jeffrey), and Jason DeBerry (collectively the DeBerrys) with five counts of first degree murder; two counts were intentional murder (720 ILCS 5/9-1(a)(1) (West 2004)), one count was knowing murder (720 ILCS 5/9-1(a)(2) (West 2004)), and two counts were felony murder (720 ILCS 5/9-1(a)(3) (West 2004)) for the death of James Norwood. At defendant's trial, the State nol-prossed the intentional and knowing murder counts, leaving the two felony-murder counts.

¶ 6 Steven Langhoff was defendant's initial attorney. In a January 2006 pretrial discovery order, Langhoff declared defendant would be asserting the affirmative defense of self-defense. In January 2007, Gregory Mattingley became defendant's counsel.

¶ 7 Judge Theodore E. Paine presided over defendant's June 2007 trial. The State presented the testimony of (1) Viola Norwood, the victim's aunt; (2) Dr. Travis Hindman, the forensic pathologist who performed Norwood's autopsy; (3) Brad Tubbs, an eyewitness; (4) Officer John Jones; (5) Detective Randall Chaney; (6) Beverly Coon, a nurse at St. Mary's emergency room; (7) Officer Ed Cunningham; (8) Detective Patrick Campbell; (9) Detective Cory Barrows; (10) Officer Chad Shull; (11) Detective Jeremy Welker; (12) Rhonda Carter, a forensic scientist with the Illinois State Police forensic laboratory (Laboratory); (13) Amanda Humke, a biology analyst with the Laboratory; (14) Brian Long, a forensic scientist with the Laboratory; (15) Richard Johnson, a forensic scientist with the Laboratory; and (16) Detective David Pruitt. The State also presented numerous exhibits, including the video of defendant's statement to Detective Pruitt. Defendant testified on his own behalf and presented the testimony of Melissa Curtis, Jeffrey's girlfriend; and Cody Bunning, defendant's roommate. On rebuttal,

Barrows testified, as well as Sergeant Doug Taylor. The evidence relevant to the issue on appeal is set forth below.

¶ 8 Tubbs testified that, on December 3, 2005, he was driving home between 2:15 and 2:30 a.m., when he saw two or three figures "humped over looking like they were hitting something" and one person off to the right swinging in a downward motion with what appeared to be a "2x4." Tubbs assumed they were beating up someone, but he never saw an actual person. Tubbs later saw a vehicle pull up around the group and stop.

¶ 9 Dr. Hindman testified Norwood had "20 wounds that were related to the passage of a sharp object." One wound penetrated Norwood's aorta. In Dr. Hindman's opinion, Norwood bled to death due to "multiple stab cutting wounds to the chest and abdomen." Detective Chaney testified that, in defendant's blue Grand Prix, he found defendant's wallet, defendant's and Patrick's identification cards, documents of defendant, and an invoice for Patrick. The vehicle also had what appeared to be bloodstains, which were swabbed. Detective Welker testified he seized a knife and a baseball bat from defendant's residence. Carter testified the deoxyribonucleic acid (DNA) in the bloodstains found in defendant's car and on the bat seized from defendant's home matched Norwood's DNA.

¶ 10 Detective Pruitt testified he interviewed defendant on the evening of December 3, 2005. Defendant never stated he had been threatened in any way by the other three individuals in the car with him at the time of the attack. Defendant also did not indicate he wanted to go home while he was riding around with the DeBerrys. The State played portions of the video of Pruitt's interview of defendant.

¶ 11 On the video, defendant first stated he let Patrick borrow his car and went to bed at 12:30 a.m. He denied knowing anything about the attack on Norwood. Defendant's next

version of the incident was that he was present but did not stab Norwood. Defendant did admit to hitting Norwood two or three times with his fist. He also stated all four of them chased Norwood when they first spotted him. Additionally, defendant admitted he knew they were going to jump Norwood for hitting Jason in the face but noted he did not know they were going to beat, stab, and kill him. Defendant stated they drove around for 40 minutes looking for Norwood. Moreover, defendant first identified the black bat as the one Patrick had during the attack. He denied seeing Norwood with a weapon. Defendant stated a second time everyone got out of the car when they located Norwood. Defendant also noted he fell after Norwood swung at him, and defendant got back up and continued to chase Norwood.

