

No. 14-0732

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IN THE
APPELLATE COURT OF ILLINOIS
FIRST DISTRICT

PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the Circuit Court
)	of Cook County.
Respondent-Appellee,)	
)	
v.)	No. 13 CR 11302
)	
JAMES THOMAS,)	
)	Honorable Joseph G. Kazmierski
Petitioner-Appellant.)	Judge Presiding

Justice Simon delivered the judgment of the court,
Presiding Justice Connors and Justice Mikva concurred in the judgment.

ORDER

¶ 1 *Held:* The evidence at trial proved that defendant was guilty of aggravated battery beyond a reasonable doubt. The trial court properly admitted proof of other-crimes evidence at trial. The jury was correctly instructed and defense counsel was not ineffective.

¶ 2 Following a jury trial, defendant James Thomas was convicted of aggravated battery and sentenced to 3 years in prison. Defendant appeals his conviction and sentence arguing that: (1) the evidence presented at trial was insufficient to establish beyond a reasonable doubt one of the elements of the offense; (2) the trial court committed reversible error by allowing the State to

introduce proof of other-crimes evidence at trial; (3) the trial court erred in providing the victim's prior inconsistent statement to the jury; (4) defense counsel was ineffective for failing to object to the trial court's improper definition of "bodily harm."

¶ 3

BACKGROUND

¶ 4 On May 21, 2013, defendant and Shanika Gray ("Shanika") were in a seven year relationship and lived together in a second floor apartment in Chicago with two of their children: three year old son, Jadaries, and an infant daughter, Ja'Zarie.

¶ 5 Pursuant to a court order, Shanika testified to the following facts. Around 10 a.m. on May 21, 2013, she and defendant continued a verbal altercation from the night before over rent money and suspected infidelity. She was starting a new job and left the apartment at 10:00 a.m. with her daughter, Ja'Zarie. Shanika and Ja'Zarie went downstairs and then Shanika returned to the apartment for the stroller. Defendant continued the argument. When she tried to leave the apartment, defendant "grabbed the stroller from [Shanika] and [she] proceeded down the stairs." Defendant dropped the stroller down the stairs. Shanika further testified that defendant "kicked the stroller. He didn't kick me." Their older child, Jadaries, was inside the apartment during the altercation which took place in the hallway.

¶ 6 About 10 minutes later, Shanika was at the bus stop at North Avenue and Karlov Avenue, when she saw defendant approach with their son in tow. As defendant approached her, the verbal altercation continued and "it just turned crazy." Shanika stated she was the more aggressive one and as defendant came "closer to me, I pushed him and when I pushed him it's like he was poking me in the face and he just poked me and then I pushed him again." Shanika testified that defendant "didn't necessarily hit me with a closed fist, he just poked me twice on

my lip, [with] such force if you [sic] poking somebody in the face," and she was not necessarily bleeding and did not have pain in her lip.

¶ 7 Shanika testified that, after defendant poked her in the face, he tried to grab her keys, which had a container of mace attached to it. While tussling for the key, Shanika discharged the mace. Jadaries was standing next to Shanika while defendant and Ja'Zarie were a few feet away. Shanika stated that the mace burned her face, but Ja'Zarie was shielded by the car seat and stroller shades. Shanika then ran from the mist with Ja'Zarie who was crying. Jadaries and defendant returned to their apartment.

¶ 8 The police arrived at the scene approximately 15-20 minutes later. Shanika told the police where to locate defendant and Jadaries. An ambulance was called because Shanika is asthmatic and a firefighter thought Ja'Zarie was wheezing. Shanika testified that she's a trained medical assistant and she did not notice Ja'Zarie wheezing; however, she acknowledged that she did not have a stethoscope to support her opinion. Shanika did not receive medical treatment at the scene, but was transported with Ja'Zarie to the hospital. According to Shanika, Ja'Zarie did not receive oxygen at any time although she was photographed laying next to an infant oxygen mask.

¶ 9 Officer Edward McCartan of the Chicago Police Department testified that he took photos of Shanika and Ja'Zarie. McCartan stated that Ja' Zarie's face appeared to be swollen. McCartan also stated that Ja'Zarie's eyes remained closed for the 5-10 minutes when he was at the hospital.

