2018 IL App (1st) 152432-U

THIRD DIVISION
August 8, 2018

No. 1-15-2432

IN THE APPELLATE
COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County.
	)	
v.	)	No. 14 CR 10656 (01)
	)	
JEROME QUICK,	)	The Honorable
	)	Matthew E. Coghlan,
Defendant-Appellant.	)	Judge Presiding.

JUSTICE FITZGERALD SMITH delivered the judgment of the court.
Presiding Justice Cobbs and Justice Howse concurred in the judgment.

ORDER

HELD: Defendant's conviction must be reversed and his cause remanded for a new trial where defense counsel clearly provided ineffective assistance by failing to object to the admission into evidence of four otherwise inadmissible and prejudicial "lookout bulletins;" counsel's performance was deficient in that it fell below an objective standard of reasonableness, and counsel's deficient performance substantially prejudiced defendant so as to undermine the confidence in the trial's outcome.

¶ 1 Following a jury trial, defendant Jerome Quick (defendant) was convicted of theft and sentenced to five years in prison. He appeals, contending, in part, that his trial counsel rendered

constitutionally ineffective assistance in failing to prevent the jury from viewing inadmissible and highly prejudicial hearsay evidence. He asks that we reverse his conviction and remand his cause for a new trial. For the following reasons, and because we find that counsel was woefully ineffective and caused him substantial prejudice, we reverse and remand.

¶ 2 BACKGROUND

¶ 3 Because our determination rests on counsel's ineffectiveness regarding the admission of certain exhibits known as "lookout bulletins" at trial, we present only those facts relevant to that issue.[1]

¶ 4 Defendant was arrested in June 2014 and charged with theft with respect to an incident that occurred eight months earlier on October 22, 2013 at approximately 8:45 p.m. on the Chicago Transit Authority's (CTA) Red Line train in Chicago. The victim, Sharon Shi, reported to police that her wallet was stolen when it was removed from her purse as she boarded and rode a northbound train at the Grand Avenue and State Street station. Shi never identified defendant during the resulting police investigation; rather, as described herein, defendant was arrested based on other information. Essentially, the State's theory was that defendant and another man, Renard Jones, often worked together as pickpockets on the CTA Red Line, this time with Jones distracting Shi and obfuscating any view of the crime and defendant illegally obtaining her wallet

[1]For the record, defendant raises two issues for our review: ineffective assistance of counsel based on various instances of defense counsel's conduct (including the admission of the bulletins) as well as cumulatively, and error upon the trial court for its alleged violation of certain procedures under *People v. Thompson*, 2016 IL 118667. However, as noted, because we find herein that reversal of defendant's conviction and remand of his cause is necessary based on one specific instance of ineffective assistance of counsel, we need not discuss any of the other contentions defendant has raised on appeal.

from her purse. Eventually, Jones' trial was severed from defendant's, and thus, he is not a party to this appeal. The defense theory, meanwhile, was that there was no evidence, physical or otherwise, linking defendant to this crime. Defendant was represented by private counsel.

¶ 5 At trial, Shi testified that on the evening of October 22, 2013, after using her Ventra card at the CTA Red Line station and returning her wallet to her canvas tote bag which lacked any closure device, she waited on the crowded platform and boarded a train car. She averred that as she stepped inside, a tall, thin African American man bumped into her and stepped on her foot, knocking her off balance. Shi moved past him to the other side of the car. She exited at her stop, went home and saw that her credit card company had notified her of fraudulent activity on her account. She discovered that her wallet was missing from her bag and called police. Shi further narrated CTA surveillance video taken of the platform and train car, which was published to the jury. She pointed out a man in the video who she believed took her wallet as she was bumped, and a second man placing a bag on some glass, seemingly in an attempt to obstruct the camera's view. On cross-examination, Shi averred that during the investigation of this incident, she never viewed a photo array or physical lineup to identify defendant.

¶ 6 Chicago Police Detective Kevin Fron testified that once he was assigned to Shi's case, he spoke with CTA security specialist Frank Higgins to obtain video surveillance footage from the platform and from inside the train car. Following a stall in the investigation for several months, Detective Fron was notified by a sergeant from the Mass Transit Unit about a "bulletin" that identified the suspects involved in this case. Detective Fron explained that after CTA security officers review video of an incident, they pull the best still frames of the offenders' faces and

create a CTA security bulletin, or “lookout bulletin,” which they disseminate to police and the public. During his testimony, the State presented People's Exhibits Nos. 2 and 3, which were the bulletins disseminated from the CTA to Detective Fron. After prompting by the trial court as to whether he had any objection to their admission, defense counsel stated he had "[n]o objection."