¶ 12 On the video, defendant eventually admitted he stabbed Norwood four or five times in the back, neck, and head area. He admitted he went to jump Norwood as a favor and lost control after Norwood swung at him. Defendant did not want to stab Norwood until Norwood swung a knife at him. Defendant further admitted that, after the attack, he took the knife to his house and cleaned it. He also discussed the attack with Bunning. Additionally, defendant denied knowing a gold baseball bat had blood on it. He stated Patrick had the gold bat, and he had the black bat. Defendant threw the black bat at Norwood because he could not catch him.

¶ 13 Curtis testified that, on December 2, 2005, Jeffrey and his brother Jason were at her residence on Cassell Court late that night. Norwood, an acquaintance of Jeffrey's, arrived shortly before midnight looking for Jeffrey. Jeffrey was gone at that time, so Norwood waited. At some point, Norwood and Jason began to have a verbal fight about Jason stealing Norwood's money. Curtis asked everyone to leave, and Jason and Norwood went outside. Curtis later heard a lot of commotion and opened her front door. Curtis saw Norwood with a silver aluminum

baseball bat with black tape around the handle and a knife. Norwood was swinging the bat and knife at Jason and "challenging" him. Curtis told Norwood to leave or she would call the police. Norwood left with the knife and the bat. After Norwood left, Jason was upset, and his face was swollen. Curtis believed Norwood had struck Jason in the face with the bat, but she did not see it happen. Sometime after the altercation, Jeffrey and Jason left Curtis's residence, saying they were going to the liquor store. They left around 2 a.m. in a blue car that Melissa thought belonged to defendant. Jeffrey came back to the house by himself not long after leaving. About an hour after Jeffrey came back, Jason came back.

¶ 14 Bunning had known defendant for two years prior to them becoming roommates and knew defendant as a peaceable, nonviolent person. Before midnight on December 2, 2005, Bunning was with defendant and Patrick in Bunning's car. Bunning admitted they had been drinking and had smoked some cannabis. While driving around shortly before midnight, Patrick received a call. After the call, Patrick told Bunning to drive to a residence at Cassell Court. When they got there, two black males, later identified as Jeffrey and Jason, got into the backseat of the car and told Bunning they wanted to go find "Dude." The two men were excited and said, " 'We're going to get Dude.' " Bunning stated he did not want to go and drove everyone to the house he shared with defendant.

¶ 15 When they got to the house, defendant and Patrick came inside, while the other two remained outside. Patrick left the house first and got into defendant's car with the other two men. Defendant grabbed a couple of beers as he left the house. After defendant had been gone for a time, Bunning called defendant to check on him. Defendant told Bunning they had not found this "Norwood guy" and he was going to try to see if they would let him come home. Defendant did not indicate he feared for his safety. A few minutes later, defendant said he had to

get off of the telephone. Sometime later, defendant called Bunning. Defendant told Bunning they had seen "Dude" up by the police department but had lost him.

¶ 16 Patrick and defendant came home a little after 3 a.m. Bunning had been asleep, but the two men were noisy and woke him up. The men were excited, and defendant told Bunning, " 'We got him good.' " Defendant stated they saw "Dude," got out of the car, ran up to Norwood, and started hitting him. Defendant said "Dude" had a knife and had tried to cut him, so defendant took it and cut "Dude" with it. Defendant had a knife with him that he took into the kitchen and washed off by spraying it with cleaner. Defendant left the knife in the sink, and Bunning put it on the counter the next day. Bunning stated defendant had a gold baseball bat that defendant sometimes kept in his bedroom and a black baseball bat that defendant kept in the trunk of his car. Bunning also testified defendant allowed Patrick to use his car.

