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2015 IL App (3d) 140571-U

Order filed September 1, 2015

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

A.D., 2015

THE PEOPLE OF THE STATE OF)	Appeal from the Circuit Court
ILLINOIS,)	of the 10th Judicial Circuit,
)	Tazewell County, Illinois,
Plaintiff-Appellee,)	
)	Appeal No. 3-14-0571
v.)	Circuit No. 00-CF-302
)	
ALAN W. BREEDLOVE,)	Honorable
)	Michael E. Brandt,
Defendant-Appellant.)	Judge, Presiding.

JUSTICE HOLDRIDGE delivered the judgment of the court.
Justices O'Brien and Wright concurred in the judgment.

ORDER

- ¶ 1 *Held:* The trial court's denial of the defendant's third-stage postconviction petition was not manifestly erroneous where the defendant did not make a substantial showing that he received ineffective assistance of counsel.
- ¶ 2 A jury trial found the defendant, Alan W. Breedlove, guilty of first degree murder (720 ILCS 5/9-1(a)(1) (West 2000)). The trial court sentenced the defendant to 50 years of imprisonment. On direct appeal, we affirmed the defendant's conviction and sentence. *People v.*

Breedlove, 342 Ill. App. 3d 924 (2003), *aff'd*, 213 Ill. 2d 509 (2004). Thereafter, the defendant filed a *pro se* postconviction petition, which the trial court dismissed at the first stage. The defendant appealed, and we remanded the case for postconviction counsel to review the defendant's *pro se* petition and file any necessary amendments. *People v. Breedlove*, No. 3-08-0082 (2010) (unpublished order under Supreme Court Rule 23).

¶ 3 On remand, postconviction counsel filed an amended petition. At the second stage of proceedings, the trial court granted the State's motion to dismiss the amended petition. On appeal, we found that the defendant had made a substantial showing of ineffective assistance of counsel and remanded the case for an evidentiary hearing. *People v. Breedlove*, 2013 IL App (3d) 110765-U.

¶ 4 On the second postconviction remand, the trial court held an evidentiary hearing on the defendant's petition. After receiving evidence from the parties, the trial court denied the defendant's petition. On appeal, the defendant argues that the trial court's ruling was manifestly erroneous because he made a substantial showing that he received ineffective assistance of trial counsel. We affirm.

¶ 5 **FACTS**

¶ 6 On the morning of April 26, 2000, the defendant and his former wife, Valerie Rakestraw, were in Valerie's apartment when a fire broke out. The defendant was pulled from the fire through the south door of the apartment. The defendant incurred burns to his face, arms, and torso, and had cuts on his inner forearms and neck. A badly burned body, later identified as Valerie, was found near the north door. Valerie had been stabbed multiple times in the chest and back. A hunting knife was found next to her body.

¶ 7 On June 2, 2000, the defendant was charged by a five-count bill of indictment with Valerie's murder. On June 23, 2000, the court appointed public defender Dean Hamra to represent the defendant at trial. On February 20, 2001, in response to the defendant's request for another attorney, the public defender's office assigned John Lonergan to assist Hamra. On May 22, 2001, the defendant's jury trial began.

¶ 8 At trial, the State's evidence showed that Valerie and her new husband, John Rakestraw, were married 34 days prior to her death. John and Valerie lived in an apartment next to Valerie's son, Jeff Breedlove. Valerie had two adult children, Jeff and Brent Breedlove, whom had been adopted by the defendant in their youth. Valerie and the defendant had been divorced twice. Even after Valerie married John, Valerie and the defendant continued to speak on the telephone and visit each other.

¶ 9 Jeff had worked for John for five years, and they drove to work together. On the morning of Valerie's death, John and Jeff left for work together at 6:30 a.m. Valerie, who went to work at 7 a.m., was at home when they left. At 6:40 a.m., John and Jeff passed the defendant, who was driving in the opposite direction. Jeff learned of Valerie's death a few minutes after 7 a.m.

