FIRST DIVISION
February 17, 2015

No. 1-13-1301
2015 IL App (1st) 131301-U

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. 07 CR 15241
	)	
DARRIAN DANIELS,	)	Honorable
	)	Neera Lall Walsh,
Defendant-Appellant.	)	Judge Presiding.
	)	

JUSTICE CONNORS delivered the judgment of the court.
Justices Cunningham and Harris concurred in the judgment.

ORDER

Held: Defense counsel was not ineffective for failing to object to the introduction of prior consistent statements, eliciting prior consistent statements, calling a witness that allegedly damaged defendant's case, and failing to perfect impeachment of a state's witness. Court properly addressed defendant's *pro se* allegations of ineffective assistance of counsel.

¶ 1 Following a jury trial, defendant Darrian Daniels was convicted of two counts of first degree murder and sentenced to natural life in prison. On appeal, defendant contends that his trial counsel was ineffective for both failing to object, and for eliciting, prior consistent

statements. Defendant also contends that his trial counsel was ineffective for (1) calling a witness on his behalf that damaged his case, and (2) failing to perfect his impeachment of a State's witness. Finally, defendant claims that he made a *pro se* posttrial claim that his counsel was ineffective, but that the court denied him an opportunity to specify and support those claims. For the following reasons, we affirm.

¶ 2 I. BACKGROUND

¶ 3 Defendant was arrested in connection with the shooting death of two men: Cordero Diggs and Michael Smith. The victims were shot while they were standing on a back porch at 832 West 53rd Street at approximately 10:30 p.m. on June 1, 2007. James Washup, who was in custody at the time of trial for failing to respond to the State's subpoena, testified that he was sitting on his back porch on the night in question and that he saw Smith and Diggs standing on the back porch next door. James testified that he saw a figure "creeping" through the alley towards the victims. James then heard footsteps coming through the gangway between the houses. He walked over and saw a person he knew as "Wiener" walking through the gangway with a gun in his hand. James identified defendant as the person he knew as "Wiener." James then saw defendant draw his gun, he heard shots, and ran into his house. When he went back outside, he saw Smith and Diggs lying on the back porch.

¶ 4 James' sister, Tina Washup, was also in custody at the time of trial for failing to respond to the State's subpoena. She testified that she was in her bedroom, of the house she shared with her brother James, on the night in question, with her two-year-old son. Her bedroom window faced the gangway between her house and the victims' house. Tina testified that she was cleaning her room when she heard footsteps in the gangway. She looked out her window and asked who was there, but did not hear a reply. Tina testified that she then heard several gunshots

and told her son to get on the floor. She then looked out the window and saw "Wiener" running through the gangway with a gun in his hand. Tina identified defendant as "Wiener."

¶ 5 On cross-examination, Tina was asked about her handwritten statement to the police in which she stated that she grabbed her son and threw him to the floor, and then looked up through the window from the floor. On redirect examination, Tina testified that in her grand jury testimony, she stated that when she heard shots, she told her son to get down and she went to the window to look out. Tina testified that she did not talk to the police on the night of the shooting because she was afraid.

¶ 6 Rodney Jones testified that he was the brother of one of the victims, Michael Smith, and that he had been standing outside on the porch with Smith and Diggs just before the shooting. Jones testified that he went inside the house to use the bathroom and while he was inside he heard gunshots. Jones testified that he ran to the front of the house and looked out the window. He saw somebody getting into the passenger side of a car. Jones testified that he could not recognize the person's face as he came out of the gangway, but that when he opened the car door and the interior light came on, he saw that it was "Wiener." Jones identified defendant as "Wiener."

¶ 7 The parties stipulated that Dr. Arunkumar, a medical examiner who performed the autopsies of Smith and Diggs, would testify that the deaths resulted from gunshot wounds.

