2013 IL App (4th) 120633-U

NO. 4-12-0633

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED
November 21, 2013
Carla Bender
4th District Appellate
Court, IL

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from
Plaintiff-Appellee,	)	Circuit Court of
v.	)	McLean County
REGINALD DWAYNE WOODS,	)	No. 07CF176
Defendant-Appellant.	)	
	)	Honorable
	)	Charles G. Reynard,
	)	Judge Presiding.

JUSTICE APPLETON delivered the judgment of the court.
Presiding Justice Steigmann and Justice Knecht concurred in the judgment.

ORDER

¶ 1 *Held*: After inquiring into the factual bases of defendant's *pro se* claims of ineffective assistance of counsel, the trial court found no possible neglect of the case and accordingly declined to appoint new counsel; that decision is not manifestly erroneous, and thus it is affirmed.

¶ 2 In a bench trial, the trial court convicted defendant, Reginald Dwayne Woods, of armed robbery (720 ILCS 5/18-2(a)(1) (West 2006)), armed violence (720 ILCS 5/33A-2(a) (West 2006)), and aggravated battery (720 ILCS 5/12-4(b)(1) (West 2006)). For each of those offenses, the court imposed an extended term of imprisonment: 50 years for armed robbery, 50 years for armed violence, and 10 years for aggravated battery, ordering that the sentences run concurrently.

¶ 3 Defendant appealed. We affirmed the trial court's judgment as modified, and we

remanded the case with directions. *People v. Woods*, 2011 IL App (4th) 100429-U ¶ 4. We modified the 10-year term of imprisonment for aggravated battery by making it a nonextended term of 5 years' imprisonment (*Id.*, ¶ 86), because section 5-8-2(a) of the Unified Code of Corrections (730 ILCS 5/5-8-2(a) (West 2006)) did not authorize an extended term for that offense (*Id.*, ¶¶ 83-84). We further modified the sentence by allowing defendant a credit of $10 against a drug-court assessment of $10. *Id.*, ¶ 86. Finally, we remanded the case with directions to perform a preliminary inquiry into defendant's *pro se* claims of ineffective assistance, as *People v. Krankel*, 102 Ill. 2d 181 (1984), and its progeny required.

¶ 4 On remand, the trial court performed a *Krankel* inquiry and decided that appointing new counsel would be unnecessary. Defendant now appeals from the court's decision not to appoint new counsel. We do not find that decision to be manifestly erroneous. Therefore, we affirm the trial court's judgment.

¶ 5 I. BACKGROUND

¶ 6 A. The Indictment

¶ 7 The indictment had six counts: count I, armed robbery (720 ILCS 5/18-2(a)(1) (West 2006)); count II, armed violence (720 ILCS 5/33A-2(a) (West 2006)); count III, aggravated battery (720 ILCS 5/12-4(a) (West 2006)); count IV, aggravated battery (720 ILCS 5/12-4(b)(1) (West 2006)); count V, unlawful restraint (720 ILCS 5/10-3(a) (West 2006)); and count VI, attempt (first degree murder) (720 ILCS 5/8-4(a), 9-1 (West 2006)).

¶ 8 Because the State *nol-prossed* count VI on March 25, 2008, and because the trial court entered a judgment of conviction only on counts I, II, and IV, the latter three counts are the only ones that need concern us in this appeal.

¶ 9 All three of the counts (counts I, II, and IV) accused defendant of committing offenses on January 29, 2007, in McLean County. Count I charged him with armed robbery (720 ILCS 5/18-2(a)(1) (West 2006)) "in that he knowingly took property, a cell phone, from the person or presence of Jessica Piper by the use of force or threatening the imminent use of force, while armed with a dangerous weapon, a knife."

¶ 10 Count II charged him with armed violence (720 ILCS 5/33A-2(a) (West 2006)) "in that he knowingly[,] while armed with a dangerous weapon, a knife, *** committed the offense of unlawful restraint."

¶ 11 Count IV charged him with aggravated battery (720 ILCS 5/12-4(b)(1) (West 2006)) "in that he knowingly and without legal justification caused bodily harm, cuts to the hands, to Jessica Piper by cutting her with a deadly weapon, a knife."