¶ 10 Christopher Sprague testified that on April 26, 2000, a little before 7 a.m., he approached the south door of Valerie's apartment to serve papers on her concerning medical bills. He also had papers to serve on the defendant. As Sprague approached the apartment, he heard a man and woman yelling. Sprague knocked on the door and waited for Valerie to answer. The defendant opened the door 12 inches and stood with the left side of his body outside the door. Sprague explained that he was serving papers on Valerie. Sprague heard a woman's voice asking for help. The defendant grabbed the papers and slammed the door shut. Sprague returned to his car

and called 911. A few moments later, Sprague saw smoke coming out of the northeast window of Valerie's apartment.

¶ 11 John testified that in the days leading up to Valerie's death, the defendant told John that he visited Valerie every morning. Neither John nor Valerie owned any sort of a hunting knife.

¶ 12 Brent testified that the knife found at the scene looked like the knife that the defendant kept on a shelf in his basement. Brent last saw the knife in April 1999.

¶ 13 Forensic pathologist Dr. Travis Hindeman testified that he conducted an autopsy on Valerie's body. Hindeman concluded that Valerie died from multiple stab wounds. The wounds were inflicted before the fire, and they were consistent with the blade of the hunting knife found next to Valerie's body. After reviewing photographs of the defendant's cuts, Hindeman opined that the cuts on the defendant's arms and neck were self-inflicted.

¶ 14 The defendant did not testify for the defense. Bankruptcy attorney Gary Rafool testified for the defense that Valerie and the defendant had met with him the day before Valerie's death, and they appeared to get along.

¶ 15 On May 24, 2001, the jury convicted the defendant of first degree murder. The trial court sentenced the defendant to 50 years of imprisonment. On direct appeal, the defendant claimed that he was not properly admonished pursuant to Illinois Supreme Court Rule 605(a) (eff. Oct. 1, 2001). We affirmed the judgment of the circuit court, reasoning that the defendant was admonished in compliance with the version of Rule 605(a) that was in effect at the time he was sentenced. *Breedlove*, 342 Ill. App. 3d 924.

¶ 16 The defendant filed a *pro se* postconviction petition and was appointed postconviction counsel. Postconviction counsel certified that his suggested amendments had been rejected by the defendant and did not file an amended postconviction petition. The trial court granted the

State's motion to dismiss the petition. On appeal, we remanded the case with directions for postconviction counsel to review the defendant's *pro se* petition and file any necessary amendments. *Breedlove*, No. 3-08-0082.

¶ 17 On remand, postconviction counsel filed an amended petition that alleged, *inter alia*, that Hamra had been ineffective in several respects. In support of his claims, the defendant alleged:

"Before, during, and after Mr. Hamra's representation of the defendant, Mr. Hamra was engaged in various unethical and illegal activities. Mr. Hamra subsequently was convicted of felony theft *** and as a result of [disciplinary] proceedings, Mr. Hamra is no longer authorized to practice law in the State of Illinois."

The petition was supported by several exhibits, which included: (1) Hamra's investigation of several individuals whom the defendant thought were possibly involved in the murder; (2) a police report of an interview with the defendant's treating physician, Dr. Milner, who told the police that the lacerations on the defendant's arms and neck were self-inflicted; (4) a report from the Illinois fire marshal which stated that a fire occurred in the defendant's basement in September 1999 and caused "much burning to shelves"; and (4) a letter from Lonergan in which Lonergan said that he would have said or done something if Hamra prevented the defendant from testifying.

