2019 IL App (1st) 152584-U

FIRST DIVISION
August 26, 2019

No. 1-15-2584

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. 08 CR 21875
	)	
RONALD WEEDEN,	)	Honorable
	)	Thomas V. Gainer, Jr.,
Defendant-Appellant.	)	Judge Presiding.

PRESIDING JUSTICE MIKVA delivered the judgment of the court.
Justices Griffin and Walker concurred in the judgment.

O R D E R

¶ 1 *Held*: Affirming defendant's conviction and the trial court's ruling that defendant's trial counsel did not give ineffective assistance. Record does not support defendant's claim that his two court-appointed *Krankel* attorneys were ineffective at a posttrial hearing on trial counsel's ineffectiveness. We remand to the trial court to give defendant a chance to correct his mittimus to accurately reflect his presentence incarceration credit.

¶ 2 A jury convicted defendant Ronald Weeden of the murder of Mathaniel Caldwell and the attempted murder of Elijah Caldwell, stemming from a shooting that took place after midnight on August 14, 2008. The trial court sentenced him to consecutive prison terms of 50 years for the murder and 35 years for the attempted murder. On appeal, Mr. Weeden raises the following

issues: (1) the sufficiency of the evidence to convict him; (2) his entitlement to a new trial based on the ineffective assistance of both his trial counsel and his two court-appointed *Krankel* attorneys; and (3) the correction of his mittimus to reflect his allotted pre-sentence incarceration credit. For the following reasons, we affirm his conviction and remand to the trial court, pursuant to Illinois Supreme Court Rule 472, for Mr. Weeden to file a motion to correct his mittimus.

¶ 3 I. BACKGROUND

¶ 4 Mr. Weeden was charged by indictment on November 24, 2008, with several counts of first-degree murder and attempted first-degree murder—including allegations that he personally discharged a firearm that caused Mathaniel's death and the permanent disfigurement of Elijah—along with counts of aggravated battery with a firearm and unlawful use of a weapon by a felon. Assistant public defender Amy Thompson was appointed to represent Mr. Weeden, and a jury trial was held from March 18 to 21, 2013.

¶ 5 A. The Trial

¶ 6 Before the trial commenced, one of the potential jurors indicated in *voir dire* that she was familiar with two of the State's potential witnesses, both forensic investigators, from her time as a sergeant with the Chicago Police Department. At the time of trial, this particular juror had retired from the police force and worked as a criminal defense attorney. Ms. Thompson opted not to challenge this juror, stating: "[g]iven that forensics done by these investigators are not central to the issue of guilt or innocence in this case, and considering [the potential juror's] varied background, we are not *** exercising a strike, but I want[ed] to make it clear that we spoke with my client about that." The juror was empanelled with the others and the case proceeded. The following day, the trial court addressed Mr. Weeden directly, asking if it was "okay" that Ms. Thompson chose not to strike a juror "who was a retired police officer and also a criminal

defense attorney." Mr. Weeden indicated he was okay with this and the trial commenced.

¶ 7 The case against Mr. Weeden largely focused on the testimony of two eyewitnesses regarding what occurred on the night of the shooting: Elijah Caldwell and his niece Terraile Brown. Elijah stated that he was 30 years old at the time of trial and that he lived in Des Moines, Iowa, but that he was born in Chicago and lived there, at 78th and Paulina Streets, until he was eight years old. His testimony was not clear as to whether he ever lived in Chicago after that point, but he clearly testified that he returned periodically to see family. Elijah had several felony convictions, all received between 2001 and 2005, for possession of cannabis, aggravated robbery, and possession of another controlled substance. Elijah testified that he had no criminal record after 2005. Elijah identified Mr. Weeden in court and testified that he knew him by the nickname "Fat Folks." Elijah stated that he was 17 or 18 years old when he first met Mr. Weeden, he considered him an acquaintance but not a friend, and that he had seen and interacted with Mr. Weeden occasionally for "about five years because [Mr. Weeden] stayed in [Elijah's family's] neighborhood."

¶ 8 At around 3 p.m. on August 13, 2008, Elijah drove to 68th Street and Damen Avenue in Chicago to celebrate with family and pick up his (then) 18-year-old niece, Terraile. He had married the month before and this was his first time back to Chicago since the wedding. He and Terraile went to 78th Street and Marshfield Avenue, near his old neighborhood, "[t]o run across some old buddies *** [and] acquaintance[s]." There was a discrepancy in the two witnesses' testimony with respect to the car Elijah drove, in that Elijah testified he drove a 1999 Buick Century, while Terraile testified the car was a Toyota Camry.

¶ 9 Both Elijah and Terraile testified that when they arrived at the old neighborhood, they both saw Mr. Weeden, whom Terraile also identified in court. Elijah parked and exited his

vehicle and talked to Mr. Weeden for about five to ten minutes. Elijah then came back to the car and he and Terraile drove to his older brother Mathaniel's home at 116th Street and Yale Avenue. Mathaniel and his girlfriend Nicole joined them and the four went to get food before meeting an ex-girlfriend of Elijah's named Sabrina. They all drove to Sabrina's home at roughly 6 or 7 p.m. that night, and Elijah testified they were "listening to music, playing cards," and having "a couple of cocktails," including "some beer, some gin." Elijah did not want to stay out late because he was supposed to return to Iowa the next day, but Mathaniel, who had drunk quite a bit more than Elijah had that night, convinced him to "go by the old neighborhood one more time."

¶ 10 Elijah testified that, after midnight, he drove himself, Terraile (in the front passenger seat), Mathaniel (in the driver-side rear seat), and Nicole (in the passenger-side rear seat) back to 78th Street on Marshfield Avenue. Terraile testified they drove there at roughly 12:30 a.m. In contrast to Elijah, she recalled that Mathaniel was in the front passenger seat and she was in the back. Terraile also testified that they were pulled over by a police officer before getting there, but that the officers searched them and let them go.

¶ 11 Elijah testified that he pulled up near 7757 South Marshfield Avenue, facing north on the right side of the one-way street, and saw roughly six people, including Mr. Weeden, standing near the fence to an apartment building on the other side of the street. Elijah later identified some of the people in the group through police photographs, including "BK," whose real name is Brian Nailer, and "Skeff," whose real name is Jeffrey Stewart. Elijah testified that Mr. Weeden was standing "in between Brian and Skeff," roughly five to ten feet away from Elijah's car. He also testified that he "knew Jeffrey like all [his] life," and that he "knew Brian about the amount of time [he] knew Ronald Weeden, five years." Terraile gave a slightly different account of the

three men's locations on Marshfield Avenue, which we address below.

¶ 12 Also present were two men and a woman, whose names Elijah did not know. Elijah testified that he exited his car and went to talk to the woman, who had called out his name. He also testified that Mathaniel and Nicole exited but stayed near the car. Terraile testified that she remained in the car after the other three got out. While Elijah was talking with the group, Mr. Weeden told Mathaniel he was "making too much noise on his block." Mathaniel's response, in Elijah's words, was "[w]hat you mean? I been over here all my life." At that point, Mr. Weeden pulled out a black handgun with an extended clip from his waist and aimed it up in the air. Elijah testified that he approached Mr. Weeden and said "[i]f you shoot him, then you'll have to kill me. That's my brother." In court, Elijah identified a black handgun with an extended clip, marked People's Exhibit 5A, as the one Mr. Weeden held that night. In particular, he gave the following testimony on direct examination:

"[THE STATE]: Sir, do you recognize this handgun?

