2017 IL App (1st) 141245-U

No. 1-14-1245

April 11, 2017

Second Division

IN THE

APPELLATE COURT OF ILLINOIS

FIRST DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County.
	)	
v.	)	No. 08 CR 08671
	)	
JASON RUMSEY,	)	Honorable
	)	Anna Helen Demacopoulos,
Defendant-Appellant.	)	Judge presiding.

JUSTICE NEVILLE delivered the judgment of the court.
Presiding Justice Hyman and Justice Pierce concurred in the judgment.

ORDER

¶ 1 *Held*: We affirm defendant's conviction where the evidence was sufficient to prove his specific intent to kill, the trial court did not improperly admit hearsay statements, and the trial court conducted a proper *Krankel* hearing.

¶ 2 Following a jury trial, defendant Jason Rumsey was convicted of, *inter alia*, attempted first degree murder of Charles Ramirez (720 ILCS 5/8-4(a), 9-1 (West 2008)), armed robbery (720 ILCS 5/18-2(a)(4) (West 2008)), and home invasion (720 ILCS 5/12-11(a)(5) (West 2008)), and sentenced to 45 years' imprisonment on each count, to be served concurrently. On appeal,

defendant argues the evidence was insufficient to prove attempted murder in that he lacked a specific attempt to kill, the trial court committed error by allowing a hearsay statement, and the trial court failed to conduct a proper inquiry under *People v. Krankel*, 102 Ill. 2d 181 (1984). We affirm.

¶ 3 Defendant was charged by indictment with five counts of attempted first degree murder, one count of aggravated battery with a firearm, three counts of armed robbery, five counts of home invasion, and three counts of aggravated battery stemming from acts occurring on November 25, 2007, in Lansing, Illinois. Prior to the start of trial, Ramirez died from unrelated causes. At trial, the following evidence was presented.

¶ 4 Mark Koenig, a neighbor living two doors away from Ramirez, testified that, on November 25, 2007, he heard two gunshots outside of his house. Koenig went outside and noticed Ramirez's car running in front of Ramirez's house. Koenig saw the front door of Ramirez's house was open and could hear people arguing. He noticed that the front window was broken and a struggle was taking place inside. Two people wearing jeans and hooded sweatshirts then exited the house walking quickly and entered Ramirez's running car. One person had a white baseball hat on that fell to the ground when attempting to enter the car, and one person was carrying something. The car drove away down the street. Koenig then saw Ramirez exit his house and knock on a neighbor's door while screaming loudly in Spanish. Koenig did not understand what Ramirez was saying because he does not speak Spanish.

¶ 5 Koenig observed Ramirez approach another neighbor's house and could see that he was limping. Koenig went back inside his home and heard sirens and saw an ambulance. He then approached his neighbor's home and noticed blood on the neighbor's porch.

¶ 6 April King[1] testified pursuant to a plea agreement where she agreed to plead guilty to an armed robbery charge. She testified that, on November 24, 2007, she lived in Ramirez's house with her sister, Latasha King,[2] who was in a relationship with Ramirez. Both she and her sister were addicted to crack cocaine. Ramirez owned a black, two-door Monte Carlo, another nice car, two trucks, a motorcycle, and a collection of Jordan shoes.

¶ 7 Ramirez gave Latasha money, and let her and April use his black Monte Carlo to drive to Hammond, Indiana, so they could do laundry and Latasha could visit with her case worker. On the way, they stopped in Calumet City, Illinois, to purchase crack cocaine, which they used.

¶ 8 They returned to Ramirez's house and, around 8 or 9 p.m., Latasha was contacted by Terrance Robinson, who wanted to be picked up because he had cognac to share with them. Ramirez gave Latasha more money, and the two went back to Calumet City to buy more crack cocaine, then to Hammond to pick up Robinson. After picking up Robinson, April picked up defendant, whom she identified in court.

