2018 IL App (4th) 160025-U

NO. 4-16-0025

FILED
June 5, 2018
Carla Bender
4th District Appellate
Court, IL

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
Plaintiff-Appellee,	)	Circuit Court of
v.	)	Morgan County
ROBERT S. HEITBRINK,	)	No. 13CF105
Defendant-Appellant.	)	
	)	Honorable
	)	Christopher E. Reif,
	)	Judge Presiding.

JUSTICE TURNER delivered the judgment of the court.
Justices Holder White and Knecht concurred in the judgment.

ORDER

¶ 1 *Held*: 1. Based on the evidence in this case, a rational trier of fact could have concluded defendant was guilty of first degree murder, not second degree murder.

2. Defendant was not entitled to an involuntary manslaughter jury instruction because no evidence was presented defendant acted recklessly.

3. Defendant failed to establish the State engaged in prosecutorial misconduct during its rebuttal closing argument.

4. Neither defendant's right to equal protection under the law nor his right to due process under the law was violated when he did not receive credit against his sentence for time he spent in home detention.

¶ 2 On October 20, 2015, a jury found defendant Robert S. Heitbrink guilty of first degree murder. On December 15, 2015, the trial court sentenced defendant to 27 years in prison. Defendant appeals, raising the following arguments: (1) his conviction should be reduced to second degree murder; (2) he was denied a fair trial because the trial court refused to instruct the

jury on involuntary manslaughter; (3) the State intended to inflame and prejudice the jury against defendant when it misstated the law, voiced opinion, and denigrated defendant during closing arguments; (4) his equal protection rights were violated because he was not given presentence custody credit for time he spent on home detention; and (5) his due process rights were violated because he did not receive presentence custody credit for time he spent on home detention. We affirm.

¶ 3 I. BACKGROUND

¶ 4 On August 20, 2013, the State filed an amended information charging defendant by information with three counts of first degree murder (720 ILCS 5/9-1(a)(1), (2) (West 2012)), stemming from the death of William McElhaney on July 27, 2013. The information alleged defendant stabbed William multiple times with a knife.

¶ 5 Defendant's trial was held in October 2015. On July 27, 2013, Lieutenant Doug Thompson of the Jacksonville police department responded to defendant's home in response to a 9-1-1 call made at 4:26 a.m. Thompson knew defendant and was aware he was a suspect based on the 9-1-1 call. Defendant had dried blood on his hands, leg, and feet and smelled strongly of alcohol. Thompson asked defendant what happened. Defendant said he did not know. Thompson then asked him how he did not know. Defendant said he had been inside the house. Thompson again asked defendant what happened, and defendant again said he did not know. According to Thompson, defendant did not seem upset and was nonchalant about the situation.

¶ 6 Shelley Heitbrink testified she had been married to defendant, but they divorced in 2005. While they never legally remarried, she and defendant reunited in 2006. She and defendant had three children together: Emily, Calahan (Cal), and Josef (Joe) Heitbrink. William McElhaney was married to Shelley's mother, Connie McElhaney. While William was her

stepfather, Shelley considered him to be her father.

¶ 7 In July 2013, Cal and Joe went on a long vacation with William and Connie McElhaney. They returned to Jacksonville on July 26, 2013. That night, William, Connie, Shelley, defendant, Cal, and Joe spent the evening telling stories and looking at pictures from the vacation. The adults were drinking alcohol. At some point during the evening, defendant and William left the house and went to a local liquor store to get more alcohol. At about 10 p.m., Shelley, Connie, and the boys went to bed. That night, the boys slept with Shelley in Shelley's and defendant's bedroom. Defendant and William stayed up and continued drinking. At about 4 a.m., defendant came into his and Shelley's bedroom and woke Cal up because he wanted to talk to him. Cal said he was tired and wanted to go back to sleep.

¶ 8 Shelley testified defendant then went to a cabinet in the bedroom, got something out of the cabinet, reached in his pocket, and then "stood there for a minute." Shelley had a feeling something was not right. She heard defendant say someone was going to get hurt. This concerned her. After defendant went downstairs, she stayed in bed for a few minutes, but she then went downstairs and opened the garage door from the house. She saw defendant standing at the workbench and William leaning against the Mustang. She did not think there was a problem between the two of them, and no one appeared injured. She asked defendant why he came upstairs and woke up the boys. She did not feel right about the situation, but nothing appeared to be wrong so she went back upstairs.

