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2013 IL App (5th) 110174-U
NO. 5-11-0174
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,)	St. Clair County.
)	
v.)	No. 09-CF-394
)	
DENNIS EDWARDS,)	Honorable
)	Milton S. Wharton,
Defendant-Appellant.)	Judge, presiding.

JUSTICE CHAPMAN delivered the judgment of the court.
Justices Stewart and Cates concurred in the judgment.

ORDER

- ¶ 1 *Held*: Where strategy of defense counsel's cross-examination had potential to mislead the jury, the trial court's ruling that counsel opened the door to testimony previously deemed inadmissible was not erroneous. Where defense counsel's representation of the defendant was ineffective, and the evidence that was admitted was very prejudicial, we conclude that the defendant's conviction and sentence must be reversed and the case remanded for a new trial.
- ¶ 2 The defendant files this direct appeal from his conviction of unlawful use or possession of a weapon by a felon pursuant to section 24.1.1(a) of the Criminal Code of 1961 (720 ILCS 5/24-1.1(a) (West 2008)). He argues that the trial court erred in ruling that his attorney opened the door to testimony about other crimes and bad acts, and alternatively argues that if his attorney opened the door to the evidence, then his attorney provided ineffective assistance. Finally, he argues that the State did not prove his guilt beyond a reasonable doubt.

¶ 3

FACTS

¶ 4 A grand jury returned a two-count indictment against the defendant, by which the defendant was charged with one count of first-degree murder and one count of unlawful possession of a weapon by a felon. On the defendant's motion and with the State's agreement, the two charges were severed. The State first proceeded on the unlawful possession case.

¶ 5 The case went to trial by a jury in October 2010, but the jury could not reach a verdict and a mistrial was called. A second trial was held on December 14 and 15, 2010.

¶ 6 Motion in Limine. The defendant filed his motion *in limine* seeking to keep the State from introducing evidence of any and all prior bad acts. The trial court did not rule that this evidence was inadmissible, but withheld its ruling because there was potential for defense counsel to open the door to the testimony. The court stated that the door could be opened if defense counsel intimated that there was a different reason that a witness could be biased, which could mislead the jury. If that occurred, the State could put on evidence to controvert those implications. The court stated that testimony about alleged sexual misconduct by the defendant would not be allowed. However, the court indicated that defense counsel could open the door to testimony about the sexual misconduct if cross-examination led to erroneous implications.

¶ 7 Officer Todd Schultze. The first witness called was Illinois State Police Officer Todd Schultze. In an unrelated investigative matter, Officer Schultze was contacted by the East St. Louis police department and provided with the name of a woman who was related to a "subject of interest." Officer Schultze called this woman, Denesia Edwards. The defendant is Denesia's father. She provided information to Officer Schultze which enabled him to contact Denesia's mother, Stephanie Jones.

¶ 8 Officer Schultze and another Illinois State Police officer, Patricia Kelly Cullen, went

to speak with Stephanie Jones at her place of employment. Stephanie told the officers that the defendant was living in her home. She advised that he kept a weapon inside their residence. She stated that the weapon was in a bag, and she informed the officers where the bag could be found within her home. Officer Schultze testified that he had already determined that the defendant was a convicted felon. At the conclusion of the conversation with the officers, Stephanie signed a consent form to allow the officers to search her home for the defendant's weapon.

¶ 9 Upon arrival at Stephanie's home, the officers took the defendant into custody and transported him to the Illinois State Police headquarters in Collinsville. Officer Schultze found a black bag in Stephanie's bedroom closet. A handgun wrapped in a towel was inside the bag.

¶ 10 On cross-examination, Officer Schultze testified that Denesia Edwards contacted the East St. Louis police department because she wanted to talk to someone. He acknowledged that Stephanie Jones did not seem too shocked that the officers had come to talk with her. However, he explained that Stephanie was not aware that the officers were going to come to talk with her on that day.