¶ 7 As evidenced by the record herein, Exhibit No. 2 is a one-page flyer containing a blue and white header with the CTA logo and the word "SECURITY" in capital letters at its top. Underneath this, in larger-font black capital letters, are the words "LOOKOUT BULLETIN INFORMATION." And, underneath that, near the middle of the page, in red capital letters are the words "REDLINE PICKPOCKET." Following these headings, there are four still frame pictures taken from the surveillance video showing two African American men. The first and second photos are bigger than the third and fourth; one of the men appears in the first and third photos, and the other man appears in the second and fourth photos. Immediately above the first photo appears defendant's name ("Jerome Quick") handwritten in black ink; on the opposite side of the flyer appears the name "Renard Jones," also handwritten in black ink, and with an arrow drawn to the man in the second photo. Underneath the photos, the bulletin contains the date, time, and location of the incident involving Shi and phone numbers urging the public to call with information. Additionally, at the bottom of the bulletin in capital letters is a paragraph with Shi's recount and a description of the video surveillance, stating:

> "A FEMALE PASSENGER REPORTS THAT AS SHE WAS BOARDING A N/B REDLINE TRAIN AT GRAND SHE WAS BUMPED IN THE DOORWAY. SHE LATER FOUND HER WALLET HAD BEEN TAKEN.

> CTA SURVEILLANCE VIDEO DEPICTS THE ABOVE TWO PERSONS EXITING THE VICTIM'S N/B TRAIN AND RUNNING TO WHERE THE VICTIM IS BOARDING. THERE IS A COMMOTION AT THE DOORWAY AND THEN THESE TWO PERSONS RETREAT FROM THE DOORWAY AND WALK TO THE S/B PLATFORM WHERE THEY BOARD AND LEAVE."

¶ 8 People's Exhibit No. 3, also admitted at this time, is identical in form and content to Exhibit No. 2, with some slight differences. On this one-page flyer, there are four different still frame pictures; the same man from the first and third photos in Exhibit No. 2 appears in the second and third photos of this exhibit, and the same man from the second and fourth photos of Exhibit No. 2 appears in the first and fourth photos of this exhibit. Above the first photo in Exhibit No. 3 appears the name "Renard Jones" handwritten in black ink, and immediately next to it appears the following handwritten in pencil: "IR# 528148, per Frank stalls." Above the third photo appears the name "Jerome Quick" handwritten in black ink and with an arrow drawn to the man in the photo, and immediately next to it appears the following handwritten in pencil: "IR# 633021, does pick."

¶ 9 Upon further questioning about these exhibits, Detective Fron testified that while he obtained the bulletins from Frank Higgins, the handwritten notations on them were made by Sergeant Michael Jones of the Chicago Police Department's Mass Transit Tactical Unit in March 2014, some five months after the incident. Based on these, Detective Fron issued an investigative alert for defendant, who was later arrested.

¶ 10 CTA security specialist and investigator Frank Higgins, who secured the video surveillance and had prepared the bulletins, testified as to his investigatory process and with respect to Exhibit Nos. 2 and 3. He also identified People's Exhibit Nos. 4 and 5. Per Higgins' testimony, and as presented in the record, Exhibit No. 4 is a clean, color copy of Exhibit No. 2 with no extraneous handwriting on it, and Exhibit No. 5 is a clean, color copy of Exhibit No. 3 with no extraneous handwriting on it. The State moved that they be entered into evidence and, after the trial court again prompted defense counsel as to whether he had any objection, defense counsel asked to view the exhibits for a "quick second" and then informed the court that he had "[n]o objection" to their admission and publication to the jury.

¶ 11 Briefly, Sergeant Michael Jones testified that he was contacted by Detective Fron, who showed him the bulletins and asked if he knew the people in the photos. Sergeant Jones confirmed that it is his handwriting that appears on the bulletins (Exhibit Nos. 2 and 3). He stated that he identified defendant from these as someone he had stopped before and of whom he had seen photos during his work in law enforcement, which focused primarily on CTA pickpockets. Defense counsel did not cross-examine Sergeant Jones.

