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2015 IL App (5th) 120561-U

NO. 5-12-0561

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

**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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| THE PEOPLE OF THE STATE OF ILLINOIS, | ) | Appeal from the    |
|                                      | ) | Circuit Court of   |
| Plaintiff-Appellee,                  | ) | St. Clair County.  |
|                                      | ) |                    |
| v.                                   | ) | No. 11-CF-1543     |
|                                      | ) |                    |
| SANTOIN RUSSELL,                     | ) | Honorable          |
|                                      | ) | Milton S. Wharton, |
| Defendant-Appellant.                 | ) | Judge, presiding.  |

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JUSTICE CHAPMAN delivered the judgment of the court.  
Presiding Justice Cates and Justice Schwarm concurred in the judgment.

**ORDER**

¶ 1 *Held*: Where the trial court did not conduct an adequate inquiry into the defendant's *pro se* claims that he received ineffective assistance of counsel during his trial for first-degree murder as required by *People v. Krankel*, 102 Ill. 2d 181, 464 N.E.2d 1045 (1984), we reverse and remand for further proceedings.

¶ 2 A jury convicted the defendant of first-degree murder. Before sentencing, the defendant filed a *pro se* motion for a new trial raising multiple instances of alleged ineffective assistance of counsel. The trial judge appointed an attorney to evaluate the defendant's claims. After hearing from his appointed attorney and the defendant, the court denied the defendant's motion. The court sentenced the defendant to 60 years of

imprisonment. The defendant appeals and asks us to remand the case for appointment of new counsel to represent him on his claim of ineffective assistance of trial counsel and for a hearing on his claims. We reverse and remand.

¶ 3

### FACTS

¶ 4 Karinina Polk was killed in early February 2008. The State charged the defendant with first-degree murder on November 18, 2011. The charge alleged that the defendant struck Karinina Polk in the head with a tire iron resulting in her death.

¶ 5 At trial, Officer Shaun Benyr testified about his role in the investigation of Karinina Polk's death. Early in the morning of February 3, 2008, he noticed a Ford Taurus in the parking lot of a motel located on Collinsville Road in Fairmont City. About three hours later, Officer Benyr received a call about an unresponsive female at the same hotel. He went to the second-floor balcony just outside of room 228 where the body was located. Officer Benyr was familiar with Karinina because of her past prostitution and drug-related offenses. When Officer Benyr arrived at the scene, Karinina had no pulse and her body was cold.

¶ 6 Lieutenant Matthew Eiskant testified at trial that he was involved with the investigation of Karinina Polk's alleged homicide. Late in the evening of February 3, 2008, Lieutenant Eiskant and Sergeant Delmar interviewed the defendant. They recorded the interview. The defendant was advised of his *Miranda* rights. The defendant denied being in the hotel room when Karinina was murdered. Later in the interview, the defendant admitted being in the room, but denied being the person who hit Karinina, claiming that his friend, Terryon Triplett was responsible. The defendant claimed that he

unsuccessfully tried to stop Terryon. After the interview concluded, but while the video was still recording, the defendant looked at a spot on the coat he was wearing. The defendant then called his father. He told his father that he loved him; that he could be going to jail for a long time; that he was at the Belleville police department; that the case involved a homicide charge; and that he had been with a girl and a friend of his at the time. The officers then collected the defendant's clothing, including the coat. Lieutenant Eiskant noticed that upon removing his clothes, the defendant had a number of scratches on his body. The officers photographed the scratch marks. The defendant was released that evening.

¶ 7 Terryon Triplett testified that he voluntarily went to the police station on March 18, 2008, to talk with Lieutenant Eiskant about this case. Triplett was offered a 20-year sentence for the first-degree murder of Karinina Polk in exchange for his truthful testimony.

