2014 IL App (1st) 123398-U

FIFTH DIVISION
NOVEMBER 21, 2014

No. 1-12-3398

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. 10 CR 12469
	)	
WILLIAM WADE,	)	Honorable
	)	Colleen Ann Hyland,
Defendant-Appellant.	)	Judge Presiding.

JUSTICE GORDON delivered the judgment of the court.
Presiding Justice Palmer and Justice McBride concurred in the judgment.

O R D E R

¶ 1 ***Held:*** Court did not err in denying defendant's posttrial ineffective-assistance claims after an evidentiary hearing.

¶ 2 Following a jury trial, defendant William Wade was convicted of being an armed habitual criminal, possession of a controlled substance (900 grams or more of cocaine) with intent to deliver (PCSI), and possession of cannabis (more than 500, but not more than 2,000, grams) with intent to deliver (PCI) and sentenced to concurrent prison terms of 30, 30 and 7 years. On appeal,

defendant contends that the court erred in denying his counsel-filed posttrial motion raising claims of ineffective assistance of trial counsel for not (1) presenting at trial certain witnesses and evidence casting doubt on the State's constructive possession theory, (2) objecting to improper impeachment of a key witness, and (3) effectively cross-examining that witness.

¶ 3 Defendant was charged with armed violence, armed habitual criminal, unlawful use of a weapon by a felon, PCSI, and PCI, all allegedly committed on or about June 21, 2010. The indictment alleged in various counts that he possessed in his own abode a .22-caliber handgun, a .39-caliber handgun, and firearm ammunition while (1) having been convicted of delivery of a controlled substance in cases 98CR7083 and 98CR7084, and (2) possessing with intent to deliver more than 900 grams of a substance containing cocaine. It also alleged that he possessed with intent to deliver more than 500 grams, but not more than 2,000 grams, of a substance containing cannabis. The case went to jury trial on the armed habitual criminal, PCSI, and PCI counts.

¶ 4 At trial, police officer James Duffy testified that, at about 8 a.m. on June 21, 2010, he and other officers were executing an arrest warrant for defendant at a particular apartment in Tinley Park (the apartment). After he knocked on the apartment door and announced that he was with the police, he heard "scurrying around" followed by "what sounded like an automatic weapon being loaded" in the apartment. Officer Duffy explained that the sound of pulling back the slide of an automatic pistol to chamber a round of ammunition is distinctive and he had heard it "[t]housands of times." Upon hearing this sound, he and the other officers "took cover" and a "SWAT team" was summoned "[b]ecause we believed that we had a barricaded subject." Officer Duffy stayed outside the apartment building while other officers took over. He observed two children and a woman in her 20s leave the building at some point, followed by defendant at 12:30 p.m. On cross-examination, Officer Duffy testified that he had no information that

defendant was the leaseholder or tenant of the apartment. He never viewed defendant before that afternoon, nor did he observe defendant holding a gun.

¶ 5 Police Deputy Chief Kevin Ruel testified that he went to the apartment building at about 8:30 a.m. in response to the call for a SWAT team. At around 9 a.m., investigators spoke with defendant by telephone; defendant told them that he was not in the apartment but was going to a nearby courthouse to surrender on the warrant. Police continued speaking with defendant as they checked whether defendant had arrived at the courthouse as claimed; Deputy Chief Ruel became "relatively certain" that defendant did not go to the courthouse. Officers in the apartment building heard from within the apartment a person talking on a telephone during the time defendant was talking to investigators. Deputy Chief Ruel spoke with defendant, telling him that the police knew he was not at the courthouse and asking him to surrender, but he continued to deny that he was in the apartment. At about noon, Deputy Chief Ruel ordered officers to fire a non-lethal rubber round or dart into the apartment while he spoke to defendant; he heard the window breaking in the background of the phone call, followed by defendant saying "don't kill me," so he concluded that defendant was in the apartment. Defendant told Deputy Chief Ruel that he was surrendering, and another officer told defendant how to do so. At about 12:15 p.m., a woman and two children left the apartment, followed by defendant, who was promptly arrested.

