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IN THE  
APPELLATE COURT OF ILLINOIS  
FIRST JUDICIAL DISTRICT

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THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County.
	)	
v.	)	No. 11 CR 633
	)	
DARRELL WARREN,	)	Honorable
	)	Garritt E. Howard,
Defendant-Appellant.	)	Judge Presiding.

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JUSTICE ROCHFORD delivered the judgment of the court.  
Justices Hall and Lampkin concurred in the judgment.

**O R D E R**

¶ 1 **Held:** Defendant's claim of ineffective assistance of counsel fails where prejudice was not established: the evidence overwhelmingly supported defendant's convictions; and the outcome of the proceedings would not have been different even if trial counsel had successfully raised the alleged hearsay objections.

¶ 2 Following a jury trial, defendant Darrell Warren was found guilty of home invasion and two counts of armed robbery and sentenced to concurrent terms of 30 years' imprisonment on each count. On appeal, defendant argues his trial counsel was ineffective for failing to object to

certain inadmissible hearsay statements. We affirm, finding defendant failed to establish prejudice as required under *Strickland v. Washington*, 466 U.S. 668 (1984).

¶ 3 We set forth the pertinent trial evidence.

¶ 4 On the morning of December 1, 2010, Natalia Lukatch (Natalia), her fiancé, Alexon Arceneaux (Alexon), and their three-year-old son, Alexon Jr. (Junior) were at their second-floor apartment located at 9057 Keating Avenue in Skokie, Illinois. Natalia was preparing Junior for school, and Alexon was sleeping. Junior was not cooperating with Natalia. Natalia "kind of yelled" at Junior to go to his room and put on his shoes. Natalia then went to Alexon's and her bedroom to retrieve coats. When she got to the bedroom, Natalia was struck on the back of the head with a heavy object and knocked to the floor. When she looked up, Natalia saw two men with guns who were wearing black "hoodies" and ski masks which covered the lower part of their faces. One man was taller than the other man. Natalia was able to discern the men were African-Americans, and she was able to see the larger man's eyes, forehead, and the top of the nose. Natalia observed the mask slide down the larger man's face at different times, but she never saw his entire face. The smaller man had Junior by the arm. Following the orders of the larger man, Alexon got out of bed and onto the bedroom floor. Guessing the men were there for money, Alexon began to reach for the dresser, where a safe containing money was kept. The larger man hit Alexon on the right side of his face with a gun and said, "don't look at me, put your hands on the ground, face the ground." The larger man ordered Natalia and Junior to move toward the front of the apartment and Alexon to crawl there.

¶ 5 When they were in the living room, the larger man asked the couple where they kept their money. Natalia told him there was money in a safe in the bedroom. The larger man ordered her to show him where the safe was. As they walked toward the bedroom, the larger man yelled at

Natalia about her earlier behavior, saying "she shouldn't talk to her son like that." The larger man then called her a "b\*\*\*h." When Natalia turned to respond, there was a gun in her face, so she turned back around.

¶ 6 Once inside the bedroom, Natalia opened the safe. The larger man hit her again on the head with the gun, and told her to leave the room. Natalia went back to the living room. Shortly thereafter, the larger man returned to the living room and asked "where's the money?" Natalia then remembered she had hidden the money from Alexon after a fight. She told the larger man there was a brown folder with money which was hidden in a chair in the back room. The larger man went there to retrieve the money. Because he was unable to find the money, the larger man returned to the living room and then brought Natalia with him to the back room. Natalia located the brown folder and gave the contents to the larger man. Throughout this time, Natalie was in close proximity to the larger man. The men left the apartment with approximately \$2,800.

¶ 7 When Alexon saw Natalia was crying and "bleeding severely," he became enraged and ran after the men. As he ran down the stairs, Alexon saw the larger man running northbound toward the alley behind their building. Alexon, who was wearing pajamas, ran after him. During the chase, the larger man twice turned toward Alexon and waived his gun at Alexon. The mask on the larger man's face was coming off and Alexon was able to see the exposed area of the larger man's face.

