

2016 IL App (2d) 131075-U
No. 2-13-1075
Order filed March 28, 2016

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IN THE
APPELLATE COURT OF ILLINOIS
SECOND DISTRICT

THE PEOPLE OF THE STATE)	Appeal from the Circuit Court
OF ILLINOIS,)	of DuPage County.
)	
Plaintiff-Appellee,)	
)	
v.)	No. 95-CF-1160
)	
PAMELA JACOBAZZI,)	Honorable
)	Robert G. Kleeman,
Defendant-Appellant.)	Judge, Presiding.

JUSTICE HUTCHINSON delivered the judgment of the court.
Justices Jorgenson and Hudson concurred in the judgment.

ORDER

¶ 1 *Held:* The trial court’s denial of defendant’s post-conviction petition was not against the manifest weight of the evidence; we affirm.

¶ 2 This is the fourth appeal in this case. Following a jury trial in 1999, defendant, Pamela Jacobazzi, was convicted of first-degree murder (720 ILCS 5/9-1(a)(2) (West 1994)) for the death of an infant child. The State argued at trial that the victim’s injuries were the result of “shaken baby syndrome.” Defendant was sentenced to 32 years’ imprisonment. On direct appeal, this court affirmed defendant’s conviction and sentence. Defendant filed a post-conviction petition in 2002, alleging, *inter alia*, that her trial attorneys had been ineffective for

failing to investigate the victim's medical history and provide her expert witness with the medical records from the victim's pediatrician. The trial court dismissed defendant's petition on the State's motion, and defendant appealed. This court remanded the cause for an evidentiary hearing with directions that three specific questions be addressed. The trial court conducted the evidentiary hearing in 2005 and denied defendant's petition. This court subsequently remanded the cause for a second evidentiary hearing, directing the trial court to address two additional questions. The trial court conducted the second evidentiary hearing in 2013, and again denied defendant's petition. Defendant timely appeals. We affirm.

¶ 3

I. BACKGROUND

¶ 4 This case is well known by the parties and this court, and we will therefore limit our recitation of the background to the facts that are relevant to this appeal.

¶ 5 The victim, Matthew C., was born on October 3, 1993. He was approximately 10 months old when he began attending defendant's home daycare during the first week of August 1994. The victim's mother noticed a bump on his forehead when she picked him up on August 8. Defendant said the victim had lost his balance and fallen in the kitchen, striking his head against the tile floor. The victim appeared healthy and his mother did not believe it was necessary that a doctor examine the bump. The victim attended daycare on August 9 without incident. However, the victim developed a fever that caused him to miss daycare on August 10. The fever subsided and the victim returned to daycare on August 11. The victim appeared to be in a deep sleep when his mother picked him up that evening. At times, he appeared to be stretching and trying to wake up. The victim's mother took him to the hospital later that night after she was unable to wake him. The victim was found to have injuries including a subdural hematoma and retinal

hemorrhages. He was eventually taken to the Marianjoy Rehabilitation Hospital, and although he made limited progress, he never regained consciousness. He died on December 19, 1995.

¶ 6 The State presented 10 expert witnesses at defendant's jury trial, each of whom testified that the victim's injuries occurred on August 11, 1994, during the period of time that he was in defendant's care. The State's experts also consistently opined that the victim's injuries were the result of shaken baby syndrome.

¶ 7 The defense called Dr. Kenneth Sullivan, the radiologist who read the victim's CAT scans on the night he was hospitalized. Sullivan testified that the victim's subdural hematoma contained both "acute" and "chronic" blood, which he described as "new" blood and "old" blood. Sullivan opined that the new blood had been present for a period of hours, whereas the old blood had been present for 10 to 14 days or longer. The defense then called Dr. Jan Edward Leestma, a neuropathologist, who agreed with Sullivan's conclusion that the victim's hematoma contained both new and old blood. Leestma believed the oldest components of the hematoma were at least 10 or 11 days old. He explained that a subdural hematoma may develop with vague symptoms, such as a headache, and retinal hemorrhages may be caused by a variety of inherited conditions. Leestma opined that the evidence was insufficient to establish beyond a reasonable degree of medical certainty that the victim's injuries were caused by shaking. He concluded in pertinent part, "*** I don't know how [the victim] came to have any injuries that he had, how the subdural hematoma formed, [or] what, if anything, caused him to reactivate or continue to bleed." On cross-examination, Leestma acknowledged that he had written a treatise titled, "Forensic Neuropathology." He had written therein, "it is an inescapable fact that the vast majority of seriously head-injured infants and children in [which] automobile and other major accidental trauma can be ruled out acquired their injuries as a result of child abuse." Leestma

