2019 IL App (2d) 160477-U
No. 2-16-0477
Order filed January 24, 2019

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS, Plaintiff-Appellee, v. ROOSEVELT T. YANKAWAY, Defendant-Appellant.	))))))))))	Appeal from the Circuit Court of Kane County. No. 15-CF-231 Honorable Linda Abrahamson, Judge, Presiding.

PRESIDING JUSTICE BIRKETT delivered the judgment of the court.
Justices Hutchinson and Zenoff concurred in the judgment.

ORDER

¶ 1 *Held*: Defense counsel was not ineffective for failing to object to certain testimony, as letting the testimony pass without highlighting it was a reasonable strategy.

¶ 2 Defendant, Roosevelt Yankaway, appeals from his conviction of residential burglary (intent to commit theft) (720 ILCS 5/19-3 (West 2014)), asserting that counsel was ineffective when she failed to contemporaneously object to testimony by a State's witness that suggested defendant's involvement in previous burglaries, a disclosure that defendant asserts violated the court's ruling on a motion *in limine*. We hold that counsel's decision to stay silent, which she explained to defendant as based on her desire to avoid drawing attention to the testimony, was

reasonable trial strategy. We thus reject defendant's ineffective-assistance-of-counsel claim and therefore affirm his conviction.

¶ 3 I. BACKGROUND

¶ 4 Defendant was indicted on a single count of residential burglary. An investigation by the Aurora police concluded that defendant was the person who had broken down the front door at 1017 Kane Street in Aurora on December 29, 2014; defendant was charged accordingly. Defense counsel moved to bar the State from introducing evidence of defendant's prior convictions, particularly his conviction of burglary in a 2010 case and residential burglary in a 2011 case. The court ruled that the 2010 burglary conviction, among others, would be admissible for impeachment if defendant testified, but that the convictions were not otherwise admissible. Defendant had a jury trial. Identity was the primary issue; that a burglary occurred was not significantly in dispute.

¶ 5 Jocelyn Quiroz, the State's first witness, lived at 1017 Kane Street in Aurora and was at home on December 29, 2014, when the break-in occurred. At about 8 a.m., she heard knocking at both the front and back doors of the house. She ignored it, hoping that whoever was doing it would leave. Eventually, the knocking stopped. About three hours later, the knocking started again, but louder and at the front door only. She again ignored it, but this time she heard a "loud boom and then the door flying open and hitting the wall." She next heard noises that she interpreted as someone breaking into her uncle's room on the first floor. She stayed where she was—in a loft bedroom at the top of the stairs—until she heard footsteps coming up the stairs. She went to the "edge of the stairs" and looked down. She saw an "African-American" in "a black hoodie *** and washed-out jeans" crawling up the stairs. As the intruder reached the top

of the stairs, she made eye contact with him. He looked "surprised" and ran down the stairs. She called the police immediately. She was alone in the house when the police arrived.

¶ 6 Quiroz could not remember the intruder's facial features and could not pick anyone out of photo line-ups in two attempts on separate days. However, she gave a detailed description of the intruder's clothing, particularly his jeans. She estimated that the intruder was in the house for two to three minutes and that she had seen him for five seconds.

¶ 7 Quiroz's family members testified that the front door was broken out of its frame and that the door of a first-floor bedroom also had been forced. Three hundred dollars in cash, intended for rent, was missing from that bedroom.

¶ 8 The State, through the testimony of several witnesses, introduced a video recording from a home security camera that showed the break-in and surrounding events. The recording came from a camera owned by Miguel Madrigal, who lived in an apartment at 1012 Kane Street, across the street from 1017 Kane Street. The apartment had several security cameras, including one that pointed at 1017 Kane Street and one that pointed up the street. The recording, which is of poor quality, apparently shows a person dressed as Quiroz described. He initially stands outside the door of 1017 Kane Street. He crosses the street and gets into a red minivan. Later, someone who appears to be identically dressed crosses back and breaks down the door of 1017 Kane Street. A few minutes later, someone, apparently the same person, runs out the front door and down the street.