¶ 8 Terryon detailed the events of February 2 and 3, 2008, in his testimony at the defendant's trial. Terryon testified that the defendant picked him up from Nicole Hardy's apartment. Nicole was the defendant's girlfriend. The defendant was driving Nicole's vehicle, a Ford Taurus. Terryon lived with Nicole at that time. Kendra Merideth was in the vehicle with the defendant when they picked up Terryon from Nicole's apartment. The defendant wanted to rent a hotel room to celebrate Nicole's birthday, so he, Terryon, and Kendra drove to the First Western Inn, arriving between 8:30 and 9 a.m. Terryon rented the room. The defendant told Terryon to bring a bag from Hardy's car up to the room. Terryon testified that a tire iron was in this bag, along with alcohol. The

defendant and Kendra had sex in the room, while Terryon watched television. Later that morning, the defendant drove Kendra to a place known as "The Stroll." The defendant then picked up crack and sold some of it. The defendant dropped Terryon off at his cousin's house in St. Louis. In the evening, Terryon took the Metro Link train line to one of the East St. Louis stations. The defendant met him there. When the defendant picked Terryon up, Karinina was with him. The three of them went back to the Fairmont City motel. The defendant engaged in sexual intercourse with Karinina. Then the defendant and Karinina smoked crack. Kendra returned to the motel room. Upon discovering that the defendant and Karinina had engaged in sexual intercourse, Kendra became upset and she and Karinina argued. The defendant and Karinina left the motel room for approximately an hour, while Kendra and Terryon stayed in the room.

¶ 9 Terryon testified that the defendant and Karinina came back to the motel room between 9 and 10 p.m. Terryon and Kendra left to go get something to eat. They returned to the motel room before midnight. Kendra went into the bathroom. The defendant began talking to Karinina about how much money she owed him for drugs. Terryon testified that he told Karinina that the amount owed was between \$1,000 and \$1,500. The defendant and Karinina argued about the amount. The defendant offered to cut some of the debt if Karinina would agree to have sex with him and with Terryon. Karinina refused. The defendant struck Karinina multiple times in the face with his fist. The defendant attempted to remove Karinina's clothing, but she fought back, kicking at the defendant and screaming. Terryon testified that while Karinina was screaming, he grabbed her torso in an effort to calm her down, advising her that she should give the

defendant whatever money she had and that they would drive her to wherever she wanted to be taken. The defendant continued striking Karinina in the face and then retrieved the tire iron from the bag that Terryon had earlier carried into the room. The defendant struck Karinina on the head with the tire iron. Karinina screamed, "they're gonna kill me." Kendra then exited the bathroom and began kicking Karinina's body. The defendant told Kendra to stop and to hold down Karinina's body. Kendra complied and held Karinina's legs. The defendant handed Terryon the tire iron and instructed him to hit Karinina. Terryon struck her in the torso and on the head. Terryon admitted that he hit Karinina's head so hard that he heard her skull make a "popping" sound. He then dropped the tire iron. The defendant retrieved it and continued striking Karinina on her head. The defendant told Terryon to grab Karinina's head. Terryon complied. The defendant then placed the tire iron in Karinina's mouth and attempted to shove it down her throat. While doing so, Terryon testified that the defendant repeated that Karinina owed him money, and said, "You've never had enough hate in your heart to kill somebody. It gets easier every time you do." Karinina tried to shake the object from her mouth and in doing so Terryon testified that he heard her jaw pop.

¶ 10 The defendant, Terryon, and Kendra fled the room, leaving Karinina lying on the floor of the motel room. Terryon said that before they left the parking lot, he saw Karinina crawling out of the room onto the second-floor balcony.

¶ 11 Upon leaving Fairmont City, they drove Nicole's car to the home of Brandon Jones in Centralia. Terryon testified that they left Centralia and returned to Nicole's apartment in Shiloh around noon the next day. At Nicole's apartment, they changed clothes. They

put the clothing in a black trash bag. Terryon testified that the defendant disposed of the clothing.

¶ 12 The next day, the major case squad took them into custody and interviewed them. Terryon testified that he gave a videotaped statement. At trial he admitted that he lied during this interview when he denied involvement in Karinina's murder. After the interview, the police department released him. Later, he contacted the Belleville police department on his own. He testified that he did so because he could not cope with the nightmares about what happened that night. A meeting was set up between Terryon and Lieutenant Eiskant. Terryon testified that he still was not truthful during this second meeting. Ultimately during this meeting, he told Lieutenant Eiskant the truth about what occurred that night.