¶ 18 The trial court granted the State's motion to dismiss the amended petition, and the defendant filed a notice of appeal. On appeal, we found that the defendant made a substantial showing that he had received ineffective assistance of trial counsel. *Breedlove*, 2013 IL App (3d) 110765-U. We remanded the case for an evidentiary hearing on the issue of whether the defendant was denied effective assistance of trial counsel. *Id.*

¶ 19 On remand, the trial court held an evidentiary hearing on the defendant's postconviction claim of ineffective assistance of counsel. The defendant's father, Wayne Breedlove, testified that on August 24, 2000, and January 31, 2001, Hamra called him and demanded an additional \$25,000 to pay for investigation and other expenses. Hamra said, that without the money, he would do little for the defendant because he could not afford to waste his time for the amount of money that the county was paying him. During both calls, Wayne told Hamra that he did not have the money.

¶ 20 Bobby Henderson testified that, in 2000, he was the sergeant of investigation for the Tazewell County sheriff's department. While investigating the defendant's case, Henderson interviewed Dr. Anthony Firilas about the defendant's injuries. Firilas said that "there was no way to tell if [the defendant's neck injury] was self-inflicted or not." Firilas had no knowledge of the injuries to the defendant's arms. Postconviction counsel offered an affidavit from Firilas into evidence. Firilas' affidavit corroborated Henderson's testimony.

¶ 21 The defendant testified that he was represented at trial by Hamra and Lonergan. Wayne told the defendant about Hamra's demand for payment and that the family was unable to pay the \$25,000. The defendant understood that without the money, Hamra would not be able to provide a proper defense. Thereafter, the defendant wrote a letter to the head public defender, John Bernardi. Bernardi responded that the Tazewell County public defender's office did not have the funds to replace an attorney at will, but he appointed Lonergan as co-counsel on the case. During the case, Hamra did not tell the defendant that he was being investigated for engaging in unethical or illegal activities.

¶ 22 Each time the defendant met with Hamra, the defendant said that he wanted to testify at trial. Hamra told the defendant "if [he] persisted and [kept] asking him, that he would get up,

and leave, and [the defendant] could represent [himself]." The defendant did not want to represent himself, but continually reminded Hamra that he wanted to testify during the trial. On the morning of the trial, the defendant reminded Hamra that he wanted to testify. During the trial, Hamra had Lonergan sit between himself and the defendant.

¶ 23 The defendant intended to testify that he got along with Valerie after the two divorced, and he visited Valerie nearly every day before he went to work. During these visits, Valerie and the defendant ate breakfast and occasionally had sex.

¶ 24 The day before the murder, Valerie and the defendant met with Rafool to discuss filing for bankruptcy. In the evening, the defendant had some drinks at a bar. Around 9 p.m., the defendant returned home where he snorted and smoked cocaine for the rest of the night. The defendant acknowledged that he was a "very bad" drug user, and he used cocaine and opiates nearly every day.

¶ 25 On the morning of April 26, 2000, the defendant drove to Valerie's apartment. The defendant saw a dark green Ford Explorer parked in an alley near Valerie's building. The defendant also noticed that the trunk of Valerie's car was open and the backdoor to the apartment was cracked open. The defendant entered the apartment and yelled for Valerie. Valerie yelled to the defendant not to come in. The defendant noticed that Valerie sounded very excited and scared. The defendant saw Valerie arguing with a black male. Three other black males shoved the defendant into the kitchen. The defendant identified one of the men as "Junebug." Junebug socialized with Eddie McCoy. The defendant had previously driven a truck for McCoy. All the men socialized at a garage that was owned by Terry Edwards. The defendant had previously hauled loads for Edwards. The men wanted to know where the drugs and items that the defendant had stolen out of McCoy's truck were located. The defendant told the men that he did

not have their drugs or money, and a short male, who carried a gun and a knife said, "[y]ou'll come up with it or we'll make sure you never take any again." At that point, the defendant heard a knock at the door. The defendant partially opened the door and saw Sprague. The defendant grabbed the papers that Sprague was serving on Valerie but did not attempt to leave because the man with the knife and gun was standing near him. Instead, the defendant attempted to indicate to Sprague, through eye contact, that he needed help. Eventually, the other men forced the door shut. Someone then hit the defendant in the head and another individual cut the side of his neck. The defendant fell to the floor and the men kicked and hit him. The defendant heard the victim yell for help, and he was unable to get up. The defendant noticed that the apartment was filling with smoke, and he was pulled outside. The defendant did not know who started the fire.