¶ 8 Detective John Foster testified that he responded to the scene of the shooting at approximately 11:20 p.m., and that he spoke to James Washup, who stated that the shooter was somebody called "Wiener." Detective Foster testified that he also spoke to Tina Washup, who told him that she did not want to talk because of the large crowd that had gathered. He testified that people in the crowd told him that defendant shot the victims in retaliation for a fire that had

been set at 846 W. 53rd Street. Detective Foster testified that he looked through police databases and confirmed that there had been a fire at that location, and that someone with the nickname "Weezer" had listed that address as a residence. Detective Foster came to learn that "Weezer" was defendant. He then put together a photo array. Both Rodney Jones and James Washup picked defendant out of the photo array. Defendant was arrested on July 5, 2007. Jones, James, and Tina all identified defendant in a physical lineup after his arrest.

¶ 9 Zackary Sparks, defendant's brother, then testified for the defense. He testified that on the date in question, he and defendant were with their parents at 338 Lawndale. Sparks testified that they arrived at approximately 3 p.m., and did not leave before 2 a.m. the following morning. At 2 a.m. their father dropped defendant off at his girlfriend's house

¶ 10 In rebuttal, the State called Mike Maloney, an investigator, to testify that he attempted to locate both North and South 338 Lawndale, but there was no such address.

¶ 11 Kwame Tate also testified for the defense. Tate testified that he had previously lived a block and a half from where the shooting occurred. He knew the men that were killed and also knew Tina Washup. Tate testified that he had a conversation with Tina during the summer of 2007, at which time she told him that she did not see defendant shoot anybody, but that Rodney Jones told her to say defendant was the shooter. Tina denied this on the witness stand.

¶ 12 The jury returned a verdict finding defendant guilty of both counts of first degree murder. The court imposed a mandatory sentence of natural life in jail.

¶ 13 II. ANALYSIS

¶ 14 On appeal , defendant contends that (1) defense counsel was ineffective for failing to object to the introduction of inadmissible prior consistent statements, as well as eliciting prior consistent statements from certain witnesses, (2) defense counsel was ineffective for calling a

witness on defendant's behalf that damaged his case, and for failing to perfect the impeachment of a State's witness, and (3) defendant made *pro se* posttrial claims that this counsel was ineffective, but the trial court denied him an opportunity to support those claims.

¶ 15 Ineffective Assistance of Counsel – Prior Consistent Statements

¶ 16 Defendant's first argument on appeal is that defense counsel was ineffective for (1) failing to object to the introduction of inadmissible prior consistent statements from Tina Washup, (2) failing to object to the introduction of inadmissible prior consistent statements from Rodney Jones, and (3) eliciting prior consistent statements from James Washup.

¶ 17 The Sixth Amendment right to counsel is the right to effective assistance of counsel. In *Strickland v. Washington*, 466 U.S. 668 (1984), the United States Supreme Court set forth a two-prong test for determining whether counsel was ineffective. Illinois adopted this test in *People v. Albanese*, 104 Ill. 2d 504 (1984). The two-part test is: (1) counsel's representation fell below an objective standard of reasonableness and (2) counsel's error prejudiced the defendant in that but for counsel's shortcomings, the outcome of the proceeding would have been different. *Albanese*, 104 Ill. 3d at 526-27. The fundamental concern underlying this test is "whether counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied on as having produced a just result. *Strickland*, 466 U.S. at 686. Mistakes in strategy, or the fact that another attorney with the benefit of hindsight would have handled the case differently, do not indicate that the trial counsel was incompetent. *People v. Vera*, 277 Ill. App. 3d 130, 138 (1995). The defendant must overcome a strong presumption that counsel's complained-of action or inaction was merely trial strategy. *Id*. This court reviews *de novo* the questions of whether trial counsel provided ineffective assistance. *People v. Stanley*, 397 Ill. App. 3d 598, 612 (2009).

¶ 18 Tina Washup

¶ 19 Defendant's first ineffective assistance of counsel claim relates to the testimony of Tina Washup. Defendant contends that defense counsel failed to object to the State's redirect examination of Tina when the prosecutor elicited improper prior consistent statements from her. In general, a witness may not be rehabilitated by admitting former statements consistent with her trial testimony. *People v. Harris*, 123 Ill. 2d 113, 139 (1988). However, there is an exception to this rule, which is where there is a charge that the witness recently fabricated the testimony or that the witness has a motive to testify falsely. *Id*. at 139. Under these circumstances, a prior consistent statement may be admissible, but only if the witness made the prior consistent statement before the motive to fabricate arose. *Id*.