¶ 6 After officers briefly searched the apartment to confirm no persons were still inside, they sealed it until a search warrant could be obtained. When a warrant was obtained later that afternoon, Deputy Chief Ruel and other officers entered and observed "large quantities of cocaine as well as cannabis," a revolver, a semiautomatic pistol, $20,889 in cash, and packaging material and rubber bands. (The parties later stipulated that a total of $20,879 was recovered and that testing established that there were 943.8 grams of cocaine and 619.7 grams of cannabis.) A

one-kilogram package of cocaine was "broken up" as if being processed for retail sale. Deputy Chief Ruel explained that cocaine is shipped in wrapped kilogram packages but then mixed with other substances to result in 1.5 to 2 kilograms of retail product and repackaged in 1- and 2.5-gram bags. On cross-examination, Deputy Chief Ruel testified that the cocaine and guns were found in a garbage bag, that defendant was in the apartment with a working washroom, and that there was no evidence he attempted to dispose of the cocaine. In his experience with "raids," some suspects attempt to dispose of contraband while others do not.

¶ 7 Lieutenant Sean Gleason testified that he was the SWAT team leader. His team observed the apartment after 8 a.m. to about noon, when he was ordered to fire two "baton rounds" or plastic darts into the apartment. When fired, one round struck the window frame while the other broke the window and entered the apartment. Some time later, a woman and two children left the apartment; they appeared "fine." A short time later, defendant left the apartment and was arrested without incident; no guns, drugs, or other contraband were found in his postarrest search.

¶ 8 Investigator Michael Mendez testified that he went to the courthouse with a photograph of defendant to determine if defendant had arrived there, but defendant was not found. Investigator Mendez then went to the apartment building where defendant resided and he guarded the empty apartment until officers arrived with a search warrant. When the officers arrived with the search warrant, Investigator Mendez and a canine officer entered and searched the apartment. The dog reacted to a garbage can near the kitchen, two closets, and a hamper in the bedroom. When the garbage bag inside the garbage can was emptied, Investigator Mendez observed a revolver, a semiautomatic pistol, a "brick" and three clear bags of a white rock-like substance, rubber bands, and a scale. In one of the closets, containing men's clothing, Investigator Mendez observed a bag containing cannabis and rubber bands, and a pair of pants

containing money. In the bedroom hamper, Investigator Mendez observed a backpack and a garbage bag; the garbage bag contained cannabis, plastic bags, and rubber bands, while the backpack contained two boxes of ammunition, three scales, and plastic bags. Money was found on a shelf in the bedroom, and on the nightstand were medicine bottles bearing defendant's name and business cards bearing defendant's name and photograph. In the other closet, Investigator Mendez observed men's coats with "several rolls and large amounts" of money in the pockets. On cross-examination, Investigator Mendez testified that he observed no evidence that defendant was the leaseholder of the apartment nor anything identifying defendant in the kitchen garbage can, bedroom hamper, or closets.

¶ 9 Evidence technician Officer Lukasik testified to photographing the apartment after the search and recovering one fingerprint on a card attached to a brick of cocaine. He observed a pair of pants on the living room sofa; in a pocket was defendant's credit card. He also observed miscellaneous documents bearing defendant's name on the dining room table. On cross-examination, Officer Lukasik could not recall if those documents bore the apartment address. Forensic scientist Moira McEldowney testified that she examined the semiautomatic pistol found in the apartment for fingerprints but found no useable prints, and also found no useable or comparable fingerprint on the card recovered by Officer Lukasik.