¶ 26 After the fire, the defendant was transported to a hospital in Springfield for treatment. At the hospital, the defendant was placed in a drug-induced coma, and as a result, he initially had little memory of Valerie's murder. However, by the day of the trial, the defendant was able to recall the events of April 26, 2000, and told them to Hamra.

¶ 27 The defendant also said that he did not own the knife that was admitted into evidence. In the past, the defendant owned some fillet knives and a hunting knife; however, in September 1999, the knives were destroyed in an electrical fire. The defendant used the insurance proceeds from the fire to purchase a new tackle box and fillet knife. The defendant did not buy another hunting knife. The fire marshal's report was attached as an exhibit to the defendant's postconviction petition. The report stated that the fire was contained to the basement and there was "much burning" to some shelves.

¶ 28 The defendant explained that he never told the court about his problems with Hamra because Hamra promised to call a number of witnesses on the defendant's behalf and indicated

that the defendant was going to testify. The defendant believed Hamra, and he remembered that the court did not ask the defendant about his decision not to testify.

¶ 29 On cross-examination, the defendant said that, on the day of the trial, Hamra told the defendant that he would not testify. The defendant's memory was "very clear on the day of trial."

¶ 30 The defendant spoke with Dr. Robert Chapman in August 2000. The defendant did not remember telling Chapman that he had no memory of the events leading up to Valerie's murder, and he thought that Chapman misunderstood his statements. The defendant also remembered that during sentencing he said "[a]lthough I don't remember a thing that happened on that terrible day, I am very sorry she is gone." The defendant made the statement because he had given up hope, and he knew that his only chance was on appeal.

¶ 31 The State also asked the defendant about some interviews that the sheriff's investigator, Henderson, had conducted at defense counsels' request. The defendant said the interviews were derived from an "enemies list." The defendant thought that Henderson spoke to all the individuals on the list, but noted that Henderson's investigation was "very minimal." The list did not include anyone named "Junebug," but included Edwards and McCoy.

¶ 32 The State called Hamra to testify. Hamra did not know Wayne, and he did not ask Wayne for \$25,000 to pay for an investigation needed to properly defend the defendant's case.

¶ 33 Prior to trial, Hamra had a conversation with the defendant regarding his right to testify. Hamra noted:

"[w]e discussed it, and at that time, [the defendant] was unable to remember anything that occurred at that time—and Mr. Lonergan and I spoke with him. We all came to the conclusion that we were not going to put him on the stand."

The defendant did not object to Hamra's decision, and during the trial, Hamra did not tell the defendant that he would not defend the defendant if he elected to testify. Hamra thought that, at trial, the defendant sat between him and Lonergan because he remembered turning to his right to speak with the defendant. Hamra did not learn of the defendant's version of events until the postconviction hearing.

¶ 34 Hamra also acknowledged that he had been convicted of felony theft and was no longer a licensed attorney.

¶ 35 On cross-examination, Hamra said he requested assistance from the Tazewell County sheriff's department in investigating 10 to 15 people that the defendant thought could have committed the murder. Henderson provided a report on the defendant's potential suspects and noted that all the individuals were unable to be at Valerie's apartment at the time of the murder or had alibis. Lonergan and Hamra also went to the scene to locate eyewitnesses, but they were unsuccessful.

¶ 36 Hamra recalled that Hindeman was extremely emphatic that the defendant's arm wounds were indicative of suicide.