¶ 9 April, Latasha, Robinson, and defendant then drove around drinking, and April and Latasha also used crack cocaine. Defendant then mentioned an idea to rob Ramirez, and Robinson agreed, pulling out a silver revolver. April drove to about two blocks from Ramirez's house, and defendant and Robinson exited the car. Robinson gave defendant the gun, and the two went into a gangway towards Ramirez's house.

¶ 10 After April and Latasha waited 10 minutes, April tried to contact defendant by phone but received no response. April then drove to Ramirez's driveway and noticed all the lights were on inside his house. She honked the horn and a few seconds later Robinson and defendant exited the

[1] Hereinafter, April King will be referred to as "April."

[2] Latasha King will be referred to as "Latasha."

house and got into the car. When defendant first left the car he was wearing a white hat but was no longer wearing it when he returned. Defendant was carrying a shoe box containing Jordans, and he handed the gun back to Robinson.

¶ 11 April drove away and proceeded back to Calumet City to buy more crack cocaine. On the way, everyone had "calmed down" and Robinson spoke about what had happened inside Ramirez's house. Robinson stated that he and defendant approached Ramirez's house and found the door was locked. Defendant then tapped on the window with the gun, breaking the glass and cutting his finger. Defendant and Robinson pushed their way inside the house and began to fight with Ramirez, causing him to fall back and hit his head on a table.

¶ 12 Defendant and Robinson asked Ramirez where the money was located, and Ramirez responded all he had was the money in his pocket. Both defendant and Robinson told Ramirez he was lying. Defendant went to look for money but returned when he could not find any. Robinson then went to look while defendant held the gun on Ramirez. Robinson returned with money and began to fight with Ramirez again. Defendant stated that he knew Ramirez was lying about the money. Robinson stated that defendant shot Ramirez in the leg. Defendant then agreed, stating he shot Ramirez in the leg.

¶ 13 Robinson gave $100 each to April and Latasha, and kept the rest with defendant. April went to buy more drugs and then dropped defendant at a house he lived in with his mother. Robinson attempted to give the gun to defendant but April objected, noting her children stayed at the house. Robinson put the gun in his waistband and stayed in the car. Latasha got more crack cocaine in Calumet City, and both Latasha and April were dropped off in different locations in Hammond, Indiana.

¶ 14 The following day, April spoke with Robinson who told her to keep her mouth shut. She also saw defendant who told her the same thing.

¶ 15 Detective Chuck Weeden of the Lansing Police Department testified that, on November 25, 2007, he responded to a shooting at Ramirez's house. After arriving, he witnessed Ramirez inside an ambulance, bleeding with wraps around both of his thighs. Ramirez told Weeden that a person came to the door asking for Missy Hollis, and Ramirez responded that she no longer lived at the home. He then heard his window break and when opening the door to see who had broken it, two men forced themselves inside. The first person, a black man, began to punch him. The second person, a Hispanic man, asked him where the money was located before running into the back bedroom. Ramirez denied having money, but they eventually found some. They questioned Ramirez why he had lied to him, and Ramirez was then shot.

¶ 16 Ramirez told Weeden that April and Latasha King were living with him and took his car to go to Hammond to laundry but had not returned. Weeden then observed Ramirez's house and noticed the broken front window, blood on the floor, a damaged coffee table, a can of Modelo beer with blood on it, and a blood trail into Ramirez's bedroom where the money was taken. A white baseball hat was recovered outside in the street.

¶ 17 Weeden went to the hospital, met with Ramirez, and learned that he had suffered bullet wounds to each thigh. At some point, Weeden and the officers working the case received an anonymous tip. Weeden then compiled a photo array, which contained five or six pictures of individuals who may or may not be the offender. After showing Ramirez the photo array, Weeden began to look for defendant. Weeden identified defendant at trial.

¶ 18 By this point, April had been taken into custody, and Weeden was in contact with the Hammond Police Department in order to take defendant, Robinson, and Latasha into custody. Latasha was taken into custody and gave a written statement to Assistant State's Attorney Mike Sorich. Weeden Mirandized April, who provided a written statement of the events.

