2016 IL App (4th) 130888-UB

NO. 4-13-0888

FILED
December 4, 2017
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.	)	Coles County
BLACKIE VEACH,	)	No. 12CF479
Defendant-Appellant.	)	
	)	Honorable
	)	Mitchell K. Shick,
	)	Judge Presiding.

JUSTICE STEIGMANN delivered the judgment of the court.
Justices Holder White and Appleton concurred in the judgment.

ORDER

¶ 1 *Held*: The appellate court reversed defendant's convictions, concluding that defendant was denied the effective assistance of trial counsel.

¶ 2 Following a July 2013 trial, a jury convicted defendant, Blackie Veach, of two counts each of attempt (first degree murder) (720 ILCS 5/8-4(a), 9-1(a) (West 2010)) and aggravated battery (720 ILCS 5/12-3.05(a)(1), (f)(1) (West 2010)). The trial court later imposed consecutive prison sentences of 16 years on defendant's attempt convictions. (Defendant's aggravated battery convictions were lesser-included offenses on which the court imposed no sentences.)

¶ 3 Defendant appealed, arguing only that he was denied the effective assistance of trial counsel when his counsel stipulated to the admission, during his trial, of video recordings containing various prior consistent statements and bad character evidence. This court concluded that the trial court record was inadequate to adjudicate defendant's claim on direct appeal. As a

result, we affirmed defendant's convictions and suggested that he raise his claim of ineffective assistance of counsel in a petition under the Post-Conviction Hearing Act (725 ILCS 5/122-1 to 122-7 (West 2016)). *People v. Veach*, 2016 IL App (4th) 130888, ¶¶ 92-95, 50 N.E.3d 87.

¶ 4 The supreme court granted defendant's petition for leave to appeal, reversed our decision, and remanded with directions for us to address the merits of defendant's claim of ineffective assistance of counsel. *People v. Veach*, 2017 IL 120649, ¶¶ 53-54.

¶ 5 On remand, we follow the supreme court's directions and now agree with defendant that he was denied the effective assistance of trial counsel. Accordingly, we reverse defendant's convictions and remand for further proceedings.

¶ 6 I. BACKGROUND

¶ 7 A. The State's Charges

¶ 8 In December 2012, the State charged defendant with the aforementioned offenses. Pertinent to this appeal are the State's attempt (first degree murder) charges, which the State amended in July 2013. Specifically, the State alleged that on December 12, 2012, defendant "performed an act which constituted a substantial step toward the killing of *** individual[s] in that [defendant] cut the throat of" Matthew Price and Renee Strohl.

¶ 9 B. The Pertinent Evidence Presented at Defendant's Trial

¶ 10 Because defendant challenges only his trial counsel's effectiveness, we limit the following discussion to those facts that place defendant's claim in its proper context.

¶ 11 After jury selection and outside the jury's presence, the State and defense counsel stipulated to the admission of People's exhibit No. 24, a compact disc (CD) containing a video recording of the December 12, 2012, interview between Johnny Price, who was present during the events at issue, and a police detective. The trial court then addressed defendant directly and

determined that (1) he had spoken with his counsel about the stipulation and (2) by stipulating, he waived any foundational objections to the recording.

¶ 12 When the trial court asked whether the exhibit was being offered as substantive evidence, the following exchange occurred:

> "DEFENSE COUNSEL: Technically, we were going to open the door with impeachment, but rather than delay the time, I think those rules are duplicitous. If we go to impeach it, then the whole video comes in to show—and I think it's an exception to hearsay if you look at the—.
>
> THE COURT: Okay.
>
> DEFENSE COUNSEL: —801 series, I think it's B something recount [*sic*] recorded—.
>
> THE COURT: I understand what you're saying. I just wanted to make sure for the record it's clear what you're agreeing to."

¶ 13 The parties explained that they were also stipulating to the admission of People's exhibit No. 25, which was a video recording of defendant's interview with a police detective.

¶ 14 After reconvening the jury, the State called Johnny to the stand.