¶ 13 Terryon testified that he did not minimize his involvement in the crime; that no one threatened him or forced him to testify; and that he received a 20-year sentence for his cooperation in the trials of the defendant and Kendra.

¶ 14 Officer Rick Orr testified that during the evening of February 3, 2008, he and Deputy Desmond Williams went to an apartment in Shiloh. Officer Orr noticed a maroon Ford Taurus that had been reported to him as a vehicle involved in this crime. Officer Orr ran the vehicle identification number and ascertained that the registered owner was Nicole Hardy. Nicole Hardy had an outstanding warrant for her arrest. On that basis, Officer Orr and Deputy Williams went to her apartment. Terryon Triplett answered the door. The defendant, Hardy, and Kendra Merideth were present inside the apartment. All four were taken into custody for questioning.

¶ 15 Amy Hart, a forensic scientist, testified during trial as a latent print expert. Investigators provided Hart with finger and palm print standards from the defendant, Terryon Triplett, Kendra Merideth, and Karinina Polk. She compared those prints to several items recovered from the crime scene. She found Terryon's prints on a nonplastic bag, but found no prints on the tire iron.

¶ 16 A crime scene investigator, Michael Lewis, testified during trial. Lewis went to an apartment in Shiloh where Nicole Hardy lived. He testified that he was called to work this investigation to look at the Ford Taurus that police believed was involved in Karinina Polk's murder, as well as to examine clothing found in a black trash bag retrieved from a dumpster at the apartment. He found a blood-like substance inside the Ford Taurus. Later in the investigation, it was learned that the clothing from the trash bag belonged to Terryon Triplett. A shirt in the bag was stained with bleach. A pair of jeans and a pair of boxers had a blood-like substance on them. Inside a pocket of the jeans was a key access card labeled with the number 228.

¶ 17 A forensic biologist, Brian Hapack, testified that he performed tests on the tire iron, the plastic bag, the jacket taken from the defendant, and Terryon Triplett's white shoe, jeans, and boxers. He found a blood-like substance on all of these items.

¶ 18 Forensic scientist Jay Winters testified that he received DNA standards from the defendant, Terryon Triplett, Kendra Merideth, and Karinina Polk. Winters testified that he concluded that Karinina Polk's DNA profile was on Terryon's shoe, jeans, and boxers, and on the defendant's jacket. He also concluded that Terryon's DNA, Karinina's DNA,

and a third person's DNA were on Terryon's boxers. Winters testified that the DNA of this third person did not match any of the DNA standards he was provided.

¶ 19 Dr. Raj Nanduri, a forensic pathologist, testified during trial. Dr. Nanduri testified that she performed an autopsy on Karinina Polk. She observed bruising and lacerations on Karinina's face, mouth, and hands. Dr. Nanduri stated that the hand injuries were defensive injuries. The bruising on Karinina's face was consistent with being struck with a fist. She testified that Karinina sustained six lacerations to her scalp that were deep and extended to the bone. One of the scalp lacerations resulted in a cranium fracture—described as a depressed fracture pushing the bone into her brain resulting in a hemorrhage. The scalp lacerations were consistent with being struck with a tire iron. Dr. Nanduri also discovered that the mandible and hyoid bones were both fractured located in the jaw and behind the jaw in the area of the throat. She noted extensive bleeding in and around her mouth and tongue, and found that a large amount of blood flowed into Karinina's respiratory system and gastrointestinal tract. The mouth lacerations were to the oral pharynx, larynx, and pharynx, as well as on the inside of Karinina's cheeks. Dr. Nanduri testified that while a significant blow to the head could have resulted in a mandible fracture, in this case because of the extensive bleeding in the mouth and tongue, the injuries were more consistent with an object, like the tire iron, being put in her mouth and throat.

¶ 20 The toxicology report reflected the presence of cocaine in Karinina's blood, but Dr. Nanduri testified that this was not a factor in her death. Dr. Nanduri testified that had Karinina received prompt medical treatment, she would have survived—that while the



cranial injuries in time would have caused brain swelling and subsequent death, Karinina's death was primarily the result of blood asphyxiation from the mouth and throat lacerations.

¶ 21 The State stipulated that a black parka coat with a white furry hood was found in Nicole Hardy's Ford Taurus.