¶ 10 After leaving the hospital, Shanika and the children were taken to the police station. Shanika gave a statement to Detective Longstreet and Assistant State's Attorney Klarissa Flores ("ASA Flores"). The statement was introduced at trial as People's Exhibit 6 as prior inconsistent statement to be considered not only for impeachment, but as substantive evidence.

¶ 11 Shanika's typed statement specified that: "she left her son Jadaries sitting on the stairs and left her daughter, Ja'Zarie in her carrier on the stairs. Shanika state[d] that when she got to her apartment James kicked her in the leg. Shanika state[d] that she reached for her daughter's stroller but James was holding the stroller and would not let the stroller go."

¶ 12 In her statement, Shanika indicated that the verbal altercation with defendant turned physical at the bus stop. "Shanika state[d] that James then started to poke her in her face with his fingers several times. Shanika state[d] that James poked her so hard in the face that her lip started to bleed." According to her statement, defendant then "grabbed her arms and pulled her hair," and "grabbed her keys . . . removed the mace from its case and sprayed her face." Eventually, Shanika asked some girls nearby to call the police for her.

¶ 13 At trial, Shanika testified that she only gave the statement because the police threatened to involve DCFS and take her children away. Shanika said that despite the alleged threats concerning DCFS, she never mentioned anything to ASA Flores about any alleged threats if she did not make a statement. Shanika acknowledged that she signed the bottom of every page, reviewed the statement, and made the necessary corrections to her statement along with ASA Flores and Detective Longstreet.

¶ 14 Shanika also testified that when she spoke to ASA Flores and Detective Longstreet, she made statements and told the police things that were not necessarily true. Shanika further testified that she asked for the charges against defendant to be dropped. Shanika admitted at trial that she was not forced to go to the police station and that the officers did not treat her poorly.

¶ 15 ASA Flores testified that, as a felony review assistant for the Cook County State's Attorney's Office, she reviewed the case involving Shanika. Shanika voluntarily agreed to speak to her and their initial conversation lasted roughly 30-45 minutes. ASA Flores identified

People's Exhibit 6 as Shanika's typed statement, and stated that Shanika signed the bottom of each page.

¶ 16 ASA Flores testified that she asked Shanika if she received any threats or promises in return for her giving her statement and Shanika indicated no. Shanika stated that Detective Longstreet and all the police officers at the station treated her fairly and she had no complaints against any of them. ASA Flores stated that Shanika was very cooperative and forthcoming and actually did most of the talking; she was responsive to questions and appeared willing to provide any information that was needed.

¶ 17 ASA Flores testified that Shanika's typed statement indicated that defendant pulled her arms and hair, but that Shanika never said she pushed defendant first or that she was the one to hit the mace causing it to spray, nor did she ever say the macing was an accident. Shanika never mentioned to ASA Flores that she was threatened with DCFS intervention if she did not give her statement. ASA Flores testified that DCFS was never mentioned once in her interview with Shanika.

¶ 18 Edward McCartan testified at trial that he was working as evidence technician for CPD on May 21, 2013, and was called to Norwegian Hospital to investigate an incident concerning Shanika and her daughter. While speaking with Shanika at the hospital, she indicated "scratches on her right arm and she had a split lip."

¶ 19 Before trial, defendant filed a motion *in limine* to prevent the State from introducing evidence regarding the circumstances of his arrest. The court denied the motion holding that the circumstances of defendant's arrest were relevant and admissible. Officer Serrano testified at trial that he arrived on the scene and other officers informed him that defendant was inside the apartment holding a child and refusing to turn the child over to his mother. The officers had a

10-15 minute conversation with defendant through an open window. Defendant cursed at everyone, threatened police and refused to turn the child over. Officer Serrano said the landlord eventually let the officers into the building but the officers were forced to kick down the apartment door since defendant refused to open the door. Officer Serrano witnessed defendant resisting arrest and wildly swinging his arms. Defendant was tasered by police to get him to comply with instructions and taken into custody.

¶ 20 Sergeant Timothy Dineen testified at trial that he responded to a call at 4321 W. LeMoyne. There, he encountered defendant on the second floor of the apartment building. Dineen testified that defendant refused to allow officers to enter the apartment, so he kicked down the apartment door because there was a situation involving a child, and officers needed access into the apartment. Once inside the apartment, Dineen observed defendant holding a child against his chest with his arms wrapped around the child. Dineen observed an officer remove the child from defendant's grasp. Defendant did not appear under the effects of mace or pepper spray.