¶ 15 1. *Johnny's Testimony*

¶ 16 a. Direct Examination

¶ 17 On December 12, 2012, Johnny—who was 18 years old and lived in Toledo, Illinois—rode with his grandmother to Charleston, Illinois, to visit his cousin, Matthew Price, at the home Matthew shared with his girlfriend, Renee Strohl. Throughout that day, visitors came and went, but that evening, only Matthew, Renee, Johnny, and defendant remained in the front room of the house. Matthew was smoking "fake marijuana," otherwise known as K2, Renee was

drinking beer, and Johnny was drinking beer and smoking cannabis. Defendant was "drinking and smoking fake marijuana" while talking with Matthew.

¶ 18 Sometime thereafter, Johnny was seated on a sofa, facing a "loveseat" where Matthew and Renee were seated. Defendant was sitting behind Matthew. Johnny momentarily looked away, but when he looked back, he saw defendant—who was now standing behind the loveseat—cut Matthew's neck. Matthew jumped up, holding his neck, and told defendant to "back the fuck up." As Renee picked up her telephone, defendant "cut" her as well. Matthew then pushed defendant down onto a mattress, which was against the wall. During that time, Johnny made his way to the kitchen and exited through the back door of the house. When Johnny looked back, he saw defendant "chasing after [him]."

¶ 19 Johnny ran to a local restaurant and called his grandmother. He was "shaking and crying," and too "scared" to dial 9-1-1. Johnny told the restaurant employees that his cousin's neck had "been sliced." Sometime later, police arrived and transported Johnny to the police station for an interview.

¶ 20 b. Johnny's Recorded Interview

¶ 21 The State then moved to admit into evidence People's exhibit No. 24, which was the CD containing Johnny's interview with the police. The trial court admitted the exhibit. When the court then asked defense counsel whether he had any objection to playing the exhibit for the jury, counsel responded, "The entire interview?" The prosecutor then said, "I believe under the doctrine of completeness the—everything needs to be seen."

¶ 22 The trial court played the recording for the jury. At some point during the playing of the recording, defense counsel objected. The following exchange occurred:

"THE COURT: [T]his is an exhibit that you've admitted into evidence by agreement. What are you objecting to?

DEFENSE COUNSEL: Previous rulings of the court.

THE STATE: Which, Your Honor, I believe it's completely consistent with the previous ruling of the court.

THE COURT: I don't know what you're referring to, [defense counsel]. Do you want to make a record?

DEFENSE COUNSEL: As long as we're allowed to call rebuttal, judge.

THE COURT: Absolutely, all right."

The rest of the recorded interview was then played for the jury.

¶ 23 During Johnny's recorded interview with the police, he recounted the entire incident (about which he had testified during his direct examination) and described the knife attack six different times. Johnny also stated in that recording that (1) on the evening at issue, defendant claimed to be a member of a street gang; (2) defendant was making gang signs and wanted Johnny to mimic his gestures; (3) defendant compelled Johnny to smoke drugs that night; (4) defendant began having "problems" with Johnny; (5) Matthew warned defendant that if he wanted to confront Johnny, defendant would have to go through Matthew—or "that's what [Johnny was] guessing they said"; (6) after Matthew told defendant he would have to go through him, defendant cut Matthew's throat; and (7) defendant cut Renee and chased Johnny because defendant wanted to kill all the witnesses.

¶ 24 After playing Johnny's recorded interview with police, the trial court instructed the jury that (1) Johnny had been convicted of retail theft and (2) the jury could consider that conviction only as it might affect his believability.

¶ 25 c. Cross-Examination

¶ 26 Johnny admitted that during his police interview, he "probably" told the police that he did not know if defendant had been smoking anything in Matthew's house. But he was "confused" at the time, and now, in retrospect, Johnny knew defendant had been smoking. Johnny also explained that during his interview, he was "confused," "scared," "high," and "drunk" when he told the detective that he had jumped over the couch in the front room. Actually, he "didn't jump over nothing." Johnny first tried to escape through the front door but could not get it open, so he headed for the back door.

¶ 27 2. *Matthew's Testimony*

¶ 28 a. Direct Examination

¶ 29 Prior to Matthew's direct testimony, the trial court informed the jury that (1) Matthew had been convicted of three felonies and (2) the jury could consider his convictions only as they might affect his believability.

¶ 30 Matthew, who was 22 years old, testified that in December 2012, he lived with his then-fiancée, Renee, in a home located in Charleston. Defendant, Matthew's longtime "best friend," whom he had "always called [his] brother," "stay[ed] with [them] quite often."