[ELIJAH CALDWELL]: Yes.

[THE STATE]: Does it – what do you recognized this handgun to be?

[ELIJAH CALDWELL]: To be the handgun Ronald Weeden had in his hand.

[THE STATE]: It looks like it or it is?

[ELIJAH CALDWELL]: It is.

[THE STATE]: How are you able to tell that this handgun is the one that he had in his hand?

[ELIJAH CALDWELL]: It['s] got the same clip on it, the same extended clip that he had, and it's also the black one, the black gun."

¶ 13 After Elijah intervened, Mr. Weeden aimed the gun at the ground and replied, "[y]ou

better get him then," which Elijah took to mean "get him up off the block, out the neighborhood." Terraile likewise testified that Elijah was in between Mr. Weeden and Mathaniel, and was "trying to get them apart from each other." She testified that Elijah and Mr. Weeden shook hands, and Mr. Weeden stated, "[o]kay. Cool. Get your brother on."

¶ 14 Elijah then told Mathaniel and Terraile "[l]et's go," and instructed all three to get in the car, which they did. Both Elijah and Terraile testified that after everyone was in the car, Mathaniel said he wanted to sit in the front seat, prompting Mathaniel and his niece to get out of the car, which drew the attention of BK. BK said something Elijah could not hear and Mathaniel responded "[f]**k you then." BK then grabbed a chrome or silver handgun, without an extended clip, from his waistband. Skeff yelled "[a]ir them n*****s out," which Elijah testified he understood as "shoot them." Elijah then heard Mr. Weeden say from the sidewalk "clear the way" before aiming his handgun at Mathaniel, who was roughly 15 feet away from Mr. Weeden.

¶ 15 Elijah testified that he had a hold of Mathaniel and intended to jump in front of him, but that his brother was shot before he could do so. Elijah did manage to move in front of Mathaniel, however, and was himself shot 14 times before falling to the ground. Mr. Weeden walked closer and stood above Elijah, continuing to shoot him. Elijah stated in court that he could clearly see Mr. Weeden's face.

¶ 16 Terraile corroborated much of this account, testifying that she saw Mr. Weeden open fire at Mathaniel and Elijah from her position in the car. She testified that Mr. Weeden was firing a black handgun with an extended clip, and that Mr. Weeden then walked closer and continued to shoot Elijah from roughly six to eight feet away. She testified that the black handgun produced at trial looked "[e]xactly like" the handgun Mr. Weeden used to shoot Mathaniel and Elijah. Terraile did testify that BK's handgun was black, not chrome or silver, and that it was smaller

and "more like a police gun." But she testified that she did not see BK fire his handgun at any time. She saw Mr. Weeden flee the scene and, later, ambulances and police officers arrive. There were a few discrepancies between the eyewitnesses' statements to police and their testimonies at trial, which are discussed below.

¶ 17 Elijah was taken to a hospital, where he was treated for the 14 gunshot wounds and remained in a coma and on life support for almost a month. The gunshot wounds were spread all over his body, and three bullets remained in his back at the time of trial. Elijah lost his spleen and part of his leg, which had to be amputated, and he came very close to going into kidney failure while he was hospitalized.

¶ 18 On August 17, 2008, Terraile was interviewed by police officers at her grandfather's home. She identified Mr. Weeden as the shooter in a photo array. She also identified Skeff and BK in two different photo arrays. When Terraile identified BK, she told police that he also had a handgun that night. In court, Terraile was shown photographs of the crime scene and identified the placement of Elijah's car, the spot where Mr. Weeden was standing when he fired his handgun, and the places where Elijah and Mathaniel were shot.

¶ 19 Elijah awoke from his coma on September 8, 2008, and gave his account of the shooting to police detectives. Detectives showed him a photo array, which was admitted at trial, from which he identified Mr. Weeden as his shooter. He also identified Skeff from the same photo array. He later identified BK in a photo array as the other armed individual that night who had been arguing with Mathaniel but did not fire his weapon.

¶ 20 On cross-examination, Mr. Weeden's lawyer, Ms. Thompson, asked questions regarding the group's intoxication that night. Elijah testified that he had a couple of shots of gin and drank some of the beer the group bought, but that he was not as intoxicated as the others in the group.

He stated that although Mathaniel drank more than he did that night, his brother "was able to stand" and "was paying attention, alert to what's going on" that evening.

¶ 21 Ms. Thompson also probed Elijah's earlier statements to the police regarding the positions of Mr. Weeden, Skeff, and BK that night. In response to defense counsel's questions, Elijah denied telling the police after he awoke from the coma that the person nicknamed "Skeff," who shouted "Shoot 'em n*****s" was across the street at the time he ordered Mr. Weeden to fire. He stated in court that all three men—Mr. Weeden, Skeff, and BK—were standing at the fence across from where Elijah parked the car, and that he told this to the police on September 8, 2008. Elijah marked on a series of photograph exhibits the locations where Mr. Weeden, Skeff, and BK stood during the confrontation and where he and Mathaniel were shot.

¶ 22 During Ms. Thompson's cross-examination of Elijah, the following exchange occurred:

"[DEFENSE COUNSEL]: Mr. Caldwell, you were shown a gun in this case, right?

[ELIJAH CALDWELL]: Right.

[DEFENSE COUNSEL]: Because you recognized it had an extended clip and it was black?

[ELIJAH CALDWELL]: Right, and the police told me it matched the same.

[DEFENSE COUNSEL]: Excuse me, Mr. Caldwell. I'm asking what you know.

[ELIJAH CALDWELL]: Right. That's how I know.

[DEFENSE COUNSEL]: You know because the police told you?

[ELIJAH CALDWELL]: Right.

[DEFENSE COUNSEL]: Not because you recognized it?

[ELIJAH CALDWELL]: I recognize the clip and I recognize it was black. That's

[an] extended clip on it.

[DEFENSE COUNSEL]: You know there are other black guns?

[ELIJAH CALDWELL]: It's a lot of them, yes.

[DEFENSE COUNSEL]: And you understand what an extended clip is, right?

[ELIJAH CALDWELL]: Yes.

[DEFENSE COUNSEL]: Because you've seen them before?

[ELIJAH CALDWELL]: Right.

[DEFENSE COUNSEL]: So there are other black guns with extended clips?

[ELIJAH CALDWELL]: Right.

[DEFENSE COUNSEL]: You know that this is the gun because the police told you it was the gun, right?

[ELIJAH CALDWELL]: Yeah, it matched. Yes, it matched the shells that's in my body and came on the crime scene."

¶ 23 During cross-examination, Terraile denied that Mathaniel was "highly intoxicated" on the night in question testifying instead that her uncle had been "stable." She testified that she did not know any of the three men who were in the altercation with Mathaniel and Elijah, and only learned their names after speaking with police. Terraile testified during cross-examination that Mathaniel first got angry at BK when BK showed him his gun, and that Mathaniel yelled, "Don't show me a gun. I used to be from around here." During re-cross examination, she testified that she told the police that Mr. Weeden was moving back and forth between the gangway and sidewalk on Marshfield Avenue, and that when he opened fire, he was on the sidewalk near the fence, where the group first saw him upon parking the car.