admitted that, based on the victim's condition when he was taken to the hospital, his working assumption would have been that the child was abused. He further admitted that the victim's injuries were consistent with shaken baby syndrome.

¶ 8 Defendant was convicted and sentenced to 32 years in prison. She raised numerous issues on direct appeal, including a challenge to the sufficiency of the State's evidence. One of her arguments was that Dr. Leestma's testimony created reasonable doubt regarding the cause and timing of the victim's injuries. This court rejected that argument, holding as follows:

“At trial, the State presented the testimony of one medical expert after another. Every physician that treated the victim, and every expert who rendered an opinion for the State testified that the victim's injuries were consistent with and distinctive of shaken baby syndrome. Each witness testified that the victim's injuries occurred the same day he arrived at the emergency room, and that the victim would begin to display symptoms almost immediately after his injury. [The victim's mother] testified that the victim appeared well in the morning, and [defendant] testified that the victim appeared well at 3:15 p.m. on August 11, 1994. [The victim's mother] testified that at approximately 5 p.m. on August 11, the victim appeared to be in a deep sleep and appeared to be stretching. A rational trier of fact could find that this testimony was consistent with the medical testimony that a shaken baby would often appear to be asleep immediately after being shaken and that as the injury progressed the baby would often begin ‘posturing.’ ”

People v. Jacobazzi, No. 2-00-0523, 82-83 (2001) (unpublished order under Supreme Court Rule 23) (*Jacobazzi I*).

¶ 9 On May 17, 2002, defendant filed a petition for post-conviction relief. One of her claims was that she did not receive effective assistance of counsel at trial because her trial counsel

“failed to explore the range of potential defenses by failing to conduct a proper examination of the victim’s medical history, failing to provide a full set of medical records to [defendant’s] expert witness, and failing to fully explore known predisposing conditions, or conditions which very possibly enhanced the victim’s susceptibility to the injury.” Specifically, defendant alleged that her trial counsel failed to provide Dr. Leestma with the records of the victim’s pediatrician, Dr. David Nadelman. Those records showed that the victim had sickle cell trait, anemia, and recurrent respiratory infections and fevers. Defendant argued that there was a reasonable probability the outcome of her trial would have been different if this evidence had been introduced.

¶ 10 The trial court dismissed defendant’s petition on the State’s motion, finding that her claims had been waived because she failed to raise them on direct appeal. On appeal, this court affirmed in part, reversed in part, and remanded for additional proceedings. *People v. Jacobazzi*, No. 2-02-1292 (2003) (unpublished order under Supreme Court Rule 23) (*Jacobazzi II*). Although defendant failed to challenge trial counsel’s conduct pertaining to the Nadelman records on direct appeal, this court applied the fundamental fairness exception to the rule of waiver, concluding that defendant did not learn of the alleged error until after her trial. *Jacobazzi II*, at 6-7. The cause was remanded for an evidentiary hearing with instructions that the trial court address three questions: (1) whether trial counsel reviewed the Nadelman records; (2) whether trial counsel forwarded the Nadelman records to Dr. Leestma; and (3) whether the outcome of defendant’s trial would have been different absent trial counsel’s alleged errors. *Jacobazzi II*, at 11.