¶ 19 Weeden continued his investigation and spoke with defendant over the phone. Defendant stated he would come into the police station but never arrived. Weeden continued to search for defendant for over a month and eventually was provided with a phone number that he traced to a house in Hammond.

¶ 20 Weeden went to the house in Hammond and took defendant into custody. Weeden provided defendant with his *Miranda* warnings and defendant agreed to speak with him. Defendant stated to Weeden and Detective Baily that he and Robinson were driven to Ramirez's house by April. Defendant and Robinson forced their way into Ramirez's house, and Robinson began to hit Ramirez. Defendant stated that he had a chrome revolver, and they asked Ramirez where the money was. Eventually defendant found the money despite Ramirez saying he did not have any. Defendant stated that he got angry and shot Ramirez in the leg, spun around, and shot him in the other leg.

¶ 21 Defendant was transported from the Hammond Police Department to the Lake County, Indiana, jail where Assistant State's Attorney Michael Sorich read defendant his *Miranda* warnings, and defendant provided a written statement. Weeden further testified that defendant was wearing a pair of Air Jordan shoes when he was arrested.

¶ 22 Lansing police officer Wilson Pierce testified that, on November 25, 2007, he arrived at Ramirez's house as a crime scene investigator. He noticed a broken front window, blood at the

door, and that the house appeared to have been ransacked. A white baseball hat was recovered from the street and inventoried. Pierce observed a Modelo beer can knocked over on a coffee table, which had a bullet lodged inside it. Pierce removed part of the table that the bullet was lodged in and inventoried it. All items recovered were sent to the Illinois State Police laboratory for examination.

¶ 23 Illinois State Police forensic biologist Katherine Sullivan testified that she received a baseball hat, beer can, and a buccal standard from both defendant and Robinson. The DNA recovered from those items did not match the DNA profile for either defendant or Robinson. Sullivan testified that if multiple persons came into contact with an item, a mixture of DNA could result leaving a person's minor contribution of DNA unable to be determined.

¶ 24 Assistant State's Attorney Michael Sorich testified that he interviewed defendant, whom he identified in court, at the Lake County jail. Sorich provided defendant with his *Miranda* warnings, and defendant agreed to have his statement memorialized in writing. Defendant reviewed and corrected the written statement, signing each page. Sorich then read the statement, which said, in pertinent part:

> "On November 25, 2007 I was in a car with a guy I know as 'T.' Mike showed me a photo marked People's Exhibit Number 1 which is a photo of 'T.' I known [*sic*] 'T' from seeing him in the neighborhood. April King was also in the car. April is my brother's baby mamma. Mike showed me a photo marked People's Exhibit Number 2 which is a photo of April. I had taken some pills and I was drinking Modelo beer. While we were in the car 'T' showed me he had a gun. At some point the car stopped and 'T' said let's go. When he said let's go I did not know where – what was going on. We went

up to the dude's house and I broke the window to the front of the house while 'T' knocked on the door. I cut my finger from the broken glass. The guy who I now know as Chuck Ramirez answered the door. Before that 'T' handed me the gun. 'T' went into the house first. And, I followed him. I pointed the gun at Chuck while 'T' ran around the house. 'T' found some money in the house and then came back and started yelling at Chuck.

Before I pointed the gun at Chuck I needed to find something to cover my finger since it was bleeding from the broken glass. I found two boxes of Nike shoes and since I figured we were going to get in trouble for all of this I might as well take them. Mike showed me a photo marked People's Exhibit Number 3 which is a photo of the pair of shoes I stole from the guy. These were the same shoes I was wearing when the police came to arrest me. When 'T' came back yelling at Chuck he was upset. He started hitting him while I was standing and holding the gun. That's when I shot two times at Chuck to calm 'T' down. 'T' and I both freaked and ran out of the house. I left my Modelo beer in the house.

Outside 'T' gave me some of the money we stole out of the house. I went to my mother's house with the shoes I took. I went to bed and the next day I talked to April. She was saying the police were looking for us for attempted murder. That's when I realized I was in some trouble since Chuck was hit two times in the legs. I decided to go lay low and not stay at my mother's house since the police would be looking for me. I stayed at my girl's house until I broke up with her. And, then I stayed with a couple other different girls. I want to apologize for my actions. As I know what I did was wrong. I should not have shot the man that night."