¶ 9 Within 30 minutes, defendant was back upstairs banging on the door to the room where Connie McElhaney was sleeping, yelling at her to come get her "child[-]molesting husband." Shelley and her mom went downstairs and saw William on the floor of the garage. Shelley called 9-1-1 when she saw William. She testified defendant normally kept his Spartan

Cold Steel knife, the knife used to stab William, in the bedroom cabinet, which was the same cabinet defendant had been looking inside before he went downstairs.

¶ 10 Officer Brad Rogers of the Jacksonville police department, the lead detective in this case, testified he did not observe any injuries on defendant other than a small scrape on his right leg above the ankle.

¶ 11 Jeff Harkey, a forensic pathologist, performed an autopsy on William's body. Harkey found seven stab wounds and three incised wounds (commonly known as cuts). William's blood alcohol content level was 0.244. William was not stabbed or cut on the front of his body. Other than an incised wound to the back of William's head, he was not stabbed or cut above his waist.

¶ 12 Defendant testified he and William continued talking and drinking in the garage after the kids and women went to bed. They were getting along fine. Defendant stated he loved William like a brother. He admitted he was intoxicated. About 2:30 a.m., they started talking about the trip. Defendant thanked William for taking the boys. Defendant told William he was concerned about Cal being away from defendant and Shelley for so long. Defendant testified Cal had some anxiety issues and had been seeing counselors for four to five years.

¶ 13 According to defendant, William became argumentative, questioning defendant about his concern. William said Cal was not anxious and had a good time on the trip. Defendant said he did not think Cal wanted to go on the trip at first. William got angry about this comment, and his demeanor changed. William started arguing and cussing at defendant. Defendant testified he had never seen William like that. This went on for a while. William started acting like defendant was accusing him of something. William asked defendant if defendant thought William did something to Cal. Defendant said he did not think that. William responded he was

not a child molester or a pedophile. Defendant testified he started becoming concerned for his son.

¶ 14 Defendant said he needed to talk to Cal. William was also mad about that. Defendant then went upstairs and tried to wake up Cal. Cal said he wanted to sleep. Defendant stood there for a while and then agreed. He denied saying someone was going to get hurt. He got in the dresser because he was looking for chapstick, which he did not find. Defendant denied getting a knife out of the cabinet. Defendant said he had taken the Spartan Cold Steel knife, which was the knife he used to stab William, down to the garage the week before because he needed to work on it.

¶ 15 After trying to talk to Cal, defendant went back to the garage. William was leaning on the car. William asked defendant what he said to Cal. Defendant said Cal was asleep, and he would talk to him in the morning. Shelley then came downstairs. After she left, William wanted to know what defendant said to Shelley. Defendant said he did not say anything to her. Defendant then went inside the house to use the bathroom. When defendant came back out to the garage, William was agitated and angry. Defendant testified he noticed William was holding a knife. William then lunged at him with the knife. Defendant said he hit William in the face two or three times. Defendant then lost his balance and fell backward. William still had the knife and jumped on top of defendant. Defendant blocked the knife, grabbed William by the forearm, and forced William's arm with the knife behind William's head. William was still on top of him. Defendant hit him two or three more times.

¶ 16 Defendant then kicked William off him and sat up. He saw William had lost the knife, which defendant grabbed with his right hand. William had turned on his right side, also trying to get the knife. William then started kicking defendant. Defendant thought William was

trying to kick the knife out of his hand. Defendant said he stabbed William. He was not aiming at a specific spot. William kept kicking, and defendant kept stabbing. Once William stopped kicking defendant, defendant stopped stabbing William. Defendant stated he was not trying to kill William. Defendant closed the knife and dropped it in a blue tub in the garage. William was not bleeding profusely at that time. Defendant then went upstairs and told William's wife to get William out of his garage.

¶ 17 Defendant claimed he did not know how the laceration on the back of William's head occurred. He said he did not think defendant was badly hurt. Defendant said he was shocked when he went back downstairs and saw all the blood.

¶ 18 The trial court instructed the jury on first degree murder and second degree murder but denied defendant's request for an involuntary manslaughter instruction. After deliberations, the jury found defendant guilty of first degree murder.