¶ 11 Patricia Kelly Cullen. Officer Cullen testified that she was an Illinois State Police investigator on April 9, 2009. She transported Stephanie Jones back to her apartment. They stayed in Officer Cullen's squad car while the other officers went up to the apartment to take the defendant into custody. After the defendant was removed, she and Stephanie went into the apartment. She heard Stephanie's confirmation that the gun found in her closet did not belong to her and that it belonged to the defendant.

¶ 12 Stephanie Jones. Stephanie Jones was called to testify at trial. She is a certified nursing assistant employed at a nursing home. The defendant is the father of Stephanie's daughter. As of April 2009, the defendant had been living with Stephanie in her Belleville

apartment for six months. The defendant did not pay rent. She did not consider the defendant to be her boyfriend.

¶ 13 Stephanie knew that her daughter had informed the police about the defendant's possession of a gun. She did not know, however, that police intended to talk to her that same day. She had seen the gun when she was turning a mattress on a bed about one week before the date that the police came to her apartment. After she discovered the gun, she confronted the defendant and told him to get the gun out of her apartment. Stephanie testified that the defendant refused her request, wrapped the gun in a towel, and then put it in a black bag.

¶ 14 Stephanie testified that approximately two nights later, she and the defendant were fighting during which the defendant threatened her. The defendant's attorney promptly moved for a mistrial, which the trial court denied.

¶ 15 Stephanie identified the black bag and the gun. Stephanie admitted telling the police in an earlier statement that she did not know how the gun got into the black bag.

¶ 16 On cross-examination, she admitted that when the defendant moved into her apartment in 2008, she considered him her boyfriend. She testified that she was aware that the defendant was still dating a woman by the name of Beverly Brooks at that time. She testified that the defendant was stealing her money.

¶ 17 After the defendant was arrested in this weapons possession case, Stephanie discarded his belongings. When pressed as to the reason for throwing away the defendant's items, Stephanie testified that she was frightened of the defendant because he had threatened her while he was in jail. She stated that she just wanted to get out of that home, and so she moved.

¶ 18 Stephanie was asked about why she allowed the defendant to live in her home. She explained the living arrangement as being connected to the time he was spending with her

grandchildren, stating that she "was trying to see where his head was at since he was hanging around [her] daughter's house around [her] grandbabies." This answer prompted the State to object on the basis that she was treading close to a line about which a pretrial *in limine* order addressed. Of concern were Stephanie's allegations that the defendant had sexually abused her daughter. The State argued that if defense counsel continued to press Stephanie about the defendant's other girlfriend, and continued to insinuate that Stephanie did not like the defendant because of this other girlfriend, the State should be allowed to get into the real reasons that Stephanie disliked the defendant—that he had sexually abused their daughter and that he had been implicated in a murder. In response, the defense attorney supported her line of questioning on the basis that Stephanie was being a very difficult witness—reluctant to answer the questions asked. The trial court determined that up to this point, the door had not been opened, and thus the State could not ask Stephanie what it believed to be the real reason she was biased against the defendant.

¶ 19 When cross-examination began again, defense counsel continued to ask Stephanie about whether it upset her that the defendant had another girlfriend while he was living in her home and about whether she was allowed to continue her relationship with her boyfriend. Stephanie testified that the defendant would not allow her to communicate with her boyfriend, but that this demand did not make her angry with the defendant. She explained that she did not care that he had a girlfriend, because the purpose of his being in her home was for him to make positive changes in his life. Defense counsel then approached the topic from another angle, asking Stephanie if she considered the defendant to be her friend. Stephanie said that he was not her friend. Stephanie explained that they got along at first after he moved in, but after some time, he began "going back to his old self," and then her feelings towards him changed. The next question asked was:

"You mean, when you say going back to his old stuff, are you referring to his

cheating ways with Miss Brooks?"

The State asked to approach the bench arguing that this question clearly opened the door to the potentially harmful allegations against the defendant unrelated to the charges in this case. The court did not specifically state that the door had been opened, but told the State that this was now an area to bring out on redirect examination.