¶ 21 At the conclusion of the evidence, defendant moved for a directed verdict that was denied. During deliberations, the jury sent the court a note requesting a copy of People's Exhibit 6 (Shanika's statement). The court sent back a copy of People's Exhibit 6 with redacted "portions of the statement that did not concern the victim's prior inconsistent statement, which could not be considered by the jury as substantive evidence and only [sent] those proper statements back to the jury." Defendant objected to sending the statement back to the jury.

¶ 22 The jury also sent a note asking "what is bodily harm, how is it defined, is there a threshold?" Pursuant to the agreement by both parties, the court responded "the term bodily harm means physical harm . . . [i]t's for you to determine whether physical harm is present or not."

¶ 23 The jury found defendant guilty of aggravated battery of Shanika and the trial court sentenced defendant to 3 years in prison. Defendant filed a motion for a new trial which the trial court denied. This appeal follows.

¶ 24 ANALYSIS

¶ 25 Sufficiency of the evidence

¶ 26 Defendant argues that the State’s evidence was insufficient to support his conviction for aggravated battery. Specifically, defendant argues that the State failed to prove beyond a reasonable doubt that Shanika suffered any bodily harm during the altercation because she testified that she did not suffer any bodily harm and because there was no medical evidence of injury presented at trial.

¶ 27 The due process clause of the Fourteenth Amendment to the United States Constitution requires that a person may not be convicted in state court “except upon proof beyond a reasonable doubt of every fact necessary to constitute the crime with which he is charged.”

People v. Cunningham, 212 Ill. 2d 274, 278 (2004). When we review a claim for sufficiency of the evidence to sustain a conviction, “the question is ‘whether, after reviewing the evidence in the light most favorable to the prosecution, *any* rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.’” (Emphasis in original)

Cunningham, 212 Ill. 2d at 278-79, quoting *Jackson v. Virginia*, 443 U.S. 307, 319 (1979). “The *Jackson* standard applies in all criminal cases, regardless of the nature of the evidence.”

Cunningham, 212 Ill. 2d at 279. In applying this standard, “a reviewing court must allow all reasonable inferences from the record in favor of the prosecution. *Id.* at 280.

¶ 28 A person commits an aggravated battery in a public way when “in committing a battery, other than by the discharge of a firearm, he or she is or the person battered is on or about a public

way, public property, a public place of accommodation or amusement, a sports venue, or a domestic violence shelter.” 720 ILCS 5/12-3.05 (West 2012). First, the State needed to prove beyond a reasonable doubt the essential elements of battery, meaning that defendant intentionally or knowingly without legal justification, caused bodily harm or makes physical contact of an insulting or provoking nature. 720 ILCS 5/12-3 (West 2012).

¶ 29 In this case, defendant was charged and convicted of aggravated battery for striking Shanika while on or about a public way, specifically, at a bus stop. Defendant only argues that the State failed to prove beyond a reasonable doubt the “bodily harm” element of the offense of aggravated battery. Defendant relies on Shanika's testimony at trial to show that the State failed to meet their burden. At trial, Shanika testified that defendant poked her in the lip “a couple of times” and that the poking did not cause any pain, cuts, or bleeding. She also testified that defendant never grabbed her arms or pulled her hair during the incident, and the only physical marking resulted from being struck by the stroller after defendant dropped it down the apartment stairs.

¶ 30 Bodily harm requires “some sort of physical pain or damage to the body, like lacerations, bruises or abrasions, whether temporary or permanent,” *People v. Mays*, 91 Ill. 2d 251, 256 (1982). Furthermore, “[t]he crucial inquiry in an aggravated battery charge is whether the victim received a bodily injury, and if the evidence is in conflict a reviewing court will not substitute its judgment for that of the finder of fact unless the evidence is so improbable as to raise a reasonable doubt as to the defendant’s guilt.” *People v. Terry*, 91 Ill. App. 3d 34 (1980).