¶ 19 On December 15, 2015, the trial court sentenced defendant to 27 years in prison with credit for 58 days served.

¶ 20 This appeal followed.

¶ 21 II. ANALYSIS

¶ 22 A. Second Degree Murder

¶ 23 Defendant first argues his first degree murder conviction should be reduced to second degree murder because the evidence demonstrates he acted under a sudden and intense passion resulting from serious provocation or unreasonably believed he was entitled to act in self-defense after William attempted to stab him in the chest with a knife. According to defendant, "[n]o rational trier of fact could find that the mitigating factors of serious provocation or an unreasonable belief in self-defense were not present in this case." We disagree.

¶ 24 Section 9-2 of the Criminal Code of 2012 (Criminal Code) (720 ILCS 5/9-2(a)(1), (2) (West 2012)) provides a "person commits the offense of second degree murder when he or she commits the offense of first degree murder" and "at the time of the killing he or she is acting under a sudden and intense passion resulting from a serious provocation by the individual killed" or "he or she believes the circumstances to be such that, if they existed, would justify or exonerate the killing under the principles stated in Article 7 of this Code, but his or her belief is unreasonable." Pursuant to section 9-2(c) of the Criminal Code:

> "When evidence of either of the mitigating factors defined in subsection (a) of this Section has been presented, the burden of proof is on the defendant to prove either mitigating factor by a preponderance of the evidence before the defendant can be found guilty of second degree murder. The burden of proof, however, remains on the State to prove beyond a reasonable doubt each of the elements of first degree murder and, when appropriately raised, the absence of circumstances at the time of the killing that would justify or exonerate the killing under the principles stated in Article 7 of the Code." 720 ILCS 5/9-2(c) (West 2012).

¶ 25 "In the context of a challenge to the sufficiency of the evidence to prove a mitigating factor, the test is whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found that the mitigating factors were not present." (Emphasis omitted.) *People v. Thompson*, 354 Ill. App. 3d 579, 587, 821 N.E.2d 664, 671 (2004). Based on the evidence in this case, a rational trier of fact could have found mitigating factors were not present because it did not find defendant's version of events credible.

¶ 26 On this point, defendant argues the jury could not disregard or reject his testimony

regarding what happened between him and William inside the garage. Defendant quotes the following language from the majority in *People v. Liddell*, 32 Ill. App. 3d 828, 830, 336 N.E.2d 815, 817 (1975), when "there is only one version of the incident, and it is not improbable nor contradicted in material part, and is in fact corroborated by evidence in the record, the trier of fact may not disregard or reject that version [citations]."

¶ 27 However, defendant contradicted the version of events he provided in his testimony with his initial statement to the police at the scene of the murder. Defendant told the police he did not know what happened. His version of events was also contradicted by Shelley Heitbrink's testimony. Before the incident in question, she heard him say someone was going to get hurt. In addition, while defendant claimed William came at him with the murder weapon, Shelley testified defendant kept the murder weapon in a cabinet in their bedroom, in which he was looking for something prior to the murder. Based on the evidence in this case, defendant's testimony William first came at him with the murder weapon was improbable. As a result, his argument the jury could not reject his version of events is without merit.

¶ 28 B. Involuntary Manslaughter Instruction

¶ 29 Defendant next argues the trial court erred in denying his request for the jury to be given an involuntary manslaughter instruction. Citing *People v. McDonald*, 2016 IL 118882, ¶ 25, 77 N.E.3d 26, defendant argues a lesser-included instruction should be given if the jury heard some evidence, even if the evidence is slight, which would reduce the crime charged to a lesser offense if the jury believed the evidence. We apply an abuse of discretion standard of review to a court's decision to deny a defendant's request for a certain jury instruction. *McDonald*, 2016 IL 118882, ¶ 42.

¶ 30 Section 9-3(a) of the Criminal Code states "[a] person who unintentionally kills

an individual without lawful justification commits involuntary manslaughter if his acts whether lawful or unlawful which cause the death are such as are likely to cause death or great bodily harm to some individual, and he performs them recklessly ***." 720 ILCS 5/9-3(a) (West 2012). Defendant cites cases where Illinois courts have found the evidence supported a finding of recklessness when a person was killed during a struggle for a weapon.