¶ 11 On remand, the trial court ordered that the evidentiary hearing be bifurcated, finding that separate proceedings were necessary to address the elements of defendant’s ineffective

assistance of counsel claim. See *Strickland v. Washington*, 466 U.S. 668, 691-94 (1984) (holding that a claim of ineffective assistance of counsel requires a showing that: (1) counsel's performance fell below an objective standard of reasonableness; and (2) counsel's performance was prejudicial, meaning there is a reasonable probability that the result of the proceeding would have been different absent counsel's deficient performance). The trial court would initially consider evidence related only to the first (*i.e.* performance) prong of *Strickland*, which correlated to the first and second questions posed by this court. If defendant established that her trial counsel's performance fell below an objective standard of reasonableness, the trial court would conduct a second hearing, where it would consider evidence relating to the second (*i.e.* prejudice) prong of *Strickland*.

¶ 12 Dr. Leestma testified first during the hearing on the *Strickland* performance prong. This was followed by testimony from defendant's trial counsel, attorneys Richard Butera and Anthony Montemurro.

¶ 13 Dr. Leestma testified that he did not recall having been provided with the Nadelman records during his preparation for defendant's trial. He would have remembered the Nadelman records because they indicated that the victim had sickle cell trait and anemia. This contradicted Leestma's working assumption during defendant's trial: that the victim was "essentially a healthy baby with no health concerns going into the event that eventually resulted in the hospitalization and ultimately the death of the child." Leestma remembered viewing slides taken from the victim's subdural hematoma and concluding that the hematoma contained chronic components that were 10 or more days old. He testified that, if he had been aware of the victim's sickle cell trait, he would have examined the slides more closely to determine whether the red blood cells had an abnormal shape. On cross-examination, Leestma acknowledged that

he had reviewed the victim's medical records from the Marianjoy Rehabilitation Hospital in preparation for defendant's trial. The Marianjoy records included the following report:

“Past medical history includes sickle [cell] trait. The patient has a history of anemia which was worked up by an outside pediatrician. Laboratory values are unknown but the patient was treated with iron.”

¶ 14 Butera testified that he did not recall viewing anything prior to defendant's trial that would have indicated that the victim had an abnormal medical condition or blood disorder. He also had no recollection of whether he discussed the Nadelman records with Dr. Leestma. However, Butera admitted on cross-examination that his case file included notes referring to sickle cell trait and anemia. One document was titled “Questions of Dr. Leestma.” A question regarding sickle cell trait was written on the document. Other documents included notes stating, “Pre-Existing Conditions” and “Look to pre-existing chron[ic] symptomology.”

¶ 15 Montemurro testified that he had possessed the Nadelman records prior to defendant's trial. He remembered that the records showed the victim had sickle cell trait, and he recalled that he had discussed sickle cell trait with Dr. Leestma. Montemurro testified that Leestma did not attach any significance to the sickle cell trait, adding that Leestma reviewed the victim's medical records himself and chose what was significant. The defense theory proposed by Leestma was that the victim suffered a prior injury that caused a slow bleed. Leestma supported this theory with Dr. Sullivan's report, which indicated that there was both acute and chronic bleeding on the victim's brain.

¶ 16 The trial court made findings and determined that defendant's trial counsel had reviewed the Nadelman records and forwarded them to Dr. Leestma prior to defendant's trial. Although Butera did not remember reviewing the Nadelman records, the references in his case file to the

victim's pre-existing conditions made it "abundantly clear" that he had reviewed them. Montemurro also provided credible testimony that he had reviewed the Nadelman records and discussed them with Leestma. Finally, Leestma's credibility was diminished by his admission that he had reviewed the Marianjoy records, which themselves referenced sickle cell trait and anemia. The trial court accordingly denied defendant's post-conviction petition, concluding that defendant's trial counsel did not perform deficiently, and therefore defendant had not received ineffective assistance of counsel. As a result, the trial court did not hear any evidence relating to the *Strickland* prejudice prong.