¶ 20 Defense counsel continued questioning Stephanie, asking her to confirm that she did not like the defendant. In response, Stephanie explained that he was her daughter's father, and so she obviously liked him at one time. The attorney then asked Stephanie if she had mixed feelings about the defendant. Stephanie replied that she could not give the answer to that question that she would like to give. Again, Stephanie was asked, "Did you dislike Mr. Edwards, or did you have a complex array of emotions about Mr. Edwards?" Stephanie again testified that she disliked the defendant for many reasons and that she was willing to tell the defense attorney those reasons if those reasons were requested. At that response, the defendant's attorney asked to approach the bench. Defense counsel did not say anything further to the court, but Stephanie explained that she was having difficulty answering the questions in light of the fact that certain topics were off-limit, stating that defense counsel "keeps going back to that." Upon resuming cross-examination, defense counsel asked Stephanie if she loved the defendant on April 9, 2009, the date she told authorities that the defendant had a gun in her home. Stephanie testified that she did not love him on that date. She was asked if she hated him and also asked if she disliked him on April 9, 2009. In answer to the question about "dislike," Stephanie responded affirmatively stating, "[f]or various reasons."

¶ 21 The questions continued in this vein. Stephanie was asked to explain how she felt on April 9, 2009, to which she testified that she was afraid and scared of the defendant. Defense counsel then backtracked to January 1, 2009, and asked Stephanie how she felt

about the defendant on that date. Stephanie replied that January 1, 2009, was when things "were crazy." Then, Stephanie was asked if she loved the defendant on September 1, 2008. Stephanie answered negatively and confirmed that somewhere in that time frame she asked the defendant to move out. Cross-examination ended at this point with defense counsel expressing frustration at Stephanie's responses.

¶ 22 The State asked to approach the bench again before beginning redirect examination. The State formally asked the court to be permitted to get into the evidence—about the plan to change the defendant's life by moving in with Stephanie, about what Stephanie was fearful of, and about all of the reasons Stephanie did not like him. Defense counsel renewed earlier objections stating that allowance of this evidence would be unduly prejudicial. The trial court ruled that the door had been opened to allow Stephanie to testify as to why she did not like the defendant and why she feared him. The trial court would not allow any questions that got into the murder investigation, but allowed the State to ask Stephanie for information about his relationship with his daughter.

¶ 23 Stephanie testified on redirect examination that she was afraid of the defendant because he had threatened her while he was incarcerated. She stated that the defendant sent a letter to their daughter claiming that she would not be hard to find. Because of that letter, Stephanie testified that she had to move from the apartment. Stephanie reaffirmed that at first when the defendant moved in, they got along, but then he had gone back to his old ways. She explained that the old ways involved smoking crack cocaine, stealing, running around, showing no respect, and trying to destroy everything with which he came into contact. She testified that she was afraid of him when he was under the influence of crack and that he had hit her one time. Stephanie attempted to explain the difficult nature of their relationship. She testified that she needed to find out where he was mentally, in that he was beginning to spend time with their daughter and their grandchild. She had always told her

daughter to stay away from her father. She was unaware that the two had begun to see each other until she saw the defendant in her daughter's home holding her grandchild. She explained that when he asked her if he could live with her, she agreed to the arrangement so that she could keep an eye on him, but stated that he had to go straight if he was going to live with her. She confirmed that the gun was not her gun and that she had seen the defendant with this gun. The State did not elicit testimony about the allegations that the defendant had sexually abused his daughter.

¶ 24 The defendant's attorney sought additional information on recross-examination. Stephanie explained that she was not afraid of the defendant personally, when he asked to move in with her, but she was afraid for her grandchildren. The violence did not occur until the middle of the period of time he spent living in her home. She testified that the violence returned when he returned to his former ways—smoking crack. Stephanie testified that the defendant's drug usage dated back to the early 1980s when their daughter was born. Stephanie explained that until 2008, she had never lived with the defendant but that he may have spent a night or two in her mother's home. The questioning centered on whether or not Stephanie loved the defendant at any point in time, and about his ongoing struggle with drugs, and culminated in the following exchange:

"Q. And you left him, right?