¶ 31 However, in this case, the victim was not stabbed multiple times during a struggle for the knife. Even taking defendant's testimony at face value, defendant had gained control over the knife when he repeatedly stabbed William. Further, while defendant testified he did not intend to kill William and was not aiming for a specific part of William's body when stabbing William with the knife, his act of stabbing William multiple times was not a reckless act for purposes of an involuntary manslaughter instruction. Our supreme court has stated:

> "In general, a defendant acts recklessly when he is aware that his conduct might result in death or great bodily harm, although that result is not substantially certain to occur. See 1 W. LaFave & A. Scott, Substantive Criminal Law § 3.7(f), at 336-37 (1986); 1 T. Decker, Illinois Criminal Law 82 (1986). Reckless conduct generally involves a lesser degree of risk than conduct that creates a strong probability of death or great bodily harm." *People v. DiVincenzo*, 183 Ill. 2d 239, 250, 700 N.E.2d 981, 987 (1998), *abrogated on other grounds by McDonald*, 2016 IL 118882, ¶¶ 23-25.

When an individual intentionally stabs another person numerous times with a knife like the one used by defendant, great bodily harm is substantially certain to occur. As a result, defendant did not engage in reckless conduct in this case, and the trial court did not abuse its discretion by not providing the jury with an involuntary manslaughter instruction.

¶ 32 C. Closing Argument

¶ 33 Defendant next argues he is entitled to a new trial because the State "misstated the law, voiced opinion, and denigrated [defendant]" in an attempt to inflame and prejudice the jury against defendant during the State's rebuttal closing argument. Defendant accuses the State of prosecutorial misconduct. According to defendant, the prosecutor's comments denied defendant a fair trial.

¶ 34 Defendant acknowledges this issue is forfeited because his attorney did not object to the State's comments at trial. However, defendant argues we should review this issue pursuant to the plain error doctrine. A defendant seeking plain error review must first show a clear or obvious error occurred. *People v. Sebby*, 2017 IL 119445, ¶ 49, 89 N.E.3d 675. We find defendant has failed to establish anything in the prosecutor's closing argument amounts to clear or obvious error.

¶ 35 The alleged incidents of prosecutorial misconduct complained of by defendant occurred during the State's rebuttal to defendant's closing argument. During closing arguments, the State is given wide latitude to make arguments regarding the evidence presented and legitimate inferences that can be drawn from the evidence presented. *People v. Hart*, 214 Ill. 2d 490, 513, 828 N.E.2d 260, 272 (2005). A prosecutor "may challenge a defendant's credibility and the credibility of his theory of defense in closing argument when there is evidence to support such a challenge." *People v. Kirchner*, 194 Ill. 2d 502, 549, 743 N.E.2d 94, 119 (2000).

¶ 36 With regard to this alleged misconduct, defendant first argues the prosecutor voiced his opinion and improperly disparaged defendant and his testimony. According to defendant:

"It is well settled that a prosecutor may comment upon and argue from the

> facts proved in a case, and draw all legitimate inferences from those facts. *People v. Burnett*, 27 Ill. 2d 510, 517 (1963). It is equally settled, however, that a prosecutor may not misstate the evidence, argue facts not proven by the evidence, or otherwise get before the jury that which amounts to his own testimony. *People v. Woolley*, 178 Ill. 2d 175, 209 (1997)."

Defendant argues "the prosecutor repeatedly painted [defendant's] testimony as contrived, if not an outright lie, and as an individual bent on not only killing [William], but also [ruining] his reputation" by suggesting William was a child molester. However, the prosecutor's argument was based on reasonable inferences from the evidence during the case, addressed defendant's defenses, and did not constitute prosecutorial misconduct.

¶ 37 The jury was provided evidence William was 70 years old and the defendant was 48 years old at the time of the incident. According to defendant's version of events, the victim allegedly attacked defendant in the garage with a knife defendant had taken to the garage from his bedroom about a week prior to the incident. However, Shelley Heitbrink testified defendant normally kept this knife in a cabinet in their bedroom. Defendant had been looking for something in this cabinet shortly before the incident and said someone was going to get hurt. Shortly thereafter, defendant stabbed the victim multiple times with the knife, causing the victim's death. Further, while defendant claimed he was in a life and death struggle with this 70 year old man, he had only minor injuries from this alleged fight. Moreover, while defendant offered clear and detailed testimony about what happened in the garage, he told a responding officer shortly after the incident that he did not know what happened to William.

