2014 IL App (4th) 130133-U

NO. 4-13-0133

FILED
October 10, 2014
Carla Bender
4th District Appellate
Court, IL

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from
Plaintiff-Appellee,	)	Circuit Court of
v.	)	McLean County
COREY RYAN WISSMILLER,	)	No. 12CF80
Defendant-Appellant.	)	
	)	Honorable
	)	Robert L. Freitag,
	)	Judge Presiding.

JUSTICE TURNER delivered the judgment of the court.
Presiding Justice Appleton and Justice Knecht concurred in the judgment.

ORDER

¶ 1 *Held*: Defendant failed to show the State's evidence was insufficient to find him guilty beyond a reasonable doubt and he was denied effective assistance of counsel and a fair trial.

¶ 2 In February 2012, a grand jury indicted defendant, Corey Ryan Wissmiller, with one count of home invasion (720 ILCS 5/12-11(a)(2) (West 2010) (text of section effective July 1, 2011)), one count of mob action (720 ILCS 5/25-1(a)(1) (West 2010)), and one count of criminal trespass to a residence (720 ILCS 5/19-4(a)(2) (West 2010)). After a June 2012 trial, a jury found defendant guilty of all three charges. In August 2012, defendant filed a motion for a new trial. In August 2012, the court denied defendant's posttrial motion and sentenced him to eight years' imprisonment for home invasion to run consecutive to his sentence in another case. In October 2012, defendant filed a motion to reconsider his sentence. After a January 2013 hearing, the court dismissed as untimely defendant's motion to reconsider.

¶ 3 Defendant appeals, arguing (1) the State's evidence was insufficient to prove him guilty beyond a reasonable doubt, (2) the trial court's denial of a continuance to present a witness's testimony denied him a fair trial, and (3) he was denied effective assistance of counsel. We affirm.

¶ 4 I. BACKGROUND

¶ 5 On January 21, 2012, Mark Schiewe, Martin Teresi, Jacob Cousin, and Samuel Dickie all resided at 606 Church Street, Apartment 6, in Normal, Illinois (hereinafter Apartment 6). Schiewe's and Cousin's bedrooms were in the basement of the three-level apartment, and Teresi's and Dickie's bedrooms were on the second floor. Late that night, the four roommates had a party on the main level of the apartment. Defendant and his brother, Caleb Wissmiller, attended the party. At some point, Schiewe's iPod went missing, and the roommates decided to prevent guests from leaving until the iPod was found. While searching for the missing iPod, defendant was involved in a fight. The roommates then decided to allow people to leave. Caleb exited the apartment out the front door, and defendant exited from the back door. After his exit, defendant attempted to reenter the apartment to look for Caleb, but the roommates would not let him. Defendant then punched out the back light fixture of Apartment 6 and a neighbor's window. The police came to Apartment 6 and talked with the roommates. After the police left, Teresi and Cousin left Apartment 6.

¶ 6 After leaving the party, defendant met up with his girlfriend, Ashley Miller, and had her drive him to where Craig Wissmiller, his father, was playing cards with Ryan Holt and others. Defendant told Craig he and Caleb had been "jumped," and he could not find Caleb. Defendant, Craig, Holt, and an unknown male who had been playing cards got into Miller's car to search for Caleb. After driving around looking for Caleb for some time, the group went to

Apartment 6. Miller remained in the car while the four men went to the front door of Apartment 6.

¶ 7 According to Dickie, the four men entered Apartment 6 without invitation at about the same time Dickie reached the main level of the apartment. At some point, Craig told Dickie to get off his cellular telephone (cell phone), knocked the cell phone out of Dickie's hand, and kicked it away. Craig asked Dickie about Caleb's and Cousin's whereabouts. Dickie took the four men to the basement. While there, Schiewe's bedroom door was forcefully opened. Schiewe confronted Holt, and Holt punched Schiewe several times in the face. When Holt ceased punching Schiewe, Cousin could be heard coming home. The four men went upstairs to talk with Cousin, and when Cousin did not know Caleb's whereabouts, the four men left. Once the four men went upstairs, Dickie called 9-1-1. Officer Latz was one of the responding officers who talked with Dickie after the second incident.