A. That's right.

Q. Then you went and you made a life for yourself for you and your daughter, right?

A. Yeah, then he come back around and he try to put his hands where they didn't belong. I'm not on this.

Q. Okay. And when did that happen? When did that happen?

A. Ask my daughter.

Q. Ma'am, you just brought it up, I'm asking you. When did that happen?

A. I don't recall.

Q. Okay. So you're alleging that Mr. Edwards did something inappropriate with your daughter, is that right?

A. Yes, he did.

Q. Okay. And when did that happen?

A. I don't recall.

Q. You don't remember when your daughter was inappropriately touched by her father?

A. I don't remember the year.

Q. How old was your daughter? How old was your daughter?

A. Do you have a daughter?

Q. Ma'am, how old was your daughter when it happened? How old—how old was she when you found out?

A. She was about 13.

Q. Okay. How old—did you find out immediately?

A. Yes, I did. My dad told me about it because my dad was there when it happened.

Q. And what allegedly happened, ma'am? What allegedly happened?

A. You need to be asking him that.

Q. Ma'am, what do you allege happened? What is the reason why you hate my client? What is it? What did he allegedly do to your daughter?

A. He tried to fondle his own kid. My daughter. And then he had the

nerve to go back to her and ask for his forgiveness, had some old lame excuse why he did it, and he didn't mean to, and so she let him still come back around, and I told her to leave him alone around my grandbabies."

Stephanie went on to explain that after this alleged sexual misconduct occurred, the defendant was in and out of jail, and occasionally when he was out of jail, he would come to visit his daughter. After she was an adult, her daughter maintained contact with the defendant. Stephanie testified that she did not like the defendant because of what he had done. When the sexual touching occurred, Stephanie did not contact the police or the Department of Children and Family Services, nor did she take her daughter to be medically examined. She explained that the defendant had not abused her but that he had only touched her. Later, she was asked again about why she was afraid for her grandchildren, and she stated: "I was afraid for him to be around. *** [H]e tried to touch her, I wasn't going to take a chance with him trying to touch them."

¶ 25 Denesia Edwards. Denesia Edwards was next called to testify at trial. She is the daughter of the defendant and Stephanie. She testified that she believed that her father moved into her mother's home in 2009. She had never seen her mother, or her father, with a gun. She was able to identify the type of bag in which the gun was located. She frequently saw the defendant carry a bag. She was not able to testify with certainty if the bag in which the gun was originally found was, in fact, the bag that her father carried around. She never looked inside his bag. She testified that she saw the bag in his car but had never seen the bag in her mother's home.

¶ 26 On cross-examination, Denesia testified that during the time her father was with her mother, they appeared to be happy and were "starting over."

¶ 27 Melissa Gamboe. The State next called Melissa Gamboe to testify. Melissa works

for the Illinois State Police at its Fairview Heights forensic science laboratory. She is a specialist in latent fingerprint examination—fingerprints not visible. Melissa was given the task of examining the gun from this case—to see if there were any latent fingerprints on the gun. She found no fingerprints on this gun, which was not surprising, as Melissa testified that no prints are left on at least 70% of all guns that are involved in criminal activities. She testified that she also found no prints on three cartridges she also examined.

¶ 28 Stipulations. The parties stipulated to the chain of custody involved with the black bag and the gun. The parties also stipulated to the fact that the defendant was a convicted felon.

¶ 29 The Defense. The defendant did not testify at the trial. No other witnesses or evidence was offered in defense of the case beyond the cross-examination conducted of the State's witnesses.

¶ 30 Motion for Directed Verdict. Defense counsel moved for a directed verdict at the close of the State's case and at the close of all evidence on the basis that the State failed to show that the defendant had knowledge of and possessed this gun. The State countered that Stephanie Jones testified that she saw the defendant move the gun from under a mattress to a black bag in which the gun was ultimately discovered. The trial court denied the motions.