¶ 38 Based on the evidence in this case, the State was justified in challenging all aspects of defendant's testimony regarding what happened and why it happened between

defendant and William in the garage. The State also did not go beyond permissible limits in providing the jury with an alternative version of what might have happened between defendant and the victim in the garage based on reasonable inferences that could be drawn from the evidence in this case.

¶ 39 Defendant also argues the prosecutor misstated the law and evidence to the jury. According to defendant's brief, "the State repeatedly argued to the jury that [defendant's] testimony failed to prove that he either felt subjectively or objectively 'justified' in stabbing [William]." Defendant does not cite to the record where the State made any inappropriate burden shifting argument, and our review did not discover any. With regard to second degree murder, which was at issue in this case, we note a defendant does bear the burden of proving an appropriate "mitigating factor by a preponderance of the evidence before the defendant can be found guilty of second degree murder." 720 ILCS 5/9-2(c) (West 2012). As a result, the State could have justifiably referenced the defendant's burden of proof in this case.

¶ 40 Defendant also takes issues with the following argument by the State:

> "[E]ven if this incident occurred the way the defendant said, with William kicking the defendant, the defendant, by stabbing him repeatedly about the body, was not either objectively or subjectively justified in his response to that minimal contact. There is no way that that could be considered by anyone to be feeling an imminent death or great bodily harm."

According to the defendant's argument, the State was ignoring the "key element of second degree murder, that an individual believed the force he used to have been justified, but his belief was unreasonable." However, from our review of the State's argument, it appears the State was simply arguing no one in defendant's position, including defendant, could have believed stabbing

William was justified based on the evidence in this case.

¶ 41 In other words, even if the jury believed defendant's testimony that William attacked him with a knife and twice tried to stab him, the jury should not believe defendant's testimony he believed he was justified in stabbing William because—according to defendant's own version of events—he had already disarmed William and gained possession of the knife himself before he stabbed William for the first time.

¶ 42 We do not find defendant has established any clear or obvious instances of prosecutorial misconduct in this case. As noted earlier, the State is given wide latitude in making its closing argument, and it did not stray outside the wide limits allowed.

¶ 43 D. Equal Protection

¶ 44 Defendant next argues section 5-4.5-100 of the Unified Code of Corrections (Corrections Code) (730 ILCS 5/5-4.5-100 (West 2012)) violates his equal protection rights because it precludes him from receiving presentence custody credit for time he spent in home detention because he was convicted of first degree murder. According to defendant, he is entitled to presentence custody credit for the 812 days he was in home detention before sentencing.

¶ 45 While section 5-4.5-100(b) requires trial courts to give defendants credit against their sentences for time spent on home detention for most convictions, it and section 5-4.5-100(d) exclude defendants convicted of certain offense, including first degree murder, from receiving this credit. 730 ILCS 5/5-4.5-100(b), (d) (West 2012). According to defendant:

> "The interplay of these two sections of the Calculation of Term of Imprisonment statute leads to absurd results, in effect penalizing certain defendants for being placed on home detention, as an individual who is able to post bond and is placed on home detention will end up serving more time in custody than a similarly

> situated person, i.e.[,] an individual given an identical sentence for the same crime, who remains in custody, either because the trial court determined they were unfit for home detention or because they were able to post bond."

¶ 46 The primary goal of the equal protection clause is for similarly situated individuals to be treated similarly by the State. *Hope Clinic for Women, Ltd. v. Flores*, 2013 IL 112673, ¶ 81, 991 N.E.2d 745. Defendant's argument an individual who is on home detention awaiting trial is similarly situated to a defendant who is sitting in jail awaiting trial is without merit. As our supreme court has noted:

> "Home confinement, though restrictive, differs in several important respects from confinement in jail or prison. An offender who is detained at home is not subject to the regimentation of penal institutions and, once inside the residence, enjoys unrestricted freedom of activity, movement, and association. Furthermore, a defendant confined to his residence does not suffer the same surveillance and lack of privacy associated with becoming a member of an incarcerated population." *People v. Ramos*, 138 Ill. 2d 152, 159, 561 N.E.2d 643, 647 (1990).

As a result, defendant's equal protection argument fails.