¶ 8 The grand jury's February 8, 2012, home-invasion and criminal-trespass-to-a-residence indictments asserted defendant's entry into Apartment 6 was without authority. The mob-action charge alleged defendant committed that offense by acting with Craig and Holt to force entry into the Schiewe's residence and battering Schiewe. The same three charges brought against defendant were also brought against Craig (No. 12-CF-76) and Holt (No. 12-CF-115). In March 2012, the State filed a motion to consolidate the three cases, which the trial court granted without objection. The last order addressing subpoenas for the consolidated trial had a certificate of mailing that listed only the following members of the Normal police department: Darren Wolters and Jacob Zabukovec.

¶ 9 The consolidated jury trial commenced on Monday, June 18, 2012, with selection of part of the jury. Jury selection resumed on Tuesday, June 19, 2012, and the presentation of

evidence commenced on that day as well. The State presented the testimony of all four residents of Apartment 6; Megan Waiflein, a neighbor of the roommates; and Officer Wolters, who interviewed defendant. Holt presented the testimony of Miller, and Craig testified on his own behalf. The evidence relevant to the issues on appeal is set forth below.

¶ 10 Teresi testified defendant threatened to come back and kill them when they denied him reentry to Apartment 6. Schiewe also testified defendant threatened to come back. At around 3 a.m. on January 22, 2012, Dickie was talking to his girlfriend on his cell phone in his bedroom when he heard a regular knock on the front door. He heard it about three times. Dickie took his time getting to the door. As Dickie reached the base of the stairs, the four men entered Apartment 6. According to Dickie, he was four or five feet from the front door. He denied touching the door in any way before it opened. Dickie also testified he did not gesture in any way that would indicate he was welcoming someone into the apartment or say anything that would indicate they were allowed to enter. Dickie stated the front door was not locked, and he described the door opening as if "someone turned the knob and then walked in as they opened the door." Schiewe testified he heard a "loud commotion," followed by yelling and stomping.

¶ 11 Dickie further testified the four men came in "very fast" and were immediately within arm's reach of him. Craig told him to get off the cell phone, and Dickie did not know what to do. Craig then grabbed the cell phone from Dickie, threw it down on the ground, stomped on it several times, and kicked it into the kitchen. Craig wanted to know where Caleb was. When Dickie indicated he did not know, they asked where Cousin was. Dickie stated he did not know and Cousin was not at home. They then asked where Cousin's room was. During the questioning, they were shouting and cursing at Dickie.

¶ 12 Dickie picked up his cell phone and took the four men to the basement. Dickie

knocked on Schiewe's door twice, and when Schiewe did not answer, defendant kicked the door open. Schiewe also testified his door was kicked in. According to Dickie, Schiewe got out of bed and said something to Holt, and Holt punched Schiewe. Schiewe testified that, after his door was kicked in, the four men entered his bedroom, and Craig started questioning him about Cousin's and Caleb's whereabouts. Schiewe stated he was not sure where they were. Schiewe then got in Holt's face and told him to get out. Holt responded by closed-fist punching Schiewe continuously on the left side of Schiewe's face and did not stop until Dickie yelled at Holt to stop punching Schiewe. Schiewe denied punching or shoving Holt first. The State presented photographs depicting a bad cut above Schiewe's left eyebrow and a black, swollen left eye. Schiewe also testified Holt had shoved him and threatened to kick Schiewe's butt before Schiewe told him to get out. The others had also threatened harm if Schiewe did not tell them where Caleb was. Dickie shouted for them to stop and leave, and defendant stopped punching Schiewe.

¶ 13 Dickie heard Cousin come home, and the four men ran upstairs to meet him. Dickie checked on Schiewe, and then called 9-1-1. The State sought to play the 9-1-1 recording for the jury, and the trial court asked each of the defendant's counsel if they had an objection, and defendant's counsel responded, "No." The State also provided a transcript of the recording. The State proceeded to play the recording for the jury. During cross-examination, Dickie denied telling Officer Latz one of the men grabbed him and knocked him down. Dickie did admit he told Officer Latz he was only three-fourths of the way down the stairs when the men entered and that, while he felt threatened, none of the men actually threatened him.