¶ 20 Here, Tina testified at trial that on the night in question she was cleaning her bedroom and that her two-year-old son was in the bedroom with her. She heard footsteps in the gangway and called out to ask who was there. When she did not receive a response, she looked out the window and saw two men but could not see their faces. A few seconds later, she heard gunshots, so she told her son to get down on the ground and she went to the window. She testified that she saw defendant running through the gangway with a gun in his hand. She also testified that she signed a handwritten statement on July 6, 2007, about a month after the incident.

¶ 21 On cross-examination, defense counsel asked Tina about her handwritten statement. He specifically asked about the portion where she stated that she had grabbed her son and threw him to the floor when she heard gunshots. Defense counsel then asked, "Isn't it true that this statement that you signed that night says that you grabbed your son and went to the floor?" Tina responded, "Yes, sir." Defense counsel then asked, "So if it was true then, it is true today, isn't it?" to which Tina responded, "Yes, sir." As defendant notes on appeal, this handwritten

statement to the police "presented a question as to whether Tina could have looked out the window and seen the shooter if she was on the floor with her son." Accordingly, on redirect examination, the prosecutor responded by eliciting Tina's grand jury testimony from July 19, 2007. The State asked Tina if she remembered the following question and answer during her grand jury testimony:

"Q: How much time from when you yelled out who is there and when you heard the gunshots?

A: Like some seconds later.

Q: When you heard the gunshots, what did you do?

A: I told my son to get down on the floor.

Q: Did you look out the window again?

A: Yes.

Q: At this point in time, what did you see?

A: That's when I saw [defendant] running through the gangway towards the front.

Q: Did he have anything in his hand?

A: Yes, a gun in his right hand, running towards the front."

¶ 22 Tina told the prosecutor that she was indeed asked those questions by the grand jury, and that she gave those answers. Defendant contends that defense counsel should have objected to this line of questioning because it was improper for the State to elicit prior consistent statements from Tina absent the implication of recent fabrication or motive to testify falsely. The State responds, and we agree, that defense counsel was clearly insinuating on cross-examination, by confronting her with her handwritten statement to police, that Tina was fabricating her testimony

on the witness stand about whether she could see the offender if she was on the floor with her son. Accordingly, the State was justified in rebutting this by introducing Tina's prior consistent statement to the grand jury, in which she stated that she told her son to get down and looked out the window. *Harris*, 123 Ill. 2d at 139.

¶ 23 Moreover, during closing arguments, defense counsel stated: "[Tina] admitted when confronted with her written statement that says, I grabbed my baby and got down on the floor, she admitted that was the truth. And by admitting that was the truth, she's admitting what she said before, that was a lie." Accordingly, it was appropriate for the prosecutor on redirect examination to introduce Tina's grand jury testimony, which was consistent with her trial testimony, in order to rebut defense counsel's implication of recent fabrication. *Harris,* 123 Ill. 2d at 139; see also *People v. Thomas*, 278 Ill. App. 3d 276, 282 (1996) (prior consistent statements permissible where defense counsel raised an inference of recent fabrication) and *People v. Smith*, 242 Ill. App. 3d 668, 673 (1992) (where an inference of recent fabrication is raised during cross-examination, admission of a prior consistent statement is proper). We therefore cannot find that defense counsel was ineffective for failing to object to an appropriate line of questioning.

¶ 24 Rodney Jones

¶ 25 Defendant next contends that his counsel was ineffective for failing to object when the prosecutor introduced prior grand jury testimony from Rodney Jones that was consistent with his testimony on direct examination. Specifically, defendant takes issue with the introduction of Rodney's grand jury testimony, which was the same as his direct examination testimony, that he first saw defendant when he was coming out of the gangway with a gun in his hand and that he then saw defendant get into a waiting car. Defendant claims that these statements were improper

prior consistent statements that defense counsel should have objected to. The State maintains that the statements were properly presented in response to defense counsel's implication of recent fabrication.