¶ 24 Dr. James Conall Doherty testified that he was a trauma surgeon and that he treated both

Mathaniel and Elijah that evening, detailing both the circumstances of Mathaniel's death after emergency surgery and the extent of Elijah's injuries.

¶ 25 The parties stipulated that Dr. Terra Jones, who was employed with the Cook County Medical Examiner's Office, performed a post-mortem examination on Mathaniel and determined that his cause of death was multiple gunshot wounds. The parties also stipulated that on August 15, 2008, forensic investigator Larry Goodson retrieved and inventoried two fired bullets recovered from Mathaniel's body.

¶ 26 Officer Juan Aguirre testified that he was an evidence technician with the Chicago Police Department and was on duty on August 14, 2008. Shortly before 2 a.m., he responded to the scene of an aggravated battery at 7757 South Marshfield Avenue. Officer Aguirre observed nine cartridge cases on the sidewalk near that address, a pool of red liquid that appeared to be blood, and a baseball cap near the blood. He photographed the scene, and some of those photographs were admitted into evidence. Officer Aguirre recovered and inventoried the nine cartridge cases he observed and confirmed that they were 40-caliber Smith and Wesson rounds.

¶ 27 Now-retired Detective Richard Bochian testified that he was on duty on August 14, 2008, and that he and his partner, Detective Neal Maas, interviewed Terraile. Detective Maas showed Terraile a photo array and asked for her description of the firearm used in the shooting, which she told him was a black, semi-automatic handgun with an extended clip. Detective Bochian testified that he and Detective Maas interviewed other witnesses and, as a result of that investigation, Mr. Weeden became a suspect and was ultimately arrested on October 17, 2008. Detective Bochian confirmed that both Jeffrey Stewart (Skeff) and Brian Nailer (BK) had died before trial.

¶ 28 Master Sergeant Alan Ulcigrai testified that he was employed with the Illinois State

Police and, at roughly 2:30 a.m. on August 16, 2008, was on patrol going northbound on the I-94 expressway near 79th Street with other officers. He performed a traffic stop on a speeding vehicle and smelled a strong odor of cannabis emanating from inside the car, where a person named Reginald McDonald occupied the passenger seat. After Sergeant Ulcigrai asked the occupants to exit the vehicle, another police officer attempted to perform a protective pat down of Mr. McDonald, but he pushed the officer away and fled on foot. Sergeant Ulcigrai and other officers on the scene pursued and detained Mr. McDonald and recovered from him a Glock Model 22, 40-caliber handgun with an extended magazine loaded with 28 rounds of 40-caliber bullets, which Sergeant Ulcigrai inventoried and identified in court.

¶ 29 Marc Pomerance testified that he was a forensic scientist employed with the Illinois State Police crime lab. He testified that he received evidence relating to the arrest of Mr. McDonald consisting of a firearm and magazine. He also identified the two bullets recovered from Mathaniel's body and the nine fired cartridge cases recovered from the scene of the shooting, which he had subjected to ballistics testing and examination using a comparison microscope. Mr. Pomerance concluded that the bullets recovered from the body had the same "class characteristics" as the black handgun recovered during the arrest of Mr. McDonald, meaning the caliber or dimension of the bullets matched that handgun. However, his analysis of distinctive markings on the bullets was inconclusive as to whether the two bullets were fired from that particular handgun. He testified, "I can't identify these two fired bullets as being fired from this gun but, to the same degree, I can't exclude these fired bullets as being fired from this gun." When he performed the same analysis on the cartridge cases recovered from the scene, however, he testified that "all nine of the cartridge cases were in fact fired from the firearm submitted."

¶ 30 The State rested its case-in-chief, and defense counsel moved for a directed finding on

both the murder and attempted murder charges, on the basis that Elijah and Terraile were not credible witnesses. Without those witnesses, and given that the gun used in these shootings was in the possession of another individual when it was recovered, defense counsel argued there was nothing to link Mr. Weeden to the crimes. The trial court denied the motion and trial continued.

¶ 31 The trial court then asked Mr. Weeden whether he wanted to testify on his own behalf, admonishing him that it was a decision only he could make and that he could consult further with his attorneys if he needed more time. Mr. Weeden stated "[n]o, sir, I don't want to testify." The trial court confirmed with him that his waiver was given knowingly and voluntarily.

¶ 32 During closing argument, Ms. Thompson emphasized that the firearm used in the shooting was recovered from someone other than her client, asking "[w]here is Reginald McDonald? Where is he? They told you *** the person with the gun[] is the killer, and they are right." She also argued that Elijah and Terraile were not credible witnesses, based on their compromised ability to observe the shooter, the amount of alcohol they drank that night, their manner and attitude on the stand, and their inconsistent statements both to police and at trial. The State gave its closing argument and the case was then submitted to the jury for deliberation.

¶ 33 During deliberations on the afternoon of March 21, 2013, the jury sent a note out to the trial court asking "is there any evidence of other guns being fired at the scene *** witness, casings, *et cetera*." The jurors were told in response that they had all of the evidence and to continue deliberating. Just over one hour later, the jury returned verdicts finding Mr. Weeden guilty of the murder of Mathaniel and the attempted murder of Elijah. The jury specifically found that Mr. Weeden had personally discharged the firearm that was the proximate cause of Mathaniel's death and Elijah's permanent disfigurement. The jury was polled at Ms. Thompson's request, revealing a unanimous verdict.

¶ 34 B. Posttrial Matters

¶ 35 After trial, Mr. Weeden filed a series of *pro se*, handwritten motions, in which he initially argued that Ms. Thompson's performance was deficient and deprived him of his sixth amendment right to counsel under *Strickland v. Washington*, 466 U.S. 668 (1984), and later claimed that the attorneys the court appointed to represent him pursuant to *People v. Krankel*, 102 Ill. 2d 181 (1984), were also ineffective.

¶ 36 With respect to ineffective assistance of trial counsel, Mr. Weeden filed a number of motions, some with the assistance of *Krankel* counsel, arguing Ms. Thompson's performance was deficient in a number of respects. Three central arguments in these motions, which we address extensively below, concern her failure to (1) challenge a prospective juror that knew one of the State's witnesses, (2) investigate a potential alibi witness named Phillip Washington, and (3) properly impeach the eyewitness testimony of Elijah and Terraile.

¶ 37 In his first motion, filed on May 13, 2013, Mr. Weeden claimed that Ms. Thompson's assistance had fallen below an objective standard of reasonableness and deprived him of a fair trial. Specifically, Mr. Weeden asserted that Ms. Thompson was "unconcerned with [his] proposed defense" and unwilling "to investigate zealously," that "no line of communication remained" between him and her or anyone else at the public defender's office, that she did not give Mr. Weeden "the opportunity to assist in coming up with [an alibi] defense," and that she failed to pursue necessary witnesses. Mr. Weeden asked the court to appoint him new counsel to ensure his retrial issues were preserved.