¶ 12 B. The Bench Trial (February and March 2008)

¶ 13 1. *Defendant Borrows Piper's Phone in Order To Cancel an "Art Class"*

¶ 14 Jessica Piper (who, in 2001, was convicted of aggravated battery) testified that in the daytime on January 29, 2007, she was outside her apartment when she was approached by a man whom she knew by his street name, "Sky High." This man, as she described him, had a dark complexion and was about 6-feet 1-inch tall. He had "braids and beads" and "was wearing a black coat with a big symbol on the back of it." She identified defendant, in court, as the man.

¶ 15 In January 2007, Piper did not know defendant's actual name, but she was acquainted with him: he was "Sky High." He approached her on this occasion and requested to use her cell phone, purportedly to cancel an art class. She allowed him to use her phone, a T-Mobile cell phone. (Piper told the police that a person named Germaine was present when

defendant requested to use Piper's phone. At trial, however, Piper testified that only she and defendant were present.)

¶ 16 According to a stipulation, signed by both parties, People's exhibit No. 23 was a business record from T-Mobile indicating that on January 29, 2007, at 3:23 p.m., a call was made from Piper's phone number to (309) 828-2860. This was the phone number of Collaborative Solutions Institute (Institute) in Bloomington.

¶ 17 Cheryl Gaines testified she was a counselor at the Institute and that in January 2007, defendant was enrolled in a program at the Institute, the AVERT program. He was in the "domestic violence-abuser group," which met every Monday at 5:30 p.m. Although a court order required him to participate in this program, he called in on January 29, 2007, to say he would miss the session that day. And indeed he was absent that day.

¶ 18 2. *Piper Sells a Bag of Cocaine to Defendant and Then Denies Him a "Front," With Adverse Consequences for Her*

¶ 19 Piper testified that in the evening of January 29, 2007 (later during the same day when defendant requested to use her phone), a white man named Mike and a black man whose name she did not know stopped by her apartment and she let them in and sold them each a bag of crack cocaine. (Piper admitted initially lying to the police by telling them that Mike's name was Jerome. And until the day of trial, she never divulged that she had sold cocaine in her apartment.) The two men smoked the crack cocaine in her apartment while she snorted some cocaine. (Piper admitted lying to the police by telling them she only had smoked cannabis.)

¶ 20 While the two men were still in her apartment, defendant arrived. Piper sold him a bag of crack cocaine as well, which he likewise smoked in her apartment.

¶ 21 After Mike and the unidentified black man finished smoking their cocaine, they asked Piper, " 'Can I get a front?' "—meaning a free bag of cocaine. She told them no. Then defendant begged for a front, offering to leave his wallet as collateral until he fetched the $20. She told him no, also. The three men left, and Piper locked the door behind them and sat down on the couch.

¶ 22 Soon afterward, Piper heard a knock on her door. It was defendant again. As soon as she let him in, he ran into the kitchen and grabbed a knife. He wrapped his arms around her from behind, telling her, " 'Give me that bag,' " and he cut her on the neck with the knife. (Piper admitted lying to the police by telling them that defendant had said, " 'Give me the money' " rather than " 'Give me the bag.' ")

¶ 23 Piper gave defendant a bag of crack cocaine. He had her sit on the couch, and he sat down beside her, telling her, " 'Just don't do nothin' stupid.' " At his direction, she pressed a sock against her neck, to stop the bleeding. He put the knife in his coat pocket and smoked the cocaine he had taken from her by force.

¶ 24 The prosecutor asked Piper:

> "Q. After he smoked the crack, what did he do then?
>
> A. I tried to get away the first time.
>
> Q. What do you mean you tried to get away?
>
> A. I tried to run to the front door and unlock the door, but we was struggling and stuff.
>
> Q. When you struggled, did anything happen to you?
>
> A. I think he cut my hand, like, on the side.

Q. Okay. What do you mean? You think he cut your hand?

A. I think when we were struggling, I believe that he cut my hand right here—(indicating).

Q. Did you have an injury to your hand?

A. Yes."

After this scuffle, defendant pointed the blade of the knife at Piper's eye. She "just settled down" and obeyed his command to sit back down on the couch.