¶ 12 Detective Thomas Purtell, who interviewed defendant following his arrest, testified that defendant denied being in any of the photographs contained in the bulletins and stated that he "didn't conduct any picks." Detective Purtell further detailed that upon additional questioning, defendant became "agitated" and "loud" and pointed out that there were no photos of him taking anything from anyone and that he should not have been arrested without such evidence. On cross-examination, Detective Purtell admitted that defendant's interview with police was not

recorded or memorialized in any manner and defendant had not made any written statement while in custody.

¶ 13 At the close of trial, the jury found defendant guilty.

¶ 14 ANALYSIS

¶ 15 Defendant contends on appeal, in part, that his trial counsel rendered constitutionally ineffective assistance when he failed to challenge the admission of the bulletins into evidence Exhibit Nos. 2 and 3, and their copies, Exhibit Nos. 4 and 5. He asserts that these were highly prejudicial and otherwise inadmissible as hearsay, and that there could have been no strategic reason for defense counsel, who had consistently promulgated a theory of lack of evidence tying defendant to the alleged incident, to not, at the very least, object to their admission and publication to the jury. The State, for its part, argues contrarily that defense counsel was not ineffective for failing to object because the bulletins were nonhearsay, since they were admitted only to demonstrate how defendant was identified and the course of the police investigation. Based upon our review of the record, and particularly of the bulletins themselves, we agree with defendant.

¶ 16 A defendant is constitutionally guaranteed the right to assistance not simply of counsel but, rather, of effective counsel. See *People v. Holmes*, 141 Ill. 2d 204, 218 (1990); U.S. Const., amend. VI. Defense counsel has an " 'overarching duty' " to advocate for his client and use his skills and knowledge to ensure that the trial afforded to the defendant is a reliable, adversarial one. *People v. Watson*, 2012 IL App (2d) 091328, ¶ 22, quoting *Strickland v. Washington*, 466 U.S. 668, 688 (1984). In other words, this constitutional guarantee intimates that counsel, in

fulfilling his duty, will engage evidentiary rules to shield the defendant from a verdict based on unreliable evidence, will appreciate and understand the legal principles applicable to the case at hand, and will provide assistance ready to ensure " 'an adversarial check to a prosecutor's excessive endeavors.' " *Watson*, 2012 IL App (2d) 091328, ¶ 22, quoting *People v. Fletcher*, 335 Ill. App. 3d 447, 453 (2002).

¶ 17 Of course, when a defendant challenges counsel's performance as ineffective, he must show both that counsel's performance was deficient in that it fell below an objective standard of reasonableness, and that counsel's deficient performance substantially prejudiced him in that there is a reasonable probability that, but for counsel's errors, the result of the proceedings would have been different. See *Strickland*, 466 U.S. at 687 (both the deficient performance prong and the prejudice prong must be satisfied); accord *People v. Patterson*, 217 Ill. 2d 407, 438 (2005). A reasonable probability is one sufficient to undermine the confidence in the outcome, namely, that counsel's deficient performance rendered the result of the trial unreliable or the proceeding fundamentally unfair. See *People v. Enis*, 194 Ill. 2d 361, 376 (2000); accord *Watson*, 2012 IL App (2d) 091328, ¶ 23.

¶ 18 Additionally, it is true that there is a strong presumption that counsel's performance falls within the wide range of reasonable professional assistance, and that trial strategy cannot be the basis for finding counsel ineffective. See *People v. Smith*, 177 Ill. 2d 53, 93 (1997); accord *Watson*, 2012 IL App (2d) 091328, ¶ 24. However, this presumption that counsel's challenged action or inaction was the product of sound trial strategy may be overcome where no reasonably effective defense attorney, when faced with the same circumstances of the defendant's trial,

would engage in similar conduct. See *People v. Fountain*, 2016 IL App (1st) 131474, ¶ 45 (exception to presumption arises when counsel's chosen "strategy" is so unsound that he entirely fails to conduct any meaningful adversarial testing); accord *Watson*, 2012 IL App (2d) 091328, ¶ 24, citing *Fletcher*, 335 Ill. App. 3d at 453.