¶ 14 After Dickie's testimony, which took place on Wednesday, June 20, 2012, Holt's counsel and Craig's counsel noted they were trying to obtain the appearance of Officer Latz, who was not under a subpoena, to provide impeachment testimony. Holt's counsel explained as

follows the testimony Officer Latz would address:

> "By way of proffer in terms of what we're talking about here, Mr. Dickie indicated two separate things that can be used for impeachment here.
>
> One is the inclusion of an act that he denied having occurred during his testimony and denied making a statement to Officer Latz that he was knocked down on the floor when entry was made into his apartment building.
>
> Additionally, we will be able to show that Mr. Dickie, during that conversation that he had with Latz, who was one of the first responding officers after the 911 call, omitted any mention of any damage being done to his cell phone or any actions being taken to that. ***"

Holt's counsel argued the testimony was important in terms of the believability of a key State witness. Craig's counsel also explained an arrangement existed with the police department to secure its officer's testimony without a subpoena. The court stated it would allow defendant and his codefendants to present the testimony of Officer Latz the next morning. The defense attorneys later learned Officer Latz was on his honeymoon, and the State refused to stipulate to the admission of Officer Latz's police report.

¶ 15 Waiflein testified that, on the date at issue, she lived in the apartment two doors down from Apartment 6. She had been at the party. After talking to the police, she returned to her apartment and talked with her roommates. At around 3 a.m., she heard yelling outside and opened her window to listen. She could hear angry yelling but could not discern the dialogue.

Wailfein only heard the people and did not see them. On cross-examination, Wailfein acknowledged she told the police officers she had opened the back door of her apartment around 3 a.m. and heard someone talking about a son. Wailfein denied telling the officers she did not recognize anyone outside Apartment 6 after the second incident.

¶ 16 Craig testified that, in the early morning hours of January 22, 2012, he was playing cards at Carl King's home with King, King's wife, and Holt. Halfway through the card playing, an unknown acquaintance of King's arrived. While Craig was at King's home, defendant showed up and was upset. Defendant told Craig he could not locate Caleb. Craig, defendant, Holt, and the unknown man got into Miller's car to look for Caleb. After driving around awhile looking for Caleb, they went to Apartment 6. Craig knocked on the door of Apartment 6 for several minutes and eventually heard the dead bolt turn, and Dickie, who was on his cell phone, opened the door. Craig explained who he was and that he was looking for Caleb. He also mentioned Cousin because defendant noted Cousin had been nice to Caleb and him at the party. Dickie waved them into Apartment 6. The four men waited for Dickie to finish his call. When Dickie finished the call, he began to lead them to the basement. Dickie's cell phone rang, and Craig admitted knocking it out of Dickie's hand and kicking it into the kitchen. Craig also testified it was Dickie who opened the door to Schiewe's room by forcefully shaking the door handle, and that Schiewe was the one who started the altercation with Holt.

¶ 17 Miller testified she remained in her car in front of Apartment 6 while the four men were on the apartment's porch. She saw a man wave the four men into the apartment. She did not see the four men kick in the front door or force entry into Apartment 6.

¶ 18 Officer Wolters also testified that, during his interview of Holt, Holt stated the men entered Apartment 6 after a resident answered the door.

¶ 19 The next morning (Thursday, June 21, 2012), after all of the other witnesses had testified, defendant and his codefendants moved to continue the trial to obtain Officer Latz's testimony, and the State objected. Holt's counsel asked for leave to provide the trial court with a copy of Officer Latz's police report. The court stated counsel could supplement the record with the police report, but it did not need the report to rule on the motion. The record on appeal does not contain a copy of Officer Latz's police report. The court denied the motion, noting if a short delay was possible, it would be appropriate to grant it. However, a short delay was not possible because Officer Latz could not appear the rest of the week and the court was on vacation the next week. The court noted it was looking at a minimum of a 10-day delay in the trial. The court also stated it did not believe the inability to perfect the impeachment of Dickie's testimony would deprive defendant and his codefendants of a fair trial. After the motion to continue was denied, defendant's counsel moved for a mistrial, which the court also denied.

¶ 20 During deliberations, the jury first asked to listen to the 9-1-1 recording again, and no one objected to that request. At the conclusion of the deliberations, the jury found defendant guilty of all three charges.