¶ 9 The State relied on the testimony and prior inconsistent statements of Mustafa Ali, who witnessed the break-in from across the street, to identify defendant as the intruder. Ali was on mandatory supervised release (MSR) when the Aurora police interviewed him, but not when he testified. He knew defendant and directly implicated him in his statements to the police, but he

testified that he felt that he had to implicate defendant to avoid being treated as a suspect. The court admitted as substantive evidence a video recording of Ali's February 4, 2015, statement to the police.

¶ 10 In the recording, Ali agreed that he lived at 1018 Kane Street and that he had come to the police station voluntarily to make the statement. He said that, sometime between noon and 3 p.m. on December 29, he and his girlfriend returned to their home in Ali's red minivan. As he drove in, he noticed two people standing across the street, near the house at 1017 Kane Street. One was on the sidewalk and one was near the door. Ali recognized the person at the door as "Roosevelt Yankaway," and he thought that the person on the sidewalk was someone he knew as "Red." He said that, when he first spoke to the police, he had been confused about the legal names of individuals whom he knew by their nicknames and had incorrectly used the name "Donte" for defendant. After Ali parked the minivan in the driveway, he got defendant's attention by honking the horn, and defendant came over and got in the minivan. The two talked casually for a few minutes. Defendant declined an invitation to come into the house to talk more, saying that he needed to leave to do something else. Ali told him that he could not stay in the minivan. Defendant went left, heading toward a cross street, and Ali went into his house. Ali next saw defendant about five minutes later; Ali was looking out his front window when he saw defendant come into view from behind the house across the street. Ali agreed that defendant was wearing the same clothing he had been in before. Defendant approached the door of the house and kicked it in. He entered, and came out in "20, 30 seconds tops," and ran away down the street.

¶ 11 Toward the end of the recording, Ali viewed a photo lineup; he identified defendant as "Roosevelt Yankaway" and specifically stated that the person pictured was the person who

kicked down the door. The police showed Ali another photograph separately, and he identified it as depicting Donte Yankaway, defendant's brother.

¶ 12 Ali's testimony largely matched his police statements until he described what happened after defendant left Ali's minivan. He had known defendant for years, but was friends with defendant's brother Dante (or Donte). Defendant was "good people." Ali agreed that he had identified defendant as the "Roosevelt Yankaway" of his statement, but he denied that he had seen defendant after they spoke in the minivan. Although Ali agreed that he had told the police that defendant had kicked in the door, he testified that he had seen someone other than defendant do it. Although he had told the police that he had had a good view of the forced entry, he testified that he had not had a clear view of it. He agreed that he had told the police that defendant had been wearing the same clothing when he talked with Ali and when he broke into the house. However, he testified that he had not taken note of what defendant was wearing when he talked to him and could not say that the intruder and defendant were in the same clothing. He testified that he had picked defendant out of a photo line-up, but claimed that he had identified him only as the person who came over to him in his minivan. However, he then stated that he had identified the person he "thought kicked in the door."

¶ 13 Defendant's claim that counsel was ineffective arises out of counsel's non-reaction to a portion of the testimony of Officer Nikole Petersen of the Aurora police. Petersen was assigned to Aurora's "Community Orienting [*sic*] Policing" unit; her assignment was to be "in charge of an area in a district, and then *** in charge of what the problem is that day." Petersen's area included the houses on Kane Street. The State asked Petersen about her prior assignments; she responded, "I've been assigned to the burglary task force, patrol, dispatch, and then cadet before

that." When the State asked her what she knew about defendant, the following exchange occurred:

"Q. Do you know an individual by the name of Roosevelt Yankaway?

A. I do.

Q. And how do you know that individual named Roosevelt Yankaway?

A. Previous calls for service and other burglaries in my area.

Q. Not going into burglaries, but do you know him from every gambit from a witness, from calls for help, from everything under the sun as a police officer?