¶ 25 Piper then tried to escape again. She made a dash for the back door of the apartment, but defendant caught her by the hood of her coat, stopping her. She testified: "He had the knife in his left hand, and he made me open the back door to make sure there wasn't nobody out there, and he demanded my phone. That way, I don't call the cops." She handed over to him her T-Mobile cell phone, which she never received back. He prevented her from leaving through the back door.

¶ 26 When defendant went into the bathroom, however, Piper escaped through the front door. Defendant then came out of the apartment, put the knife in his pocket, and told Piper he would get help for her. He went down Washington Street and never returned.

¶ 27 Piper ran through an alley and onto Front Street, where someone called the police and an ambulance. At the hospital, medical personnel closed the cut on her neck with staples.

¶ 28 Piper subsequently identified defendant in a photographic lineup.

¶ 29 3. *Kandase Singletary's Testimony*

¶ 30 Kandase Singletary testified she used to be a friend of Jessica Piper's sister,

Rebecca Piper, and that the two sisters, Jessica and Rebecca, lived in the same apartment building, though not in the same apartment. The evening of January 29, 2007, Singletary visited Rebecca, and as she was leaving Rebecca's apartment, she saw three men, whom she did not know, leaving Jessica's apartment. It was dark out, but Singletary was "pretty sure" all three men were black.

¶ 31 Then Singletary saw one of the three men run back to Jessica's apartment. The prosecutor, Jennifer Patton, asked Singletary:

> "Q. Kandase, you had testified earlier that it was dark outside. Is it possible that the races of the three men could have been different than three black males?
>
> A. Maybe. But I'm pretty sure it was a black man that ran back to her door."

¶ 32 According to Singletary, Jessica opened the door of her apartment slightly, looked to see who it was, let the man in, and closed the door behind him. Soon afterward, Singletary heard Jessica scream. Because Jessica, however, was a habitual ranter and screamer—a "drama queen"—Singletary did not think much of it at the time.

¶ 33 4. *The Police Find the Knife*

¶ 34 The police found the kitchen knife, People's exhibit No. 1, on Washington Street. No fingerprints were on the knife, but the blade appeared to have bloodstains on it. With a swab, the police collected a sample from one of the stains. Buccal swabs also were collected from Jessica Piper and defendant.

¶ 35 5. *DNA Testing of the Knife*

¶ 36 Deborah Minton was a forensic scientist at the Illinois State Police crime laboratory. She testified she had performed tests on the swab taken from People's exhibit No. 1 and that the tests revealed a "mixed DNA profile." The DNA profile turned out to be a combination of two people, one male and the other female. The female profile was the "major profile," and the male profile was the "minor profile." The female profile matched the profile of Jessica Piper. As for the male profile, Minton could say only that defendant could not be excluded as having contributed to that profile. Minton explained that "there were no foreign alleles between Reginald Woods's DNA profile and the multiple genotypes that were present in [the] minor profile." Nevertheless, because Minton was unable to "go to one genotype per locus, *** [she] f[e]ll back and use[d] the words 'he can't be excluded' rather than 'a match.' "

¶ 37 Minton further explained: "In this instance, because of that minor profile was of such a lower intensity, I did a statistical analysis on only seven of the 13 amplified loci. So the statistics of the minor profile were based on those seven loci, only. Approximately 1 in 88 million black, or 1 in 110 million white, or 1 in 640 million Hispanic unrelated individuals cannot be excluded from having contributed to that minor male profile."

¶ 38 6. *The Verdict*

¶ 39 On March 26, 2008, after taking the matter under advisement, the trial court entered a written order finding defendant guilty of count I, armed robbery; count II, armed violence; count IV, aggravated battery based on bodily harm; and count V, unlawful restraint. The court did not enter a conviction on count V, however (the charge of unlawful restraint) given that the charge of armed violence (count II) was predicated on the unlawful restraint. The court found defendant not guilty of count III, aggravated battery based on great bodily harm.

¶ 40 In its order, the trial court found that Jessica Piper was a credible witness and that her identification of defendant as the culprit was credible. Also, the court found that Piper's testimony was corroborated by the physical evidence, the testimony of police officers, Singletary's testimony, and the DNA evidence.