¶ 37 In a written order, the trial court found that: (1) Wayne and Hamra likely had a conversation concerning Hamra's demand for \$25,000; (2) there was no evidence that Hindeman's determination regarding the defendant's wounds was incorrect; (3) Hamra attempted to investigate a third-party murderer; (4) evidence that the defendant's hunting knife was destroyed in a fire before the murder had little probative value to refute Brent's testimony; and (5) the defendant's testimony that he asserted his right to testify was incredible and defense counsel reasonably would have advised the defendant not to testify because the defendant had no recollection of the events. The defendant appeals.

¶ 38

ANALYSIS

¶ 39

The defendant argues that the trial court erred in denying his postconviction petition after a third-stage evidentiary hearing because the evidence substantially showed that he received ineffective assistance of trial counsel. The State argues that the trial court's ruling was not manifestly erroneous. We agree.

¶ 40

The Post-Conviction Hearing Act (Act) provides a mechanism by which an individual under a criminal sentence can assert that he was convicted as a result of a substantial violation of his constitutional rights. 725 ILCS 5/122-1 *et seq.* (West 2008). The Act provides a three-stage review process for a defendant's petition. *Id.*

¶ 41

The present case involves an appeal from the denial of the defendant's postconviction petition after a third-stage evidentiary hearing. At the third stage, the trial court holds an evidentiary hearing on the petition, and the defendant may present evidence in support of his petition. 725 ILCS 5/122-5, 122-6 (West 2008). The defendant bears the burden of making a substantial showing that his conviction was the result of a violation of a constitutional right. *People v. Pendleton*, 223 Ill. 2d 458, 473 (2006). On appeal from the third-stage denial of a postconviction petition, we review the trial court's factual findings and credibility determinations for manifest error. *Id.* We may not substitute our judgment for that of the trial court, and we will not reverse its decision unless it is clearly evident, plain, and indisputable that the decision was erroneous. *People v. Chatman*, 357 Ill. App. 3d 695, 698 (2005).

¶ 42

The defendant argues that the evidence he presented during the evidentiary hearing substantially showed that he was denied his right to the effective assistance of counsel. The United States and Illinois Constitutions guarantee a criminal defendant the assistance of counsel. U.S. Const., amends. VI, XIV; Ill. Const. 1970, art. I, § 8. This guarantee requires not only that

an accused have the assistance of counsel for his defense, but that such assistance is "effective."
United States v. Cronin, 466 U.S. 648, 655-56 (1984).

¶ 43 To establish ineffective assistance of counsel, the defendant must show that: (1) counsel's performance fell below an objective standard of reasonableness; and (2) there is a reasonable probability that, but for counsel's deficient performance, the result of the proceeding would have been different. *People v. Manning*, 241 Ill. 2d 319, 326-27 (2011) (citing *Strickland v. Washington*, 466 U.S. 668, 694 (1984)). The defendant must satisfy both prongs of the *Strickland* test. *People v. Griffin*, 178 Ill. 2d 65, 74 (1997). However, where the ineffective assistance claim can be disposed of on the ground that the defendant did not suffer prejudice, we need not decide whether counsel's performance was deficient. *Id.* The prejudice component of the *Strickland* test "entails more than an 'outcome-determinative' test." *Id.* "The defendant must show that counsel's deficient performance rendered the result of the trial unreliable or the proceeding fundamentally unfair." *Id.*

¶ 44 I. Ineffective Assistance—Right to Testify

¶ 45 The defendant argues that Hamra provided ineffective assistance in that he prevented the defendant from testifying in his own defense. The defendant contends that the evidence that he informed counsel of his desire to testify was uncontroverted and his testimony had a reasonable probability of changing the outcome of the proceeding. The State argues that the trial court's ruling was not the result of manifest error. We agree.