¶ 19 In the instant cause, we find that, with respect to the unobjected-to admission of the bulletins, defendant has met both the deficient performance prong and the prejudice prong of *Strickland*.

¶ 20 First, we conclude that counsel's performance fell below an objective standard of reasonableness. The State is correct that, generally, police photographs are admissible when introduced for the purpose of showing how the defendant was identified from them. See *People v. Wilson*, 168 Ill. App. 3d 847, 851 (1988). It is also true, as the parties agree, that information demonstrating the investigative steps taken by a police officer in a cause is also admissible. This is because, although this technically amounts to an out-of-court statement, it is not considered hearsay since it is not offered for the truth of the matter it asserts; rather, as noted, it is offered for the limited purpose of describing the investigation and explaining what caused the police to act. See *People v. Simms*, 143 Ill. 2d 154, 174 (1991) (police officer may recount steps of investigation and describe events leading up to arrest); accord *People v. Gacho*, 122 Ill. 2d 221, 248-49 (1988). However, when that information, even if it relates to the investigative steps taken by police, *is* offered for the truth of the matter asserted, it is hearsay and, thus, it is inadmissible. See *People v. Warlick*, 302 Ill. App. 3d 595, 599 (1998) (to be admissible, it must satisfy some relevant nonhearsay purpose; anything beyond what is necessary to explain police procedure is

hearsay); accord *People v. Jura*, 352 Ill. App. 3d 1080, 1088 (2004). Ultimately, "[p]olice procedure or not, when the words go to 'the very essence of the dispute' the scale tips against admissibility." *Warlick*, 302 Ill. App. 3d at 600 (internal citation omitted); accord *People v. Jones*, 153 Ill. 2d 155, 160 (1992); see also *Jura*, 352 Ill. App. 3d at 1088 (officer's testimony that he received dispatch of "person with a gun" was not step in investigation but, rather, inadmissible hearsay because went to essence of dispute, namely, whether the defendant was the man who possessed the gun).

¶ 21 The bulletins in the instant cause are, in and of themselves, hearsay. They went to the very essence of the dispute in this cause: whether defendant was the "Redline Pickpocket" depicted therein who stole Shi's wallet. Higgins made clear in his testimony that the bulletins, which he generated, have "information and photographs on th[em] pertaining to a particular incident or crime." Indeed, all four bulletins contained the words "REDLINE PICKPOCKET," in red capital letters no less, immediately above the pictured photographs and contained a paragraph wherein a "victim" was mentioned and relating what can only be considered to be suspicious activity, indicating that a crime had definitely occurred. Moreover, the bulletins were clear as to who was believed to have committed the crime. That is, Exhibit Nos. 2 and 3 not only contained defendant's name handwritten above the multiple photographs, and in one instance included an arrow pointing directly to a man in the photos, but also listed his "IR" number, clearly indicating he was already known to police,[2] and included the phrase "does pick," clearly

[2]An "IR" number has been reported to stand for an "internal record" number, an "individual record" number, or an "identification record" number. Whatever its name, it is a number given by police to individuals the first time they are arrested.

indicating he has pickpocketed in the past. Police procedure or not, the words on these bulletins the printed red capital letters identifying the "REDLINE PICKPOCKET," the description of the suspicious behavior at the time in question, and the handwritten information which included defendant's name, IR number and a notice that he has pickpocketed in the past obviously go to the very essence of the dispute in this case. Accordingly, the bulletins constitute inadmissible hearsay.

¶ 22 The State argues that the bulletins were not hearsay because they were not offered for the truth of the matter asserted (that defendant was the pickpocket), but instead to show how and why defendant was arrested as part of "the course of the police investigation." The State continues that, because of this, defense counsel obviously did not need to object to their admission and, thus, cannot be considered ineffective. However, this argument is incredibly misleading, particularly in light of the record before us. At no point whatsoever when they were discussed in court; testified to by Detective Fron, investigator Higgins or Sergeant Jones; or presented into evidence to the jury was it stated that the bulletins were being admitted simply to show the course of the police investigation here that resulted in defendant's arrest. To the contrary, no such limiting purpose was ever mentioned at all. There is nothing in the record demonstrating that the State proposed a limited purpose for the bulletins when it introduced them first during Detective Fron's testimony, when its other witnesses including Higgins and Sergeant Jones further testified regarding them, nor when it asked the trial court to admit them into evidence for the jury's consideration. Similarly, there is nothing in the record to indicate that the trial court instructed the jury that it should view the bulletins in some limited manner, such as for

consideration of the police process only as opposed to the bulletins' very content naming defendant as the pickpocket here, or that the court otherwise admitted the bulletins into evidence in some other limited manner.