¶ 22 In closing argument, the State argued the significance of Karinina's blood found on the coat the defendant was wearing at the police interview. The State argued that after the defendant saw Karinina's blood on the coat, he realized that the coat tied him to the murder. He then called his father to tell him that he would likely go to jail for a long time for a homicide. The prosecutor argued that these words were inconsistent with the defendant's claim of innocence, but were consistent with his participation in a murder.

¶ 23 The trial court instructed the jury on the elements establishing the charge of first-degree murder, and on accountability. During deliberations, the jury asked to see the defendant's video interview again—including the part where the defendant looked at the blood on the coat he was wearing, and phoned his father. Following deliberation, the jury convicted the defendant of the crime.

¶ 24 The defendant's attorney filed a motion for a new trial. Six days later, the defendant filed a *pro se* motion for a new trial. The defendant alleged that his trial attorney was ineffective because she failed to request an accomplice jury instruction, which would have informed the jury to consider Terryon Triplett's testimony with suspicion because he too was involved in the crime. The defendant also alleged that counsel was ineffective because she failed to call Nicole Hardy to testify at trial. He

explained that if his attorney had called Nicole Hardy to testify, she would have been able to tell the jury that when he and the others were taken in for questioning, he was wearing Terryon's coat. He claimed that his own coat was in the back seat of Nicole Hardy's Ford Taurus. He supported his argument with the fact that there was no coat in the black trash bag that contained all of Terryon's clothing and that Terryon was wearing no coat when he was first taken in for questioning despite the fact that it was winter.

¶ 25 Simultaneous with the filing of his motion for a new trial, the defendant filed a *pro se* motion alleging ineffective assistance of counsel. This second motion raised the same arguments.

¶ 26 On September 5, 2012, the trial court appointed attorney P.K. Johnson V. The court's order stated as follows: "Defendant has raised allegations of ineffective assistance of counsel. Court hereby appoints PK Johnson to evaluate allegations." Attorney Johnson spoke with the defendant about the allegations in his motions. He based his evaluation of the defendant's claims on this conversation. He did not speak with trial counsel. At the court's October 26, 2012, hearing on the defendant's *pro se* motions, the court asked attorney Johnson for his opinion about the legal assistance provided the defendant. He informed the court that he did not believe that the defendant's trial attorney deviated from the accepted standards of representation. However, Johnson qualified his opinion because he had not reviewed the trial transcript, as the transcript had not been prepared. The defendant argued his claims that trial counsel was ineffective. At the end of the hearing, the trial court denied the motions.

¶ 27 On November 15, 2012, the defendant made an oral *pro se* motion for a continuance to allow the court reporter to prepare the transcript, which would aid his attorney in preparing for posttrial motions and sentencing. The trial court denied the motion as untimely.

¶ 28 At the sentencing hearing, the court took note of the "uniquely brutal manner of death of the victim in this case" as an aggravating factor. The court stated that imprisonment was necessary to deter others. The court sentenced the defendant to 60 years in prison.

¶ 29 The trial court denied the defendant's motion to reconsider the sentence.

¶ 30 **LAW AND ANALYSIS**

¶ 31 On appeal, the defendant claims that his posttrial appointed counsel did not properly investigate his allegations that his trial counsel was ineffective. In support of his argument, he states that attorney Johnson did not interview Nicole Hardy who could have testified that the defendant's coat was in her car and that the coat worn by the defendant during his police investigation actually belonged to Terryon. (The coat worn by the defendant had a blood-like substance on it that was later confirmed to contain the victim's DNA profile.) The defendant also argues that attorney Johnson should have questioned his trial attorney about why she did not seek an accomplice instruction.