A. Yes.

Q. Approximately how many times have you come into contact as a police officer with the person that you know to be Roosevelt Yankaway?

A. Several.

Q. More than 5, more than 10, more than 3, more than 20? What's 'several'?

A. More than five.

Q. And has that been in summertime, wintertime, all seasons?

A. Yes.

Q. And in your contacts with Roosevelt Yankaway, do you know him to have any nicknames or monikers?

A. Yes.

Q. What nicknames or monikers is the person you know to be Roosevelt Yankaway?

A. Little Bud or Bud."

Petersen stated that defendant was generally known just as "Bud." The State rested after a brief redirect examination of Petersen.

¶ 14 Defendant called only one witness, an officer who had testified earlier. She testified that she was aware of other security cameras nearby but did not seek out recordings from them. The defense rested after that testimony.

¶ 15 The State called a single rebuttal witness, another Aurora police officer, who testified that he had made an unsuccessful attempt to get video from the resident of another house that had a security camera facing the street.

¶ 16 The State's closing argument focused on the video evidence. It said that it was obvious from the video that the person who had gotten into Ali's minivan was the same person who had kicked in the door and that Ali had surely known who had been in his minivan with him. It argued that Ali had changed his story because he was no longer on MSR. It did not suggest that defendant had been a suspect in prior burglaries.

¶ 17 The jury found defendant guilty of residential burglary.

¶ 18 Defendant then filed a *pro se* motion asking the court to find that counsel had been ineffective for, among other things, failing to object to the part of Petersen's testimony that linked her familiarity with him to burglaries in the neighborhood. The trial court addressed the circumstances as governed by *People v. Krankel*, 102 Ill. 2d 181 (1984), and its progeny. Accordingly, the court spoke to defendant directly to determine the nature of his complaints. Defendant told the court that he thought that Petersen's testimony had been extremely prejudicial, but that counsel had told him that she thought that calling attention to Petersen's testimony would have made things worse. The court found that counsel's actions were

acceptable trial strategy and declined to appoint conflict counsel to further address defendant's claim.

¶ 19 Defendant, through trial counsel, filed a posttrial motion arguing, among other things, that Petersen's testimony violated the pretrial evidentiary ruling. Counsel argued that the entire structure of the defense she had planned had been based on avoiding having the jury become aware of defendant's prior burglary convictions and that Petersen's testimony improperly interfered with the counsel's strategic choice.

¶ 20 The court ruled—primarily—that Petersen's testimony did not violate the pretrial order:

> "[Petersen] did testify that she was acquainted with him. She knew the defendant based on previous calls for other burglaries and that she had met him more than about five times.
>
> She did not testify that the defendant was ever arrested or charged with anything, but simply previous calls on other burglaries. And I don't think that that testimony in and of itself, when compared with the additional evidence in this case, would have been outcome determinative."

The court thus denied the motion for a new trial. After the court sentenced defendant and denied defendant's postsentencing motion, defendant timely appealed.

¶ 21 II. ANALYSIS

¶ 22 On appeal, defendant argues that counsel was ineffective for failing to object to Petersen's testimony that she knew defendant due to " '[p]revious calls for service and other burglaries in [her] area.' " He asserts that, because "there were no factual findings by the trial court, the issue is subject to a *de novo* standard of review."

¶ 23 The State responds first that Petersen's testimony was not clearly inadmissible; second, that declining to object to the testimony was sound trial strategy; and third, that, because of the strength of the State's evidence, an objection could not have affected the outcome of the trial, so that defendant suffered no prejudice from counsel's choice.

¶ 24 We hold that defense counsel's decision to allow Petersen's testimony to pass without objection was not so unreasonable as to fall outside the presumption that decisions by defense attorneys are proper trial strategy. We note that, despite the *Krankel* proceedings in the trial court, both parties treat defendant as raising for the first time on appeal a claim of ineffective assistance, so we do not consider the court's *Krankel* ruling in our analysis. Moreover, as the State does not contest the *de novo* standard of review urged by defendant, we give defendant the benefit of that standard.