¶ 31 Here, the evidence at trial was conflicting. According to Shanika's statement, which was admitted as substantive evidence, defendant knowingly made contact with her face and body, causing her bodily harm. In her statement, Shanika indicated that: defendant “poked her so hard

in the face that her lip started to bleed," defendant "grabbed her arms and pulled her hair," and that she sustained some scratches from defendant throwing the stroller at her as she went down the stairs in her apartment building. Based on Shanika's statement, defendant did cause scratches to her arm and a split lip which amounted to "damage to the body" or bodily harm sufficient to support defendant's conviction. In contrast, at trial, Shanika testified that defendant "didn't necessarily hit me with a closed or opened fist, he just poked me twice on my lip, like [sic] such force if you [are] poking somebody in their face."

¶ 32 Even though Shanika's trial testimony contradicted her previous statements, both were considered substantive evidence by the trier of fact. It is the role of the fact-finder to resolve any inconsistencies or conflicts in the evidence. *People v. Evans*, 209 Ill. 2d 194, 211 (2004). In addition, the jury was also made aware that Shanika asked for the charges against defendant to be dropped. Shanika was then forced to testify at trial by way of subpoena and not voluntarily testifying against her boyfriend and the father of her children. As the trier of fact, the jury is in a superior position to this court to assess a witness' credibility (*People v. Adams*, 394 Ill. App. 3d 217, 232 (2009)), and “ ‘may believe as much or as little as it pleases of a witness's testimony’ ” (*People v. Mejia*, 247 Ill. App. 3d 55, 62 (1993)) (quoting *People v. Beasley*, 54 Ill. App. 3d 109, 114 (1977)). Given the verdict, it is clear the jury found Shanika's pretrial statement and description of the events of May 21, 2013, more credible than her testimony at trial. See *People v. Rodriguez*, 2012 IL App (1st) 072758-B, ¶ 45. Moreover, Shanika's description of her injuries outlined in her pretrial statement was corroborated by the testimony of Edward McCartan, an evidence technician, who stated that while speaking with Shanika at the hospital "she indicated scratches on her right arm and a split lip."

¶ 33 Furthermore, contrary to defendant's argument that the State did not establish the bodily harm element when no medical personnel testified to the extent of Shanika's injuries "direct evidence of injury is not required, and the trier of fact may infer injury based upon circumstantial evidence in the light of common experience." See *People v. Ford*, 2015 IL App (3d) 130810,

¶ 33. Based on the entire evidence presented at trial including Shanika's pretrial statement, her testimony at trial and the photographs taken after the incident, the jury as the trier of fact determined that Shanika experienced bodily harm of the hand of defendant. We will not disturb the jury's evidentiary finding as the record supports the jury's verdict. See *People v. Terry*, 91 Ill. App. 3d at 36. Therefore, we find that the State proved beyond a reasonable doubt the bodily harm element of the offense along with all the other elements, and that defendant was properly proven guilty beyond a reasonable doubt of aggravated battery.

¶ 34 Proof of other-crimes evidence

¶ 35 Defendant also contends that the trial court committed reversible error in denying his motion to bar the State from introducing evidence of the circumstances of his arrest. Defendant argues that the evidence that he resisted arrest on May 21, 2013 was highly prejudicial and should have not been admissible at trial.

¶ 36 Evidence of other-crimes is admissible if it is relevant for any purpose other than to show the defendant's propensity to commit crimes. *People v. Wilson*, 214 Ill. 2d 127, 135 (2005). Evidence of other-crimes is admissible "to show the circumstances surrounding defendant's arrest." *People v. Coleman*, 158 Ill. 2d 319, 335-36 (1994). "When such evidence is offered, it is incumbent upon the trial judge to weigh the relevance of the evidence to establish the purpose for which it is offered against the prejudicial effect the introduction of such evidence may have upon the defendant." *People v. Harris*, 225 Ill. 2d 1, 28 (2007). We review a trial court's decision to

admit or deny other-crimes evidence under an abuse of discretion standard. *People v. Donoho*, 204 Ill. 2d 159, 182-183 (2003). A trial court abuses its discretion only when its ruling is arbitrary, fanciful, or where no reasonable person would take the view adopted by the trial court. *Id.* at 183.

¶ 37 During the oral arguments on defendant's motion *in limine*, the State argued that "all defendant's actions show consciousness of guilt to the circumstances of arrest and to bar that testimony would seriously put the jury to a disadvantage to understand how this case came before your honor." After hearing and weighing the arguments from both sides, the trial court allowed the other-crimes evidence to be admitted and ruled that "circumstances of the arrest can be properly before the jury based upon your proffer." Before allowing proof of other-crimes into evidence, the trial court admonished the jury stating "Ladies and gentlemen, you're going to consider what the officer says just to show you why he went and did what he did, not for the truth of the matter of what he saw. Okay?"