¶ 31 On December 12, 2012, around 8:30 or 9 p.m., defendant visited Matthew's home, bringing with him two 40-ounce containers of malt liquor as well as "the baseball bat he always carried," which Matthew described as a small Louisville Slugger, a little longer than Matthew's forearm. Defendant "[s]tarted talking and playing music." In addition to drinking alcohol, defendant was smoking K2 with Matthew. Matthew remembered that he had earlier cut some speaker wires with a kitchen knife that remained in the front room of the home. Later that even-

ing, Matthew saw defendant pick up the knife as defendant was going to the back door to answer the knock of some visitors.

¶ 32 Eventually, the visitors left except for defendant and Johnny. Matthew and Renee were sitting on the loveseat, Johnny was sitting on a sofa, and defendant was sitting on a black chair. Sometime thereafter, Matthew and Renee got up from the loveseat and went into the bathroom, where they had sexual intercourse. About 20 minutes later, they left the bathroom. As they did so, defendant, who was standing outside the bathroom door, said, " 'What the hell' " and " 'that's bogus.' " Unable to comprehend what defendant was complaining about, Matthew returned to the loveseat with Renee. Johnny remained on the sofa. Defendant sat back down on the black chair and resumed playing with the stereo radio.

¶ 33 After a while, defendant asked Matthew to meet him at the back porch, where no one was located. After doing so, defendant told Matthew that "he had to put a hit out for Renee [for] beating up his aunt [Debbie Davis,] who isn't actually his aunt." Matthew told defendant that "it was just a female fight," and although Davis "got her ass whooped," Renee was charged with aggravated battery. Matthew urged defendant to "let it go." Eventually, defendant stated, "[a]ll right, all right bro, I got you." Thereafter, they returned to the front room of the house.

¶ 34 Upon their return, Matthew sat down on the loveseat, beside Renee, and defendant "walked around [as if] he was going to sit in the black chair again," but after a couple of seconds, he "went behind the loveseat to a black foldout chair." With defendant sitting behind him, Matthew and defendant had a conversation about two street gangs. Defendant then told Matthew, " 'You're not my brother. You never have been.' " Matthew did not get a chance to respond, because, the next thing he knew, there was a "warmness running down [his] neck."

¶ 35 Matthew flung up his hand and "realized [he] was cut," and now his hand "started to get cut," too. As Matthew "ducked down and spun around *** to the left," he saw defendant "scooting over and cutting Renee." Defendant had in his hand the kitchen knife that Matthew had earlier used. Matthew yelled, "['N]o[!]' " and "swung over the couch." Matthew believed that he had grazed defendant somewhere in the face, causing him to drop the knife and fall backward on a guest bed they had in their front room. Defendant said "not to call 9-1-1." As Matthew walked toward defendant, Johnny ran between them, en route to the back door (the front door was nailed shut). The resulting collision staggered Matthew back, giving defendant an opportunity to "take off after [Johnny] and get out himself."

¶ 36 Renee was on the telephone, but because she was not coherent, Matthew took the telephone from her and told the 9-1-1 operator on the other end to hurry up because their throats had been slit and they were "bleeding out." The police and an ambulance arrived, and they were transported to the hospital, where Matthew received stitches and was released that night. The next day, December 13, 2012, Matthew went to the Charleston police department and provided a statement, which the police recorded.

¶ 37 b. Matthew's Recorded Interview

¶ 38 The State then moved to admit into evidence the first track of People's exhibit No. 28, a CD containing two separate audio recordings, the first of which was Matthew's interview with the police. After the trial court confirmed that defense counsel and defendant had stipulated to the admission of that audio recording without objection, the court admitted that portion of exhibit No. 28 into evidence, and, thereafter, played the recording for the jury.

¶ 39 In his recorded statement to the police, Matthew repeated the details of defendant's knife attack four times, and he stated three times that defendant's motive was to retaliate

for the beating Renee inflicted on Davis. Matthew also stated that defendant "was a real big alcoholic, and that's all he does now is drink." Matthew denied that on the night of the stabbing, any conflict existed between defendant and Johnny.