¶ 25 The parties stipulated that Doctor Satish Patel would testify that he treated Ramirez, who had a bilateral nasal fracture and two bilateral gunshot wounds, one to each thigh. He would further testify Ramirez did not require surgery for his injuries and remained in the hospital from November 25, 2007, to December 6, 2007.

¶ 26 Defendant testified that he had known April for years, including on November 25, 2007. In November 2007, defendant would drink and take Xanax pills every day. On November 25, 2007, defendant was at a friend's house when April called him about a party and stated she would pick him up. She was driving a black car with Latasha and Robinson as passengers. Defendant had April drive to a liquor store so he could buy beer and then to a friend's house so he could buy pills. Defendant took some pills and "washed them down with beer."

¶ 27 Defendant gave his beer to Robinson and took the hat Robinson had on and began wearing it. They pulled up around the corner from a house and Robinson exited the car and asked defendant to come with him. Defendant went with Robinson but denied seeing a gun. Defendant waited outside the house while Robinson went inside. Defendant heard a commotion and then two gunshots. April and Latasha pulled up in front of the house and Robinson came out of the house handing defendant a box of shoes. Defendant and Robinson got into the car, and they drove away. Defendant denied giving Robinson the gun and denied telling April he shot Ramirez. Defendant then testified Robinson never gave him any money and that he never saw any money.

¶ 28 Defendant spoke with Detective Weeden over the phone and told him he would speak with him when he had enough money to hire an attorney. The police arrested defendant at his

girlfriend's house in Hammond but never searched him. Defendant testified he had pills and "weed" inside basketball shorts he was wearing under his jeans.

¶ 29 Defendant told the officers that he did not want to talk to them and wanted an attorney. The officers, including Weeden, gave defendant two pieces of paper, which contained statements April and Latasha made to the police. Defendant went to the bathroom and, while inside, took one of the Xanax pills he had hidden in his pocket. The police then told defendant they had let Latasha go and they just wanted to close the case. Defendant stated they told him to make a statement "somewhat like April's" and he would be released. He was under the influence of Xanax at the time.

¶ 30 On cross-examination, defendant stated he did not know why Robinson was going to Ramirez's house but that Robinson wanted him to go with. After Robinson entered the house, defendant heard a commotion and two gunshots. Defendant remained outside the house and Robinson came out and handed him a shoe box. Defendant testified, "[b]efore we went in the house he gave me a baseball cap."

¶ 31 The jury found defendant guilty of attempted first degree murder, aggravated battery with a firearm, armed robbery with a firearm, and home invasion while armed with a firearm. The jury further found that during the commission of the offense of attempted first degree murder, defendant personally discharged a firearm that proximately caused great bodily harm to another person.

¶ 32 Defense counsel then filed a written motion for a new trial and defendant submitted a "Petition for Krankel Hearing." In defendant's "Petition for Krankel Hearing," he alleged, *inter alia*, trial counsel was ineffective for failing to call two witnesses, later identified as Cecelia

Renosso[3] and Jessica Kincaid, to testify at his hearing on the motion to quash arrest and suppress his statement. The trial court denied both motions. The trial court then sentenced defendant to concurrent terms of 45 years' imprisonment each on the attempted murder, armed robbery, and home invasion charges. The remaining charges merged. Defendant filed a timely notice of appeal.

¶ 33 On appeal, defendant first argues the evidence was insufficient to prove that he had the specific intent to kill Ramirez, a necessary element of his attempted murder conviction. He asks us to reduce this conviction to the merged offense of aggravated battery with a firearm and remand for resentencing.