¶ 23 What is most significant here is that the one person who could have challenged the bulletins' admission, and how they were to be considered and used at trial, failed to do so. Surely, the overarching duty to challenge the admissibility of the bulletins is not upon the State introducing them (which would receive a windfall if they were admitted with no limiting instruction), nor upon the trial court which cannot advocate for either side. Instead, as we discussed above, defense counsel is required to engage in evidentiary rules and utilize legal principles to provide assistance to the defendant to ensure that his trial is a reliable and adversarial one.

¶ 24 Yet, defense counsel in this case did not do that for defendant here, and with dire consequences. This is because, absent a limiting instruction, it cannot be presumed that the jury's use of hearsay evidence was limited to a nonhearsay purpose. See *People v. Ochoa*, 2017 IL App (1st) 140204, ¶ 57, citing *People v. Trotter*, 254 Ill. App. 3d 514, 528 (1993) (when investigatory procedure testimony is presented, "the trial court must instruct the jury that the testimony was introduced for the limited purpose of explaining what caused the police to act and that they were not to accept the statement as true;" if it does not, it cannot be assumed that the jury's use of the evidence was properly limited), and *Jura*, 352 Ill. App. 3d at 1093; accord *People v. Purcell*, 364 Ill. App. 3d 283, 295 (2006). This is especially troubling when the jury here was presented with not one, not two, but four copies of a bulletin prepared by law enforcement detailing that a crime

occurred and providing a blaring description that defendant, who these bulletins noted had been in trouble with police before as a pickpocket, was the man in the photos committing it. We simply can see no reason why the average juror would *not* consider the bulletins as evidence of defendant's guilt, particularly when they clearly identify him, by name no less, and implicate him in similar past conduct. See, *e.g.*, *People v. Boling*, 2014 IL App (4th) 120634, ¶ 135.

¶ 25 How defense counsel did not ask for a limiting instruction is unfathomable. Having not done so, the State was never required to, nor ever did, articulate to the trial court that the bulletins were being placed into evidence for the sole purpose of explaining how police arrived at arresting defendant. More critically, the trial court, in turn, was not required to, nor ever did, explain the same to the jury. Accordingly, the bulletins, which clearly comprise hearsay, were admitted and, we must presume, considered by the jury here for their truth. This was, legally and procedurally, completely inappropriate.

¶ 26 Moreover, even if testimony that defendant was identified based on the bulletins could have been properly considered here, there is no explanation why defense counsel did not otherwise challenge the State's introduction of the entire content of all four bulletins into evidence and, more particularly, of Exhibit Nos. 2 and 3. For example, portions of the bulletins, such as the red capital letters stating "REDLINE PICKPOCKET" and the paragraph recounting the crime which was not relevant in any way to police procedure and only described suspicious conduct on the part of the men named in the photos, could easily have been redacted or excised from the Exhibit Nos. 4 and 5, which were otherwise clean copies of Exhibit Nos. 2 and 3, and then submitted to the jury in order to remove the striking hearsay evidence and ensure that the

bulletins legitimately explained only the course of the police investigation here. This, in turn, would have made the admission of Exhibit Nos. 2 and 3, which contained the damning extraneous handwritten information containing defendant's name, an arrow pointing to the photos, his "IR" number and the words "does pick" essentially and conclusively proving he was the Redline Pickpocket who stole Shi's wallet wholly cumulative and unnecessary. Yet, a simple objection, and this simple fix, was not even attempted by defense counsel. As such, we conclude that counsel's performance was clearly deficient as it fell below an objective standard of reasonableness.

¶ 27 Turning to the second *Strickland* prong of prejudice, we conclude for similar reasons that there is a reasonable probability, namely, one sufficient to undermine confidence in the outcome, that, but for counsel's deficient performance in failing to object to the bulletins' admission, the outcome of the trial would have been different. The State argues that even if defense counsel performed deficiently in failing to challenge the bulletins' admission, there was no prejudice to defendant here because there was "overwhelming circumstantial evidence" of his guilt. According to the State, this "overwhelming" evidence included defendant's presence in the same train car as Shi; that he is a tall, thin African American male as portrayed in her description of the alleged offender; and Detective Purtell's testimony that defendant became "agitated" and "loud" during his police interview.