¶ 31 Jury Instructions. All instructions were agreed to by the parties.

¶ 32 Closing Arguments. The closing argument offered by the defendant's attorney pursued a theory of the case that Stephanie Jones so detested the defendant that she set him up to be arrested for illegal possession of a gun. She argued in part:

"Now yesterday when she was on the witness stand, she wanted to project certain ideas to you and let's go over what she wanted you to know.

She definitely wanted you to know that she thought that my client, Dennis Edwards, was a terrible person. He was a terrible person 30 years ago, he was a drug

addict, he was a thief, he was in and out of prison, he didn't take care of her, he didn't take care of her daughter. ***

She told you when her daughter was 13 *** that there was possibly some sort of issue that happened with Dennis. She implied that Dennis was inappropriate with his daughter in a sexual manner or attempted to be. And it doesn't get much worse than that, ladies and gentlemen, at calling somebody a bad person.

So why would a woman who's been around this person, this person who didn't live up to her expectations when she was 17, when she had her daughter in 1981, this person that didn't support her, allegedly, that allegedly didn't support her daughter, that allegedly even went as far as abusing her daughter, that used drugs and that was just never there, why would she bring this person back into her life, into her house, and into her bed? What motivates people?

Anger motivates people. ***"

¶ 33 Verdict and Sentence. The jury convicted the defendant of the charge. At sentencing on January 20, 2011, the court sentenced the defendant to 20 years' imprisonment.

¶ 34 **LAW AND ANALYSIS**

¶ 35 The defendant appeals from the conviction and argues that the trial court erred in finding that his attorney opened the door to allowance of prejudicial testimony, and alternatively argues that his attorney was ineffective in doing so. He finally argues that he was not proven guilty beyond a reasonable doubt.

¶ 36 Trial Court's Evidentiary Ruling. The general rule is that evidence of other crimes is not admissible. *People v. Romero*, 66 Ill. 2d 325, 330, 362 N.E.2d 288, 290 (1977). Admissibility of other-crimes evidence is admissible under certain exceptions to the general rule. *People v. McGee*, 268 Ill. App. 3d 582, 586, 645 N.E.2d 329, 332 (1994). The

decision to allow the admission of other-crimes evidence is within the trial court's discretion. *Id.* That evidentiary decision will not be reversed unless the ruling constituted an abuse of discretion. *Id.*

¶ 37 Evidence of other crimes or bad acts can be admitted if the evidence is invited by the defendant. *Id.* The doctrine of curative admissibility allows the State to elicit other-crimes evidence if the court determines that defendant's attorney opened the door to this evidence. *People v. Cortes*, 181 Ill. 2d 249, 283-84, 692 N.E.2d 1129, 1143-44 (1998). By allowing the State to follow up to the questions posed by defense counsel, the State is able to rebut the defense by clarifying any misconceptions resulting from the defense attorney's questioning. *People v. Manning*, 182 Ill. 2d 193, 217, 695 N.E.2d 423, 434 (1998) (quoting *People v. Chambers*, 179 Ill. App. 3d 565, 580-81, 534 N.E.2d 554, 562 (1989)).

¶ 38 In this case, the defense maintained a consistent strategy. Defense counsel intended to get Stephanie Jones to admit her initial love for the defendant, to acknowledge her anger towards and perhaps hatred of the defendant after learning that he was involved with another woman, and to acknowledge her anger over supporting the defendant. The inference to be drawn from this testimony was that Stephanie was angry enough to frame the defendant with the gun in her apartment. This theory was carried out through extensive cross-examination of Stephanie during the trial. Stephanie was asked several times about her feelings towards the defendant. The answers Stephanie provided were that the defendant was connected to her because he was the biological father of her child and that hatred was not something that she harbored. She admitted that she disliked him but would not agree that the reason she disliked him was because he had a girlfriend. Despite her denials, defense counsel continued to return to this type of questioning, apparently seeking a different answer than what Stephanie provided.