¶ 34 The standard of review when challenging the sufficiency of the evidence is whether, after viewing the evidence in the light most favorable to the State, any rational trier of fact could have found the essential elements of the offense proven beyond a reasonable doubt. *People v. Brown*, 2013 IL 114196, ¶ 48. A reviewing court must not retry the defendant. *People v. Cunningham*, 212 Ill. 2d 274, 279 (2004). Additionally, "a reviewing court will not substitute its judgment for that of the trier of fact on issues involving the weight of evidence or the credibility of witnesses." *People v. Siguenza-Brito*, 235 Ill. 2d 213, 224-25 (2009). The jury, as trier of fact, has the responsibility to determine the credibility of witnesses, weigh the evidence and any inferences derived, and resolve any conflicts in the evidence. *People v. Kidd*, 2014 IL App (1st) 112854, ¶ 27. A conviction will not be overturned unless the evidence is so improbable, unsatisfactory, or inconclusive that a reasonable doubt of defendant's guilt exists. *People v. Belknap*, 2014 IL 117094, ¶ 67.

[3] The record refers to her as Cecelia Renosso while the parties refer to her as Cecelia Renossa. We will adopt the parties' spelling of "Renossa."

¶ 35 In order to sustain the conviction for attempted murder, the State must prove beyond a reasonable doubt that the defendant, with intent to commit murder, took a substantial step towards committing murder. 720 ILCS 5/8-4(a), 9-1 (West 2008); *People v. Harris*, 2016 IL App (1st) 141744, ¶ 26. Proof of a specific intent to kill is a necessary element of the offense. *People v. Hill*, 276 Ill. App. 3d 683, 687 (1995). "However, because the specific intent to take a life is a state of mind, it is rarely proven through direct evidence." *People v. Viramontes*, 2017 IL App (1st) 142085, ¶ 52. Specific intent to kill may be shown by the circumstances surrounding the act, including the use of a deadly weapon and the character of the assault. *Hill*, 276 Ill. App. 3d at 688. We have noted that " '[t]he very fact of firing a gun at a person supports the conclusion that the person doing so acted with an intent to kill.' " (Internal quotation marks omitted.) *People v. Petermon*, 2014 IL App (1st) 113536, ¶ 39 (quoting *People v. Ephraim*, 323 Ill. App. 3d 1097, 1110 (2001)). The jury, as trier of fact, is tasked with determining whether a specific intent to kill exists, and its conclusion will not be disturbed on appeal absent reasonable doubt as to the defendant's guilt. *Viramontes*, 2017 IL App (1st) 142085, ¶ 52.

¶ 36 Defendant argues that there is no evidence of his specific intent to kill Ramirez based on the testimony and the statements admitted at trial. We disagree. The medical testimony established Ramirez suffered two gunshot wounds. April testified that defendant stated he knew Ramirez was lying about not having money and he shot Ramirez. Further, in his oral statement, defendant told Weeden that he got angry and shot Ramirez in the leg, spun around, and shot him in the other leg. The jury was free to reject that this was an impulsive reaction to a confrontation with Ramirez. Here, however, the evidence supports the inference that defendant had the specific intent to kill when he pointed the gun at Ramirez and shot him twice, once in each leg.

See *Harris*, 2016 IL App (1st) 141744, ¶ 27 ("A reasonable trier of fact could infer that shooting a defenseless person multiple times evinces a specific intent to kill that person"). Viewing the evidence in the light most favorable to the State, we find the evidence was sufficient to sustain defendant's conviction for attempted first degree murder of Ramirez.

¶ 37 In arguing that intent to kill was not established, defendant notes that Ramirez was shot in each leg, rather than the chest, head, or upper back, where death is more likely to result. However, having already determined that firing a gun at a defenseless person twice, and indeed striking that person twice, shows a specific intent to kill, we reject defendant's argument that the location of the gunshot wounds weighs against finding a specific intent to kill. Further, "[p]oor marksmanship is not a defense to attempted murder, and it is a question for the jury to determine whether defendant lacked the intent to kill or whether defendant was simply unskilled with his weapon and missed his targets." *People v. Teague,* 2013 IL App (1st) 110349, ¶ 27. While defendant argues Ramirez was not shot in a place where death was more likely to result, the jurors could have also reasonably inferred defendant was an unskilled shooter, and we will not disturb their judgment for ours on appeal. *Id.* ¶ 29.