¶ 38 Here, the trial court did not abuse its discretion when it allowed into evidence the testimony of the officers detailing the circumstances of defendant's arrest. Evidence of other-crimes is admissible "to show the circumstances surrounding defendant's arrest." *People v. Aguilar*, 396 Ill. App. 3d 43, 55 (2009) citing *People v. Coleman*, 158 Ill. 2d 319, 335-36 (1994). Officer Serrano testified that the officers had a conversation with defendant through an open window for roughly 15 minutes where defendant was cursing at everyone, threatening police, and refusing to turn over the child he had with him. Sergeant Dineen testified that defendant refused to let officers into the apartment, so Dineen kicked down the door to the apartment. Officer Serrano also testified that defendant resisted arrest, swung his arms at the officers, and that an officer tasered defendant in order to secure his compliance. Clearly, the testimony of the

police officers provided the jury with the circumstances of how defendant was arrested on May 21, 2013, following his aggravated battery of Shanika.

¶ 39 Defendant argues that the trial court erroneously allowed the other-crimes evidence to show defendant's consciousness of guilt or as part of continuing narrative of the charged offense. Assuming *arguendo* that the trial court admitted the evidence for these purposes, evidence admissible for one purpose is not affected by inadmissibility for another. *People v. Johnson*, 2014 IL App (2d) 121004, ¶ 52 citing *People v. Carter*, 38 Ill.2d 496, 504 (1967). As detailed above, the testimony of the police officers regarding defendant's arrest was properly presented to the jury regardless of its admission for showing defendant's consciousness of guilt or as part of continuing narrative of the charged offense. Accordingly, the trial court did not abuse its discretion in allowing the other-crimes evidence at trial.

¶ 40 Prior Inconsistent Statement

¶ 41 Defendant next argues that the trial court abused its discretion by providing Shanika's redacted statement to the jury during deliberations. Defendant does not dispute that Shanika's statement was properly admitted into evidence as a prior inconsistent statement pursuant to 725 ILCS 5/115-10.1 (West 2012), but limits his arguments to the trial court's decision to send a redacted version of the statement after the jury requested it. The decision whether to allow jurors to take exhibits into the jury room is left to the sound discretion of the trial court.” *People v. McDonald*, 329 Ill. App. 3d 938, 947 (2002). The court “will not reverse that decision unless there is an abuse of discretion to the prejudice of the defendant.” *Id.* at 948. The sole complaint raised by defendant is that the trial court favored the State's theory of the case by allowing Shanika's redacted statements to be reviewed by the jury.

¶ 42 Contrary to defendant's claims, the trial court did not send the statement to the jury to favor the State's case. Rather, the trial court concluded that the statement admitted as substantive evidence was helpful to the jury's deliberation. At trial, Shanika testified inconsistently with her prior statement claiming that while defendant poked her in the lip "a couple of times," the poking did not cause any pain, cuts, or bleeding. In her statement, Shanika not only identified defendant as the person who attacked her, but also provided significant details as to the attack and her injury. The jury was entitled to review the statement which served as substantive evidence and impeached Shanika's testimony on multiple points when the jury did not have such opportunity at trial. See *People v. Modrowski*, 296 Ill. App. 3d 735, 748 (1998) (finding no error in the trial court's ruling allowing the jury to review a redacted copy of a witness's grand jury testimony that was received as substantive evidence, where the trial court reasoned that "because the jurors had lacked the opportunity to observe [the witness] before the grand jury, the jurors had no recollection of that testimony upon which to rely"); *People v. White*, 2011 IL App (1st) 092852,

¶ 62. The review of this prior statement was crucial for the jury to properly assess the facts of the case and to determine whether to believe Shanika's testimony or her pretrial statement.