¶ 21 In August 2012, defendant filed a posttrial motion, contending (1) the State failed to prove him guilty of the charged offenses beyond a reasonable doubt; and (2) he was denied fair trial, due process, and the equal protection of the laws. At a joint August 2012 hearing, the trial court denied defendant's posttrial motion and sentenced him to eight years' imprisonment for home invasion to run consecutive with his sentence in McLean County case No. 11-CF-844. The court did not sentence defendant on the other two charges in this case because it found those charges merged with the home-invasion charge. On October 4, 2012, defendant filed a motion to reconsider his sentence. On January 25, 2013, the court dismissed as untimely defendant's

motion to reconsider.

¶ 22 On February 14, 2013, defendant filed a notice of appeal. In a May 2013 supervisory order, our supreme court directed this court to allow defendant's notice of appeal to stand as a validly filed notice of appeal. *People v. Wissmiller*, 2013 IL 115938 (nonprecedential supervisory order on motion of appellant). Accordingly, this court has jurisdiction under Illinois Supreme Court Rule 603 (eff. Feb. 6, 2013).

¶ 23 II. ANALYSIS

¶ 24 A. Sufficiency of the Evidence

¶ 25 When presented with a challenge to the sufficiency of the evidence, a reviewing court's function is not to retry the defendant. *People v. Givens*, 237 Ill. 2d 311, 334, 934 N.E.2d 470, 484 (2010). Rather, we consider " 'whether, after viewing the evidence in the light most favorable to the prosecution, *any* rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.' " (Emphasis in original.) *People v. Davison*, 233 Ill. 2d 30, 43, 906 N.E.2d 545, 553 (2009) (quoting *Jackson v. Virginia*, 443 U.S. 307, 319 (1979)). Under that standard, a reviewing court must draw all reasonable inferences from the record in the prosecution's favor. *Davison*, 233 Ill. 2d at 43, 906 N.E.2d at 553. Further, we note a reviewing court will not overturn a criminal conviction "unless the evidence is so improbable or unsatisfactory that it creates a reasonable doubt of the defendant's guilt." *Givens*, 237 Ill. 2d at 334, 934 N.E.2d at 484.

¶ 26 In this case, the State had to prove the following elements for the jury to find defendant guilty of home invasion: (1) defendant was not a police officer acting in the line of duty, (2) defendant knowingly made an unauthorized entry into the dwelling of another, (3) defendant knew or had reason to know that one or more persons were present therein, and (4)

defendant intentionally caused injury to a person in the dwelling place. See 720 ILCS 5/12-11(a)(2) (West 2010) (text of section effective July 1, 2011)). Defendant asserts the State failed to prove beyond a reasonable doubt his entry was unauthorized. We have already found the State's evidence was sufficient to prove Holt entered Apartment 6 without authority in his appeal. See *People v. Holt*, 2014 IL App (4th) 121090-U, ¶ 33.

¶ 27 Here, defendant notes our supreme court has stated that, "where the defendant enters with an innocent intent, his entry is authorized, and criminal actions thereafter engaged in by the defendant do not change the status of the entry." *People v. Bush*, 157 Ill. 2d 248, 254, 623 N.E.2d 1361, 1364 (1993). However, the *Bush* court was discussing the situation of where a person is invited in by an occupant and later causes an injury to the occupant in the dwelling. In this case, Dickie testified he did nothing to give defendant and the other men authority to enter Apartment 6.

¶ 28 Defendant insists Dickie's testimony was internally inconsistent and so incredible that it was not worthy of belief. He notes Dickie described the knocking as regular knocking and a simple opening of the door. On the other hand, Dickie described the men as upset and yelling at him. According to defendant, if the men were upset and yelling, they would have pounded on the door and the door would have crashed open. However, it is believable the four men would have got more upset and louder as time went on and Craig was not getting any answers about Caleb's whereabouts. It was also 3 a.m., and thus an initial quiet entry is also not surprising or improbable. Additionally, defendant notes Dickie's testimony Craig grabbed his cell phone out of his hand, stomped on it, and kicked it away. Dickie later called 9-1-1 as the four men left the apartment. Defendant claims if Craig had stomped on Dickie's cell phone, he would not have been able to call 9-1-1. However, Craig admitted knocking Dickie's cell phone to the ground,

and it is not unrealistic the cell phone would still work after being stomped. Thus, we disagree with defendant that Dickie's testimony is clearly inconsistent. Regardless, "[i]t is well settled that discrepancies in testimony *** do not necessarily destroy the credibility of a witness, but go only to the weight to be afforded his testimony." *People v. Ranola*, 153 Ill. App. 3d 92, 98, 505 N.E.2d 1191, 1196 (1987).