¶ 41 C. Defendant's Letter of March 30, 2008, to the Trial Court

¶ 42 On March 30, 2008, defendant wrote the trial court a letter (filed on April 3, 2008) asking the court to reconsider its guilty verdicts. In his letter, defendant said he had "consistently complained of," and "[had] been subjected to," ineffective assistance of counsel. We quote from his brief in the first appeal: "Mr. Woods's allegations included that counsel had not consulted with him prior to going to trial, that trial counsel had failed to 'acknowledge' that Jessica Piper's sister should have been called where her testimony was 'pivotal' to the defendant's case, and that defense counsel did not hire an expert to 'confirm or deny the State's DNA findings.' "

¶ 43 D. Our Discussion, in the First Appeal, of the Need for a *Krankel* Inquiry

¶ 44 In our decision in the first appeal, we said:

> "Again, the three claims of ineffective assistance are that (1) defense counsel failed to consult with defendant before trial, (2) defendant failed to call Rebecca Piper as a witness at trial, and (3) defense counsel failed to 'hire an expert to "confirm or deny the State's DNA findings." ' The third claim states its factual basis, and it does not show a possible neglect of the case. Defense counsel did not have to hire an expert merely for the sake of hiring

an expert. Unless defense counsel had a reason to question Minton's conclusions, he had no reason to hire a DNA expert.

The other two claims call for some exploration, though, because their factual bases are unspecified. Was a defense omitted at trial because of this alleged failure to consult with defendant before the trial? What would Rebecca Piper have said on the stand, and how does defendant know what she would have said? Maybe she would have testified she saw defendant intercept the real culprit in the hallway and try to wrench the knife out of his hand. One never knows unless one asks—and the trial court did not ask." *Woods*, 2011 IL App (4th) 100429-U, ¶¶ 78-79.

¶ 45 E. On Remand, the Trial Court Performs a *Krankel* Inquiry and Decides Not To Appoint New Counsel

¶ 46 On June 11, 2012, on remand, the trial court performed a preliminary inquiry pursuant to *Krankel*. The court invited defendant to explain his allegations against the appointed trial counsel, John L. Wright, Jr. Defendant replied that Wright had failed to call witnesses who would have been beneficial to the defense, Wright had refused to hire a DNA expert, and Wright had proceeded to trial in spite of defendant's belief that Wright was unprepared. The court requested defendant to further explain his concern that Wright had failed to call witnesses.

¶ 47 Defendant responded that he had read a police report, which recounted a statement that Rebecca Piper had made to the police. Rebecca Piper was Jessica Piper's sister, and according to defendant, Rebecca Piper had made a statement substantially as follows.

Jessica Piper was a drug addict and a prostitute, she was "always into this type of folly," and "they [were] looking for something to happen at any given minute by her being in th[ese] type[s] of actions all the time." Defendant complained that Wright never pursued "issues of other individuals that this victim claimed."

¶ 48 Defendant did not think that Wright had consulted with him on a "positive level," and he regarded Wright's performance as lackadaisical or "in bad faith": "[t]here was nothing whatsoever investigated," and Wright had failed to challenge Jessica Piper's lies, "just let[ting] it roll through." Apropos the failure to investigate, defendant wanted to know why a DNA expert never was hired for him. He believed he was entitled to his own DNA expert.

¶ 49 Wright was present at this hearing, and the trial court invited him to respond. Wright responded simply that he thought his "performance was what was called for," that he had consulted adequately with defendant, and that he had been under the impression that defendant wanted to proceed to trial.

¶ 50 The trial court then explained its evaluation of what it had heard in the *Krankel* inquiry. The court remarked that in the bench trial, both Patton and Wright elicited testimony that Jessica Piper was a drug addict and a prostitute. Therefore, the court reasoned, Rebecca Piper's testimony would have been cumulative and would not have made any difference in the court's evaluation of Jessica Piper's credibility. The court noted it was not uncommon for a client and his or her attorney to disagree about the way in which to proceed at trial; the mere fact of such a disagreement did not equate to ineffective assistance. Because the facts that defendant blamed Wright for failing to elicit actually were elicited, one way or another, in the bench trial, the court found no possible neglect of the case and hence no necessity to appoint new counsel.

¶ 51 This appeal followed.