¶ 32 After a defendant files a *pro se* ineffective assistance of counsel claim, the court is required to adequately inquire into the factual basis of the claim and under certain circumstances appoint new counsel to argue the claim on the defendant's behalf. *People v. Krankel*, 102 Ill. 2d 181, 187-89, 464 N.E.2d 1045, 1048-49 (1984). The supreme

court in *People v. Moore* set out three ways the court may conduct an adequate inquiry: (1) the court may question trial counsel regarding the facts and circumstances surrounding the claim; (2) the court may briefly discuss the claim with defendant; or (3) the court may base its evaluation on its objective assessment of defense counsel's trial performance and on the sufficiency or insufficiency of the defendant's claims. *People v. Moore*, 207 Ill. 2d 68, 78-79, 797 N.E.2d 631, 638 (2003). Whether the court should appoint new counsel is not automatic, and is dependent upon the outcome of the court's preliminary evaluation. *Id.* at 77, 797 N.E.2d at 637. If, after conducting the inquiry, the court determines that the claim lacks merit or pertains only to matters of trial strategy, the court need not appoint new counsel and may deny the *pro se* motion. If however, the allegations show possible neglect, new counsel should be appointed to represent the defendant's claims. *Id.* at 78, 797 N.E.2d at 637.

¶ 33 The State concedes that the "trial court did not examine the factual basis of the defendant's claim before appointing Johnson." Nevertheless, the State takes the position that the court appointed Johnson in some sort of parajudicial officer of the court capacity it calls a "master." As a "master," Johnson was tasked in "conducting the preliminary examination as to the factual basis of the defendant's claim to determine whether the claim lacked merit or pertained only to matters of trial strategy." The State further posits that because Johnson was acting as a "master" rather than appointed counsel for the defendant's claim of ineffective assistance of counsel, "he could not have rendered ineffective assistance."

¶ 34 Considering the State's concession that attorney Johnson was appointed to conduct the preliminary investigation and thus did not represent the defendant, we need not decide whether Johnson's assistance was ineffective representation. Even the State readily admits, "[f]rom the record, it is not clear what Mr. Johnson's role was at the hearing." The court's own docket entry states: "Defendant has raised allegations of ineffective assistance of counsel. Court hereby appoints PK Johnson to evaluate allegations." It appears Johnson himself was confused as to his role, as he did not speak to former trial counsel or review a trial transcript. At the hearing held on the defendant's *pro se* motion, Johnson advised the court that it was his opinion that after speaking with the defendant about his allegations, the defendant's trial attorney did not deviate from the accepted standards of representation. Attorney Johnson qualified his opinion because he had not reviewed the trial transcript, as it had not been prepared, nor had he spoken to trial counsel. The defendant himself addressed the court with his claims of ineffective assistance of trial counsel.

¶ 35 We believe that the court acted under a misapprehension of its role under the law. *Moore*, 207 Ill. 2d at 78, 797 N.E.2d at 638. The State cites no authority for its position that the court can assign new counsel to conduct a *Krankel* inquiry in its stead.

¶ 36 The State finally argues that even if there was error in the handling of the defendant's ineffective assistance of counsel allegations, because his claim lacked merit there was no prejudice. We find this argument equally unavailing. As the *Moore* court stated, " '[w]hile [the] defendant's claims may be without merit, the trial court should have afforded the defendant the opportunity to specify and support his complaints. In

short, the defendant's motion was precipitously and prematurely denied.' " *Id.* at 80, 797 N.E.2d at 639 (quoting *People v. Robinson*, 157 Ill. 2d 68, 86, 623 N.E.2d 352, 361 (1993)). When the court fails to conduct the necessary preliminary examination as to the factual basis of the defendant's allegations, the case must be remanded for that limited purpose. *People v. Buchanan*, 2013 IL App (2d) 120447, ¶ 19, 989 N.E.2d 289 (citing *People v. Serio*, 357 Ill. App. 3d 806, 819, 830 N.E.2d 749, 760 (2005)).

¶ 37 We find that remand is warranted for the limited purpose of allowing the trial court to conduct the required preliminary investigation into the factual basis of the defendant's claims. If the court then determines that the claims lack merit or only pertain to matters of trial strategy, it need not appoint new counsel and may dismiss the *pro se* motion. If, on the other hand, the claims show possible neglect, new counsel must be appointed to represent the defendant on his claim of ineffective assistance.

¶ 38 **CONCLUSION**

¶ 39 For the foregoing reasons, we reverse the trial court's order denying the defendant's posttrial motion and remand this case for proceedings consistent with this order.

¶ 40 Reversed and remanded with directions.