¶ 8 Alexon followed the larger man westbound on Davis Street to a parked, silver Chevy Impala (Impala). When the larger man reached for the door handle of the Impala, he made eye contact with Alexon. The larger man's mask was down at his chin and Alexon had a frontal view of his face. Alexon was then seven feet away from the larger man and could see the larger man's features. The larger man's hood began to come off and Alexon noticed the larger man wore

dreadlocks. As the larger man drove away in the Impala, Alexon was able to pull the rear license plate from the vehicle. Alexon did not see the smaller man during the chase or after the Impala drove away. Because the windows were tinted, Alexon could not see whether another person was in the Impala.

¶ 9 Alexon subsequently returned to the apartment to take Natalia to the hospital. As they were outside their apartment, they met Skokie police officer Eric Duerig. Officer Duerig was in the area in response to a report of a "suspicious incident" involving two black males running down the street—one of whom was wearing pajamas. Officer Duerig approached Alexon, who was still wearing pajamas, and Natalia. They informed Officer Duerig that they had just been robbed of \$2,800 by two black males—one man was heavy-set, wearing dark or black clothing, and was armed—the other man was smaller and wore a brown or gold coat, and also was armed. Officer Duerig testified that Alexon stated that during his chase, the larger man's ski mask slipped and exposed part of his face and that he observed that the larger man's hair was braided.

¶ 10 Alexon gave Officer Duerig the license plate which he had removed from the Impala. Officer Duerig ran the license plate and found that the Impala was registered to Matrina Gardner, who lived at 7747 N. Tripp Avenue in Skokie, Illinois.

¶ 11 Based on this information, Skokie police officers, including Commander Terrence Shiel, proceeded to 7747 North Tripp Avenue. Ms. Gardner answered the door and identified herself as the owner of the Impala. The Impala was not there at that time. Commander Shiel informed Ms. Gardner that her Impala had been involved in an incident and asked her where the vehicle was. Ms. Gardner informed the officers that her son, Darrell Warren, had the Impala. While Commander Shiel was at Ms. Gardner's home, her nephew Winston Williams, who appeared to be approximately 5-feet-ten-inches tall, 150 pounds in weight, and wore dreadlocks, arrived in a

cab. Skokie police detective Al Vincic, who was with Commander Shiel, gave Mr. Williams a pat-down, but let him go.

¶ 12 Meanwhile, Skokie police detective Ronald Glad and his partner went to Skokie Hospital to interview Alexon and Natalia. After speaking to them briefly, the officers proceeded with the couple to their apartment. When they arrived, the couple showed the officers where and how the crime occurred. An evidence technician was at the scene, but no fingerprints nor DNA evidence was introduced at trial. Alexon testified he told Detective Glad that the larger man was approximately six-feet-one to six-feet-two-inches tall, weighed approximately 250 pounds, and wore six-inch-long dreadlocks. Alexon further testified that he told Detective Glad the smaller man was approximately 5-feet-eight-inches tall and weighed approximately 150 pounds. However, Detective Glad confused the descriptions of the smaller offender and the larger offender in his police report.

¶ 13 At the Skokie police station, Commander Shiel informed Detective Glad of his conversation with Ms. Gardner and her statement that her son was in possession of her vehicle. Shortly thereafter, Alexon and Natalia met Detective Glad at the police station and separately viewed an array of 10 photographs. Alexon and Natalia each read and signed a photographic array advisory form which stated the person involved in the offense may not be included in the array. Alexon identified defendant as the larger offender in the photographic array saying, "it looks a lot like him," and that he was 75% to 80% certain. In the photograph, defendant had dreadlocks. When Natalia looked at the photographs, she covered the bottom half of the faces in the photographs with her hand. Natalia also identified defendant in the photographic array. She said the eyes, nose, and skin tone of the person in the photograph matched the larger offender's features. On cross-examination of Natalia, the following colloquy took place:

"[Defense Counsel:] And you indicated to Detective Glad when you saw [defendant's] photograph that you're 75 percent sure that it's him - - his eyes looked like that, his forehead looks like that; is that correct?

[Natalia:] Probably.

[Defense Counsel:] You were not 100 percent?

[Natalia:] I don't remember saying 75 percent, but I remember pointing him out."