¶ 10 Latorya Witcher testified that she has known defendant for over four years and they have a son together. She went to the apartment with her two sons on the evening of June 20, 2010, to meet defendant. She had not been in the apartment before that day, nor did she know who was the tenant of the apartment, and she had not visited defendant before at his home because he always visited her home. Nobody else was in the apartment as she spent the night there with defendant. She was awakened the next morning by police at the door calling for defendant by

name. Defendant gave Witcher no explanation but merely told her to go with her children into the bedroom and close the door; she did so. She had not observed defendant with a gun, nor did she observe a gun or drugs in the apartment. She denied that defendant threatened her or the children and denied being in fear for the safety of herself or her children. She told defendant that she wanted to leave, but he did not reply or tell her not to leave; she did not leave the apartment because "I didn't know what to do." When she repeatedly urged him to surrender, he replied that he would but needed time to think. When the police fired into the apartment, bullets entered the bedroom containing Witcher and her children, so they screamed. Defendant then said over the phone that he was surrendering. Defendant left the apartment, then Witcher and the children left.

¶ 11 Hours after the incident, Witcher spoke with an assistant State's Attorney (ASA) about that morning's events. She told the ASA that she observed defendant take an object from the hall closet into the kitchen, though she could not tell what the object was as it was dark in the apartment. She did not recall telling the ASA that the object was a gun. However, the ASA wrote down Witcher's statement, and she signed each page. She admitted telling the ASA that defendant said that the police could not enter the apartment as they had no search warrant, that defendant told her repeatedly that she could not leave, and admitted in the statement that the object he moved from the closet to the kitchen was a gun. She denied observing defendant hold a garbage bag or reach into the kitchen cabinets, but admitted that she told the ASA that she observed him do so. She denied telling the ASA what she thought defendant was doing with the garbage bag, and specifically denied stating a belief that he was hiding drugs and the gun in the bag.

¶ 12 Defendant objected and a sidebar was held. The court sustained the objection insofar as Witcher was merely speculating in her statement – that is, expressing her belief rather than

observation of what defendant was doing with the bag – and directed the State to "lay the proper foundation with regards to that statement." When the State noted that it would be calling the ASA as its next witness to publish Witcher's statement, defendant argued that the speculative portion of the statement should be excluded. The court stated "that is subjective evidence, that may be argued as subjective evidence," also noting that the witness's statement was being introduced for impeachment purposes rather than as substantive evidence.

¶ 13 ASA John Reich testified that he interviewed Witcher on the day of the incident. He first had her recount events, then asked her if he could prepare a written statement of her account. As he typed out her account, he asked her questions "to make sure it was accurate," then read the statement aloud to her so that he could correct any errors; he did not recall her making any changes. After he printed the draft statement, Witcher signed each page, made one correction, and initialed the correction; ASA Reich also signed each page and initialed the correction.

¶ 14 When ASA Reich asked Witcher about guns, she replied that defendant went into a hall closet, removed a handgun she believed to be a revolver, and went into the kitchen. When ASA Reich asked what defendant was doing in the kitchen, she replied that she observed defendant reach into a garbage bag and into a kitchen cabinet, and she believed he was putting a gun and narcotics into the bag. (Trial counsel did not object up to this point in time, but successfully objected to the next question and made several other successful objections before and afterwards during ASA Reich's testimony.) Witcher did not complain to ASA Reich about her treatment by the police. Witcher made no reference to observing narcotics or to defendant possessing a semi-automatic pistol.

¶ 15 The parties stipulated that defendant had two felony convictions for purposes of the armed habitual criminal charge. As the court was deciding on what exhibits to send to the jury,

defendant objected to the jury receiving a copy of Witcher's written statement unless it was redacted to include only the impeachment of her testimony; the court ruled that the statement would not go to the jury unless the jury requested it and the issue of the redaction would be addressed at that point in time. The jury was instructed on the definition of possession of a controlled substance, possession of cannabis, armed habitual criminal, PCSI, PCI, and on actual and constructive possession. Following closing argument and deliberation (with no jury request to view Witcher's statement), the jury found defendant guilty of armed habitual criminal, PCSI, and PCI, and not guilty of the other crimes.

¶ 16 Defendant later retained new counsel, who after various extensions filed a posttrial motion for a new trial alleging in relevant part ineffective assistance of trial counsel.