¶ 29 Defendant further notes Teresi testified he locked the front door when he exited. Dickie testified the door was unlocked. The jury, as the trier of fact, bore the responsibility to determine the witnesses' credibility and the weight given to their testimony, *to resolve conflicts in the evidence*, and to draw reasonable inferences from the evidence. *People v. Ortiz*, 196 Ill. 2d 236, 259, 752 N.E.2d 410, 425 (2001). On such matters, this court will not substitute its judgment for that of the trier of fact. *Ortiz*, 196 Ill. 2d at 259, 752 N.E.2d at 425. The timing of the yelling by the four men was also a matter for the trier of fact to consider and weigh.

¶ 30 Unlike *People v. Smith*, 185 Ill. 2d 532, 545, 708 N.E.2d 365, 371 (1999), cited by defendant, this is not a case where no reasonable trier of fact could have found Dickie's testimony credible. Dickie's testimony was plausible and, at times, corroborated by other witnesses, including codefendant Craig. Here, the jury had to decide if Dickie's version of the incident was credible, and this court will not disturb that determination.

¶ 31 Accordingly, for the aforementioned reasons, we find the State's evidence was sufficient for the jury to find beyond a reasonable doubt defendant's entry into Apartment 6 was unauthorized.

¶ 32 B. Motion To Continue

¶ 33 Defendant next asserts the trial court erred by denying his motion to continue his trial to allow him to subpoena Officer Latz. The State asserts defendant has forfeited this issue

by failing to raise it in his posttrial motion. In his reply brief, he requests we review this issue under the plain error doctrine. See Ill. S. Ct. R. 615(a) (eff. Jan. 1, 1967).

¶ 34 The plain-error doctrine permits a reviewing court to consider unpreserved error under the following two scenarios:

> "(1) a clear or obvious error occurred and the evidence is so closely balanced that the error alone threatened to tip the scales of justice against the defendant, regardless of the seriousness of the error, or (2) a clear or obvious error occurred and that error is so serious that it affected the fairness of the defendant's trial and challenged the integrity of the judicial process, regardless of the closeness of the evidence." *People v. Sargent*, 239 Ill. 2d 166, 189, 940 N.E.2d 1045, 1058 (2010).

We begin our plain-error analysis by first determining whether any error occurred at all. *Sargent*, 239 Ill. 2d at 189, 940 N.E.2d at 1059. If error did occur, this court then considers whether either of the two prongs of the plain-error doctrine has been satisfied. *Sargent*, 239 Ill. 2d at 189-90, 940 N.E.2d at 1059. Under both prongs, the defendant bears the burden of persuasion. *Sargent*, 239 Ill. 2d at 190, 940 N.E.2d at 1059.

¶ 35 In Craig's and Holt's appeals, we found no error occurred by the court's denial of the continuance. See *People v. Wissmiller*, 2014 IL App (4th) 121028-U, ¶ 24; *Holt*, 2014 IL App (4th) 121090-U, ¶ 44. We continue to find no error in the court's denial of the continuance.

¶ 36 Whether to grant or deny a continuance rests within the trial court's sound discretion, and "a reviewing court will not interfere with that decision absent a clear abuse of discretion." *People v. Walker*, 232 Ill. 2d 113, 125, 902 N.E.2d 691, 697 (2009). "A trial court

abuses its discretion when its decision is 'fanciful, arbitrary, or unreasonable to the degree that no reasonable person would agree with it.' " *People v. Kladis*, 2011 IL 110920, ¶ 23, 960 N.E.2d 1104 (quoting *People v. Ortega*, 209 Ill. 2d 354, 359, 808 N.E.2d 496, 500-01 (2004)). "However, '[w]here it appears that the refusal of additional time in some manner embarrassed the accused in the preparation of his defense and thereby prejudiced his rights, a resulting conviction will be reversed.' " *Walker*, 232 Ill. 2d at 125, 902 N.E.2d at 697 (quoting *People v. Lewis*, 165 Ill. 2d 305, 327, 651 N.E.2d 72, 82 (1995)).