¶ 40 c. Cross-Examination

¶ 41 Matthew admitted that, once or twice, he had threatened to kill himself over Renee—not by using a knife but, rather, by hanging himself. He denied, however, that he ever threatened Renee with a knife. He also denied telling other people that it was Johnny who had cut him and Renee.

¶ 42 3. *Renee's Testimony*

¶ 43 a. Direct Examination

¶ 44 Renee, who was 24 years old, testified that she had a "rocky relationship" with Matthew from March 2011 to February 2013. In December 2012, they lived together in a two-bedroom house in Charleston. Renee noted that defendant (1) was at their home almost every day and (2) stopped by around 5 p.m. on December 12, 2012. Thereafter, Renee testified consistently with the accounts provided by Johnny and Matthew regarding the circumstances preceding defendant's actions.

¶ 45 Renee noted that after exiting the bathroom with Matthew, they both sat on a loveseat located in their front room. Defendant used the bathroom and returned to where he had been seated. After a while, defendant stood up, took a folding chair that was leaning against a wall, unfolded it, set it behind the loveseat, and sat down. Renee, then stated that "[t]he next thing I remember was something along the lines of ['']brother,['] something to do with ['']brother,['] and then I felt a sharp pain." Renee then stood up from the loveseat. Defendant was sprawled sideways on a bed, on his back, and Matthew was standing over him, telling her,

" 'Call 9-1-1. We need an ambulance. We've both been cut.' " Defendant said, " 'Don't call 9-1-1. It's not that bad, and I'll help.' " Renee told defendant, " ['] I'm sorry, I have to call 9-1-1. I think I'm going to need stitches.['] " Matthew continued to say, " 'Call them, call them,' " and he struck defendant. Renee did not see Johnny during this encounter and acknowledged that she did not see who had cut her throat.

¶ 46 b. Renee's Recorded Interview

¶ 47 The following day, December 13, 2012, Renee provided a recorded statement to the police. The State moved to admit into evidence the second audio track of People's exhibit No. 28—which contained Renee's statement—and to play it for the jury. Defense counsel confirmed that he had stipulated to the admission of the second track of People's exhibit No. 28 and had no objection to its being admitted or played for the jury. The trial court then admitted the exhibit and played Renee's recorded statement for the jury.

¶ 48 In her recorded statement, Renee recounted the events of December 12, 2012, and added the following: (1) when defendant is intoxicated, he gets violent; (2) defendant's mother told Renee that she had " 'heard stories of other people that had been hurt by [defendant] when he drinks hard alcohol' "; (3) defendant threatened to kill someone if he ever encountered that person; and (4) Matthew told Renee that defendant may have cut their throats because of the fight between Renee and Davis. Renee denied that any controversy existed between defendant and Johnny. Renee also disputed that Matthew told defendant he would have to confront him first if defendant wanted to fight Johnny.

¶ 49 c. Cross-Examination

¶ 50 On cross-examination, Renee noted that in the summer of 2012, Matthew began accusing her of having a physical relationship with defendant. Despite this claim, Renee stated that Matthew never confronted defendant about his suspicions.

¶ 51 4. *The Remaining Evidence Presented by the State*

¶ 52 Justin Carder, a Charleston police officer, testified that defendant was arrested a few minutes after the knife attack. Defendant had a smudge of blood on the left side of his face and on both of his hands. Carder learned that other people had run out of the Charleston home. Defendant identified those other people as Robert Jones and Darrell Enlow. Another Charleston police officer testified that defendant claimed that Jones and Enlow had slashed the necks of Matthew and Renee.

¶ 53 Forensic deoxyribonucleic acid (DNA) testing revealed that (1) Matthew's DNA was on defendant's face, left hand, and left shoe and (2) Renee's DNA was on defendant's pants. Other DNA samples, including the one from the knife, were unsuitable for comparison.

¶ 54 Alvina Wright, testifying as a defense witness, testified that she had known Matthew for many years. Two days after the stabbing, she saw Matthew at a local gas station and she asked him what had happened. (The State objected on the ground of hearsay, and the trial court "sustain[ed] the objection for the purpose of showing who cut Matthew's throat," but the court allowed the testimony for the limited purpose of impeaching Matthew's testimony.) Wright stated that Matthew told her that Johnny had cut his throat. (Previously, on cross-examination by defense counsel, Matthew denied telling Wright that Johnny had cut his throat, adding that he did not even know Wright.)