¶ 38 In Mr. Weeden's second *pro se* motion, filed on August 20, 2013, he built on his earlier motion, claiming that he had sought in the trial to "go *pro se* because he felt [his counsel] was not helping his case [and they] never agreed on any issues, causing a conflict of interest that

would lead to no communication between [Mr.] Weeden and [Ms.] Thompson." He insisted this situation effectively "den[ied] him the chance to offer testimony," and he was prejudiced by Ms. Thompson's failure to call key witnesses that "would have impeached both the victim and eyewitness testimony." Mr. Weeden stated he asked his counsel to attack the credibility of the eyewitnesses by "hav[ing] an expert testify on intoxicated witnesses." He also found fault with Ms. Thompson's closing argument and the way she cross-examined witnesses, Elijah and Terraile in particular.

¶ 39 That same day, Ms. Thompson filed a motion for a new trial on Mr. Weeden's behalf, in which she argued that the trial court erred by refusing to make a directed finding at the close of the State's case, by not suppressing Terraile's identification of Mr. Weeden based on a suggestive photo array, and by not sustaining objections to parts of the State's closing argument. These issues are not raised on appeal.

¶ 40 The trial court reviewed the two *pro se* motions and, on October 13, 2013, determined that "most of [the allegations], in [its] opinion, [were] either spurious or pertain[ed] to trial tactics," but that the allegations that Ms. Thompson "refused to do certain things to assist Mr. Weeden in the preparation of his defense" warranted the appointment of a lawyer to assist him in the presentation of his motion for a new trial. The trial court then appointed a public defender for a *Krankel* hearing.

¶ 41 Mr. Weeden filed a third *pro se* motion on October 15, 2013, labeled "amending motion to support ineffective assistance of counsel," in which he argued that his trial counsel was ineffective both for failing to call officers who responded to the crime scene and homicide detectives who handled the investigation, and for failing to impeach the State's key witnesses.

¶ 42 Assistant Public Defender Bruce Landrum appeared as *Krankel* counsel and, in that

capacity, filed his own motion for a new trial on April 17, 2014. This motion incorporated the arguments Ms. Thompson had already made for a new trial, as well as two key assertions made in Mr. Weeden's *pro se* filings: (1) that Ms. Thompson failed to sufficiently investigate the information Mr. Weeden provided her regarding an alibi witness named Phillip Washington, who was not called but was present at the shooting and willing to testify that Mr. Weeden was not there; and (2) she was ineffective for not challenging the prospective juror who knew the State's ballistics expert.

¶ 43 Shortly thereafter, Mr. Weeden asked to file a complaint against Mr. Landrum, claiming that he, too, was failing to adequately represent him. On June 10, 2014, Mr. Weeden filed additional *pro se* motions, largely rehashing his earlier ones. In the final motion, however, he sought counsel "other than Public Defender," claiming that he did not have "any meaningful communication with" Mr. Landrum, that Mr. Landrum seemed "unconcerned" with his "proposed issues," and was unwilling to "investigate zealously." He also complained that Mr. Landrum informed him that some of the issues Mr. Weeden wanted to raise did not "matter," and finally, that an argument ensued between the two in which Mr. Landrum "threaten[ed] to assault [Mr. Weeden]."

¶ 44 At a hearing on June 12, 2014, Mr. Weeden orally addressed some of his grievances about Ms. Thompson and Mr. Landrum, particularly regarding their failure to interview Phillip Washington, the purported alibi witness. The trial court explained to Mr. Weeden that the issue posttrial was not "what Phillip Washington had to say" but "whether Ms. Thompson investigated Phillip Washington and made a decision not to call him as a witness."

¶ 45 On July 24, 2014, Assistant Public Defender Lester Finkle filed an additional appearance to assist Mr. Landrum in posttrial proceedings. On October 17, 2014, Mr. Finkle filed his own

Krankel motion captioned "amended motion for new trial." At a posttrial hearing, Mr. Finkle clarified with the court that the various *pro se* motions were being superseded by the two, counseled, *Krankel* filings—Mr. Landrum's and his own. Mr. Weeden confirms this on appeal.

¶ 46 In addition to adopting the two points raised by Mr. Landrum regarding the alibi witness and the unchallenged juror, Mr. Finkle detailed seven instances in which he argued Ms. Thompson gave constitutionally deficient counsel at trial, each relating to her failure to thoroughly cross-examine the two eyewitnesses or call witnesses necessary to impeach them. Specifically, he argued that that Ms. Thompson failed to (1) call Detective Maas to testify that, contrary to his statement to the detective, Elijah knew the name of Mathaniel's girlfriend as "Nickie"; (2) call Detective Maas, to whom Elijah allegedly reported that Skeff was across the street, not near Mr. Weeden, when he gave Mr. Weeden the order to open fire; (3) call Detective Mass to testify that Terraile told the police that Elijah and Mathaniel were "highly intoxicated"; (4) impeach Terraile by not calling the detective or officers who took her statements regarding a "red haired girl" who identified a member in the shooting party; (5) clarify on cross-examination of Terraile whether Mr. Weeden "was or was not standing at the curb with the others" before the shooting, which "left the jury confused"; (6) impeach Terraile through police reports and police testimony that she initially stated that Mr. Weeden was moving from behind the gate to the sidewalk in front when the party first drove up; and (7) call police investigators that had interviewed Skeff (Jeffrey Stewart)—who died before trial—and reported that Skeff had an alibi placing him at a birthday party at the time of the shooting.

¶ 47 The State responded to this final *Krankel* motion, and the matter was set for a hearing.

¶ 48 At the *Krankel* hearing on March 9, 2015, Mr. Finkle submitted a complete trial transcript as evidence and argued that of the nine witnesses testifying, "seven of them were

police officers, medical examiners, life and death witnesses." He argued that "[t]his case came down to the testimony of the two occurrence witnesses who were there *** [a]nd when it comes to the impeachment of them, that's where our focus is in this motion" because "trial counsel did not perfect that impeachment."

¶ 49 Ms. Thompson was called to testify. She testified that she had tried hundreds of trials, including 50 jury trials, and at least 12 bench trials, in murder cases. She explained that in preparation for representing Mr. Weeden in his trial, she reviewed police reports, a pod video of the shooting, photographic evidence, and lab reports. Although she never mentioned Phillip Washington by name, Ms. Thompson testified that she "spoke to several witnesses both named in the reports and also that Mr. Weeden gave us information about," and she went to the crime scene several times. She testified that during cross-examination, she focused on attacking the witnesses' recollections as to where people were located during the shooting and whether individuals were intoxicated when they encountered the individuals on Marshfield Avenue. The trial court heard arguments and took the matter under advisement.

¶ 50 On April 9, 2015, the trial court denied Mr. Weeden's motions for a new trial. The court found that "Ms. Thompson's performance here did not fall below an objective standard of reasonableness" because "she gave a very vigorous defense," she reviewed "all the police reports and evidence that was tendered during discovery," and she "plotted a strategy and discussed [that] strategy with [Mr. Weeden] prior to trial." As for the specific issues complained of in the *Krankel* motions, especially regarding Ms. Thompson's failure to call Detective Maas—who purportedly would have testified that Terraile told him Elijah and Mathaniel were "highly intoxicated"—and failure to emphasize how much everyone at the party drank that night, the trial court felt that these were collateral matters, at best. It stated, "there were so many other ways that

had been proven that all these people had been drinking for a long time that day" that "the jury got the picture."