¶ 17 Defendant testified that, on December 2, 2005, he lived with Bunning and Patrick. Defendant did not know Jeffrey or Jason at the time but later learned they were brothers and Patrick's cousin. Defendant was working on December 2, 2005, and got off around 10 p.m. Patrick, who had defendant's car, picked him up from the restaurant where he worked. Before leaving, defendant and Patrick had a couple of drinks. They then went home and picked up Bunning. The three men took Bunning's car to the liquor store. On the drive, Patrick received two telephone calls. After the second call, Patrick told Bunning to drive to Cassell Court. When they got to the location at Cassell Court, Jason and Jeffrey got into the car and spoke with Patrick. Bunning drove back to the home he shared with defendant and Patrick.

¶ 18 Back at the house, Bunning stayed, but Patrick told defendant he wanted defendant to drop the three of them back off at Cassell Court. Patrick was driving, and defendant learned Jeffrey and Jason wanted to look for someone. Patrick drove defendant's car around

town for about an hour or so. During the drive, Jason and Jeffrey were "talking crazy and acting like they were wanting to go do something to somebody." Defendant claimed they tricked him into getting into the car and refused to take him home. While riding around, defendant spoke on the telephone twice to Bunning and told him he wanted to come home and hoped to be there shortly. In the second telephone call, defendant told Bunning he might have to come pick up defendant. The other people in the car did not like it when defendant was on the telephone. Defendant claimed the DeBerrys were acting like "madmen." Defendant did not know Norwood before that night.

¶ 19 While Patrick was driving, Jeffrey spotted Norwood. Defendant had a black baseball bat on the backseat floorboard. Defendant also had a gold baseball bat that had been in the house, but Patrick pulled it out of the car when they located Norwood. Once they found Norwood, Jason and Jeffrey told defendant that, "if [he] did not participate, they were going to mess [him] up and [he] was not going to go home."

¶ 20 Defendant admitted he was lying to Detective Pruitt when he first interviewed defendant because he did not want to be involved in the investigation and was scared of the other men. Defendant stated Norwood was a lot bigger than he was. When they spotted Norwood, defendant got out of the car and went after Norwood. Because defendant did not want to get near him, defendant threw the baseball bat at Norwood and then stopped. The bat did not hit Norwood. Defendant turned around to go back to the car. Jason was standing 10 feet in front of the car, and Jeffrey was out of the car. They both yelled at defendant not to go back to the car and to go after Norwood, so defendant chased Norwood. Defendant yelled at Norwood to slow down and told Norwood he was unarmed and just wanted to talk. Norwood slowed down, and defendant grabbed at his shoulder. Norwood turned and tried to slice defendant with a knife.

Defendant did not get cut, but he thought his coat might have gotten cut. Defendant fell back onto the ground. Norwood tripped over defendant's feet and fell down, too, dropping the knife. Norwood got up and started digging in his front pockets. Defendant picked up the knife. At this point, defendant thought Jason was behind them and the other two were in the car creeping down the street. Norwood pulled out another knife. Defendant was afraid for his life. Jason, who was unarmed, was coming toward them, and the car was creeping closer with its lights off.

¶ 21 Norwood took off running, and defendant ran in the same direction as Norwood to get away from the DeBerrys. As Norwood and defendant went around a corner, they were cut off by Patrick, who had run across the street after pulling up the car. Patrick was closer to Norwood. Patrick hit Norwood in the back with a bat, then Norwood, still holding the knife, turned on defendant. Defendant backed up and put up his hands. Norwood came toward defendant, so defendant stabbed Norwood to protect himself and to get Norwood to drop the knife. At this point, Patrick backed up. Jeffrey parked the car on the street illegally and got out. Jason came up to them. Defendant could not remember where he stabbed Norwood but knew he did not stab him in the abdomen or torso. Norwood dropped the knife, and defendant went to the car. At that point, the DeBerrys "got him." Jason and Jeffrey were making stabbing motions, and Patrick was beating Norwood with a baseball bat. Defendant admitted he stabbed Norwood four to five times with the knife that he got from Norwood. Defendant also admitted he brought the knife home and cleaned it. Defendant claimed he only stabbed Norwood to protect himself because Norwood had tried to stab him.