¶ 26 On cross-examination, defense counsel asked Jones about his criminal record. Jones acknowledged that he was sentenced for felony possession of cannabis on January 11, 2010, and that he was released on November 17, 2010. Defense counsel further elicited from Jones that he was arrested in that case after the current case had begun. Defense counsel then stated, "[Y]ou must be pleased with your extensive record to be out that soon, aren't you?" As the State notes, this line of questioning was introduced to suggest that Jones had received leniency on his sentence for the testimony he gave against defendant, in favor of the prosecution. Because defense counsel implied that Jones had a motive to lie, we find that it was proper for the State to introduce prior consistent statements from Jones' grand jury testimony, which took place on July 18, 2007, three years prior to his arrest for cannabis. *Harris*, 123 Ill. 2d at 139. Accordingly, it was not ineffective assistance of counsel for defense counsel to refrain from objecting to this line of questioning.

¶ 27 James Washup

¶ 28 Defendant also claims that defense counsel both elicited, as well as failed to object to, prior consistent statements of James Washup. James testified at trial for the State that he had been sitting on his back porch at around 10:30 p.m. on the night in question when he saw someone walking through the alley and "peeking" at Cordero Diggs and Michael Smith while they were standing on the back porch next door. James testified that he could not see the face of the person in the alley. A few minutes later, James heard someone coming through the gangway

between the two houses so he looked down and saw a person whom he recognized as defendant, with a gun in his hand. He then realized defendant was the same person he had seen in the alley.

¶ 29 During cross-examination, defense counsel highlighted the discrepancies in James' various statements through the introduction of his original statement to the police, his handwritten statement, his grand jury statement, and his direct testimony. Defense counsel asked James if it had been his story all along that he did not recognize the person's face in the alley on the night in question. Defense counsel then specifically asked him about the second page of his handwritten statement, which stated that James saw *defendant* peeking through the alley, and then defense counsel reminded James of his direct testimony in which he stated that he did not recognize the person peeking through the alley. Defense counsel then asked whether he stated in his grand jury testimony that he did not recognize the person peeking through the alley, to which James responded, "Yes." Defense counsel also asked James on cross-examination whether he had left anything out of his direct testimony, or if there was anything he wanted to add. This line of questioning was disallowed by the trial court, but defense counsel eventually elicited from James that in his grand jury testimony he stated that defendant acknowledged James before shooting the victims.

¶ 30 On redirect examination, the prosecutor then expanded on James' grand jury testimony, noting that in front of the grand jury, James pointed out "a couple corrections" in his handwritten statement. One of the corrections was that James saw someone who looked like defendant in the alley but it was too dark to make out his face, and that he assumed the figure in the alley had been defendant when he then saw defendant come through the gangway. The prosecutor then asked James on redirect examination whether it was true that he could not see defendant's face in the alley, to which James responded, "Yes."

¶ 31 Defendant contends that it was ineffective assistance of counsel for defense counsel to elicit testimony from James regarding his grand jury testimony that was consistent with his trial testimony, and that it was ineffective assistance of counsel for defense counsel not to object to the prosecution's line of questioning regarding his prior consistent grand jury testimony. Defendant further contends that eliciting James' grand jury testimony about defendant acknowledging James, when it had not been elicited during direct examination, was improper. The State maintains, and we agree, that defense counsel was attempting cast doubt on James' trial testimony as a whole.

¶ 32 Defense counsel attempted to highlight the fact that James previously had stated that he was able to see defendant's face in the alley, and that defendant had acknowledged James before shooting the victims. At trial, James testified that he did not see defendant's face in the alley, and he omitted the fact that defendant acknowledged him before shooting the victims. We find that it was not unreasonable for defense counsel to attempt to cast doubt on James' direct testimony. In fact, the manner in which to cross-examine a witness involves "the exercise of professional judgment which is entitled to substantial deference from a reviewing court." *People v. Pecoraro*, 175 Ill. 2d 294, 326 (1997). "[T]rial strategy ordinarily encompasses decisions such as what matters to object to and when to object." *Id*. at 327. We find that defendant has not overcome the strong presumption that counsel's complained-of action or inaction was merely trial strategy. *Vera*, 277 Ill. App. 3d at 138 (defendant must overcome a strong presumption that counsel's complained-of action or inaction was merely trial strategy).