¶ 38 Defendant next argues the trial court erred by allowing testimony of the deceased complainant's out-of-court identification of defendant as it constituted inadmissible hearsay and violated the Confrontation Clause. Specifically, he argues Detective Weeden's testimony regarding the photo array he conducted with Ramirez was not admissible to show the course of the police investigation.

¶ 39 Hearsay is an out of court statement offered to prove the truth of the matter asserted. *People v. Gonzalez,* 379 Ill. App. 3d 941, 954 (2008). Further, " '[t]estimony by a third party as

to statements made by another nontestifying party identifying an accused as the perpetrator of a crime constitutes hearsay testimony and is inadmissible.' " *People v. Yancy*, 368 Ill. App. 3d 381, 385 (2005) (quoting *People v. Lopez*, 152 Ill. App. 3d 667, 672 (1987)). The trial court has discretion to determine whether statements are hearsay, and we will not overturn that determination absent an abuse of discretion. *People v. Leak*, 398 Ill. App. 3d 798, 824 (2010). An abuse of discretion occurs when the trial court's determination is "arbitrary, fanciful, or unreasonable or where no reasonable person would take the view adopted by the trial court." *Id.*

¶ 40 A hearsay statement is allowed where it is offered for the "limited purpose of showing the course of a police investigation where such testimony is necessary to fully explain the State's case" to the jury. *People v. Williams*, 181 Ill. 2d 297, 313 (1998). A police officer therefore "may testify about a conversation that he had with an individual and his actions pursuant to the conversation to establish the officer's investigative process," but this testimony is not hearsay because it is not offered for the truth of the matter asserted. *People v. Hunley*, 313 Ill. App. 3d 16, 33 (2000); see *People v. Gacho*, 122 Ill. 2d 221, 248 (1988) (finding it was permissible for a police officer to testify that after speaking with the victim he went to locate the defendant, but noted that the officer's testimony would constitute hearsay if he testified to the substance of the conversation with the victim).

¶ 41 On direct examination, Weeden testified as follows:

"Q. Did anybody have any conversations the victim or present a photo array to him?

A. Yes.

Q. Can you just describe what a photo array is?

[Defense counsel]: Objection, Judge.

THE COURT: Overruled.

THE WITNESS: A photo array is either five or six pictures of individuals that may or may not be suspects that are shown to witnesses or victims. And they are given an opportunity to pick who they believe may be the offender in a crime.

Q. And when you got back to work now did your investigation, were you guys looking for anybody in particular?

A. Yes, we were.

Q. Who were you?

A. The defendant, Jason Rumsey."

¶ 42 After reviewing Weeden's testimony, we find that it did not include the substance of his conversation with the victim and that it was offered to show the course of the police investigation, and therefore, it is not hearsay. Similar to *Gacho*, Weeden spoke with the victim, Ramirez, at the hospital before searching for defendant. See *Gacho*, 122 Ill. 2d at 247-48. At trial, Weeden did not address the substance of his conversation with Ramirez, but, instead, provided the jury with the course of his investigation after his discussion with the victim. Weeden explained the steps taken after exhibiting the photo array to Ramirez, but did not testify to the results provided by Ramirez. See *People v. Simms*, 143 Ill. 2d 154, 174 (1991) ("Testimony describing the progress of the investigation is admissible even if it suggests that a nontestifying witness implicated the defendant"). Crucially, at no time did Weeden testify that Ramirez identified defendant as the shooter.

¶ 43 We further reject defendant's argument that, because Weeden received an anonymous tip, Weeden's testimony regarding his meeting with Ramirez in the hospital was unnecessary to explain the course of his investigation. Testimony as to the course of the police investigation is admissible to "fully explain the State's case" to the jury. *Williams*, 181 Ill. 2d at 313. Here, we simply decide whether Weeden's testimony was admissible to explain the course of the police investigation to the jury. Because we find Weeden's testimony admissible, we need not speculate on why the State chose to proceed with this testimony over the anonymous tip evidence. See *People v. Swartwout*, 311 Ill. App. 3d 250, 260 (2000) (a reviewing court will not second-guess the State's trial strategy).