¶ 51 The trial court found that, regarding the matters complained of in the *Krankel* motions, "some are collateral and some just are unnecessary based on a strategy that the Defense employed here." The court also found Ms. Thompson's performance did not amount to prejudice under *Strickland*: "I don't think *** had she done things that Counsel on the motion for new trial allege she should have done that the outcome would have been any different."

¶ 52 Mr. Weeden was sentenced on July 27, 2015, to consecutive terms of 50 years for the murder (25 years plus an additional 25 years for personally discharging a firearm causing death) and 35 years for the attempted murder (10 years plus 25 years for personally discharging a firearm causing permanent disfigurement), for a total of 85 years in prison. At the sentencing hearing, the trial court stated Mr. Weeden would "be given credit for time served since October 17, 2008," but the mittimus does not indicate that any presentence incarceration credit was awarded. Mr. Weeden filed his notice of appeal on July 28, 2015.

¶ 53 II. JURISDICTION

¶ 54 Mr. Weeden was sentenced on July 27, 2015, and timely filed his notice of appeal the next day. We have jurisdiction pursuant to article VI, section 6, of the Illinois Constitution (Ill. Const. 1970, art. VI § 6) and Illinois Supreme Court Rules 603 (eff. Feb. 6, 2013) and 606 (eff. Dec. 11, 2014), governing appeals from final judgments of conviction in criminal cases.

¶ 55 III. ANALYSIS

¶ 56 A. Sufficiency of the Evidence

¶ 57 Mr. Weeden first argues that the evidence was insufficient to convict him of murder and attempted murder. When a criminal defendant challenges the sufficiency of the evidence, our

function as a reviewing court is not to retry the defendant. *People v. Collins*, 106 Ill. 2d 237, 261 (1985). Rather, we must "carefully examine the evidence while giving due consideration to the fact that the [trier of fact] saw and heard the witnesses." *People v. Smith*, 185 Ill. 2d 532, 541 (1999). We are also obliged to "view the evidence in a light most favorable to the prosecution." *People v. Romero*, 384 Ill. App. 3d 125, 131 (2008) (citing *People v. Cunningham*, 212 Ill. 2d 274, 280 (2004)). The relevant question is "whether, after viewing the evidence in the light most favorable to the prosecution, *any* rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." (Internal quotation marks omitted.) (Emphasis in original.) *People v. Beauchamp*, 241 Ill. 2d 1, 8 (2011).

¶ 58 "[I]t is the function of the jury, as the trier of fact, to assess the credibility of the witnesses, the weight to be given their testimony, *** the inferences to be drawn from the evidence" (*People v. Cox*, 377 Ill. App. 3d 690, 697 (2007) (citing *People v. Tenney*, 205 Ill. 2d 411, 428 (2002))), and to resolve any conflicts and inconsistencies in that evidence (*People v. Schott*, 145 Ill. 2d 188, 206 (1991)). It is likewise within the province of the jury to assess the "reliability of a witness's identification of a defendant." *Cox*, 377 Ill. App. 3d at 697. "A positive identification by a single eyewitness who had ample opportunity to observe is sufficient to support a conviction" (*People v. Piatkowski*, 225 Ill. 2d 551, 566 (2007)), and that conviction will not be reversed by a reviewing court "unless the evidence is so unreasonable, improbable or unsatisfactory that it raises a reasonable doubt of defendant's guilt." *People v. Evans*, 209 Ill. 2d 194, 209 (2006).

¶ 59 Here, the jury convicted Mr. Weeden of the first-degree murder of Mathaniel and the attempted murder of Elijah. A person commits first-degree murder if "(1) he either intends to kill or do great bodily harm to that individual or another, or knows that such acts will cause death to

that individual or another; or (2) he knows that such acts create a strong probability of death or great bodily harm to that individual or another ***." 720 ILCS 5/9-1(a)(1), (2) (West 2008). A person commits attempted murder when, with the intent to commit murder, he takes any act that is a substantial step toward the commission of murder. 720 ILCS 5/8-4, 9-1 (West 2008).

¶ 60 Mr. Weeden challenges the sufficiency of the evidence against him on two general bases, arguing: (1) Elijah and Terraile's eyewitness testimony was incredible, and (2) that testimony served as the only link between Mr. Weeden and the handgun used in the shooting. We address each argument in turn.

¶ 61 During its deliberations, the jury sent out a note asking if there was "any evidence of other guns being fired at the scene," followed by a phrase in parentheses reading, "witness, casings, *et cetera*." Mr. Weeden relies on this to argue that "the jury clearly had some misgivings about the State's eyewitnesses and their credibility, as the concerns contained in the note would be wholly irrelevant if the jury assigned [those witnesses] an impeccable credibility."

¶ 62 Mr. Weeden further insists that certain admissions made by the eyewitnesses rendered their testimony unbelievable. He emphasizes, for example, Elijah's status as an ex-offender; the incongruity of Elijah professing to have had a five-year acquaintance with Mr. Weeden, beginning at age 17 or 18, notwithstanding that Elijah left Chicago at the age of 8; Elijah and Terraile's differing testimony as to the model of Elijah's car; Elijah's contradictory testimony regarding where he and Mathaniel each lived when they first met Mr. Weeden; a lack of clarity over the number of people at Sabrina's home that night; the amount of liquor the group consumed that night; and differences between what the eyewitnesses first told police and what they later said at trial regarding where Mr. Weeden, Skeff, and BK were standing in the lead-up to the shooting. Mr. Weeden argues that "[t]hese defects, even if regarded as individually

insubstantial, collectively undermine the credibility of the accusation" against him.

¶ 63 The State responds that these are "insubstantial" discrepancies drawn from the largely consistent testimony of the two eyewitnesses that "may affect the weight of the evidence," but "[do] not automatically create reasonable doubt of guilt." The State contends that "the weaknesses in the evidence that defendant cites on appeal were all presented to, considered, and rejected, by the jury," which "[b]y its verdict, *** determined that Elijah and Terraile were telling the truth when they identified defendant as the shooter," notwithstanding the jury's question regarding whether other guns were present at the scene.

¶ 64 Several of the points Mr. Weeden raises indeed border on the trivial. Discrepancies regarding the number of people at Sabrina's home and the precise make and model of the vehicle Elijah drove, for example, do not detract from the fact that the witnesses agree on several key facts in the timeline of events. These include the earlier conversation between Elijah and Mr. Weeden, the sequence of events leading the party back to the old neighborhood, the key players involved in the dispute culminating in the shooting, the type of weapon used, the identity of the shooter, and the shooter's movements as he opened fire and continued firing. Likewise, whether Elijah resided in Chicago (or Mathaniel in Ohio, as Elijah testified at one point) when the two first became acquainted with Mr. Weeden does not change Elijah's consistent testimony that he knew Mr. Weeden, and that he in fact had a conversation with him earlier in the day, just hours before the shooting. See *Piatkowski*, 225 Ill. 2d at 566 ("A positive identification by a single eyewitness who had ample opportunity to observe is sufficient to support a conviction.").