¶ 39 Each time that defense counsel questioned Stephanie's reasons for not liking the

defendant, the State asked to approach the bench, stating that defense counsel was getting close to the line and that failure to discontinue this line of questioning could potentially open the door to allow the State to get into the actual reasons that Stephanie disliked the defendant. The trial court cautioned Stephanie that she could not get into the sexual misconduct issue, but otherwise to answer the best that she could. Ultimately, the court ruled that counsel opened the door and that Stephanie should be allowed to testify as to why she did not like the defendant and why she feared him. The State was told that they could not ask any questions about the defendant's murder charge. However, the State was told that they could ask questions about the defendant's relationship with his daughter.

¶ 40 On redirect, the State did not ask Stephanie about the defendant's alleged sexual misconduct. The prosecutor asked her about why she was afraid of the defendant and why she allowed the defendant to move in with her. Stephanie indicated that at first she got along with the defendant and that she allowed him in her home because she needed to watch what he was doing as he was spending time with her grandchildren. She testified that their relationship disintegrated when the defendant returned to his "old ways" of smoking crack cocaine, stealing, and showing no respect. While the State did not ask Stephanie about sexual misconduct, defense counsel brought out that evidence on recross-examination.

¶ 41 After careful review of the record on appeal, as well as the arguments of counsel, we do not find that the trial court abused its discretion by ruling that defense counsel opened the door to testimony about the reasons that Stephanie allowed the defendant to live with her, why she was afraid of him, and why she came to dislike him during the time that they lived together. The trial court even gave permission to ask about the alleged sexual misconduct, but the State opted not to do so. Each time defense counsel asked questions about Stephanie's feelings towards the defendant, repeatedly trying to get her to admit that she hated or at least disliked him, Stephanie did not respond in accordance with the planned defense. After a

sidebar where the court determined that at that point in time, no door had been opened, defense counsel appeared to be strengthened by that ruling and forged further into Stephanie's feelings. By asking these same questions, and implying that Stephanie was angry at the defendant because he was cheating on her with his girlfriend, defense counsel was leading the jury down a clearly false path. If defense counsel had moved away from the topic of Stephanie's feelings towards the defendant after the initial answer provided, the situation may have been treated differently. However, defense counsel continued to pursue the matter, and thus, we conclude that the trial court did not abuse its discretion in ruling that the door had been opened to better explain the nature of Stephanie's feelings about the defendant.

¶ 42 Ineffective Assistance of Counsel. The defendant next argues that by the questioning tactics taken by his trial attorney, he was denied the effective assistance of counsel.

¶ 43 The United States Constitution guarantees every criminal defendant the right to assistance of counsel in his defense. U.S. Const. VI. The Supreme Court has held that the sixth amendment right to counsel means that the defendant has the right to "effective assistance of competent counsel." *McMann v. Richardson*, 397 U.S. 759, 771 (1970). The case that set forth the method for evaluating defense counsel's performance in a criminal case is *Strickland v. Washington*, 466 U.S. 668, 687 (1984). The Illinois Supreme Court adopted this *Strickland* standard in *People v. Albanese*, 104 Ill. 2d 504, 525-26, 473 N.E.2d 1246, 1255-56 (1984). Constitutionally competent assistance is measured by a test of whether the defendant received "reasonably effective assistance." *Strickland v. Washington*, 466 U.S. 668, 687 (1984). The *Strickland* standard has two components. Initially, the defendant must establish that defense counsel's performance was deficient. *Id.* Secondly, the defendant must show that the deficient performance prejudiced his defense. *Id.* at 693.