¶ 37 Initially, we note section 114-4(f) of the Code of Criminal Procedure of 1963 (Procedure Code) (725 ILCS 5/114-4(f) (West 2012)) provides that, "[a]fter trial has begun a reasonably brief continuance may be granted to either side in the interests of justice." Further, in determining whether an abuse of discretion occurred, reviewing courts must consider the case's facts and circumstances, and " '[t]here is no mechanical test *** for determining the point at which the denial of a continuance in order to accelerate the judicial proceedings violates the substantive right of the accused to properly defend.' " *Walker*, 232 Ill. 2d at 125, 902 N.E.2d at 697 (quoting *People v. Lott*, 66 Ill. 2d 290, 297, 362 N.E.2d 312, 315 (1977)). Our supreme court has set forth the following factors a court may consider in determining whether to grant a continuance request by a defendant in a criminal case: "the movant's diligence, the defendant's right to a speedy, fair and impartial trial and the interests of justice." *Walker*, 232 Ill. 2d at 125, 902 N.E.2d at 697. Other relevant factors include (1) whether counsel for defendant was unable to prepare for trial because he or she had been held to trial in another cause, (2) the case's history, (3) the matter's complexity, (4) the seriousness of the charges, (5) docket management, (6) judicial economy, and (7) inconvenience to the parties and witnesses. *Walker*, 232 Ill. 2d at 125-26, 902 N.E.2d at 697.

¶ 38 Here, the trial court was willing to grant "a reasonably brief continuance" as provided in section 114-4(f) of the Procedure Code (725 ILCS 5/114-4(f) (West 2012)), but the circumstances of Officer Latz's honeymoon and the court's upcoming vacation did not allow for a brief continuance. Thus, the court's denial of the continuance was in accordance with section 114-4(f). Similarly, a minimum 10-day delay in defendant's jury trial would have been harmful to the court's docket management and judicial economy, as well as being inconvenient to everyone involved in the proceedings. Moreover, such a significant delay near the end of a jury trial would impact the jury's recall of the testimony presented earlier and be more likely to deny defendant a fair trial than the minor impeachment evidence defendant sought to introduce, which we will now discuss.

¶ 39 According to Holt's attorney, Officer Latz's police report stated Dickie told the officer Dickie was knocked to the floor when entry was made into the apartment, and the report failed to mention any actions taken against Dickie's cell phone. (The record on appeal lacks the police report, but under the facts of this case, the lack of the report does not prohibit our review of the issue as counsel's representation of the report does not warrant reversal.) However, Dickie denied telling the officer he was knocked down, and Craig admitted knocking Dickie's cell phone down to the floor and kicking it. Additionally, Dickie's statements during his 9-1-1 call were consistent with his trial testimony. During the call, he mentioned his cell phone getting knocked to the ground and made no mention of himself getting knocked to the ground. Thus, the alleged inconsistencies have little impeachment value considering the already consistent testimony of Dickie and codefendant Craig that the cell phone was knocked to the floor after the four men entered Apartment 6. The inconsistencies between Dickie's testimony and Officer Latz's report appear to be a misunderstanding of what was knocked to the floor. If Officer Latz thought

Dickie was knocked down, then it is not surprising his report would not address damage to Dickie's cell phone. Moreover, we disagree with defendant Dickie's testimony was clearly internally inconsistent. While we recognize Dickie's testimony was key in establishing defendant's unauthorized entry into Apartment 6, the lack of Officer Latz's testimony did not deny defendant a fair and impartial trial or harm the interests of justice. Additionally, we note defendant's home-invasion charge was serious, but the impeachment matter was not complex. Moreover, even assuming, *arguendo*, the defense attorneys were diligent in trying to obtain Officer Latz's testimony, that diligence did not outweigh all of the other factors supporting the denial of a lengthy delay in defendant's jury trial.