¶ 33 Prejudice

¶ 34 Even if we were to have found that that the above complained-of prior consistent statements from Tina, Rodney, and James were improperly elicited, and should have been

objected to, we would nevertheless find that such prior consistent statements did not prejudice defendant. Defendant contends that the prior consistent statements bolstered the credibility of witnesses who "were otherwise weak." However, in order to prove the prejudice prong of ineffective assistance of counsel, defendant must show a reasonable probability that, but for counsel's errors, the result of the proceeding would have been different. *People v. Jackson*, 205 Ill. 2d 247, 259 (2001). Mere speculation concerning prejudice to the defendant is not sufficient to warrant reversal. *People v. Whitehead*, 169 Ill. 2d 355, 403 (1996).

¶ 35 Defendant fails to demonstrate how the outcome of the case would have been different had the prior consistent statements not been elicited. The direct testimony by those three witnesses, without the prior consistent statements, established that defendant was the shooter on the night in question. James testified that he saw defendant shoot the victims. Tina testified that she saw defendant in the gangway with a gun in his hand, as did Rodney Jones. See *People v. Sullivan*, 366 Ill. App. 3d 770. 783 (2006) (testimony of a single eyewitness can be sufficient to sustain a conviction). Accordingly, we find that even if defense counsel's failure to object to the prior consistent statements had amounted to deficient performance, it would not have prejudiced defendant.

¶ 36 Ineffective Assistance of Counsel – Damaging Witness

¶ 37 Defendant's next argument on appeal is that defense counsel called Zachary Sparks to the witness stand, "unaware that he had recently suffered a stroke which may have impacted his cognitive ability." Sparks testified that he was defendant's brother and that he and defendant were at their parents' house at "338 Lawndale" on June 1, 2007, until 2 a.m. In rebuttal, the State investigator testified that no such address existed. Both parties agree that Sparks appeared confused on the witness stand, and that he struggled with details. Defendant contends that

defense counsel's decision to call Sparks to the witness stand prejudiced defendant because Sparks' testimony "was so unbelievable that it suggested to the jury that [defendant] had made up an alibi, which in turn suggested a consciousness of guilt."

¶ 38 It is well-settled that strategic choices made by defense counsel after a thorough investigation of the law and facts relevant to the plausible options are virtually unchallengeable. *People v. Brown*, 336 Ill. App. 3d 711, 718 (2002). It is equally settled that trial counsel's decision whether to present a particular witness is within the realm of strategic choices that are generally not subject to attack on the grounds of ineffectiveness of counsel. *Id.*; *People v. Tate*, 305 Ill. App. 3d 607, 612 (1999). Moreover, defendant has not proved that the outcome of his trial would have been different if Sparks had not testified. *Albanese*, 104 Ill. 3d at 526-27. As recognized by the State, this case centered on the identification of defendant by three witnesses. Defense counsel did an able job of cross-examining these three witnesses, and presented testimony aimed at discrediting the witnesses. In his closing arguments, defense counsel noted that there were only three people that put defendant at the scene, "and two of these people are convicted of very serious crimes." He also argued that Tina Washup's testimony was "unbelievable." Furthermore, defense counsel never referenced an alibi witness in his closing arguments. Accordingly, it cannot be said that in the absence of the alibi testimony for the wrong address, the result of the trial would have been different. See *People v. Borges*, 127 Ill. App. 3d 597, 602-03 (1984) (counsel not ineffective for establishing an alibi on the wrong date because the case centered upon the identification of defendant by witnesses and counsel did an able job of cross-examining those witness and presenting the jury with arguments as to why the identification evidence was unreliable).