¶ 22 At the conclusion of the trial, the jury found defendant guilty of felony murder, and defendant filed a posttrial motion challenging his conviction. At a joint August 2007 hearing, the trial court denied defendant's posttrial motion and sentenced him to 25 years'

imprisonment. Defendant appealed and argued the trial court erred by denying his (1) motion to dismiss the felony-murder charges and (2) motion to suppress his statements to the police. This court affirmed defendant's felony-murder conviction and sentence. *People v. Davison*, No. 4-07-0679 (July 28, 2008) (unpublished order under Supreme Court Rule 23). Defendant appealed our decision, and the Illinois Supreme Court affirmed it. *People v. Davison*, 236 Ill. 2d 232, 923 N.E.2d 781 (2010).

¶ 23 In June 2010, defendant filed a *pro se* postconviction petition, raising numerous contentions. His second argument was an ineffective-assistance-of-trial-counsel claim based on counsel's failure to tender an instruction on the affirmative defense of compulsion. Additionally, defendant contended his appellate counsel was ineffective for failing to raise the compulsion-instruction issue on direct appeal. In October 2010, the State filed a motion to dismiss defendant's postconviction petition. After an October 2010 hearing, the trial court granted the State's motion to dismiss defendant's postconviction claims, except for the ineffective-assistance-of-counsel claims related to the failure to tender a compulsion instruction. The court advanced the compulsion-related claims to the third stage of the postconviction proceedings.

¶ 24 On April 25, 2013, Judge Timothy Steadman held an evidentiary hearing on defendant's remaining postconviction claims. Defendant did not present any evidence. The State called Mattingley, defendant's trial counsel. Mattingley testified defendant explained to him his version of the events that occurred on the night of the incident and also provided a handwritten statement. Mattingley also went through defendant's statements to the police with defendant and asked about inaccuracies or falsehoods. At no time before trial did defendant state any facts that would have supported a defense of compulsion to the felony-murder charges. According to Mattingley, defendant did mention the DeBerrys made statements about messing up or killing

defendant if he named names, but that was after the attack on Norwood. Defendant did not make any statement he was subjected to a threat of bodily harm or death before the assault on Norwood occurred. Mattingley also stated he felt defendant had two opportunities to withdraw. In Mattingley's opinion, the trial evidence did not support a compulsion instruction.

¶ 25 The trial court took the matter under advisement. On the same day as the evidentiary hearing, the court entered a docket entry denying defendant's postconviction petition. The court found defendant failed to prove both deficient performance and prejudice. Specifically, the court found counsel had no information before trial that would lead him to believe a basis existed for a compulsion defense as the only threats counsel was aware of occurred after the crime. Thus, the court found it was sound trial strategy to assert self-defense and use the threats to show why defendant lied to the police. As to prejudice, the court noted that, when considering the totality of the trial evidence, the trial was a fair one and the result was reliable.

¶ 26 On May 10, 2013, defendant filed a timely notice of appeal. However, the notice indicated the appeal was from defendant's conviction and sentence and not his postconviction petition. On September 18, 2013, the supreme court entered a supervisory order allowing defendant's May 10, 2013, notice of appeal to stand as a valid notice of appeal from the trial court's April 25, 2013, denial of defendant's postconviction petition. *People v. Davison*, 2013 IL 116450 (directing this court to allow a notice of appeal to stand as valid in a nonprecedential supervisory order). Accordingly, this court has jurisdiction under Illinois Supreme Court Rule 651(a) (eff. Feb. 6, 2013).

¶ 27 II. ANALYSIS

¶ 28 Here, defendant challenges the trial court's denial of his postconviction petition

after an evidentiary hearing. He argues he was denied effective assistance of (1) trial counsel because trial counsel failed to tender a compulsion instruction and (2) appellate counsel because appellate counsel failed to raise the lack of a compulsion instruction on direct appeal.

¶ 29 The Post-Conviction Hearing Act (Postconviction Act) (725 ILCS 5/art. 122 (West 2010)) provides a remedy for defendants who have suffered a substantial violation of constitutional rights at trial. *People v. Pendleton*, 223 Ill. 2d 458, 471, 861 N.E.2d 999, 1007 (2006). In cases not involving the death penalty, the Postconviction Act sets forth three stages of proceedings. *Pendleton*, 223 Ill. 2d at 471-72, 861 N.E.2d at 1007.