¶ 17 Defendant's first claim was that trial counsel failed to present evidence that would have cast doubt on the State's case of constructive possession. He claimed that there was evidence that SuanPaul Williams resided in the apartment because he received his mail there and had a key to the apartment. He also alleged that Florence Stone and Irene Wade (Irene) would have established that defendant was not aware of or connected to any contraband in the apartment if asked, and that the witnesses would have showed that Williams had constructive possession of the drugs through his control and possession of the apartment. He further claimed that documentary evidence would show that Florence Stone was the sole tenant of the apartment while defendant was a tenant elsewhere, and that defendant did not have a key to the apartment.

¶ 18 Defendant also alleged that trial counsel failed to object to inappropriate impeachment of Witcher and failed to effectively cross-examine her. On the first point, trial counsel had successfully objected to the State efforts to elicit Witcher's opinion as to what defendant was doing as he reached into the kitchen garbage bag (the reach). The court then allowed ASA Reich

to testify in impeachment of Witcher as to defendant's possession of a gun but not regarding Witcher's opinion on the reach or whether defendant was trying to hide narcotics. However, when ASA Reich testified to Witcher's stated belief that defendant was putting a gun and narcotics into the garbage bag, trial counsel did not object and thus allowed the State "to introduce Witcher's gross speculation" regarding the reach. As to cross-examination, defendant did not cross-examine Witcher regarding her statement to ASA Liam Reardon recanting her statement to ASA Reich claiming that "the police had said they would call DCFS to take her children" if she did not state the information given.

¶ 19 The motion was supported by the affidavits of Stone, Irene, and defendant, and the signed but unnotarized statement of Williams. Stone averred that defendant was an acquaintance who had been to the apartment before, to drive Stone to medical appointments, but did not have a key or receive mail there. Williams, Stone's cousin, resided in the apartment with her since March 2010 (sleeping on a mattress in the living room) so he had a key to the apartment and received his mail there, and the men's clothing in the apartment belonged to Williams.

¶ 20 Stone also averred that defendant, Irene, Williams, Witcher, and her children attended a party at the apartment on June 20, 2010; Witcher and her children spent the night there while Stone went to bed at about 10 p.m. Defendant came back to the apartment between 5 and 6 a.m. the next day to bring Stone to the hospital as she did not feel well. Stone did not observe Williams in the apartment that morning before leaving for the hospital. Stone told defense counsel that she signed the lease to the apartment and that Williams lived there, but counsel told her that he did not need the lease or to interview Williams.

¶ 21 Irene, defendant's wife, averred that he did not reside in the apartment and resided with her at an apartment in Chicago Ridge. She and defendant left the party at the apartment at about

10:30 p.m. but Stone called defendant at about 5 a.m. to take her to the hospital and he went to the apartment at about 6 a.m. Irene was not interviewed by defense counsel. Defendant averred that he told his lawyer before trial that Stone and Irene could provide evidence that he did not live at or control the apartment and that Williams lived there with Stone.

¶ 22 Williams gave his statement to defense counsel in the presence of his attorney, acknowledging that defense counsel was representing defendant and that Williams could be prosecuted for the instant offenses. Williams lived in the apartment with his cousin Stone; she slept in the bedroom while he slept in the living room on a mattress. It was his clothing in the apartment, and he had a key to the apartment. Defendant did not live in the apartment or have a key, though he had been to the apartment to drive Stone to medical appointments. Defendant and Irene left the party at the apartment on June 20 at about 11 p.m., while Witcher and her children spent the night. When Williams awoke at about 6 a.m., Stone was gone; he presumed that defendant had driven her to one of her appointments. Williams stored marijuana, cocaine, and drugs in the apartment and described where the contraband was found by police. Williams stepped outside around 6 a.m. to retrieve something from his automobile and then left the apartment at about 7 a.m. with some of the cocaine.