¶ 28 However, we fail to see how any of this can ever be remotely classified as "overwhelming." The entire case against defendant was, as the State concedes, circumstantial. In light of the record, we believe that is stretching the best that can be said about it. It was

entirely circumstantial. Defendant was arrested some eight months after Shi reported her wallet stolen. Shi never identified defendant as the perpetrator; police never had her view a physical lineup, nor was she ever shown a photo array. Moreover, defendant's stature and presence in the train car are hardly linchpins of his guilt. As the video surveillance and testimony from various witnesses demonstrated, the platform and train car on the Redline at that station that evening was very crowded, with people of all types bumping into each other at every turn. There is nothing in that video, nor in any testimony, showing that defendant took Shi's wallet. He was never seen with the wallet, and he was never linked to any of its proceeds. In addition, defendant never confessed to the crime. In fact, he never made any memorialized statement to police regarding the offense at all. Detective Purtell claimed that defendant grew "agitated" and "loud" during his interrogation. Yet, even accepting that as true, it is quite the leap from there to assume he was making some sort of confession, as the State intimates. It could be more than reasonable that defendant, if he did so, became “agitated” and “loud” because police were not accepting his repeated denials about being involved in a crime that occurred eight months earlier and to which they had no physical evidence to connect him.

¶ 29 Again, defense counsel's entire theory on the case here was that there was insufficient evidence linking defendant to the pickpocketing of Shi on the Redline that evening so as to prove him guilty of that crime beyond a reasonable doubt. As is clear from the record, this was his strategy from the outset of this case. Failing to object to the admission of the bulletins, *in toto* or at the very least in part with respect to various portions of their content and the fact that there were multiple copies of them being submitted to the jury, flies in direct contradiction to his

theory. Not only that, but it substantively undermined any of the challenges defense counsel tried to make at trial with respect to his very theory. Other than perhaps DNA, it is hard for us to imagine any piece of evidence with more prejudicial impact in a case like this. Those bulletins, which were introduced into evidence without any limiting instruction on their consideration, which were published to the jury, and which went back to the jury room during deliberations, specifically identified defendant as the person in the photographs, as the "REDLINE PICKPOCKET," as someone who "does pick," and as someone police knew had done so before. In a cause that was otherwise circumstantial at best, we cannot think of any conceivable tactic or strategy, let alone a reasonable one, that could somehow justify defense counsel's failure to object. No reasonably effective defense attorney when faced with the same circumstances here not even a brand new law school graduate trying his first case would have failed to object to the admission of four bulletins outrightly, and literally, naming his client as the perpetrator. Thus, we conclude that there, indeed, is a reasonable probability that, but for counsel's error in failing to object to the most critical evidence in this case, the result of the trial would have been different.

¶ 30 As evidenced by the record, although defense counsel argued a theory of lack of evidence against defendant in this entirely circumstantial case, he failed to object to the admission of the bulletins which, we believe without a doubt, were the linchpin of this cause. After twice being prompted by the trial court as to whether he had any objection to the bulletins being submitted to the jury, and after examining them again during trial, defense counsel twice told the court he had no objection. This, despite the fact that the bulletins appeared as they did: with red capital letters

declaring he was the "REDLINE PICKPOCKET;" with a blaring narrative that he stole Shi's wallet; with his name handwritten above the photographs; with his IR number scrawled in pencil immediately next to his name; and with the matter-of-fact description that he "does pick." And this, despite the fact that *four* copies of the bulletins were admitted, unchallenged, into evidence. We find that, from all this, defendant has clearly shown both that defense counsel's performance was deficient and that counsel's deficient performance substantially prejudiced him.

¶ 31 Ultimately, and due to defense counsel's failure to adhere to his duty to advocate for his client and use his skills and knowledge to ensure a reliable and adversarial trial, we conclude that defendant did not receive his constitutionally guaranteed right to effective assistance.

¶ 32 CONCLUSION

¶ 33 Accordingly, for all the foregoing reasons, we reverse defendant's conviction and remand his cause for a new trial.

¶ 34 Reverse and remanded.