¶ 52 II. ANALYSIS

¶ 53 A. Standard of Review

¶ 54 As defendant acknowledges, a trial court need not appoint new counsel just because a defendant makes a *pro se* allegation of ineffective assistance. The supreme court has said:

> "New counsel is not automatically required in every case in which a defendant presents a *pro se* posttrial motion alleging ineffective assistance of counsel. Rather, when a defendant presents a *pro se* posttrial claim of ineffective assistance of counsel, the trial court should first examine the factual basis of the defendant's claim. If the trial court determines that the claim lacks merit or pertains only to matters of trial strategy, then the court need not appoint new counsel and may deny the *pro se* motion. However, if the allegations show possible neglect of the case, new counsel should be appointed." *People v. Moore*, 207 Ill. 2d 68, 77-78 (2003).

¶ 55 We will reverse the trial court's decision not to appoint new counsel only if we find the decision to be manifestly erroneous. *People v. McLaurin*, 2012 IL App (1st) 102943, ¶ 41. A decision is manifestly erroneous only if its error is "clearly evident, plain, and indisputable." (Internal quotation marks omitted.) *People v. Morgan*, 212 Ill. 2d 148, 155 (2004).

¶ 56 B. Defendant's Claims of Ineffective Assistance of Counsel

¶ 57 Defendant contends that the trial court committed manifest error by refusing to appoint new counsel to investigate and present his *pro se* allegations of ineffective assistance of trial counsel. For six reasons, defendant contends that the court should have found a "possible neglect of the case" by Wright. *Moore*, 207 Ill. 2d at 78. First, he alleged that Wright had performed no investigation whatsoever, and that allegation was unrebutted in the hearing of June 11, 2012. Second, Wright failed to call Rebecca Piper to testify to her sister's drug addiction. Third, Wright failed to call Rebecca Piper to testify that her sister was a prostitute. Fourth, Wright failed to call Rebecca Piper to testify regarding her sister's general reputation for truthfulness. Fifth, Wright performed no investigation of Rebecca Piper. Sixth, Wright failed to hire a DNA expert. We will consider each of those reasons in turn.

¶ 58 1. *No Investigation Whatsoever*

¶ 59 Defendant claims it was unrebutted that Wright performed no pretrial investigation whatsoever. On the contrary, the transcript of the trial rebuts that allegation. "[T]he 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." *Moore*, 207 Ill. 2d at 79. At trial, Wright repeatedly impeached Jessica Piper with her prior inconsistent statements. Wright could not have done so unless he had performed some pretrial investigation.

¶ 60 2. *Failing To Call Rebecca Piper To Testify to Her Sister's Drug Addiction*

¶ 61 As defendant observes, "[e]vidence of drug addiction is admissible not only to impeach a witness'[s] ability to perceive and recall or testify, but to impeach such witness'[s] honesty and integrity generally." *People v. Kegley*, 227 Ill. App. 3d 48, 54 (1992). Defendant

faults Wright for failing to call Rebecca Piper to testify to her sister's drug addiction, a fact admissible for the purpose of impeachment. According to the trial court, however, such testimony would have been cumulative because the record at trial already revealed that Jessica Piper was a drug addict. Defendant argues the court was mistaken in that respect; the record revealed only that Jessica Piper smoked cocaine on January 29, 2007, not that she was addicted to cocaine.

¶ 62 We grant that, strictly speaking, just because Jessica Piper felt the urge to smoke an addictive drug, cocaine, immediately after selling cocaine to three customers, it does not necessarily follow that she was addicted to cocaine. So, Rebecca Piper's testimony that Jessica Piper was indeed a drug addict would have marginally added something to the defense, if only to confirm what any reasonable trier of fact would have suspected. Defense counsel does not commit neglect, however, by omitting impeaching evidence that, in the context of the evidence already in the record, would be of marginal value. Whether to adduce additional impeaching evidence is a question of trial strategy, and courts are reluctant to second-guess the strategic decisions defense counsel made during the trial.