¶ 30 At the first stage, the trial court independently reviews the defendant's postconviction petition and determines whether "the petition is frivolous or is patently without merit." 725 ILCS 5/122-2.1(a)(2) (West 2010). If it finds the petition is frivolous or patently without merit, the court must dismiss the petition. 725 ILCS 5/122-2.1(a)(2) (West 2010). If the court does not dismiss the petition, it proceeds to the second stage, where, if necessary, the court appoints the defendant counsel. *Pendleton*, 223 Ill. 2d at 472, 861 N.E.2d at 1007. Defense counsel may amend the defendant's petition to ensure his or her contentions are adequately presented. *Pendleton*, 223 Ill. 2d at 472, 861 N.E.2d at 1007. Also, at the second stage, the State may file a motion to dismiss the defendant's petition or an answer to it. *Pendleton*, 223 Ill. 2d at 472, 861 N.E.2d at 1008. If the State does not file a motion to dismiss or the court denies such a motion, the petition advances to the third stage, wherein the court holds a hearing at which the defendant may present evidence in support of his or her petition. *Pendleton*, 223 Ill. 2d at 472-73, 861 N.E.2d at 1008.

¶ 31 At both the second and third stages of the postconviction proceedings, "the defendant bears the burden of making a substantial showing of a constitutional violation."

Pendleton, 223 Ill. 2d at 473, 861 N.E.2d at 1008. Additionally, it is at this stage where the court makes fact-finding and credibility determinations. *People v. Marshall*, 375 Ill. App. 3d 670, 674, 873 N.E.2d 978, 982 (2007). Thus, when the trial court denies a defendant's postconviction petition following an evidentiary hearing, we review for manifest error. *People v. Johnson*, 206 Ill. 2d 348, 357, 794 N.E.2d 294, 301 (2002). "Manifest error is that which is 'clearly evident, plain, and indisputable.' " *Johnson*, 206 Ill. 2d at 360, 794 N.E.2d at 303 (quoting *People v. Ruiz*, 177 Ill. 2d 368, 384-85, 686 N.E.2d 574, 582 (1997)).

¶ 32 With ineffective-assistance-of-counsel claims, this court analyzes them under the standard set forth in *Strickland v. Washington*, 466 U.S. 668 (1984). See *People v. Jones*, 219 Ill. 2d 1, 23, 845 N.E.2d 598, 610 (2006) (appellate counsel); *People v. Evans*, 186 Ill. 2d 83, 93, 708 N.E.2d 1158, 1163 (1999) (trial counsel). To obtain reversal under *Strickland*, a defendant must prove (1) his counsel's performance failed to meet an objective standard of competence and (2) counsel's deficient performance resulted in prejudice to the defendant. *Evans*, 186 Ill. 2d at 93, 708 N.E.2d at 1163-64. "More specifically, the defendant must demonstrate 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.' " *People v. Petrenko*, 237 Ill. 2d 490, 496-97, 931 N.E.2d 1198, 1203 (2010) (quoting *Strickland*, 466 U.S. at 694).

¶ 33 To satisfy the deficiency prong of *Strickland*, the defendant must demonstrate counsel made errors so serious and counsel's performance was so deficient that counsel was not functioning as "counsel" guaranteed by the sixth amendment (U.S. Const., amend. VI). *Strickland*, 466 U.S. at 687. Further, the defendant must overcome the strong presumption the challenged action or inaction could have been the product of sound trial strategy. *Evans*, 186 Ill.

2d at 93, 708 N.E.2d at 1163. To satisfy the prejudice prong, defendant must show "counsel's errors were so serious as to deprive the defendant of a fair trial, a trial whose result is reliable." *Strickland*, 466 U.S. at 687. Stated differently, the defendant must prove a reasonable probability exists that, but for counsel's unprofessional errors, the proceeding's result would have been different. *Evans*, 186 Ill. 2d at 93, 708 N.E.2d at 1163-64. The *Strickland* Court noted that, when a case is more easily decided on the ground of lack of sufficient prejudice, rather than that counsel's representation was constitutionally deficient, the court should do so. *Strickland*, 466 U.S. at 697.