¶ 23 Various documents were also attached to the motion. One is a lease of the apartment to Stone from July 30, 2009, to July 31, 2010. Another is a copy of Stone's driver's license with the apartment listed as her residence. Other documents are a lease to defendant of the Chicago Ridge apartment from October 1, 2009, to September 30, 2010, two agreements regarding the Chicago Ridge apartment in defendant's name and bearing his signature with a September 2009 date, and an October 2009 Comcast bill for the Chicago Ridge apartment also in defendant's name. There are copies of seven envelopes addressed to Williams at the apartment, all sent by Casandra Walls

except one sent by a Mr. or Ms. Maldonado. A memorandum of interview by ASA Reardon discloses that, when ASA Daniel Maloney spoke to Witcher on May 24, 2011, in a courthouse corridor in ASA Reardon's presence, she "said that the handwritten statement was hers" but "also said that the statement was not all true because the police said they would call DCFS to take her children."

¶ 24 The State responded to the motion for a new trial, alleging that trial defense counsel would testify that nobody had mentioned Williams to him. The State also argued that Williams could invoke his right to remain silent "rendering his statement hearsay," his statement was uncorroborated in that nothing in the apartment bore Williams's name, and he was in jail awaiting trial on unrelated charges so that he would receive only concurrent sentencing with the instant case and "has nothing to lose by making a statement that the contraband was his." Nor could defendant show any prejudice: he was found in the apartment after a four-hour standoff, his personal items were found in the apartment, and it was already elicited at trial that there was no evidence he was the leaseholder or tenant of the apartment and no evidence showing defendant's name at the apartment address. As to Witcher's belief that defendant was disposing of drugs in the garbage bag, the State argued that the belief was not speculative because she mentioned in her written statement her knowledge that defendant was "sells drugs." Moreover, trial counsel would not have objected because that portion of her written statement would then have been highlighted. As to not cross-examining Witcher regarding her later statement noted by ASA Reardon, the State argued that she did not specify which parts of her written statement were "not all true" so a defense objection would have resulted in the State examining Witcher "line by line" regarding her written statement to determine which portions were untrue and thus "belabored" the inculpatory evidence therein. Moreover, any error in cross-examining Witcher

was not prejudicial as most of the evidence against defendant came not from Witcher but from the police testimony to the search results.

¶ 25 At the motion hearing, defense counsel asked SuanPaul Williams about "the presence of narcotics or guns" in the apartment on the date at issue, but Williams invoked his right to refrain from self-incrimination after consulting with his attorney.

¶ 26 Florence Stone testified consistently with her affidavit and authenticated her lease for the apartment and the envelopes for the mail addressed to Williams at the apartment. On cross-examination, Stone testified that she kept her clothing and other belongings in the bedroom closet and dresser. On the night of June 20-21, she slept in the bedroom while Witcher and her children slept in the living room on a mattress. Irene Wade, also known as Irene Gallegos, testified consistently with her affidavit and authenticated defendant's lease for the Chicago Ridge apartment and the Comcast bill. Defendant testified consistently with his affidavit. On cross-examination, defendant admitted that he had two attorneys before trial counsel and was thus aware that he could "change attorneys" if he was unhappy with Wiener. Wiener had successfully represented defendant in another case, with defendant's wife as the only witness at the hearing. Stone, Williams, and Witcher were in the apartment when defendant left the party, and Witcher was still there when he came to the apartment for Stone the next morning.

¶ 27 Between two sessions of the motion hearing, Williams sent letters to the court expressing his regret for not testifying consistently with his statement. After the court brought the letters to the parties' attention as an *ex parte* communication, defendant moved to recall Williams to determine if he would waive his right against self-incrimination. The State argued that Williams invoked that right in court and that the authenticity of the letters was not shown, noting that the suburban postmark of the letters was inconsistent with the fact that Williams was in the Cook

County jail. The court recalled Williams's invocation of his right to remain silent and ruled that it would not allow Williams to present by letter evidence he was unwilling to give by testimony, but did not deny defendant's motion to recall Williams if he could present him as a rebuttal witness.

