

NOTICE
Decision filed 02/15/19. The text of this decision may be changed or corrected prior to the filing of a Petition for Rehearing or the disposition of the same.

2019 IL App (5th) 150444-U

NO. 5-15-0444

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

NOTICE
This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellee,)	Saline County.
)	
v.)	No. 14-CF-167
)	
JOSHUA S. HEADRICK,)	Honorable
)	Walden E. Morris,
Defendant-Appellant.)	Judge, presiding.

JUSTICE CATES delivered the judgment of the court.
Justices Moore and Barberis concurred in the judgment.

ORDER

¶ 1 *Held:* Defendant was not entitled to a new trial because of improper cross-examination when the error neither deprived defendant of substantial justice nor influenced the determination of his guilt. There also was no error in denying the appointment of new counsel at sentencing when defendant did not establish the existence of any conflict.

¶ 2 Joshua S. Headrick, defendant, was convicted of aggravated battery, following a jury trial, and was sentenced by the circuit court of Saline County to eight years' imprisonment and one year of mandatory supervised release. Defendant appeals his conviction arguing that he is entitled to a new trial because the State improperly cross-examined him regarding his prior felony conviction for forgery. He also argues on

appeal that the court should have appointed him a new attorney after defense counsel informed the court that he believed he needed to withdraw as counsel because defendant had filed a complaint against him with the Illinois Attorney Registration and Disciplinary Commission (ARDC). Defendant believes this created a *per se* conflict of interest for defense counsel, and, if not, the trial court, at a minimum, should have conducted an inquiry into the basis of the ARDC complaint. Defendant initially raised a third issue on appeal concerning various fines that were imposed by the circuit clerk. Defendant subsequently moved to withdraw this argument. We allowed the motion and therefore do not address the matter further.

¶ 3 The record reveals that on the evening of June 26, 2014, defendant was at his home with Jaida Hines. It is not clear if defendant and Hines were dating at that time, but they had been dating off and on prior to that evening. At some point, one of the two of them, depending on whose version of the events is believed, invited Christopher Cowan, Jaida's father, to come over to defendant's residence. Cowan agreed, and the three sat around talking and listening to music. One of the two men decided to ask Jaida to pick up some sodas for them. After Jaida left to go to the store, according to Cowan, defendant turned up the volume of the music, and approached him, mumbling something about what was said the last time Cowan was at defendant's house. Defendant then started punching Cowan in the face, body slammed him to the ground, and threw him out of the house. By this point, Jaida had returned with the sodas and took Cowan home. Jaida testified she did not witness the altercation between her father and defendant. Once home, Cowan's friends convinced him that he should go to the hospital. The treating

doctor at the hospital reported that Cowan suffered fractures to his left zygomatic arch, the lateral wall of the left maxillary sinus, and the lateral wall and floor of his left orbit.

¶ 4 Defendant's version of the evening differed as to who started the altercation. He told the police that it was Cowan who stood over him while he was sitting on the couch after Jaida left to go get sodas. Defendant claimed that he shoved Cowan back and the two began fighting. Defendant also told the police that Cowan attempted to put an arm bar on him even though he later could not explain what an arm bar was.

¶ 5 At trial, defendant again claimed that Cowan was the aggressor and that he was merely defending himself. He further claimed that he had received threats from Cowan previously. Defendant admitted that he had drunk a fifth of vodka that day, and further stated that Cowan had also been drinking. According to defendant, after Jaida left, Cowan became rowdy and stood over him. Defendant told Cowan to leave his house, but Cowan swung at him instead and that is when the altercation started. Defendant eventually was able to get Cowan out of the house, but he had no idea why Cowan had swung at him.

¶ 6 Cowan, on the other hand, claimed he was not drinking that evening, and the whole incident was a complete surprise. He testified, consistent with his story to the police that, after his daughter left, defendant turned up the music real loud, came over to the couch where Cowan was seated, stood over him, and started punching him. When he tried to get off the couch, defendant body slammed him to the ground. The next thing Cowan knew he was outside the house as his daughter drove up. He got in her car so she could take him home.

¶ 7 Jaida testified at trial that when she returned from picking up the sodas, she saw defendant and Cowan outside defendant's house. Cowan was sitting on the ground bleeding. Jaida acknowledged that she had previously given a written statement to the police stating that she witnessed Cowan standing over defendant, and that when defendant asked Cowan to leave, he struck defendant in the face. She testified at trial, however, that she did not see Cowan standing over or hitting defendant. She admitted her written statement contradicted her testimony at trial, but claimed that defendant had told her what to write in the statement, and she had done so because she feared defendant. She claimed she had written the statement to help defendant because she cared for him at that time.

¶ 8 The investigating police officer testified there was no evidence corroborating either Cowan or defendant's version of the altercation, nor was there any evidence disproving defendant's version. The jury ultimately found defendant guilty. Defendant was later sentenced to eight years' imprisonment, followed by one year of mandatory supervised release. He was also ordered to pay court costs and restitution of \$6144.95.

¶ 9 Defendant first argues on appeal that he is entitled to a new trial because the State improperly cross-examined him regarding his prior felony conviction for forgery instead of using a copy of his conviction. Defendant asserts that the State forced him to testify against himself, and because the determination of guilt hinged entirely on his and Cowan's credibility, the error prevented him from receiving a fair trial. The State agrees that the proper way to impeach a defendant who testifies at trial and does not disclose a prior felony conviction is with a certified copy of the conviction presented on rebuttal.