¶ 46 Initially, we note that "when a defendant contends on appeal that he was precluded from testifying at trial, his conviction cannot be reversed on the basis that he was prevented from exercising that right unless he contemporaneously asserted his right to testify by informing the trial court that he wished to do so." *People v. Smith*, 176 Ill. 2d 217, 234 (1997). A defendant's

waiver of his right to testify is presumed if he fails to testify or notify the court of his desire to do so. *Id.* The trial court has no duty to advise a defendant who is represented by counsel that he has the right to testify or to ensure that an on-the-record waiver has occurred. *Id.*

¶ 47 Here, the trial record does not include an assertion by the defendant of his right to testify. Instead, the defendant testified that he did not assert his right because he believed that Hamra was going to allow him to testify. As a result, the defendant argued that counsel was ineffective for refusing to let him testify.

¶ 48 The issue of whether the defendant was denied the right to testify at trial may be raised by asserting that he received ineffective assistance of counsel. *People v. Whiting*, 365 Ill. App. 3d 402, 408 (2006). To prevail on this argument, the defendant must show that he contemporaneously informed counsel that he wanted to testify at trial. *Id.* at 407. The decision on whether to testify in one's own defense belongs to the defendant, but this decision should be made with the advice of counsel. *Smith*, 176 Ill. 2d at 235. Counsel's advice not to testify is a matter of trial strategy that does not amount to ineffective assistance unless the evidence suggests that counsel refused to allow the defendant to testify. *People v. Youngblood*, 389 Ill. App. 3d 209, 215 (2009). A postconviction proceeding allows a defendant to introduce evidence to prove that he asserted his right to testify, but counsel impeded the defendant from taking the witness stand. See *id.* at 218 (explaining the difference between asserting ineffective assistance based on refusal to allow a defendant to testify on direct appeal versus a postconviction proceeding).

¶ 49 During the evidentiary hearing, the defendant testified that he told Hamra that he wanted to testify at trial, and he believed that he would be allowed to testify. Hamra did not call the defendant to testify, and according to the defendant, threatened to withdraw, if the defendant testified. Hamra's testimony refuted the defendant's recollection. Hamra recalled that he

discussed having the defendant testify with Lonergan, and he noted that the defendant could not remember anything that occurred. As a result, Hamra said that "[w]e all came to the conclusion that we were not going to put [the defendant] on the stand." Hamra recalled that the defendant did not object to this strategy. From this evidence, the trial court found that the defendant's testimony was incredible, and based on the defendant's lack of memory, Hamra reasonably recommended that the defendant not testify.

¶ 50 After reviewing the evidentiary hearing and the trial record, we conclude that the trial court was better positioned to determine the witnesses' credibility. Thus, we defer to its determination that the defendant's testimony was not credible. See *People v. Domagala*, 2013 IL 113688, ¶ 34 (at the third stage, it is the trial court's function to determine witness credibility, decide the weight to be given testimony and evidence, and resolve any conflicts in the evidence). In contrast to the defendant's testimony, Hamra's testimony regarding the defendant's right to testify at trial was consistent with the trial record and a letter from Lonergan. As Hamra noted, the defendant had said on the record that he had no recollection of the events surrounding Valerie's murder. Lonergan also said in a letter to the defendant that he would have said or done something if Hamra had prevented the defendant from testifying. Therefore, the trial court's determination was the result of a conflict between the defendant's testimony that he repeatedly asserted his desire to testify and Hamra's recollection that the defendant did not recall the events or assert his right to testify. In light of this evidence, we conclude that the defendant did not substantially show that he made a contemporary assertion of his right to testify at trial, and the trial court's ruling on this issue was not manifestly erroneous.

¶ 51 II. Ineffective Assistance—Failure to Investigate

¶ 52 The defendant argues that Hamra provided ineffective assistance because he did not investigate whether: (1) the defendant's neck wound was self-inflicted; and (2) the fire marshal's record showed that the defendant's hunting knife, which was similar to the murder weapon, was destroyed in a fire before the murder. The State argues that the trial court did not err in finding that Hamra did not provide ineffective assistance for omitting this evidence. We agree.