¶ 44 Deficiency requires the defendant to overcome the strong presumption that the

challenged actions or inactions were the product of sound trial strategy. *People v. Simms*, 192 Ill. 2d 348, 361, 736 N.E.2d 1092, 1106 (2000). We presume that defense attorneys pursue sound trial strategies. See *Strickland*, 466 U.S. at 689. Trial strategies are unsound only when no reasonably effective criminal defense attorney, facing similar circumstances, would pursue such strategies. *People v. Faulkner*, 292 Ill. App. 3d 391, 394, 686 N.E.2d 379, 382 (1997); *People v. Fletcher*, 335 Ill. App. 3d 447, 453, 780 N.E.2d 365, 370 (2002). Specifically, the failure to object, or the affirmative solicitation of damaging testimony, can serve as the basis for an ineffective-assistance-of-counsel claim. See *People v. Royse*, 99 Ill. 2d 163, 171-72, 457 N.E.2d 1217, 1221-22 (1983) (counsel ineffective given a pattern of incompetence including the failure to object to hearsay evidence); *People v. Phillips*, 227 Ill. App. 3d 581, 590, 592 N.E.2d 233, 239 (1992) (defense counsel found to be ineffective for soliciting testimony of other-crimes evidence from a police officer); *People v. Moore*, 356 Ill. App. 3d 117, 127, 824 N.E.2d 1162, 1170-71 (2005) (defense counsel strategy was unsound when eliciting incriminating hearsay from state witnesses instead of impeaching these same witnesses with missing evidence); *People v. Orta*, 361 Ill App. 3d 342, 343, 836 N.E.2d 811, 813 (2005) (stating that "[a] person charged with a crime has the right to expect his lawyer's questions to prosecution witnesses will not help the State prove its accusation").

¶45 To prevail on an ineffective-assistance-of-counsel claim, "[the] defendant must show that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." *People v. Lefler*, 294 Ill. App. 3d 305, 311, 689 N.E.2d 1209, 1214 (1998) (citing *Strickland*, 466 U.S. at 694). The term "reasonable probability" has been defined to mean "a probability sufficient to undermine confidence in trial's outcome." *Lefler*, 294 Ill. App. 3d at 311-12, 689 N.E.2d at 1214 (citing *Strickland*, 466 U.S. at 687). The fact that professional errors have been committed does not define the question. We always examine the issue from the perspective of whether the defendant

received a fair trial, despite an attorney's shortcomings. *Lefler*, 294 Ill. App. 3d at 312, 689 N.E.2d at 1214. In that context, a fair trial means "a trial resulting in a verdict worthy of confidence." *Id.* (citing *People v. Moore*, 279 Ill. App. 3d 152, 161-62, 663 N.E.2d 490, 498 (1996)).

¶ 46 In this case, defense counsel filed a pretrial motion *in limine* to prevent damaging testimony about the defendant during trial. The trial court agreed, so long as defense counsel did nothing during trial to open the door to such testimony. During trial, she cross-examined Stephanie Jones on issues over and over again in an attempt to secure an admission that Stephanie disliked the defendant, which would support her defense theory that Stephanie framed him. With continued questioning, defense counsel got closer and closer to an edge that the State and the trial court cautioned against. The nature of the questions would leave the jury with an improper impression about the nature of Stephanie's feelings towards the defendant. Despite the knowledge that this line of questioning could open the door to damaging testimony, the defendant's attorney persisted in efforts to obtain the answers she deemed necessary. After several warnings, the trial court concluded that the door had been opened. Once the trial court held that the door was fully opened to all reasons why Stephanie might dislike the defendant, the State secured testimony about the defendant's "old ways," which including smoking crack cocaine and stealing. Even though the trial court allowed questioning about the incident between the defendant and his daughter, the State opted against asking Stephanie about any sexual misconduct. When defense counsel conducted recross-examination, she asked Stephanie to tell the jury about the defendant's alleged sexual misconduct against their daughter. Defense counsel also asked Stephanie why she was afraid to allow the defendant around her grandchildren, and Stephanie took that opportunity to reinforce the point and explain her fear that since he had tried to touch their daughter, he could easily do the same with his grandchildren. After being warned about the

outcome of continued questioning, defense counsel forged ahead, which resulted in the trial court's ruling. We are unable to deduce any sound trial strategy that would include encouraging the admission of such devastating evidence. Therefore, we conclude that counsel's performance was deficient.