¶ 17 On appeal, this court affirmed the trial court's factual findings concerning the Nadelman records, but held that the bifurcation of the evidentiary hearing was erroneous. *People v. Jacobazzi*, 398 Ill. App. 3d 890, 912 (2009) (*Jacobazzi III*). This court acknowledged that the trial court's decision to bifurcate was a reasonable application of the directions on remand, but explained that the questions posed were too narrow for an analysis of the *Strickland* performance prong. *Jacobazzi*, 398 Ill. App. 3d at 915. Under *Strickland*, counsel's strategic choices made after thorough investigation are "virtually unchallengeable." *Strickland*, 466 U.S. at 690. However, strategic choices made after "less than complete investigation" are only reasonable "to the extent that reasonable professional *judgments* support the limitations on investigation." *Id.* at 691 (Emphasis in original). Observing this guidance from *Strickland*, this court held, "[t]he fact that trial counsel 'reviewed' the Nadelman records and 'forwarded' them to Dr. Leestma would not of itself tell us whether there was a conscious decision by trial counsel not to present evidence of the medical conditions indicated in the records." *Jacobazzi*, 398 Ill. App. 3d at 916. Defendant's post-conviction petition therefore "raises a question whether the Nadelman records contained evidence of such potentially exculpatory force that counsel had a duty to incorporate

them into the defense at trial.” *Id.* at 929. The cause was accordingly remanded for a second evidentiary hearing, with directions that the trial court address two additional questions:

“(1) whether, given the potential benefit, if any, that the Nadelman records might have had for the defense at trial, counsel exercised reasonable professional judgment in declining to present a defense based on the records; and (2) whether there is a reasonable probability that, but for trial counsel’s omission, the result of the proceeding would have been different.” *Id.*

¶ 18 The defense called Dr. Leestma to testify again during the second evidentiary hearing. Leestma maintained that he had not been provided with the Nadelman records in preparation for defendant’s trial. He explained that he would have prepared differently if he had known about the information in the Nadelman records. In addition to sickle cell trait and anemia, the records showed that the victim had recurrent respiratory infections and fevers. This grouping of symptoms indicated that other conditions, such as cerebral venous thrombosis, which involves an increased viscosity of the blood, could have caused the victim’s subdural hematoma. Had Leestma known of the victim’s pre-existing medical conditions, he would have advised trial counsel to consult other experts, who could have supported his opinion by explaining *why* the victim’s hematoma contained both new and old blood. Leestma admitted that, during his preparation for defendant’s trial, he was more concerned with the objective evidence of the slides from the hematoma than the victim’s medical records. He added, “[a]s it turns out, I was wrong about that. There was information in there that I didn’t either receive or perceive.”

¶ 19 Dr. John Jerome Plunkett, a forensic pathologist, opined that the victim’s subdural hematoma developed at least three days prior to August 11, 1994, or even much earlier. Plunkett explained that the initial hematoma could have been caused by impact trauma, but could also

have been caused by the birthing process, blood vessel malformations, infections, or inherited disorders, such as sickle cell disease or sickle cell trait. Although Plunkett did not know what caused the victim's hematoma, he did not believe the victim was a healthy baby on August 11, 1994. Plunkett admitted on cross-examination that, even after reviewing the Nadelman records, he agreed with the theory propounded by the defense at trial: that there was a prior injury and a subsequent exacerbation of that injury.

¶ 20 Dr. Patrick Lantz, a professor of pathology at Wake Forest University Baptist Medical Center, testified that the information in the Nadelman records should have prompted more investigation into the cause of the victim's injuries. Lantz admitted on cross-examination that he agreed with Dr. Leestma's opinion at trial: that the victim could have received his injuries by other means than shaking, but the actual cause of the victim's injuries was unknown.

¶ 21 The defense played the videotaped testimony of Dr. Patrick David Barnes, a pediatric neuroradiologist, who was unable to attend the proceedings. Barnes agreed with the defense's trial theory that the victim's subdural hematoma was composed of both old and new blood, indicating an older hemorrhage and a more recent hemorrhage. However, Barnes stressed the importance of reviewing victim's entire medical history, dating back to pregnancy, "to see if there [were] risk factors that could set this baby up for this type of presentation on August 11, 1994." Barnes opined that, given the victim's pre-existing medical conditions, there was an underlying medical cause for his injuries, such as vascular malformation or venous thrombosis. Barnes further opined that the victim's injuries were more likely caused by impact, rather than by shaking, and the victim could have experienced a lucid interval, during which he presented only minor symptoms. On cross-examination, Barnes was asked if he agreed with the defense's trial theory that the victim had a prior injury or medical condition that caused an earlier bleed with a

subsequent re-bleed. Barnes answered, “I would agree that that’s one of the considerations for what we see on the imaging, yes.” Barnes also admitted that he could not determine whether the victim’s injuries were caused by abuse.