¶ 53 "Trial counsel has a professional duty to conduct 'reasonable investigations or to make a reasonable decision that makes particular investigations unnecessary.'" *Domagala*, 2013 IL 113688, ¶ 38 (quoting *Strickland*, 466 U.S. at 691). This duty includes an obligation to independently investigate any possible defenses. *People v. Kokoraleis*, 159 Ill. 2d 325, 329 (1994). "Lack of investigation is to be judged against a standard of reasonableness given all of the circumstances, 'applying a heavy measure of deference to counsel's judgments.'" *Id.* at 330 (quoting *Strickland*, 466 U.S. at 691). Where the record shows that defense counsel had reason to know that a possible defense was available, the failure to investigate fully can constitute ineffective assistance of counsel. *Domagala*, 2013 IL 113688, ¶ 38 (citing *Brown v. Sternes*, 304 F.3d 677, 692 (7th Cir. 2002), citing *Jones v. Page*, 76 F.3d 831 (7th Cir. 1996)).

¶ 54 A. Neck Wound

¶ 55 The defendant argues that Hamra was ineffective for failing to discredit the State's expert witness, Hindeman, with evidence from Firilas. Hindeman testified that he examined photographs of the defendant's wounds, and concluded, that the wounds were self-inflicted. In an affidavit, the defendant's treating physician, Firilas, averred that it was impossible to determine whether the defendant's neck wound was self-inflicted. Firilas did not testify during the evidentiary hearing.

¶ 56 Our review of the trial court's third-stage findings is deferential as the court's rulings rest largely on credibility determinations. *People v. Rivera*, 221 Ill. 2d 481, 502 (2006). Giving deference to the trial court, we find that the defendant did not make a substantial showing that he was prejudiced by the omission of Firilas' testimony. Firilas' affidavit did not conclusively establish that the defendant's neck injury was inflicted by another as Firilas averred that it was impossible to determine whether the wound was self-inflicted. This statement was further called into question by Milner's statement to the police, which was attached as an exhibit to the defendant's amended petition. Milner told the police that the injuries to the defendant's arms were self-inflicted, and he thought that the defendant's neck wound was also self-inflicted. As a result, we agree with the trial court that the evidence did not indicate that Hindeman's determination was incorrect. In light of this evidence, we conclude that the trial court's finding that the defendant did not satisfy the prejudice prong of the *Strickland* test was not manifest error.

¶ 57 B. Knife

¶ 58 The defendant argues that he made a substantial showing that Hamra was ineffective for failing to adequately investigate evidence concerning the murder weapon, specifically that the defendant's hunting knife was destroyed in a fire before the murder occurred. Hindeman stated that Valerie died as a result of multiple stab wounds to her chest and back. Hindeman opined that the stab wounds could have been caused by a knife discovered near Valerie. Brent testified that the knife found at the scene looked like the knife that the defendant kept on a shelf in his basement. At the evidentiary hearing, the defendant testified that the knife at the scene was not the knife that he kept on a shelf in his basement. The defendant's knife had been destroyed in an

electrical fire in September 1999, and the fire marshal's report documented that there was a fire in the basement and the shelves were burnt.

¶ 59 As we stated in regards to the evidence pertaining to the cause of the defendant's neck wound, our review of the trial court's third-stage ruling is deferential. *Rivera*, 221 Ill. 2d at 502. The defendant's evidence pertaining to his hunting knife did not have a reasonable probability of altering the outcome as it did not conclusively establish that the defendant's knife was destroyed during the fire. This evidence also could not eliminate the possibility that the defendant acquired another knife prior to the murder. Thus, the defendant did not make a substantial showing that the evidence regarding the prior destruction of his hunting knife had a reasonable probability of altering the outcome of the proceeding. The trial court's ruling was not manifestly erroneous.

¶ 60 CONCLUSION

¶ 61 The judgment of the circuit court of Tazewell County is affirmed.

¶ 62 Affirmed.