¶ 34 Defendant argues he made a substantial showing a reasonable probability existed the jury would have accepted his compulsion defense had they been instructed about it. The affirmative defense of compulsion requires that, in committing the felony, the defendant performed the charged offense under the threat or menace of imminent infliction of death or great bodily harm, which the defendant reasonably believed would be inflicted upon him or her if the conduct was not performed. *People v. Sims*, 374 Ill. App. 3d 231, 267, 869 N.E.2d 1115, 1145 (2007) (citing 720 ILCS 5/7-11 (West 2002)). The defense is available in a prosecution for felony murder. *Sims*, 374 Ill. App. 3d at 267, 869 N.E.2d at 1145. However, the defense does not exist "if the compulsion arises from negligence or fault of the defendant or if the defendant had ample opportunities to withdraw from the criminal enterprise but failed to do so." *Sims*, 374 Ill. App. 3d at 267, 869 N.E.2d at 1145.

¶ 35 Here, we agree with the trial court that, considering the totality of the evidence presented at defendant's trial, defendant cannot meet his burden of proving the prejudice prong of the *Strickland* test. Defendant's testimony at trial supporting his desired compulsion defense is contradicted by his prior statements to the police and the other trial evidence. Detective Pruitt,

who interviewed defendant the day of the murder, testified defendant did not state he had been threatened in any way by the DeBerrys at the time of the attack. He further testified defendant did not indicate that, while riding around with the DeBerrys, he wanted to go home. The videotape of the interview played at defendant's trial supports Detective Pruitt's testimony. Despite Detective Pruitt's numerous statements the DeBerrys were all saying defendant was the one that stabbed Norwood, defendant never stated he was threatened into participating in the attack on Norwood. Defendant admitted to going along with it as a favor to the DeBerrys. He also admitted knowing they were going to look for Norwood to attack him for hitting Jason, and they drove for at least 40 minutes looking for Norwood. Additionally, at the evidentiary hearing on defendant's postconviction petition, Mattingley testified defendant never mentioned being threatened by any of the DeBerrys before Norwood was attacked. Thus, defendant did not mention any threats by the DeBerrys until his trial, undermining the credibility of his trial version of the incident. Multiple other discrepancies also exist between defendant's description of the incident to Detective Pruitt and his trial testimony.

¶ 36 Defendant's own witness, Bunning, predominately contradicted any compulsion defense by defendant. First, Bunning's testimony indicates defendant did not have to go with the DeBerrys to find Norwood. Bunning testified that, at Patrick's direction, he drove his car with Patrick and defendant in it to Cassell Court, where two males entered his car. The two males stated they were going to find and get " 'Dude.' " They asked Bunning to come with them, but Bunning did not want anything to do with it. Bunning then drove home and went into his house. Patrick and defendant also came into the home. Patrick got into defendant's car with the other two males while defendant was still in the home, giving defendant another opportunity to separate himself from the DeBerrys. Additionally, contrary to defendant's assertion, the

DeBerrys did not need defendant to find Norwood because Bunning testified Patrick was allowed to drive defendant's car. Moreover, when Bunning later talked to defendant on his cellular telephone, defendant did not indicate he was in any kind of fear for his safety. Bunning did testify defendant stated he would try to get the DeBerrys to take him home, but Bunning admitted he did not tell that to the police or the State's Attorney's office during his interviews.

¶ 37 Additionally, Bunning's testimony contradicts defendant's claim he was tricked into riding along with the DeBerrys in the hunt for Norwood. Bunning testified that, while he was driving, the men had stated they were looking to get "Dude" and that is why Bunning went home. Additionally, the evidence showed Patrick frequently drove defendant's car, and thus it makes little sense defendant would need to drive the DeBerrys to Cassell Court.