¶ 65 As for the amount of liquor bought and consumed by individuals at the party that night, both Elijah and Terraile testified that Mathaniel drank more than Elijah that evening. The intoxication of Mathaniel, the deceased victim, is, at best, a collateral matter. As for whether the

alcohol Elijah and Terraile consumed diminished their credibility in testifying to what they recalled, that speaks to the weight of the eyewitness testimony, which is to be resolved by the jury. See *In re Thomas T.*, 2016 IL App (1st) 161501, ¶ 10 (citing *People v. Siguenza-Brito*, 235 Ill. 2d 213, 224-25 (2009)) ("A reviewing court may not substitute its judgment for that of the trier of fact on questions involving the weight of the evidence or the credibility of the witnesses."). Elijah and Terraile's accounts were largely consistent and entirely unrebutted. The discrepancies in the State's case, even viewed collectively, do not create reasonable doubt to warrant reversal.

¶ 66 Regarding Elijah's status as an ex-offender, the State cites to our decision in *People v. Howard*, 376 Ill. App. 3d 322, 329 (2007), in which we held that "[a] convicted felon is not automatically precluded from providing credible testimony." *Id.* We affirm that holding, and note that almost all of what Elijah recounted was corroborated by Terraile.

¶ 67 Mr. Weeden also frames Elijah and Terraile's testimony as inconsistent based on the positions of Mr. Weeden, BK, and Skeff when the group first pulled up in Elijah's car. Elijah stated all three were standing next to one another in front of a gate to an apartment building. Terraile, in contrast, testified that the three men were in different locations—that BK was behind the gate and away from Skeff, and that Mr. Weeden was also behind the gate. Importantly, however, both witnesses stated that BK and Mr. Weeden were in front of the gate when the shooting started, and that Mr. Weeden opened fire, but BK did not.

¶ 68 Finally, Mr. Weeden insists Elijah's testimony was internally inconsistent as to Skeff's location when he gave the order to shoot Elijah and Mathaniel. Mr. Weeden references a police report attached to the State's response to his *Krankel* motion, in which Elijah identified Skeff to police officers in 2008 as "being across the street from the Homicide at the time of the

occurrence screaming for the named Offenders *** to shoot him and his brother." Like the inconsistencies between Elijah and Terraile's recollections of who stood where, this was submitted to the jury as fact finder, to address and resolve before reaching a verdict. Viewed as a whole, this evidence is not so unreasonable, improbable, or unsatisfactory as to establish reasonable doubt of Mr. Weeden's guilt.

¶ 69 Mr. Weeden's remaining argument is that he was never "forensically" tied to the handgun that killed Mathaniel and maimed Elijah. Rather, the only evidence tying him to the murder weapon was the eyewitness testimony. We agree with the State, however, that there is no requirement that it link a defendant to a murder weapon with physical as opposed to testimonial evidence, and that credible eyewitness testimony is sufficient to support a conviction.

¶ 70 As our supreme court has held, "a positive identification by a single eyewitness who had ample opportunity to observe is sufficient to support a conviction." *Piatkowski*, 225 Ill. 2d at 566. Here, we have not one but two eyewitnesses, standing at different vantage points, and who gave largely consistent testimony that Mr. Weeden shot both Mathaniel and Elijah. Additional forensic evidence was not needed beyond these eyewitness accounts, which the jury found to be credible.

¶ 71 Mr. Weeden makes a parallel argument on this point—that "neither Elijah nor Terraile *** identif[ied] People's Exhibit 5A [the black handgun with extended clip] as the actual weapon," but only as one "consistent" with the murder weapon. He makes much of Elijah's testimony during cross-examination that the gun in court was the one Mr. Weeden held, followed by his statement "and the police told me it matched the same." According to Mr. Weeden, this exchange reveals that Elijah "was not basing his identification of the gun on any personal knowledge, but instead he relied on the forensic match obtained by the police." However,

regardless of whether or not Elijah could identify the gun, he could identify Mr. Weeden and he could testify that Mr. Weeden carried a gun with an extended clip and fired the shots that killed his brother and wounded him.

¶ 72 This case is nothing like *People v. Jackson*, 23 Ill. 2d 360 (1961) or *People v. Davis*, 278 Ill. App. 3d 532 (1996), on which Mr. Weeden relies. In *Jackson*, 23 Ill. 2d at 361-62, a police officer met the defendant at her apartment door and she immediately fled into her bathroom. The officer later recovered heroin at the bottom of an airwell several feet below the window of that bathroom. *Id.* The State argued that the natural inference, given the defendant's suspicious behavior, was that she threw the drugs out of the window. *Id.* at 364. Our supreme court rejected this, and held that, although it was a "very strong possibility, amounting perhaps to a probability, that the defendant was indeed in possession of the heroin *** [m]ere probabilities *** will not support a conviction." *Id.* at 365. No witnesses saw what the defendant in *Jackson* did in the bathroom, or where the heroin at the bottom of the airwell originated. In our case, two eyewitnesses identified Mr. Weeden holding a handgun and both witnesses described him firing that gun at Mathaniel and Elijah.

¶ 73 *Davis*, 278 Ill. App. 3d 532, is also inapposite. There, the defendant was the former husband of the murder victim, and the State established that he owned the handgun used to kill her. *Id.* at 539. The State conceded that there was no direct evidence showing that he actually fired that handgun at the victim—and he testified he had not seen the weapon for four years—but the State argued circumstantial evidence created a reasonable inference, based on his ownership, that was sufficient to prove him guilty beyond a reasonable doubt. *Id.* We rejected this claim, ruling that "[i]f an alleged inference does not have a chain of factual evidentiary antecedents, then within the purview of the law it is not a reasonable inference but is instead mere

speculation." *Id.* at 540.

¶ 74 In this case, we have more than "mere speculation," and more than circumstantial evidence. We have the testimony of not one but two witnesses who saw Mr. Weeden shoot Mathaniel and Elijah. We cannot say, viewing the evidence in the light most favorable to the State, that no rational trier of fact could have found the essential elements of the crimes beyond a reasonable doubt. *Beauchamp*, 241 Ill. 2d at 8. We affirm Mr. Weeden's convictions for the murder of Mathaniel, the attempted murder of Elijah, and the findings that he personally discharged a firearm causing the death of the former and the disfigurement of the latter.

¶ 75 B. Competence of Mr. Weeden's Trial and *Krankel* Attorneys

¶ 76 Mr. Weeden also challenges the adequacy of the representation he received from the three attorneys that represented him, arguing specifically that (1) the trial court should have concluded following his *Krankel* hearings that his trial counsel was ineffective, and (2) both of his court-appointed attorneys for the *Krankel* hearings also provided him with ineffective assistance.

¶ 77 A criminal defendant has a constitutional right to effective assistance of counsel. U.S. Const., Amends. VI, XIV; Ill. Const. 1970, Art. I, § 8; *Strickland v. Washington*, 466 U.S. 668, 687-89 (1984). A defendant also has the constitutional right to effective assistance at a *Krankel* hearing, as measured under the *Strickland* standard. *People v. Cherry*, 2016 IL 118728, ¶ 24.

¶ 78 To establish a claim of ineffective assistance of counsel, a defendant must satisfy the two-prong test originally set out in *Strickland v. Washington*, 466 U.S. 668 (1984). *People v. Mahaffey*, 165 Ill. 2d 445, 457 (1995). "First, the defendant must prove that counsel made errors so serious, and that counsel's performance was so deficient, that counsel was not functioning as the 'counsel' guaranteed by the sixth amendment." *Id.* at 457-58. To show this, the defendant

must establish that counsel's performance was below an objective standard of reasonableness. *People v. Mercado*, 397 Ill. App. 3d 622, 633 (2009). "[I]n order to establish deficient performance, the defendant must overcome the strong presumption that the challenged action or inaction may have been the product of sound trial strategy." *People v. Manning*, 241 Ill. 2d 319, 327 (2011).