¶ 44 Defendant further argues that Weeden's testimony violated his Confrontation Clause rights. The Confrontation Clause prohibits the testimonial statement of a witness who does not testify at trial unless (1) the witness is unavailable, and (2) the defendant had a prior opportunity to cross examine the witness. *People v. Stechly*, 225 Ill. 2d 246, 279 (2007) (citing *Crawford v. Washington*, 541 U.S. 36, 53-54 (2004)). A statement is testimonial if offered as a "solemn declaration[] for the purpose of establishing or proving some fact germane to the defendant's prosecution." *Stechly*, 225 Ill. 2d at 280-81.

¶ 45 However, as previously discussed, Weeden never offered any testimony regarding the substance of his conversation with Ramirez. He never testified that Ramirez identified defendant as the shooter. Accordingly, there are no statements attributed to Ramirez that would be considered "testimonial" thus implicating the Confrontation Clause. We therefore reject defendant's argument that his Confrontation Clause rights were violated. For the same reasons, we reject defendant's argument that the State violated a motion *in limine* by introducing

identification evidence at trial through Weeden's testimony. Weeden never offered any identification evidence in his testimony.

¶ 46 Defendant argues the trial court failed to conduct an adequate *Krankel* hearing. Following his conviction, defendant filed a written *pro se* "motion seeking new trial due to ineffective assistance of counsel" and a document entitled "Petition for a Krankel Hearing." Relevant here, defendant contends the trial court failed to conduct an adequate inquiry into his *pro se* posttrial claim that his trial counsel was ineffective because the trial court did not question defense counsel regarding his failure to call Cecelia Renossa at the suppression hearing or at trial.

¶ 47 The common-law procedure, which has developed from our supreme court's decision in *People v. Krankel*, 102 Ill. 2d 181 (1984), is triggered when a defendant alleges a *pro se* posttrial claim of ineffective assistance of trial counsel. *People v. Ayres*, 2017 IL 120071, ¶ 11. When a defendant presents a posttrial *pro se* claim of ineffective assistance of counsel, the trial court should first consider the factual basis underlying the defendant's claim. *People v. Moore*, 207 Ill. 2d 68, 77-78 (2003). If the court determines that the points raised are meritless or pertain to trial strategy, then the court may deny the *pro se* motion. *Id.* at 78. "If the allegations show possible neglect of the case, then new counsel should be appointed" to evaluate the defendant's claim. *People v. Chapman*, 194 Ill. 2d 186, 230 (2000).

¶ 48 The trial court may conduct its inquiry by questioning trial counsel or questioning the defendant. *Moore*, 207 Ill. 2d at 78; *People v. Jolly*, 2014 IL 117142, ¶ 30. "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." *Moore*, 207 Ill. 2d at 79. Ultimately, "the operative concern for the

reviewing court is whether the trial court conducted an adequate inquiry into the defendant's *pro se* allegations of ineffective assistance of counsel." *Id.* at 78. We review *de novo* whether the trial court conducted a proper preliminary *Krankel* inquiry. *Jolly*, 2014 IL 117142, ¶ 28.

¶ 49 At the hearing on posttrial motions, the following exchanged occurred between the court and defendant:

"Q. [Defendant], I'm only going to be asking you a couple of questions here, and, if you can, answer those questions for me.

You indicated that in your motion that you wished to have additional witnesses called on your behalf on the motion to quash arrest and suppress evidence. Which additional witnesses did you wish to have [defense counsel] call and for what reason?