¶ 14 On December 2, 2010, Alexon and Natalia separately viewed a line-up, which included defendant, at the police station. Alexon and Natalia again each signed an advisory form stating the person who was involved in the offense may not be in the lineup. At that time, defendant was not wearing dreadlocks. Alexon identified defendant in the line-up "as soon as he walked in," and commented: "I could have sworn he had dreads yesterday." Natalia next viewed the line-up and she positively identified defendant stating that she recognized his "eyes, nose and skin tone." Detective Glad noticed Natalia appeared hesitant and asked her if she wanted the members of the line-up to say something. Natalia asked for each of the members of the line-up to say: "Don't yell at your son like that, b\*\*\*h." When defendant spoke those words, Natalia was "sure" of her identification of defendant.

¶ 15 During the trial, Alexon identified defendant in court as the person who broke into his family's apartment, robbed them at gunpoint, and whom he later pursued. Natalia was not asked to make an in-court identification.

¶ 16 Defendant called several witnesses, including his mother, Ms. Gardner. Ms. Gardner testified that on the morning of December 1, 2010, she had just returned home after working a 12-hour shift and was preparing for bed when Skokie police officers came to her door. Ms. Gardner stated that the officers had their guns drawn and asked her to step outside so they could

search her home. Ms. Gardner stated that the officers asked her who had permission to drive her vehicle, and she began to "rattle off people," including her husband, her daughter, and her son. When Ms. Gardner mentioned her son had permission to use her vehicle, the officers began to question her about him. Ms. Gardner told the officers that she gave her nephew, Winston Williams, the keys to the Impala the morning before the incident prior to going to her job. Mr. Williams was staying with Ms. Gardner at that time because he was looking for work. She did not see Mr. Williams again until approximately 10:45 a.m. on the date of the incident when he arrived at her home in a taxi.

¶ 17 Mycal Breland, testified for the defense that he is a very close friend of defendant and had met defendant's cousin, Mr. Williams, who was looking for a job. Mr. Breland, a department manager for Target, arranged for Mr. Williams to meet with Mr. Breland's human resources manager for a job interview at 8 a.m. on the morning of the incident. Mr. Williams was to meet Mr. Breland at his home at 6242 North Hoyne Avenue in Chicago prior to the interview. Mr. Williams did not arrive there until 9:30 or 9:45 a.m. and was driving Ms. Gardner's Impala. Mr. Breland explained to Mr. Williams that it was too late to go to the interview. Mr. Williams became angry, walked away, and left the Impala parked on Hoyne Avenue. Mr. Williams was wearing a "hoody" and had braids. Mr. Breland admitted he never gave the police this information. Defendant is taller and weighs more than Mr. Williams. Mr. Breland testified defendant did not wear dreadlocks around the time of the incident. Mr. Breland last saw defendant with braids in November.

¶ 18 Detective Vincic, a defense witness, testified that on the morning of the incident, Mr. Williams arrived at Ms. Gardner's home in a taxi at approximately 10:30 a.m. Detective Vincic pulled his vehicle behind the taxi, activated the lights, and interviewed Mr. Williams. Mr.

Williams produced identification and stated he was living with Ms. Gardner while searching for a job. Mr. Williams stood 5-feet-10-inches tall, weighed 150 pounds, and had braided hair. Detective Vincic did not request a show-up because it was his understanding that the two black male offenders were armed and wore masks. Mr. Williams, however, was unarmed, did not have a mask in his possession, and there was nothing to connect him to the incident. Detective Vincic testified he subsequently learned Mr. Williams had been picked up by a taxi at Irving Park and Pulaski Roads.

¶ 19 In closing arguments, the State urged the jury to consider the victims' identifications of defendant in the photographic array and line-up, the license plate Alexon tore from the Impala, and the fact that Ms. Gardner informed the police that defendant was in possession of the Impala at the time of the incident. The jury found defendant guilty of one count of home invasion and two counts of armed robbery. The trial court sentenced defendant to concurrent terms of 15 years, plus a 15-year enhancement for each offense.

¶ 20 On appeal, defendant argues he was denied effective assistance of counsel because trial counsel allowed the jury to hear "critical pieces of inadmissible hearsay." Defendant identifies the improper hearsay statements as: (1) the testimony by Commander Sheil on redirect examination that Ms. Gardner said defendant was in possession of her Impala on the morning of the offense; (2) the testimony by Detective Vincic that he learned that Mr. Williams had been picked up by the taxi near Irving Park and Pulaski Roads; and (3) the testimony from Detective Glad that Ms. Gardner said her son had the Impala. Defendant contends these statements diminished his defense that Mr. Williams had the Impala at the time of the incident and had left the Impala near Mr. Breland's home. Mr. Breland's home was not near where Mr. Williams allegedly was picked up by the taxi per Detective Vincic's hearsay statement.