¶ 79 Second, the defendant must also demonstrate prejudice by showing that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." *Mahaffey*, 165 Ill. 2d at 458. If a reviewing court concludes that the defendant did not suffer prejudice, the court need not decide whether counsel's performance was deficient. *People v. Harris*, 206 Ill. 2d 293, 304 (2002).

¶ 80 i. *Krankel* Process

¶ 81 When, as in this case, a defendant alleges, *pro se*, in the trial court that his trial counsel provided ineffective assistance, the resulting inquiry proceeds in two stages. "[T]he trial court should first examine the factual basis of the defendant's claim." *People v. Moore*, 207 Ill. 2d 68, 77-78 (2003). "If the trial court determines that the claim lacks merit or pertains only to matters of trial strategy, then the court need not appoint new counsel and may deny the *pro se* motion." *Id.* at 78. "If, however, the court finds that the allegations show possible neglect of the case" by trial counsel, the matter proceeds to a *Krankel* hearing, "an adversarial proceeding in which new counsel must be appointed to represent the defendant on his *pro se* claim of ineffective assistance." *People v. Flemming*, 2015 IL App (1st) 111925-B, ¶ 82 (citing *Moore*, 207 Ill. 2d at 78); *People v. Chapman*, 194 Ill. 2d 186, 230 (2000); *People v. Downs*, 2017 IL App (2d) 121156-C, ¶ 43. *Krankel* counsel must then "present those [allegations] with merit to the trial court during the second-stage adversarial hearing." *People v. Reed*, 2018 IL App (1st) 160609,

¶ 52 (quoting *Downs*, 2017 IL App (2d) 121156-C, ¶ 51). The task for *Krankel* counsel is to "sift through the defendant's *pro se* allegations to determine if any are nonfrivolous and present those nonfrivolous claims to the trial court." *Downs*, 2017 IL App (2d) 121156-C, ¶ 50. Where a trial court has followed this procedure and made a determination on the merits that the defendant did not receive ineffective assistance of counsel, we reverse only "if the trial court's actions were manifestly erroneous." *People v. Reed*, 2018 IL App (1st) 160609, ¶ 50.

¶ 82 On appeal, Mr. Weeden does not claim any error from the first stage of the *Krankel* procedure." Rather, he insists, "[t]he problems lie thereafter" in the performance of his *Krankel* attorneys and what transpired at the *Krankel* hearing. The trial court in Mr. Weeden's case reviewed his pending *pro se* challenges and first appointed Mr. Landrum to serve as *Krankel* counsel, followed by Mr. Finkle as additional *Krankel* counsel. It denied the motions for a new trial after the *Krankel* hearing, during which Mr. Finkle advocated on Mr. Weeden's behalf and Ms. Thompson testified as to her performance at trial. We review the trial court's findings regarding Ms. Thompson's performance to see if they were "manifestly erroneous." *People v. Reed*, 2018 IL App (1st) 160609, ¶ 50.

¶ 83 Mr. Weeden contends that since the trial court made no finding as to whether he received ineffective assistance from his *Krankel* counsel, we must review that argument *de novo*, applying the *Strickland* standard to their performance. The State has not responded to that argument and we agree with Mr. Weeden that there are no specific findings by the trial court that we would defer to as to the performance of his *Krankel* counsel.

¶ 84 ii. Trial Counsel's Performance

¶ 85 Mr. Weeden argues that Ms. Thompson's deficient performance as his trial counsel violated his constitutional right to counsel under *Strickland*, entitling him to a new trial. The

errors on which Mr. Weeden focuses are Ms. Thompson's alleged failure to (1) thoroughly impeach Elijah and Terraile by calling police officers—especially Detective Maas—to testify to the witnesses' prior inconsistent statements or (2) investigate Mr. Weeden's purported alibi witness, Phillip Washington. We address these in turn.

¶ 86 Regarding the two eyewitnesses, whose testimony was certainly crucial to the State's case, Mr. Weeden acknowledges that "Ms. Thompson made several efforts to impeach each of them with their statements to police," but argues that she "then failed to call the officers to appear at trial and complete the impeachment." In particular, he states, at trial "both Elijah and Terraile placed Jeffrey 'Skeff' Stewart at the scene," but Skeff "was never charged, as he provided the police an alibi which they checked out and confirmed." Mr. Weeden argues Ms. Thompson ought to have called the investigating officers to impeach on this point.

¶ 87 The State responds that the trial court properly found that all of the impeachment-related *Strickland* claims against Ms. Thompson are nothing more than questions of trial strategy, and we agree. As our supreme court has held, "[g]enerally, the decision of whether or not to cross-examine or impeach a witness is a matter of trial strategy, which cannot support a claim of ineffective assistance of counsel." *People v. Franklin*, 167 Ill. 2d 1, 22 (1995).

¶ 88 The trial court noted at the *Krankel* hearing that Ms. Thompson's strategy at trial was clear: attack the credibility of the eyewitnesses by thoroughly cross-examining their testimony regarding their intoxication, their ability to identify the handgun used in the shooting, and the instances where their accounts conflicted. While it is possible this strategy could have been bolstered by calling police detectives to refute the presence of an individual both eyewitnesses recalled seeing, this could also have emphasized a fact on which the two witnesses agreed, thereby undercutting counsel's strategy to point out discrepancies between their two accounts.

We cannot find that the trial court manifestly erred in finding Ms. Thompson's representation satisfied the *Strickland* standard. See *People v. Tolefree*, 2011 IL App (1st) 100689, ¶ 34 (rejecting *Strickland* claim that defense counsel was deficient for not cross-examining arresting officer regarding defendant's license in an unlicensed driver case because defendant failed to show how the decision "was not trial strategy or how it would have affected the outcome of [the] case").

¶ 89 Turning to Ms. Thompson's decision not to call Phillip Washington as an alibi witness, we likewise find no deficiency, no prejudice to Mr. Weeden, and no manifest error by the trial court. As a general point, "[w]hether to call certain witnesses is a matter of trial strategy, generally reserved to the discretion of trial counsel." *Chapman*, 194 Ill. 2d at 231. The allegation in Mr. Landrum's motion was that Ms. Thompson "failed to investigate any information that [Mr. Weeden] provided her," and "[a]s a result, Phillip Washington[—]who was present at the scene and witnessed the shooting and was willing to testify that defendant was not present—was never interviewed."

¶ 90 Ms. Thompson's investigation of potential witnesses was addressed in a general way at the *Krankel* hearing. When Ms. Thompson was examined as to her investigation and preparation for trial, she testified that she "spoke to several witnesses both named in the reports and also that Mr. Weeden gave us information about," although she did not explicitly state that she spoke to or interviewed Phillip Washington. However, Mr. Washington's testimony would have only been relevant if Mr. Weeden had decided to pursue an alibi defense in the face of two eyewitnesses who knew him placing him at the scene and unequivocally identifying him as the shooter. As the trial court noted, trial counsel clearly opted to pursue a different strategy: attack the credibility of the eyewitnesses by thoroughly cross-examining their testimony regarding their intoxication,

their ability to identify the handgun used in the shooting, and the instances where their accounts conflicted.