¶ 39 Ineffective Assistance of Counsel – Failure to Impeach

¶ 40 Defendant next contends that defense counsel was ineffective for failing to call L.T. Washup as a witness in order to perfect his impeachment of James Washup. Several times during his cross-examination of James Washup, defense counsel asked whether James had told his uncle, L.T., that James had not really seen the shooter. James repeatedly denied this saying that he saw the shooter. However, defense counsel did not call L.T., despite the fact that L.T. appeared for trial. Defendant contends that it was ineffective of defense counsel not to call L.T. to perfect the impeachment of James.

¶ 41 However, "[f]ailure to secure testimony of witnesses is generally within the realm of trial strategy." *People v. Consago*, 170 Ill. App. 3d 982, 987 (1988). "A claim of incompetency arising from a matter of trial strategy will generally not support a claim of ineffective representation." *People v. Whittaker*, 199 Ill. App. 3d 621, 629 (1990). Here, defendant has failed to overcome the presumption that defense counsel's decision to not call L.T., James' uncle, was anything but a tactical choice made on the basis of strategic considerations. Defendant fails to point to anything in the record to indicate other, unacceptable, reasons for that decision. *Id*.

¶ 42 Moreover, there is no evidence in the record before us that would allow us to conclude that L.T. would have testified that his nephew told him he did not know who the shooter was. We cannot assume that this would be L.T.'s testimony based on defendant's argument alone, and therefore defendant has failed to show prejudice in this case. See *People v. Garner*, 347 Ill. App. 3d 578, 583 (2004) (no prejudice because there was no evidence in the record that would allow court to conclude that witness would have testified as to what defendant argued she would have testified to).

¶ 43 *Krankel* Hearing

¶ 44 Defendant's final argument on appeal is that the trial court erred when it inadequately addressed his *pro se* allegations of ineffective assistance of counsel. After the trial court denied defense counsel's posttrial motion for a new trial, defense counsel stated that defendant wished to address the court. The trial court noted that defendant would "have an opportunity to address the court before I sentence him." The following colloquy then took place:

"Defendant: No. I am talking about before sentencing. I mean, I want to put in a motion for ineffective counsel and also get a retrial.

The Court: Well, that's something that's going to come. There are certain steps you have to follow, okay, sir? And so, there is – we haven't gotten to the point where this case has been disposed of that you are looking for to file a motion for whatever you think you want to file one.

Defendant: If I get sentenced, then that means I can't file for a retrial.

The Court: That's not true. You absolutely can.

Defendant: I mean, retrial is what, an appeal?

The Court: Right.

Defendant: I am trying to do this before appeal. I have been talking to an attorney. He is going to write a motion why I am entitled to a jury trial.

The Court: Hold on. You have to follow certain steps. We are not at that point yet.

Defendant: I didn't know I was going to be sentenced today.

* * *

The Court: Today we are here. Your attorney presented. He filed yesterday the motion for a new trial, which was quite lengthy and clearly he is [*sic*] put in quite a bit of time and effort into that motion.

Defendant: I didn't know what was going on though. That's what I am telling you. He ain't come tell me nothing. I am not talking to him. You don't want me to talk to you and I am not talking to him.

If I can't talk to you, I can't talk to you, who am I supposed to talk to? This is my life. I am saying, I don't even know what's going on. I never knew what was going on from day one. That's what I am trying to tell you now. I don't talk to this man. I didn't know nothing about this motion.

The Court: Keep yourself calm.

Defendant: I don't know anything about this motion. You are saying it [*sic*] just over with.

The Court: I didn't say anything was over with.

Defendant: I didn't have him make this motion. I have somebody who want [*sic*] to talk to this man who was in the courtroom and who took notes and who had other grounds. I didn't know what was going on. This is his motion. I wanted to – I wanted my own motion the reason why I feel I deserve a

retrial, you know what I am saying. We don't talk. I have been in Cook County three and a half years and I only saw this man two times. There is a conflict of interest.

The Court: I am not going to let you put this into the record when this is absolutely not true. You appeared in front of me more than two times and your attorney has been –

Defendant: I am talking about visits. Visits.