¶ 28 David Wiener, trial defense counsel, testified for the State that he represented defendant in two cases including the instant case and consulted frequently with defendant in preparing for both cases. In the other case, resolved in a pretrial hearing, Wiener subpoenaed a witness named Anthony Goombash. Wiener had no record, nor personal recollection, that defendant or his friends or family had advised him of any potential witnesses in the instant case. In particular, he had no record or recollection of Williams. He had no recollection of meeting Stone. He had met with Irene as a member of defendant's family, and he was aware that defendant was not the leaseholder of the apartment and argued so at trial. Had he been advised of any witnesses, Wiener would have interviewed them and discussed them with defendant. Wiener had no record that any of his staff or investigators interviewed any "independent" witnesses.

¶ 29 Investigator Michael Mendez testified that in his search of the "entire" apartment, where he and other officers "looked everywhere" because the police were seeking a gun, he observed no women's clothing. All three closets, including the bedroom closet, contained only men's clothing. (On cross-examination, Investigator Mendez admitted that the sizes of the shoes and clothing was not recorded, nor was defendant asked to try on any of the clothing or shoes.) The bedroom nightstand had 10 medicine bottles bearing defendant's name and 17 or 18 of defendant's business cards. A pair of pants in the living room contained 10 or 11 bank and credit cards in defendant's name. About 45 documents in the apartment, including utility bills, e-mail

printouts, and court documents, bore defendant's name, though none bore the apartment address. No documents in the apartment bore Williams's name.

¶ 30 Over defendant's objection, the court admitted defendant's seven felony convictions in cases 98CR7079 through 98CR7085 in evidence.

¶ 31 After a further continuance, defense counsel informed the court that he would not be recalling Williams as a witness. Following argument, the court denied the posttrial motion for a new trial. The court recited the evidence presented posttrial, noting that defendant's witnesses other than himself were his wife and "good friend *** like an aunt," that trial counsel testified to not having been aware or informed of any such witnesses, and that the search of the apartment found only men's clothing and no women's clothing. The court found trial counsel a credible witness and found that neither element of ineffective assistance was met, that trial counsel provided "more than competent legal representation" and that the evidence of defendant's guilt was overwhelming. The court denied the posttrial motion for a new trial.

¶ 32 Following arguments in aggravation and mitigation, the trial court sentenced defendant as an armed habitual criminal, found him guilty of PCSI and PCI, and sentenced defendant to concurrent prison terms of 30, 30 and 7 years. Defendant's postsentencing motion was denied, and this timely appeal followed.

¶ 33 On appeal, defendant contends that the trial court erred in denying his posttrial motion for a new trial raising claims of ineffective assistance of trial counsel for not (1) calling Stone or Irene as trial witnesses, (2) investigating or calling Williams as a witness, (3) objecting to the improper impeachment of Witcher, and (4) cross-examining Witcher regarding her statement recorded by ASA Reardon.

¶ 34 A posttrial motion for a new trial is a matter for the trial court's discretion, so that we will not disturb the denial of such a motion absent a showing that the trial court abused its discretion. *People v. Hall*, 194 Ill. 2d 305, 343 (2000). An abuse of discretion occurs when "the ruling is arbitrary, fanciful, or unreasonable, or when no reasonable person would take the same view." *Bovay v. Sears, Roebuck & Co.*, 2013 IL App (1st) 120789, ¶ 26. Claims of ineffective assistance of trial counsel are evaluated under the two-prong *Strickland* test, under which a defendant must show both that counsel's performance was deficient in that it fell below an objective standard of reasonableness, and that he was prejudiced in that a reasonable probability exists that the outcome of the trial or proceeding would have been different absent counsel's errors. *Hall*, 194 Ill. 2d at 337 (citing *Strickland v. Washington*, 466 U.S. 668, 687-88, 694 (1984)). In showing deficient performance, a defendant must overcome the strong presumption that counsel's action or inaction may have been the product of sound trial strategy. *People v. Manning*, 241 Ill. 2d 319, 327 (2011).