See *People v. Harris*, 231 Ill. 2d 582, 592 (2008); *People v. Smith*, 241 Ill. App. 3d 365, 381 (1992). The State contends, however, that while the presentation of the prior conviction by means of cross-examination was improper, reversal is not required because the error neither deprived defendant of substantial justice nor influenced the determination of his guilt. See *People v. Madison*, 56 Ill. 2d 476, 488 (1974); *Smith*, 241 Ill. App. 3d at 381. We agree.

¶ 10 Prior to defendant testifying at trial, defense counsel presented a motion to exclude any testimony concerning defendant's prior felony convictions. The State informed the court that should defendant testify, the State wished to impeach defendant with an earlier felony conviction for forgery. The trial court denied defendant's motion, thereby allowing the State to impeach defendant with the forgery conviction. We initially note that a trial court's decision to allow impeachment of a defendant by admitting a prior conviction is reviewed for an abuse of discretion. See *Harris*, 231 Ill. 2d at 588; *People v. Atkinson*, 186 Ill. 2d 450, 461 (1999). We find no abuse of the court's discretion in this instance.

¶ 11 We do agree with defendant that it was improper for the State to cross-examine him about his prior forgery conviction given that defense counsel did not inquire about the conviction on direct examination. Defense counsel, however, made no objection to the improper questioning. Defendant insists that the error, even though waived, constituted plain error because the evidence was so closely balanced that the scales of justice were tipped against him. See *People v. Nelson*, 275 Ill. App. 3d 877, 883-84 (1995). This time we disagree with defendant. As the State points out, the jury would

have learned of defendant's prior conviction in any event given that the prosecutor was prepared to present certified copies of defendant's convictions on rebuttal, a proper impeachment tactic (see *Smith*, 241 Ill. App. 3d at 381). Additionally, the prosecutor did not belabor the point nor bring up the matter in closing argument. The brief mention of defendant's prior conviction on cross-examination did not deprive defendant of substantial justice nor influence the determination of his guilt such that defendant is entitled to a new trial. The impeachment was brief, did not leave the jury wondering what defendant was convicted of, established that the crime was not one of violence, and was not mentioned again, either in questioning of any of the witnesses or in closing argument. We additionally note there was more than sufficient evidence to establish defendant's guilt. *Smith*, 241 Ill. App. 3d at 381.

¶ 12 Defendant next argues on appeal that the trial court should have appointed a new attorney to represent him once defense counsel informed the court he believed he needed to withdraw as counsel because defendant had filed an ARDC complaint against him. At sentencing, defense counsel informed the court that he believed he had a conflict and that defendant needed a new attorney because he had received a letter from the ARDC indicating that defendant had filed a complaint against him that defense counsel was required to answer. The court granted a continuance, but did not appoint defendant a new attorney. The sentencing hearing was subsequently continued several more times while defense counsel waited for a reply from the ARDC. On October 7, 2015, the court ultimately proceeded to sentencing with the same defense counsel even though counsel still had not received a reply from the ARDC. Defendant contends a new attorney should

have been appointed for him, and the trial court, at a minimum, should have inquired into defense counsel's effectiveness. We disagree.

¶ 13 We first point out that there is no *per se* conflict of interest merely because a defendant has filed an ARDC claim against his or her defense counsel. *People v. Cordevant*, 297 Ill. App. 3d 193, 198 (1998). *Per se* conflicts are created by a defense attorney's prior or contemporaneous association with either the prosecution witnesses or the victim. See *People v. Spreitzer*, 123 Ill. 2d 1, 14 (1988). When there is no *per se* conflict of interest, it is the defendant's burden to show an actual conflict of interest and to demonstrate prejudice. *People v. Flores*, 128 Ill. 2d 66, 84 (1989); *People v. Becerril*, 307 Ill. App. 3d 518, 525 (1999). In other words, the defendant must show some specific defect in his or her counsel's strategy, tactics, or decision making attributable to a conflict. *People v. Morales*, 209 Ill. 2d 340, 349 (2004). We agree with the State that the record is devoid of any evidence of an actual conflict of interest in this instance. Defendant has not shown any specific defect in defense counsel's strategy, tactics, or decision making attributable to a conflict. In fact, the record does not even reflect the nature of the allegations in the ARDC complaint. Thus, there is nothing in the record that would have alerted the court regarding the claims by defendant against his counsel. Nevertheless, the court did continue defendant's sentencing hearing several times waiting for the ARDC's response to defendant's complaint. Unfortunately, no timely response came, and the case proceeded to sentencing with defense counsel continuing to represent defendant. The sentencing hearing could not be postponed indefinitely, especially when defendant had not shown any evidence of a conflict or placed his contentions that were

the basis for the ARDC complaint in the record. Accordingly, we find no error in not appointing new counsel under these circumstances. Speculative allegations and conclusory statements are not sufficient to establish that an actual conflict of interest affected counsel's performance. *Morales*, 209 Ill. 2d at 349.

¶ 14 For the foregoing reasons, we affirm the judgment of the circuit court of Saline County.

¶ 15 Affirmed.