A. There was [*sic*] two. One was Cecelia Renosso?

Q. And who is Cecelia Renosso?

A. She was my girlfriend at the time of the arrest. I was living with her. This was her apartment.

Q. This was her apartment?

A. This was her mother's apartment. I was living with them.

Q. And what did you believe that Ms. Renosso would testify on your behalf at the motion and how that would assist you?

A. That she wouldn't have gave no [*sic*] consent for the officers to enter my house.

Q. And have you spoken to Ms. Renosso?

A. Not since March 2008.

Q. Since the time you were arrested?

A. Since a little bit after I was arrested.

Q. And she indicated to you that she would testify that she did not give consent to the officers?

A. I had a friend contact her, and she said that she would come to court and for my attorney to get hold of her.

Q. So you have not spoken to her?

A. Me personally, no.

Q. Okay. The second question that I have for you is --

A. Also, there was a Jessica Kincaid. She came later during the reconsideration motion.

Q. All right. Jessica Kincaid is a witness that you've identified in your motion.

Q. It's my understanding that Ms. Kincaid testified at the motion to suppress; is that correct, [defense counsel]?

[DEFENSE COUNSEL]: Yes, she testified at the motion to suppress, Judge.

Q. And her testimony is included in the transcript for me to review?

[DEFENSE COUNSEL]: It is, Judge.

Q. All right.

A. She testified during the reconsideration not during the actual motion.

Q. During the motion to reconsider?

A. She testified during the motion to reconsider.

Q. And Judge Rhodes considered her testimony?

A. I guess."

¶ 50 The trial court stated it would consider defendant's arguments. It later found, in pertinent part,

"Defendant has also filed a Petition for a *Krankel* Hearing. I have had an opportunity to read his entire motion, including all of the attachments, and again I have indicated that I have read the motions that were held before Judge Rhodes. Basically, this is a *Strickland* analysis in that the attorney's conduct falls below the standards that are required, therefore, prejudicing the defendant.

As it relates to the Motion to Quash, after reading both the filed motions, as well as the transcripts, I find that defense counsel filed the appropriate motions, that the appropriate witnesses were called, there was cross-examination of those witnesses, and that the appropriate legal arguments were heard and presented before the Court.

The defendant does not have a *bona fide* claim of ineffective assistance of counsel as he repeatedly misstates the law in his motion for a *Krankel* hearing. The fact that [defendant] is quote, unquote, upset or disturbed or doesn't like the outcome of the motion is not a basis for ineffective assistance of counsel.

* * *

Therefore, I find that the defendant did not have ineffective assistance of counsel. I find the complete opposite, that [defense counsel] was, in fact, effective at trial, and that he performed with the standards that are required.

Therefore, the Petition for a *Krankel* Hearing will also be denied."

¶ 51 Defendant argues that the trial court's *Krankel* hearing was inadequate because it did not question defense counsel about why Renossa was not called as a witness, either at the suppression hearing or at trial. Defendant further contends that had Renossa been called to testify, she would have cast doubt on Weeden's credibility and thus undermined his testimony of the events. We disagree. A trial court is not required to always question defense counsel. See *Moore*, 207 Ill. 2d at 78 (with respect to a trial court's *Krankel* hearing, "a brief discussion between the trial court and the defendant may be sufficient"). In our view, the trial court conducted an adequate *Krankel* hearing by questioning defendant and reviewing the transcripts from the suppression hearing. Further, the decision to call certain witnesses at trial is a matter of trial strategy and is generally immune from ineffective assistance of counsel claims. *People v. Wilborn*, 2011 IL App (1st) 092802, ¶ 79. Here, Kincaid testified at the suppression hearing that she opened the door for the police to "casually" come inside. Defendant alleged at the *Krankel* hearing that Renossa would testify that "she wouldn't have gave no [*sic*] consent for the officers to enter my house." Given these facts, trial counsel's decision not to call Renossa at the suppression hearing or at trial is reasonable because her alleged testimony is refuted by Kincaid. As Kincaid specifically stated she opened the door for police to enter, Renossa's potential testimony that "she wouldn't have gave no [*sic*] consent for the officers to enter my house" is not relevant to whether Weeden was allowed to enter the home. Defendant's argument fails.

¶ 52 For the reasons set forth above, we affirm the judgment of the circuit court of Cook County.

¶ 53 Affirmed.