¶ 43 This court has recognized that "[i]n view of the contradictions between [a witness's] statement and his trial testimony, it is understandable that a jury would find it valuable to review the same." *People v. Lee*, 243 Ill. App. 3d 1038, 1044 (1993). In *Lee*, where defendant argued that sending a witness's written statement to the jury "overemphasized the statement and encouraged the jury to reject his self-defense argument," we found that "[t]he jury was instructed to weigh all of the evidence" and the trial court did not abuse its discretion in allowing the jury to review the written statement. *Id.* Similarly, here we find no abuse of discretion where the trial court made the substantively admitted statements available for review.

¶ 44

Ineffective Assistance of Counsel Claim

¶ 45 Defendant contends that his trial counsel was ineffective for failing to ensure that the jury was properly informed as to the definition of "bodily harm." During deliberations, the jury sent out a note requesting the definition for "bodily harm" and asking if there was a threshold for what constituted "bodily harm." Defendant argues that the trial court improperly instructed the jury that "bodily harm" meant "physical harm." According to defendant, trial counsel should have requested the trial court to define bodily harm as requiring "physical pain or damage to the body, like lacerations, bruises or abrasions."

¶ 46 We initially note that trial court accurately defined the term "bodily harm" for the jury. The purpose of jury instructions is to provide the jury with correct legal principles that apply to the evidence, thus enabling the jury to reach a proper conclusion based on the applicable law and the evidence presented in a case. *People v. Novak*, 163 Ill. 2d 93, 115-16 (1994). In criminal cases, if an Illinois Pattern Jury Instruction (IPI) is available "the instruction shall be used, unless the court determines that it does not accurately state the law." Ill. S. Ct. R. 451(a) (eff. Apr. 8, 2013). It is within the sound discretion of the trial court to determine whether a non-IPI instruction should be given, and the trial court's determination will not be disturbed absent an abuse of that discretion. *People v. Simms*, 192 Ill. 2d 348, 412 (2000). A trial court abuses its discretion in declining to give a non-IPI instruction when the jury is left to deliberate with instructions that are unclear, misleading or contain inaccurate statements of law. *In re Timothy H.*, 301 Ill. App. 3d 1008, 1015 (1998).

¶ 47 Here, by agreement of the parties, the trial court defined the term "bodily harm" as "physical harm." The court's definition was consistent with the IPI Criminal No. 11.65A. instruction which states that "the term 'bodily harm' means physical harm and includes, but is not

limited to, sexually transmitted disease, pregnancy and impotence." IPI Criminal, No. 11.65A. (4th ed. 2000). Since there was an IPI instruction that accurately stated the law and the instruction was not unclear or misleading, the trial court, in its discretion, properly used it to define the term "bodily harm."

¶ 48 Similarly, defendant's claim of ineffective assistance of counsel for failing to object to the trial court's definition of "bodily harm" fails. Claims of ineffective assistance of counsel are reviewed under the two-prong test set forth in *Strickland v. Washington*, 466 U.S. 668 (1984). *People v. Evans*, 209 Ill. 2d 194, 219-20 (2004). Under *Strickland*, a defendant must prove that (1) counsel's performance was deficient in that it fell below an objective standard of reasonableness, and (2) the deficient performance prejudiced the defense in that absent counsel's deficient performance there is a reasonable probability that the result of the proceeding would have been different. *Strickland*, 466 U.S. at 687, 694. Under the first *Strickland* prong, defendant must demonstrate that his attorney's performance fell below an objective standard of reasonableness. *People v. Enoch*, 122 Ill. 2d 176, 201 (1988); see also *People v. Stewart*, 104 Ill. 2d 463, 491-92 (1984) ("Effective assistance of counsel refers to competent, not perfect representation.").

¶ 49 Further, in order to establish deficient performance, the defendant must overcome the strong presumption that the challenged action or inaction may have been the product of sound trial strategy. *People v. Manning*, 241 Ill. 2d 319, 327 (2011). Matters of trial strategy are generally immune from claims of ineffective assistance of counsel. *Id.*; *People v. Smith*, 195 Ill. 2d 179, 188 (2000).

¶ 50 Here, trial counsel's decision not to object to the definition of "physical harm" was an instance of trial strategy, a wise one we may add, since the trial court properly instructed the jury

consistent with the IPI definition of the term. Accordingly, since defendant failed to establish that trial counsel's representation fell beyond an objective standard of reasonableness, his ineffective assistance of counsel claim fails.

¶ 51 CONCLUSION

¶ 52 Based on the foregoing, we affirm.

¶ 53 Affirmed.