¶ 40 Additionally, we note this case is distinguishable from *People v. Wilson*, 120 Ill. App. 3d 950, 960, 458 N.E.2d 1081, 1088 (1983), cited by defendant. There, the trial court had improperly quashed the defendant's subpoenas, defense counsel had little time to prepare for the trial, and the excluded testimony was significant on a very close issue. *Wilson*, 120 Ill. App. 3d at 960, 458 N.E.2d at 1088. As we have explained, the evidence in this case was not close on what was knocked to the floor by Craig at the apartment, and thus the desired testimony had little to no impeachment value. Further, the trial court in this case did not attempt to thwart defendant's attempts to obtain the evidence.

¶ 41 Accordingly, we find the trial court did not abuse its discretion by denying defendant's motion to continue. Since we have found no error, we need not address whether plain error occurred.

¶ 42 C. Assistance of Counsel

¶ 43 Defendant last asserts he received ineffective assistance of counsel when his trial counsel failed to object to the introduction of Dickie's 9-1-1 call. The State asserts the admission

of the recording was part of trial strategy, and defendant did not suffer any prejudice.

¶ 44 This court analyzes ineffective-assistance-of-counsel claims under the standard set forth in *Strickland v. Washington*, 466 U.S. 668 (1984). *People v. Evans*, 186 Ill. 2d 83, 93, 708 N.E.2d 1158, 1163 (1999). To obtain reversal under *Strickland*, a defendant must prove (1) his counsel's performance failed to meet an objective standard of competence and (2) counsel's deficient performance resulted in prejudice to the defendant. *Evans*, 186 Ill. 2d at 93, 708 N.E.2d at 1163.

¶ 45 To satisfy the deficiency prong of *Strickland*, the defendant must demonstrate counsel made errors so serious and counsel's performance was so deficient that counsel was not functioning as "counsel" guaranteed by the sixth amendment (U.S. Const., amend. VI). Further, the defendant must overcome the strong presumption the challenged action or inaction could have been the product of sound trial strategy. *Evans*, 186 Ill. 2d at 93, 708 N.E.2d at 1163. To satisfy the prejudice prong, the defendant must prove a reasonable probability exists that, but for counsel's unprofessional errors, the proceeding's result would have been different. *Evans*, 186 Ill. 2d at 93, 708 N.E.2d at 1163-64.

¶ 46 Regarding the performance prong, our supreme court has stated the following:

> "Decisions concerning which witnesses to call at trial and what evidence to present on defendant's behalf ultimately rest with trial counsel. [Citation.] As matters of trial strategy, such decisions are generally immune from claims of ineffective assistance of counsel. [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." *People v. Reid*, 179

Ill. 2d 297, 310, 688 N.E.2d 1156, 1162 (1997).

¶ 47 As with Holt's attorney, defendant's attorney argued the recording of the 9-1-1 call supported defendant and his codefendants' version of the incident. Specifically, counsel stated, "I think it's important because clearly the demeanor of Mr. Dickie on the phone doesn't match the description given us by [the prosecutor]." Defendant's counsel went on to explain how Dickie did not seem terrified in the recording and suggested Dickie was "acting." As we said in Holt's case, the record clearly shows it was part of defendant's counsel's strategy to have the jury hear the 9-1-1 recording. *Holt*, 2014 IL App (4th) 121090-U, ¶ 61. Defendant's counsel and his codefendants' counsel asserted Dickie let the men into the house, which was contrary to Dickie's testimony. Thus, the defense attorney's objective was to show Dickie was not credible. Defendant notes the 9-1-1 recording includes Dickie's statement "they just came in." However, that statement does not make defense counsel's strategy unreasonable. Defense counsel could have reasonably determined a whole recording of Dickie sounding calm during a terrifying situation was more beneficial to their attack on Dickie's credibility than the admission of an isolated consistent statement that counsel was asserting was false anyway. We find defense counsel's strategy was not so unsound that it entirely failed to conduct any meaningful adversarial testing. Accordingly, since counsel's failure to object to the admission of the 9-1-1 recording was trial strategy, defendant cannot establish the performance prong of the *Strickland* test.

¶ 48 Thus, we find defendant has failed to show he received ineffective assistance of counsel due to counsel's failure to object to the admission of the 9-1-1 recording.

¶ 49 III. CONCLUSION

¶ 50 For the reasons stated, we affirm the McLean County circuit court's judgment. As

part of our judgment, we grant the State's request that defendant be assessed $50 as costs for this appeal.

¶ 51 Affirmed.