¶ 47 E. Due Process

¶ 48 Defendant next argues he "had a protected liberty interest in the accrual of presentence credit, requiring notice that presentence time spent on electronic home monitoring may not be credited against a sentence for first degree murder, even though it was otherwise available." According to defendant:

> "In analyzing a procedural due process claim, the first step is to determine whether the Fourteenth Amendment protects the interest at issue. [Citation.] A

> 'liberty interest' may be derived directly from the constitution or from a state's statutory scheme. *Wolff v. McDonnell*, 418 U.S. 539, 557-58 (1974). A statutory right to presentence credit is a liberty interest where the State creates such a right and itself recognizes that deprivation of the right would be significantly adverse to a defendant's interest. See *Wolff*, 418 U.S. at 556; *cf. People v. Dupree*, 353 Ill. App. 3d 1037, 1048-49 (5th Dist. 2004) (recognizing defendant's interest in maximizing credit against any eventual sentence); 730 ILCS 5/5-8-7 (West 2008)."

Defendant argues the legislature "has provided that such credit accrues automatically and could be forfeited or withheld only under limited circumstances." As authority for this assertion, defendant cites section 5-4.5-100(b) and (d) of the Corrections Code (730 ILCS 5/5-4.5-100(b), (d) (West 2012)), section 5-5-3(c)(2) of the Corrections Code (730 ILCS 5/5-5-3(c)(2) (West 2012)), and *People v. Donnelly*, 226 Ill. App. 3d 771, 779, 589 N.E.2d 975, 980 (1992).

¶ 49 The State argues defendant forfeited this issue by not raising it in the trial court. Defendant does not dispute the issue is forfeited but argues we should consider the issue under the second prong of the plain error doctrine because "this violation of [defendant's] procedural due process undermines the integrity of the judicial process." According to defendant, "[Defendant] was given no notice that he would not receive credit for time spent in custody on home detention, despite the fact that he had a protected interest in this credit."

¶ 50 Defendant has not established a clear or obvious error in this case. Neither sections 5-4.5-100(b) and (d) nor 5-5-3(c)(2) of the Corrections Code nor *Donnelly* support his argument the presentence custody credit for time spent in home detention somehow accrues prior to a defendant's conviction. Any credit for his time spent in home detention would only accrue

at the time of his conviction of an eligible offense. Defendant was convicted of first degree murder, which is not an eligible offense for which a defendant is awarded credit for home detention pursuant to section 5-4.5-100(d) of the Corrections Code. Therefore, he had no liberty interest in sentencing credit against his sentence for this period of home confinement.

¶ 51 Defendant's reliance on *Wolff* is also misplaced. The Supreme Court in *Wolff* was dealing with a Nebraska law that provided prisoners with a statutory right to good-time credit that could only be taken away for serious misbehavior. *Wolff*, 418 U.S. at 557. The Court noted "the State having created the right to good[-]time [credit] and itself recognizing that its deprivation is a sanction authorized for major misconduct, the prisoner's interest has real substance and is sufficiently embraced within Fourteenth Amendment 'liberty' to entitle him to those minimum procedures appropriate under the circumstances and required by the Due Process Clause to insure that the state-created right is not arbitrarily abrogated." *Wolff*, 418 U.S. at 557. The Court continued by stating, "Since prisoners in Nebraska can only *lose* good-time credits if they are guilty of serious misconduct, the determination of whether such behavior has occurred becomes critical, and the minimum requirements of procedural due process appropriate for the circumstances must be observed." (Emphasis added.) *Wolff*, 418 U.S. at 558. However, as stated earlier, defendant did not *lose* any credit for his period of home detention because he was not eligible to receive nor did he ever receive any credit for his period of home confinement. As a result, his due process claim fails.

¶ 52 Assuming we might refuse to review the issue pursuant to the plain error doctrine, defendant argues we should review whether his trial counsel was ineffective for failing to properly preserve this issue for appeal by failing to object. However, for the reasons stated above, defendant cannot establish he was prejudiced by his trial counsel's failure to raise this

issue in the trial court. Therefore any claim of ineffective assistance on this issue would fail. *Strickland v. Washington*, 466 U.S. 668, 694 (1984).

¶ 53 III. CONCLUSION

¶ 54 For the reasons stated, we affirm defendant's conviction and sentence in this case. As part of our judgment, we award the State its $50 statutory assessment against defendant as costs of this appeal.

¶ 55 Affirmed.