¶ 63 The supreme court has said:

> "Decisions concerning which witnesses to call at trial and what evidence to present on defendant's behalf ultimately rest with trial counsel. [Citation.] These types of decisions have long been viewed as matters of trial strategy [citation], which are generally immune from claims of ineffective assistance of counsel. [Citation.] This general rule is predicated upon our recognition

> that the right to effective assistance of counsel refers to 'competent, not perfect representation.' [Citation.] Hence, '[m]istakes in trial strategy or tactics or in judgment do not of themselves render the representation incompetent.' [Citation.] The only exception to this rule is when counsel's chosen trial strategy is so unsound that 'counsel entirely fails to conduct any meaningful adversarial testing.' [Citation.]" *People v. West*, 187 Ill. 2d 418, 432-33 (1999).

Omitting Rebecca Piper as a defense witness cannot reasonably be characterized as a " 'fail[ure] to conduct any meaningful adversarial testing.' "

¶ 64 3. *Failing To Call Rebecca Piper To Testify That Her Sister Was a Prostitute*

¶ 65 Defendant faults Wright for failing to call Rebecca Piper to testify that her sister, Jessica Piper, was a prostitute. The trial court believed that this fact, *i.e.*, that Jessica Piper was a prostitute, already was in the trial record; but defendant points out that the court is mistaken: no one testified that Jessica Piper was a prostitute.

¶ 66 There are some old cases holding that a witness can be impeached by evidence that he or she "kept a house of ill fame" (*People v. Bond*, 281 Ill. 490, 499 (1917); see also *People v. Winchester*, 352 Ill. 237, 244 (1933)). Just because defense counsel *can* do something, however, it does not necessarily follow it would be a good idea to do it. Wright had to answer a question of strategy: would it be a good idea to argue to the trier of fact that prostitutes who suffer violent injuries should not be believed because they are prostitutes? Maybe Wright could

have impeached Jessica Piper on the ground that she was a "fallen woman," but he might have sounded like a monocle-wearing patrician in *The Age of Innocence*. Wright could have reasonably decided that was not a winning strategy. His decision is immune from challenge. See *West*, 187 Ill. 2d at 432.

¶ 67 4. *Failure To Investigate Rebecca Piper*

¶ 68 Defendant sees a possible neglect of the case in Wright's failure to "investigate" Rebecca Piper. By "investigating" Rebecca Piper, defendant apparently means interviewing her. Wright did not have to interview her, however, because he already knew from the police report what she would say. Presumably, she told the police everything important that she knew.

¶ 69 5. *The Possibility That Rebecca Piper Could Have Been a Character Witness Against Jessica Piper*

¶ 70 Defendant says: "Rebecca Piper may have been able to testify that the complainant had a reputation for untruthfulness." The operative word here is "may." Speculation does not warrant the appointment of new counsel. *People v. Sucic*, 401 Ill. App. 3d 492, 512-13 (2010). In Rebecca Piper's statement to the police, as recounted by defendant, she never said that Jessica Piper had a reputation for untruthfulness. Rather, she said that Jessica Piper was in this type of folly all the time. In other words, running a crack house has been a perilous occupation for her.

¶ 71 6. *Failing To Hire a DNA Expert*

¶ 72 Even though, in the first appeal, we held that Wright's refusal to hire a DNA expert "[did] not show a possible neglect of the case" (*Woods*, 2011 IL App (4th) 100429-U, ¶ 78), defendant observes that, on remand, "the trial court did not ask counsel about the results of

the State's DNA expert or whether counsel had a reason to question the expert's results."

¶ 73 All the court had to do, though, was "conduct[] an adequate inquiry into the *defendant's pro se allegations of ineffective assistance of counsel*." (Emphasis added.) *Moore*, 207 Ill. 2d at 78. What was defendant's allegation? He did not allege any defect in the State's DNA analysis. All he alleged was that, just in case there was a defect in the State's DNA analysis, Wright should have hired a DNA expert and that his failure to do so was professionally unreasonable. That was the allegation. The court did not have to ask Wright whether he had a reason to question the DNA results if defendant did not even allege any reason to question the DNA results. We are unaware that professional standards require defense counsel to hire an expert to double-check every scientific analysis the State performs in a case, to rule out the mere theoretical possibility of a defect in the analysis. Defendant has cited no authority to that effect.

¶ 74 III. CONCLUSION

¶ 75 For the foregoing reasons, we affirm the trial court's judgment. As part of our judgment, we award the State $50 against defendant as costs.

¶ 76 Affirmed.