¶ 47 We turn to the second component of *Strickland*—whether despite the problems with defense counsel's performance, the defendant received a fair trial. Was the defendant prejudiced by these errors? To properly analyze this issue, we review the evidence against the defendant at trial. The defendant did not testify. On a tip from the defendant's daughter and information provided to police by Stephanie Jones, the police secured and executed a search warrant at the apartment where Stephanie and the defendant lived. Police found the gun in the location of the apartment described by Stephanie—up in a closet. Stephanie testified that the gun was not hers. She found the gun hidden under a mattress. She told the defendant to get rid of the gun. She saw the defendant wrap the gun in a towel, place both in a black bag, and then place the black bag in a closet in the home. There were no fingerprints on this gun. There was no physical evidence linking the defendant to this gun. The defendant's daughter testified that she had seen the defendant with a black bag and that the black bag retrieved from her mother's closet looked similar. There were no other witnesses or evidence that the gun belonged to the defendant. While there was no doubt that the defendant was a convicted felon, whether he was in possession of a weapon was the issue that the State needed to prove. The only evidence of possession was by Stephanie Jones's testimony. Contrary to the State's position, we do not conclude that the evidence against the defendant was overwhelming.

¶ 48 When there is little direct evidence, other crimes and other bad acts can certainly be prejudicial. "Such evidence overpersuades the jury, which might convict the defendant only because it feels he or she is a bad person deserving punishment." *People v. Lindgren*, 79 Ill.

2d 129, 137, 402 N.E.2d 238, 242 (1980). The State correctly points out that the prejudicial impact of drug-use testimony is lessened because the charge the defendant was facing had no drug involvement. See *People v. Norwood*, 362 Ill. App. 3d 1121, 1130-31, 841 N.E.2d 514, 523-24 (2005); *People v. Andrade*, 279 Ill. App. 3d 292, 304, 664 N.E.2d 256, 265-66 (1996). However, drug usage was only one part of the other-crimes evidence introduced. Here, there was testimony not only that the defendant smoked crack, but that he was a thief, that he was guilty of domestic battery, and that he attempted to sexually touch his own daughter. In isolation, each of these allegations may not have been enough to conclude that the defendant's guilty verdict was not worthy of confidence. However, when you consider all of these bad acts being alleged against the defendant, the prejudicial impact is compounded. While a minimal reference to an activity unrelated to the crime charged may be insufficient to establish prejudice, we conclude that the totality of the other-crimes and bad-acts evidence against the defendant was overly prejudicial. We are not confident that the jury reached its verdict without construing these multiple bad acts as indicative of his guilt for the weapons possession crime charged. Accordingly, we conclude that the defendant's conviction and sentence must be reversed and the cause remanded for a new trial in order to correct the prejudicial errors.

¶ 49 Guilt Beyond a Reasonable Doubt. Because of our ruling on the issue of ineffective assistance of counsel, the constitutional guarantee against double jeopardy mandates our consideration of this issue. See *People v. Sykes*, 2012 IL App (4th) 111110, ¶ 61, 972 N.E.2d 1272. The double jeopardy clause serves to prevent the State from trying a defendant a second time, unless the State's evidence at the first trial was sufficient to prove defendant guilty beyond a reasonable doubt. *People v. Jackson*, 2012 IL App (1st) 102035, ¶ 21, 975 N.E.2d 258. Our review of the evidence in this context is in the light most favorable to the prosecution. *Id.*

¶ 50 Given thorough consideration of the record, and considering that evidence in the light most favorable to the State, we find that the State presented sufficient evidence to support the jury's verdict.

¶ 51

CONCLUSION

¶ 52 For the foregoing reasons, the judgment of the circuit court of St. Clair County is hereby reversed.

¶ 53 Reversed; cause remanded.