¶ 22 Dr. Peter Speth, a forensic neuropathologist, opined that the victim’s injuries were not consistent with shaken baby syndrome. He explained that one of the manifestations commonly associated with shaken baby syndrome is a thin layer of blood that forms over the surface of the brain; however, the victim’s hematoma presented more like a large clot than a thin layer of blood. Moreover, the victim had an infarction, meaning that one hemisphere of his brain had died, which is not a manifestation commonly associated with shaken baby syndrome. Speth believed that the Nadelman records provided the answer for the victim’s injuries. The records showed that the victim had HbS (hemoglobin sickle) hemoglobinopathy, an abnormal blood condition, which was characterized as being sickle cell trait. However, the victim had a high percentage of sickled red blood cells for a child with sickle cell trait, and his anemia was not responding to iron treatments. This indicated that his recurrent illnesses were caused by a “severe” hemoglobinopathy, rather than an iron deficiency. Speth concluded that victim’s sickled cells caused viscosity in his blood, resulting in a cerebral venous thrombosis. This prevented blood from leaving the victim’s brain and blocked fresh blood from entering his brain. This, in turn, led to the subdural hematoma, infarction, and retinal hemorrhages. On cross-examination, Speth admitted that he agreed with Dr. Leestma’s trial conclusions that the victim’s hematoma contained old and new blood, and that medical conditions can cause the “spontaneous” formation of a subdural hematoma. On re-direct examination, Speth testified that Leestma provided no explanation during the trial of the types of medical conditions that could have led to such an injury.

¶ 23 The defense's final witness was Dr. Shaku Teas, a forensic pathologist. Dr. Teas opined that the victim had a chronic subdural hematoma, which may have developed as early as birth. This was supported by evidence that the victim cried more than an average baby, and he was delayed in reaching certain milestones, such as rolling over and crawling. The chronic subdural hematoma combined with the victim's sickle cell trait and anemia to make him susceptible to having a "re-bleed," which could have occurred either spontaneously or with minor trauma. Teas concluded that the victim's death resulted from his pre-existing medical conditions and his fall on August 8, 1994, in defendant's kitchen.

¶ 24 The State's first witness was Dr. Charles Stanley Hemenway, a pediatric hematologist oncologist at Loyola University Medical Center. Hemenway pointed out that the victim did not have sickle cell disease; rather, he had sickle cell trait. Hemenway explained the difference between the former and the latter. A person with sickle cell disease inherits a gene from both parents that is responsible for abnormal hemoglobin, which causes the person's red blood cells to become shaped like a sickle. These red blood cells aggregate and form a gelatin-like substance that impedes circulation, resulting in severe respiratory complications and pain throughout the various tissues in the body. However, a person with sickle cell trait does not normally become symptomatic, because the gene associated with abnormal hemoglobin has been inherited from only one parent, resulting in a lower percentage of the abnormal hemoglobin. Hemenway opined that the victim's injuries did not result from sickle cell trait, anemia, or a combination of the two conditions. He added that there was no established connection between sickle cell trait and venous thrombosis. Hemenway acknowledged that complications can arise from sickle cell trait; however, he explained that he would not expect to see any such complications in a child that was

less than a year old. Furthermore, even if the victim had sickle cell disease, rather than sickle cell trait, it is unlikely that he would have become symptomatic at such a young age.