¶ 38 Bunning's testimony about defendant's actions after the attack on Norwood also contradicts a compulsion defense. Bunning testified that, when defendant got home, he was excited and stated, " 'We got him good.' " Defendant further stated Norwood had a knife and tried to cut him, so defendant took the knife and cut Norwood. Bunning saw defendant with the knife and watched him clean the knife in the kitchen sink.

¶ 39 Last, Detective Pruitt questioned defendant several times as to why he was involved in the attack since he did not know Norwood. Defendant indicated he thought they were just going to jump Norwood and he went along as a favor. He only stabbed Norwood in self-defense. Until trial, defendant never indicated he was threatened into participating, even in confidence with his trial counsel.

¶ 40 This case is distinguishable from the ones cited by defendant. In *Sims*, 374 Ill. App. 3d at 269, 869 N.E.2d at 1146, the reviewing court found the prejudice prong had been satisfied because (1) the evidence was "close, particularly with respect to the cause of death"; (2)

the State's forensic-pathology expert's testimony had been rejected by a different jury in the trial of a codefendant; and (3) the defendant was a 15-year-old boy at the time of the offense, who resided with an adult codefendant and was just the " 'lookout.' " In this case, the evidence was not close as defendant admitted to stabbing the victim four to five times. While defendant lived with one of his codefendants, defendant was an adult and an active participant in the crime, having stabbed the victim.

¶ 41 Defendant also cites *People v. Serrano*, 286 Ill. App. 3d 485, 492, 676 N.E.2d 1011, 1016 (1997), where the reviewing court found the failure to give a compulsion instruction was not harmless error. The *Serrano* court explained the defendant's account of the incident, his co-offender's account of it, and the testimony the defendant did not have a weapon could have persuaded properly instructed jurors to conclude the defendant was compelled to commit the crime. *Serrano*, 286 Ill. App. 3d at 492-93, 676 N.E.2d at 1016. Moreover, while the defendant gave a court-reported statement admitting guilt, he explained at trial that his life and his family's lives had been threatened. *Serrano*, 286 Ill. App. 3d at 492, 676 N.E.2d at 1016. The court concluded the State's evidence was sufficient beyond a reasonable doubt, but that determination was for the jury to make with accurate instructions. *Serrano*, 286 Ill. App. 3d at 492, 676 N.E.2d at 1016. Here, defendant's account of the incident is not supported by the account of Bunning, who was defendant's roommate and witness at trial. Moreover, defendant admitted to picking up the knife and stabbing Norwood four to five times. He also admitted to possessing a baseball bat. While defendant testified he lied to Detective Pruitt because he was scared of the DeBerrys, defendant allowed Patrick to stay at his place after the incident.

¶ 42 In this case, we find no reasonable probability exists a jury given the compulsion instruction would have acquitted defendant. This is not a close case as defendant's trial version

of the incident was contradicted by his own witness's testimony and contrary to his previous statements to police and his defense counsel. Accordingly, we find defendant failed to prove the prejudice prong of the *Strickland* test, and thus the trial court did not commit manifest error by finding defendant failed to prove ineffective assistance of trial counsel for failing to tender a compulsion instruction.

¶ 43 Defendant also raised a claim of ineffective assistance of appellate counsel for failing to raise the compulsion-instruction issue on direct appeal. "Claims of ineffective assistance of appellate counsel are measured against the same standard as those dealing with ineffective assistance of trial counsel." *People v. Childress*, 191 Ill. 2d 168, 175, 730 N.E.2d 32, 36 (2000). Unless the underlying issue is meritorious, a postconviction petitioner suffers no prejudice from counsel's failure to raise the issue on direct appeal. *Childress*, 191 Ill. 2d at 175, 730 N.E.2d at 36. Since we have found defendant's compulsion-instruction claim was not meritorious, defendant cannot establish ineffective assistance of appellate counsel.

¶ 44 On the facts of this case, the trial court properly denied defendant's postconviction petition.

¶ 45 III. CONCLUSION

¶ 46 For the reasons stated, we affirm the Macon County circuit court's judgment. As part of our judgment, we grant the State's request that defendant be assessed $75 as costs for this appeal.

¶ 47 Affirmed.