¶ 25 To succeed on a claim of ineffective assistance of counsel, a defendant must present evidence to satisfy *both* prongs of the standard set out in *Strickland v. Washington*, 466 U.S. 668, 687 (1984). Thus, a defendant must show (1) that counsel's performance was deficient and (2) that the deficient performance prejudiced the defendant. *Strickland*, 466 U.S. at 687. A court decides whether the performance of a defendant's attorney was deficient by using an objective standard of competence grounded in prevailing professional norms. *People v. Richardson*, 189 Ill. 2d 401, 411 (2000). To establish that counsel's performance was deficient, a defendant "must overcome the strong presumption that the challenged action or inaction might have been the product of sound trial strategy." *Richardson*, 189 Ill. 2d at 411. In particular, a failure to object to specific testimony "may be a matter of sound trial strategy, and does not necessarily establish deficient performance." *People v. Evans*, 209 Ill. 2d 194, 221 (2004).

¶ 26 When defendant asked the trial court to find that defense counsel was ineffective for failing to object to Petersen's testimony tying defendant to other burglaries, the trial court concluded that that decision had been a matter of trial strategy. Although our analysis here is independent of the trial court's, we agree with that conclusion. Initially, we note that Petersen's testimony reflected a failure on the State's part to prepare its witnesses to avoid improper testimony. See, *e.g.*, *People v. Boling*, 2014 IL App (4th) 120634, ¶ 122 (the State has the responsibility to prepare its witnesses adequately to ensure that they do not volunteer improper testimony). Moreover, the State's attempt to change the direction of Petersen's testimony—"Not going into burglaries, but do you know him from every gambit from a witness, from calls for help, from everything under the sun as a police officer?"—likely served only to reemphasize the association between defendant and area burglaries. However, an objection, even if the court granted it, would have highlighted the testimony in the jurors' minds. Thus, defense counsel might reasonably have concluded that the best thing for defendant would be for the testimony to move on to another subject. See *Evans*, 209 Ill. 2d at 221. Moreover, the testimony was sufficiently vague that defense counsel could not be expected to determine on the spot that the best hope for an acquittal was in preserving the error in the hope of getting defendant a new trial. Counsel could have reasonably hoped that, if the testimony passed without comment, the jury would not draw the inference that Petersen had encountered defendant as a burglary *suspect*. Counsel's performance thus was not deficient. As a successful claim under the *Strickland* standard requires that a defendant show both deficient performance and prejudice *from counsel's deficient performance* (*Strickland*, 466 U.S. at 687), our holding that counsel's performance was not deficient is dispositive. As we find no deficient performance by counsel, we need not address whether defendant suffered prejudice from counsel's deficient performance

¶ 27 Defendant argues that, because defense counsel could have avoided drawing attention to Petersen's testimony by asking for a sidebar before objecting, the failure to object could not have been reasonable trial strategy. We disagree. Asking for a sidebar would have left the jury to contemplate Petersen's words while defense counsel addressed the court. Had defense counsel chosen to object, her best choice likely would have been to do so quickly and with no explanation, thus depriving the jury of time or grist for speculation. However, as we stated, we deem that counsel could have reasonably concluded that no objection was preferable. Counsel should not have been faced with this dilemma, but, faced with it, her actions were consistent with professional norms.

¶ 28 III. CONCLUSION

¶ 29 For the reasons stated, we hold that defendant did not receive ineffective assistance of trial counsel, and we thus affirm the judgment of the circuit court of Kane County. As part of our judgment, we grant the State's request that defendant be assessed $50 as costs for this appeal. 55 ILCS 5/4-2002(a) (West 2016); see also *People v. Nicholls*, 71 Ill. 2d 166, 178 (1978).

¶ 30 Affirmed.