The Court: I didn't cut you off so –

Defendant: Excuse me.

The Court: – don't cut me off, all right? So you have seen your attorney far more than two times. All right. You had the opportunity to speak to him during the course of the trial, during the course [of] other court activities that we had. You have had plenty of time.

I have given you time to talk to your attorney since we have been here. Your attorney has stayed for hours when the court has been engaged in other matters and has stayed and talked to you so he's been here.

Defendant: He never stayed for hours.

The Court: What did I tell you about cutting me off?

Defendant: Because that's a lie. I am sitting up here, that[] ain't true. He never stayed back there for an hour and we talked. He

never saw me for an hour. That[] ain't never happen. He saw me two times in Cook County Jail since I have been in.

Ineffective counsel since day one. We filed for that. The chief judge didn't take him off my case. The man was unprepared at trial time. I mean, I got ground for a retrial but I mean –

The Court: That's fine. You go ahead.

Defendant: – a retrial.

The Court: File that motion and you go ahead and do that. I will tell you one more time, otherwise I am going to have you removed during sentencing. Do you understand me now? Mr. Daniels?

Defendant: I don't know what's going on.

* * *

Counsel: *** [F]or the record, I filed a motion to withdraw on this case back in May, I believe. My client fought with me and begged me to stay on, said I had to stay on so forth and I still persisted to the motion to withdraw which was denied by the chief judge.

I advised my client many times prior to filing that motion that he would be better off with the public defender because I was not being provided with the resources I

needed to higher [*sic*] adequate investigators and all the resources the public defendant's office would have.

I am a solo practitioner. My client still persisted that I proceed. I even had another attorney come here in September, I believe it was the day it was set for trial. And I introduced him to the family and said that I would like to bring a second counsel in but he needs to be paid something.

The family has never come up with the resources to allow me to do that. I indicated that the state would have two or three attorneys at trial. I would be on my own. I would have to question, think and try to take notes and do everything at one time and that I needed a second set of eyes. The family did not provide me with that opportunity.

I also want to point out that after closing arguments were completed I spoke to my client at trial, my client indicated to me that he thought I did a good job and that he was very happy with the state of things at that time and felt we had a good opportunity. And of course, he was disappointed in the verdict.

But at that point, he expressed gratitude and indicated that he didn't hold anything against me and felt that we had a very good chance to prevail at that time. And

I just wanted to put that on the record at this time of what my client has raised in court.

The Court: I will take it a step further. That during the course of the trial, there were many times that there were strategy of points that you were taking and I asked your client also if he knew what you were planning on doing and if he agreed with you as to those trial strategies and he did on the record indicate that he did agree with you as to those points.

[Defense counsel], as far as your conduct during the course of trial, I – nobody is perfect and that is not what the law requires. The law requires that he have a fair trial and what he did get was a fair trial.

You presented evidence. You presented everything that you were – had and I believe in your arsenal there and you were quite effective in cross-examining the witnesses and being quite effective in making your argument as far as opening and closing and the court will be remiss in not saying that also.

But we are putting the cart before the horse. We are not there. Right now, we are at the point where we are in aggravation. State, go ahead. "

¶ 45 Defendant contends that his statements to the court clearly conveyed a dissatisfaction with defense counsel that triggered a duty to give him an opportunity to specify the underlying

factual bases of his complaints. *People v. Krankel*, 102 Ill. 2d 181 (1984), and its progeny guide our analysis here. The evolution of the *Krankel* inquiry has yielded a rule "that counsel need not be appointed in every case where a defendant presents a *pro se* claim of ineffective assistance of counsel." *People v. Vargas*, 409 Ill. App. 3d 790, 801 (2011). Instead, it is incumbent upon the trial court to examine the claim and its factual underpinnings. *People v. Moore*, 207 Ill. 2d 68, 77-78 (2003). Where a *pro se* claim is determined to be without merit or concerns a matter of trial strategy, there is no need to appoint counsel and denial of the motion is appropriate. *Moore*, 207 Ill. 2d at 78. Alternatively, if the allegations demonstrate the possibility of neglect, then counsel must be appointed. *People v. Chapman*, 194 Ill. 2d 186, 230 (2000). Our review of defendant's claim of error necessarily turns on the adequacy of the inquiry made by the trial court. *Vargas*, 409 Ill. App. 3d at 801. Our review of the adequacy of the inquiry is *de novo*. *Id.*