¶ 25 The State next called Dr. Nadelman, who testified that he first saw the victim four days after his birth, on October 7, 1993. Following the victim's routine two-month visit, Nadelman advised the victim's mother that he could no longer provide routine healthcare because the victim was "on Public Aid." However, Nadelman said he would continue seeing the victim free of charge whenever his mother thought that he was sick. Nadelman prescribed iron supplements in May 1994, after the victim's blood test revealed that he was anemic. Nadelman explained that the victim's anemia was mild, and that mild anemia is not uncommon with infants. Although a subsequent test revealed that the anemia had persisted, Nadelman believed that this was because the victim had been receiving his iron supplements with his meals, which can cause the body to absorb the iron. Nadelman knew that the victim had been diagnosed with sickle cell trait at birth, but he did not believe the victim ever exhibited any symptoms associated with sickle cell trait. On cross-examination, Nadelman admitted that the victim had visited his office three times after the routine two-month visit. In March 1994, the victim was prescribed medicine for wheezing. In May 1994, the victim was diagnosed with an upper respiratory infection. Finally, in July 1994, a stool sample was taken to determine whether chronic bleeding was causing the victim's anemia. None of this changed Nadelman's opinions that the victim's sickle cell trait was a "benign condition," and the victim was a "healthy baby" up until August 11, 1994.

¶ 26 The State's final witness was Dr. Jerry Bauer, the neurosurgeon who performed two craniotomies on the victim in August 1994. During defendant's trial, Bauer opined that the victim's subdural hematoma was caused by an injury that occurred on August 11, 1994, during the time that the victim was in defendant's care. Bauer further opined that the victim rapidly lost

consciousness after sustaining the injury, which was caused by shaken baby syndrome. Since defendant's trial, Bauer had reviewed the Nadelman records on multiple occasions. The fact that the victim had sickle cell trait and was found to be anemic did not change Bauer's opinions regarding the cause and timing of the victim's injury.

¶ 27 The trial court found that Dr. Leestma reviewed the Nadelman records during his preparation for defendant's trial and made a conscious decision to focus on the objective evidence of an "old bleed." Although defendant's experts believed that her trial strategy was inadequate or incomplete, they agreed with Leestma's general theory. The trial court determined that trial counsel had therefore exercised reasonable professional judgment in declining to present a defense based on the Nadelman records. The trial court further found that the experts for both sides had presented compelling evidence in support of their respective positions. However, while defendant showed a possibility that the outcome of her trial would have been different if her defense had been based on the Nadelman records, she did not show a reasonable probability of a different result. The trial court accordingly ruled that defendant had not been denied effective assistance of trial counsel, and denied her post-conviction petition. Defendant timely appeals.

¶ 28

II. ANALYSIS

¶ 29 Defendant's sole contention on appeal is that the trial court erred in denying her post-conviction petition. She argues that she received ineffective assistance of trial counsel because her trial strategy should have incorporated the victim's pre-existing medical conditions, which would have bolstered Dr. Leestma's opinion that the victim's injuries were not caused by shaken baby syndrome. However, as we will explain, we affirm the trial court's finding that defendant failed to show a reasonable probability that the result of her trial would have been different

absent trial counsel's allegedly deficient performance. Therefore, we need not address trial counsel's performance.

¶ 30 The Post-Conviction Hearing Act (the Act) (725 ILCS 5/122-1 *et seq.* (West 2012)) creates a three-stage process for the adjudication of post-conviction petitions in non-capital cases. *People v. Harris*, 224 Ill. 2d 115, 125 (2007). At the first stage, the circuit court must review the petition within 90 days of its filing and determine whether it is “frivolous or is patently without merit.” 725 ILCS 5/122-2.1(a)(2) (West 2012). If the petition is not summarily dismissed at the first stage, it advances to the second stage, where an indigent petitioner is entitled to appointed counsel, the petition may be amended, and the State may answer or move to dismiss the petition. 725 ILCS 5/122-4 (West 2012). If the hearing advances to the third stage, the circuit court must conduct an evidentiary hearing and enter any appropriate orders with respect to the judgment or sentence in the former proceedings. 725 ILCS 5/122-6 (West 2012).