¶ 35 Here, the evidence at trial disclosed that defendant was found by police in the apartment at about 8 a.m. and that guns, cocaine, cannabis, packaging, and a large sum of cash were found after he surrendered to police. Also found in the apartment were several documents and objects bearing defendant's name. There was no evidence that defendant leased the apartment and no document bore defendant's name and the apartment address. In particular, cannabis and related materials were found in the bedroom, where defendant's medication and business cards were found on the nightstand. Witcher, who partially recanted her written statement to ASA Reich, was consistent at trial that she spent the night of June 20-21 in the apartment bedroom with defendant. She also testified that defendant brought an object into the kitchen and was

impeached with her written statement that she observed defendant holding a revolver and handling the kitchen garbage bag where the guns and cocaine were found.

¶ 36 Against this evidence, defendant presented in his posttrial motion the evidence of his wife Irene and family friend Stone in an effort to show that Williams resided in the apartment and defendant did not, and the testimony of defendant and Stone to show that trial counsel was apprised of this evidence and of Williams as an alternative suspect. While defendant attempted to present Williams's account, we agree with the trial court that we cannot consider his statement (even if it was a notarized affidavit) or letters as evidence once he invoked his right to remain silent – thus depriving the State of the ability to cross-examine him – and posttrial counsel was unable to persuade him to waive the right to remain silent. Moreover, our disposition does not change if we were to consider Williams's statement as evidence.

¶ 37 We find no abuse of discretion in the court's conclusion that defendant failed to show ineffective assistance with this evidence. First, trial counsel Wiener testified that he had no recollection or record of being advised of potential witnesses, including Williams, so the court could reasonably conclude that trial counsel was unaware of the evidence that Williams would provide. The court could also reasonably conclude that defendant was not prejudiced by the absence from his trial of the evidence presented in his posttrial motion because it was unlikely to change the outcome. The leases of the apartment and the Chicago Ridge apartment are unlikely to change the jury verdict because defendant was not shown to be the apartment leaseholder. A trier of fact could weigh the testimony of Stone and Irene (and, *arguendo*, the statement of Williams) against the evidence that the police did not find any documents in the apartment bearing Williams's name or any women's clothing. The defense witnesses's account that Witcher and her children attended a party at the apartment along with Stone, defendant, Irene, and

Williams, then spent the night there while defendant went home to Chicago Ridge with Irene, is fundamentally inconsistent with Witcher's clear unrecanted trial account that she went to the apartment at about 10 p.m. and spent the night with defendant in the bedroom with the only others present in the apartment being her children.

¶ 38 As to the failure to object regarding Witcher's statement and the absence of cross-examination on ASA Reardon's memorandum, the record supports the State argument that these were strategic decisions by trial counsel. The trial court did not rule categorically that Witcher's written-statement opinion or belief could not be elicited, noting it "may be argued as subjective evidence," but that a proper foundation must be laid. Notably, the jury did not hear Witcher's entire written statement but only the impeaching portions, as trial counsel endeavored successfully to ensure that the jury would not hear or view the entire statement. In addition, trial counsel made several objections as ASA Reich testified to impeaching portions of Witcher's statement, including an objection to the next question after the unobjected testimony at issue, and thus demonstrated that trial counsel was not refraining from testing the State's case and made objections in front of the jury. The trial court could reasonably conclude that trial counsel consciously refrained from objecting to the elicitation of Witcher's belief or opinion because the State could then attempt to introduce as a foundation that Witcher knew defendant was selling drugs so she assumed he was hiding drugs in the garbage.

¶ 39 In the same vein, trial counsel did not elicit Witcher's statement memorialized by ASA Reardon when he recorded Witcher not recanting her written statement in whole, but only stating that it was "not all true." Witcher could not recant most of her statement because it was consistent with her trial testimony. It is reasonably foreseeable that if this evidence were elicited, the State would then have sought to cross-examine Witcher in detail about the written statement

to ascertain what portions she professed to be untrue. Thus, the door would be opened to the jury hearing all or much of the written statement when trial counsel was clearly trying to keep them from doing so.

¶ 40 We conclude that the trial court did not abuse its discretion in denying defendant's post-trial claims of ineffective assistance of trial counsel after an evidentiary hearing. Accordingly, the judgment of the circuit court is affirmed.

¶ 41 Affirmed.