¶ 91 Although the trial court did not explicitly reference the alibi issue, it found that some of the complaints as to Ms. Thompson's choices at trial were "collateral and some just [were] unnecessary based on a strategy that the Defense employed here." We cannot conclude that the trial court manifestly erred in finding that Ms. Thompson's decision to focus on the impeachment of the two eyewitnesses, rather than pursue an alibi defense based on the testimony of a single witness, was reasonable under *Strickland*.

¶ 92 We also cannot say the court manifestly erred by finding that Mr. Weeden suffered no prejudice from Ms. Thompson's performance. The court stated: "I don't think *** had she done things that Counsel on the motion for new trial allege she should have done that the outcome would have been any different." In short, Mr. Weeden has failed to show us that the trial court manifestly erred when it found that he did not present sufficient evidence to overcome the strong presumption that Ms. Thompson was pursuing valid trial strategy or to show that he was prejudiced by actions of his trial counsel. We affirm the trial court's finding that Mr. Weeden did not receive ineffective assistance from his trial counsel.

¶ 93 iii. *Krankel* Counsels' Performance

¶ 94 Mr. Weeden argues his two court-appointed *Krankel* counsel likewise gave deficient representation. Although he frames this deficiency as a failure to include some of his own *pro se* allegations, his real complaint is that Mr. Finkle did not fully argue at the *Krankel* hearing the *pro se* issues that Mr. Landrum did include in his motion, regarding (1) the uncontested juror that knew two potential State witnesses and (2) the failure to contact Phillip Washington as a potential alibi witness. Mr. Weeden insists that his posttrial counsel were ineffective because

they "abandoned *sub silentio*" both of these issues.

¶ 95 As for the first issue, Mr. Weeden concedes on appeal that he assented to the seating of the juror in question when asked by the trial court. In his own words, his agreement "effectively neuter[ed] any claim that Ms. Thompson was ineffective on this basis; to raise a claim in the face of Mr. Weeden's own statements of approval would be *** to raise a frivolous issue."

¶ 96 With respect to calling Phillip Washington as an alibi witness, Ms. Thompson indicated at the hearing that she spoke to "several" of the witnesses in the police reports and those raised by Mr. Weeden. She was never asked specifically about Phillip Washington and we agree with Mr. Weeden that *Krankel* counsel could have asked more specific questions to clarify whether Phillip Washington was contacted. We cannot, however, find that this omission amounts to ineffective assistance of *Krankel* counsel. To meet the *Strickland* standard, Mr. Weeden must show both that counsel's performance fell below an objective standard of reasonableness, which would require him to overcome the strong presumption that the challenged action or inaction may have been the product of sound strategy and a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different. *Mahaffey*, 165 Ill. 2d at 457-58. There is simply no basis in the record for us to make such a finding. Even if we were to accept Mr. Weeden's argument that there can be no strategic reason for *Krankel* counsel not to have asked more questions about whether trial counsel contacted Mr. Washington, on this record, there is nothing to suggest that, had they done so, there is a reasonable probability that the outcome of the *Krankel* hearing would have been different.

¶ 97 The State argues, persuasively, that "there is no evidence in the record, other than [defendant's] mere claim, that Washington was a witness to the shootings," that nothing in the record "indicated that Washington's name was in any of the police reports or provided any proof

as to his existence at the crime scene." In addition, trial counsel still faced the problem that this presumptive alibi testimony would be weighed against two eyewitnesses that positively identified Mr. Weeden as the shooter. We cannot find that *Krankel* counsel's performance prejudiced Mr. Weeden such that the outcome of the *Krankel* hearing would have changed with further inquiry as to Ms. Thompson's contact with Phillip Washington.

¶ 98 Mr. Weeden suggests that this case is similar to *Downs*, 2017 IL App (2d) 121156-C. The defendant in *Downs* succeeded on his claim that his *Krankel* attorney provided ineffective assistance. The attorney in that case abandoned *all* of the specific *pro se* allegations of ineffective assistance of trial counsel, including those regarding an alibi witness who trial counsel never contacted. *Id.* ¶ 53. The court found that this fell below "an objective standard of reasonableness." *Id*. ¶ 56. The Second District in *Downs* also held that the prejudice prong of *Strickland* was met because *Krankel* counsel's actions, in abandoning a meritorious claim and effectively advocating against the defendant, constituted "no representation at all." *Id.* ¶ 72. The *Downs* court relied on the very narrow category of cases that the Supreme Court identified in *United States v. Cronic*, 466 U.S. 648, 656-57 (1984), in which the prejudice prong of *Strickland* can be presumed where counsel effectively provides *no* representation. *People v. Downs*, 2017 IL App (2d) 121156-C, ¶ 92. No such presumption can be made here.

¶ 99 Mr. Weeden's *Krankel* counsel met with him multiple times, consulted with him regarding claims against Ms. Thompson, cross-examined Ms. Thompson on both her trial preparation and her decisions regarding impeachment and witness examination, and vigorously advocated for a new trial. In contrast to what occurred in *Downs*, counsel here conducted an independent evaluation of Mr. Weeden's claims and presented those that were nonfrivolous at a *Krankel* hearing. *Moore*, 207 Ill. 2d at 78; *Downs*, 2017 IL App (2d) 121156-C, ¶ 50. There is no

basis upon which to presume prejudice—or that there was a reasonable probability that the outcome of the *Krankel* hearing would have been different if Mr. Weeden's lawyers had pursued questions about his trial attorney's communication with Mr. Washington. As such, there is no basis for finding a *Strickland* violation by Mr. Weeden's *Krankel* attorneys.

¶ 100 We find no *Strickland* violations among any of Mr. Weeden's three lawyers to warrant vacatur of his conviction, a new trial, or further posttrial proceedings. We affirm his conviction for murder and attempted murder.

¶ 101 C. Correction of the Mittimus

¶ 102 Finally, Mr. Weeden asks us to correct the mittimus—which does not reflect any credit to him for presentence incarceration—to reflect that he spent 2,475 days in detention from his arrest on October 17, 2008, until his sentencing on July 27, 2015. The State correctly concedes that Mr. Weeden is entitled to this credit.

¶ 103 Illinois Supreme Court Rule 472 provides that the trial court retains jurisdiction to correct certain sentencing errors, "[e]rrors in the calculation of presentence custody credit," at any time following judgment. Ill. S. Ct. R. 472(a)(3) (eff. May 1, 2017). Rule 472(e) provides that where, as here, a criminal case was pending on appeal as of March 1, 2019, and a party raised sentencing errors covered by Rule 472 for the first time on appeal, "the reviewing court shall remand to the circuit court to allow the party to file a motion pursuant to this rule." Ill. S. Ct. R. 472(e) (eff. May 17, 2019). Thus, pursuant to Rule 472(e), Mr. Weeden must first file a motion in the circuit court requesting the correction of the errors alleged here. *People v. Whittenburg*, 2019 IL App (1st) 163267, ¶ 4. We remand to the trial court to give Mr. Weeden a chance to do so.

¶ 104 IV. CONCLUSION

¶ 105 For these reasons, we affirm the judgment of the trial court and remand to allow correction of the mittimus.

¶ 106 Affirmed, remanded with instructions.