¶ 46 Our supreme court in *Moore* offered the following as a comprehensive statement of the basics of the inquiry:

> "During this evaluation, some interchange between the trial court and trial counsel regarding the facts and circumstances surrounding the allegedly ineffective representation is permissible and usually necessary in assessing what further action, if any, is warranted on a defendant's claim. Trial counsel may simply answer questions and explain the facts and circumstances surrounding the defendant's allegations. [Citations.] A brief discussion between the trial court and the defendant may be sufficient. [Citations.] Also, the trial court can base its evaluation of the defendant's *pro se* allegations of ineffective assistance on its knowledge of defense

> counsel's performance at trial and the insufficiency of the defendant's allegations on their face. [Citations.] *Moore*, 207 Ill. 2d at 78-79.

¶ 47 Here, defendant contends, relying on *People v. Vargas*, 409 Ill. App. 3d 790, 800-02 (2011), that the trial court failed to make any inquiry at all into his complaints of ineffective assistance of counsel, in violation of *Krankel*. In *Vargas*, the defendant informed the trial court that he had asked his counsel to obtain "records and information" that would be helpful for the defense of his case. *Id*. at 800. The defendant stated that throughout his case, he had asked his counsel for the status of these records, and that defense counsel ignored him. The trial court responded by asking, "Anything else?" When the defendant indicated that he did not have anything else, the trial court immediately proceeded to sentencing "without even a hint of any response to defendant's grievances." *Id*. at 801. This court found that there was "utterly no interchange" after defendant stated his complaint. *Id*. This court found that while defendant's complaint did not contain a "great deal of detail," it offered "sufficient information upon which further questioning could have resolved any lingering doubt or established the necessity of further inquiry consistent with *Krankel*." *Id*.

¶ 48 In the case at bar, we cannot say that there was "utterly no interchange" between the trial court and defendant after defendant explained his grievances. Rather, despite the trial court stating that it was not the proper time for defendant to address the court regarding ineffective assistance of counsel, it proceeded to allow defendant to speak at length about why he believed he received ineffective assistance of counsel. Defendant explained the he had only been visited twice while in jail, and that defense counsel was unprepared for trial. The trial court then allowed defense counsel to speak, wherein defense counsel noted that he did the best he could with the resources he had available, and that defendant begged him to stay on the case despite

defense counsel's reservations. The trial court then went into a lengthy discussion on defense counsel's performance. We find that this was enough to satisfy the inquiry requirements under *Krankel* and its progeny. See *Moore*, 207 Ill. 2d at 78 ("some interchange between the trial court and trial counsel regarding the facts and circumstances surrounding the allegedly ineffective representation is permissible and usually necessary in assessing what further action, if any, is warranted.")

¶ 49 Here, defendant's claims that defense counsel was unprepared, and that defense counsel did not meet with him enough before trial, were both inconsistent with the trial court's observations of the attorney's conduct. See *Moore*, 207 Ill. 2d at 78-79 (trial court can base its evaluation of defendant's allegations of ineffective assistance on its knowledge of defense counsel's performance at trial and the insufficiency of defendant's allegations on their face). The trial court noted that defense counsel was "quite effective" in cross-examining the witness, that he presented "everything *** in [his] arsenal," and that the court personally witnessed defense counsel stay "for hours" to talk to defendant while the court was engaged in other activities. Accordingly, we find that the trial court's evaluation of defendant's claims was properly based on its knowledge of defense counsel's performance at trial and the insufficiency of defendant's allegations on their face. *Id*.

¶ 50 III. CONCLUSION

¶ 51 For the foregoing reasons, the judgment of the circuit court of Cook County is affirmed.

¶ 52 Affirmed.