¶ 21 A defendant is entitled to competent, not necessarily perfect, representation. *People v. Garcia*, 405 Ill. App. 3d 608, 617 (2010). Claims of ineffective assistance of counsel are evaluated against the standards in *Strickland v. Washington*, 466 U.S. 668 (1984), and adopted by our supreme court in *People v. Albanese*, 104 Ill. 2d 504 (1984). "In order to establish ineffective assistance of counsel, the defendant must show that counsel's performance was deficient to the extent that it fell below an objective standard of reasonableness; and that he suffered prejudice as a result of counsel's performance." *People v. Greco*, 2014 IL App (1st) 112582, ¶ 21. A defendant must satisfy both prongs of the *Strickland* test. *People v. Lacy*, 407 Ill. App. 3d 442, 457 (2011). If a claim may be determined on the basis that there is no prejudice, this court need not consider whether counsel's performance was deficient. *Id.* When the facts are undisputed, as they are here, we review a claim of ineffective assistance of counsel *de novo*. *People v. Nowicki*, 385 Ill. App. 3d 53, 81 (2008).

¶ 22 In order to establish prejudice, a defendant must prove there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would be different. *People v. Richardson*, 189 Ill. 2d 401, 411 (2000). "A reasonable probability is a probability sufficient to undermine confidence in the outcome." *Id.* This is not an outcome-determinative test. *Id.* Rather, the defendant must show that counsel's deficient performance rendered the result of the trial unreliable or the proceeding fundamentally unfair. *Id.*

¶ 23 In the case before us, we find it unnecessary to consider the first prong of the *Strickland* test. After carefully reviewing the record, we find that the evidence of defendant's guilt was overwhelming. Alexon and Natalia identified defendant in a photographic array and a lineup as the larger man who committed the offenses. Both victims were in close proximity to defendant during this incident and had the opportunity in the apartment to view defendant's partially

exposed face. Natalia had the opportunity to hear defendant's voice as he led her through the apartment and as he chastised her for the way she had treated Junior. She identified defendant in the lineup visually, and after hearing defendant make the statement he made in the apartment. Alexon saw defendant's face during the chase and their eyes met as defendant entered the Impala. Defendant's mask had slipped down at the time, giving Alexon a frontal view of defendant's face as he entered the Impala. Alexon identified defendant in the courtroom as one of the offenders. The license plate from the Impala led to confirmation that the vehicle belonged to defendant's mother. The Impala was not at Ms. Gardner's home when the police arrived there shortly after the incident. Ms. Gardner testified that defendant had permission to drive the Impala.

¶ 24 Based on the weight of this evidence, whatever impact trial counsel's allegedly deficient performance may have had on the proceeding, it clearly does not constitute prejudice under *Strickland*.

¶ 25 Defendant argues that the victims' identifications of him were "dubious," and it is likely the jury would have believed that Mr. Williams was the offender had they not heard various hearsay statements undermining this defense. We do not find the identifications were dubious. Furthermore, defendant's reasoning is faulty. Defendant's argument presents an "either-or" proposition that the jury was required to find either defendant or Mr. Williams was the offender. However, there were two offenders, and the evidence showed Mr. Williams is smaller than defendant. Mr. Breland's testimony—that Mr. Williams had the Impala later on the morning of the incident—would suggest the two men, who were cousins, committed the armed robbery and home invasion together. Although this may have been the only defense available to defendant—that Mr. Williams had the Impala—it does not mean the jury would have accepted it.

¶ 26 Therefore, we conclude that, even if we were to accept trial counsel's decision to allow the introduction of the challenged hearsay evidence constitutes ineffectiveness, there is no reasonable likelihood that absent the introduction of that hearsay evidence, the outcome of the trial would have been different. The evidence against defendant was overwhelming. Therefore, for the foregoing reasons, we affirm the judgment of the circuit court of Cook County.

¶ 27 Affirmed.