¶ 31 Our review in this case is from the trial court's decision following a third-stage evidentiary hearing. At such a hearing, the trial court serves as a fact finder; it must determine witness credibility, decide the weight to be given testimony and evidence, and resolve any evidentiary conflicts. *People v. Domagala*, 2013 IL 113688, ¶ 34. The trial court's decision following the hearing will not be reversed unless it is manifestly erroneous. *People v. Beaman*, 229 Ill. 2d 56, 72 (2008). A decision is manifestly erroneous if it contains an error that is clearly evident, plain, and indisputable. *Id.* at 73.

¶ 32 As discussed above, a claim of ineffective assistance of counsel requires a showing that: (1) counsel's performance fell below an objective standard of reasonableness; and (2) counsel's performance was prejudicial, meaning there is a reasonable probability that the result of the proceeding would have been different absent counsel's deficient performance. *Strickland v.*

Washington, 466 U.S. 668, 691-94 (1984). “The failure to satisfy either the deficiency prong or the prejudice prong of the *Strickland* test precludes a finding of ineffective assistance of counsel.” *People v. Enis*, 194 Ill. 2d 361, 377 (2000). Courts may therefore resolve ineffectiveness claims by reaching only the prejudice component of *Strickland*, “for lack of prejudice renders irrelevant the issue of counsel’s performance.” *People v. Coleman*, 183 Ill. 2d 366, 397-98 (1998).

¶ 33 Here, the trial court concluded that defendant had shown a reasonable *possibility* that the outcome of her trial would have been different if trial counsel had presented a defense that was based on the Nadelman records; however, defendant had not shown a reasonable *probability* that the outcome of her trial would have been different. We find no manifest error in that decision.

¶ 34 During the evidentiary hearing, the State’s experts remained steadfast in their opinions that the victim’s injuries were caused by shaken baby syndrome, despite being confronted with evidence of the victim’s pre-existing medical conditions. Even if the victim had sickle cell disease, rather than just sickle cell trait, Dr. Hemenway would not have expected the victim to become symptomatic before he was one year old. Dr. Nadelman, whose own records are at issue, testified that he would not have treated the victim any differently in hindsight. Finally, Dr. Bauer, the neurosurgeon who performed the victim’s craniotomies, did not waver from his opinion that the victim’s subdural hematoma was caused by shaking, which occurred during the time that he was in defendant’s care.

¶ 35 Defendant argues that she “succeeded in undermining confidence in the outcome of [her] trial” because her experts presented “multiple, plausible explanations for the victim’s collapse.” We disagree. If evidence of the victim’s pre-existing medical conditions had been incorporated into defendant’s trial strategy, the trial would have turned into a classic battle of the experts.

However, we do not believe there is a reasonable probability that the jury would have decided this battle in defendant's favor. We therefore affirm the trial court's ruling that defendant failed to satisfy the *Strickland* prejudice prong. Thus, any discussion of trial counsel's performance would be irrelevant. See *Coleman*, 183 Ill. 2d at 397-98.

¶ 36 We note that we express no departure from this court's holding in *Jacobazzi III*. There, this court cautioned attorneys against being "too accepting of the opinions of an expert," explaining that the question of whether an attorney has properly scrutinized an expert's opinion "involves a sliding scale determination in which the intensity of due scrutiny bears some relation to the value that the evidence in question would have for the defense, as perceived by a reasonably competent attorney." *People v. Jacobazzi*, 398 Ill. App. 3d 890, 923-24 (2009). If defendant had shown a reasonable probability that evidence of the victim's pre-existing medical conditions would have changed the outcome of her trial, our analysis here would have hinged on a determination of whether a reasonably competent attorney would have scrutinized Dr. Leestma's opinions and proposed trial strategy more closely than did attorneys Butera and Montemurro. However, because defendant has not made such a showing, any further discussion of the issue would be advisory. See *People v. Hampton*, 225 Ill. 2d 238, 245 (2007) (stating that appellate courts should avoid rendering advisory opinions).

¶ 37 **III. CONCLUSION**

¶ 38 For the reasons stated, the judgment of the circuit court of DuPage County denying defendant's post-conviction petition is affirmed.

¶ 39 Affirmed.