¶ 55 5. *Defendant's Testimony*

¶ 56 At approximately 5:30 or 6 p.m. on December 12, 2012, defendant stopped by the Charleston home occupied by Matthew and Renee. Observing that a social gathering was occurring, defendant decided to stay. Defendant noted that along with Matthew and Renee, Johnny was at the home as well as others who visited throughout the evening. At one point, defendant answered a knock at the door. As he did so, defendant took the miniature baseball bat that he customarily carried around with him, instead of the knife in the living room. Apparently, one of the guests brought hydrocodone pills, which were being pulverized in the kitchen. Defendant observed (1) Matthew and Renee snorting the hydrocodone powder and drinking alcohol; (2) Matthew smoking cannabis and K2; and (3) Johnny drinking alcohol and smoking cannabis and K2. Defendant stated that he was merely drinking alcohol.

¶ 57 Defendant denied forcing Johnny to smoke K2. Previously, on the one and only occasion when defendant tried K2, he almost died, and he would not have forced anyone to smoke something that had almost killed him. Defendant denied that he (1) was a member of any gang, (2) told Johnny he was a member of a gang, and (3) flashed gang symbols at Johnny. Defendant asserted, instead, that Matthew and Johnny were the ones making gang symbols and claiming to be members of a street gang. Defendant also denied threatening Johnny.

¶ 58 Later that evening, all the guests had left except Johnny and himself. Eventually, Matthew and Renee left the loveseat where they were seated and went into the bathroom together, where they stayed for 20 minutes. This inconvenienced defendant because he had to go to the bathroom. When Matthew and Renee finally reemerged from the bathroom, defendant mentioned that it was bogus to use the bathroom for that purpose when the bedroom was right down the hall. Defendant then used the bathroom, but when he came out, Matthew pulled him to the back room and had a talk with him.

¶ 59 After the talk in the back room, defendant had to use the bathroom again. The radio was on in the living room, and he heard no screaming or nothing unusual. When he came out of the bathroom and returned to the living room, Johnny was nowhere to be seen, and Matthew was bleeding from the neck. Matthew pushed defendant down onto a bed, grazing and bloodying defendant's nose. Renee was screaming at Matthew to get off defendant. She gave Matthew a shove and then ran to a bedroom. This gave defendant the opportunity to run out the back door of the house. Defendant did not see Johnny, although someone (he could not tell who) was running about 10 feet ahead of him.

¶ 60 Defendant admitted telling the police, falsely, that Jones and Enlow had kicked in the door of the house and entered with guns and that he, defendant, had chased them out of the house. Actually, he never saw either of them in the house, and the last time he saw Jones was earlier that afternoon.

¶ 61 C. The Jury's Deliberation and Verdict

¶ 62 After deliberating for approximately four hours, the jury sent the trial court a note stating, "Very hung with no end in sight, members are tired and frustrated. May we go home and resume tomorrow?" The trial court instructed the jury in accordance with *People v. Prim*, 53 Ill. 2d 62, 75-76, 289 N.E.2d 601, 609 (1972), and the jury continued deliberating. Approximately three hours later, the jury returned guilty verdicts on all four counts alleged—that is, two counts each of attempt (first degree murder) and aggravated battery.

¶ 63 The trial court later imposed consecutive prison sentences of 16 years on defendant's attempt convictions but did not impose a sentence on defendant's aggravated battery convictions because the court determined that those two counts were lesser-included offenses.

¶ 64 D. The Proceedings on Appeal

¶ 65 Defendant appealed, arguing that trial counsel was ineffective for stipulating to the introduction of the recorded interviews of Matthew, Johnny, and Renee, which defendant argued contained prior consistent statements and improper character evidence. In March 2016, we filed an opinion affirming defendant's convictions. *Veach*, 2016 IL App (4th) 130888, 50 N.E.3d 87. We determined that the record did not contain adequate facts for us to resolve defendant's claim of ineffective assistance and that his claim was better suited for postconviction proceedings. *Id.* ¶¶ 88-92.

¶ 66 Defendant filed a petition for leave to appeal to the supreme court. The supreme court granted that petition, and in May 2017, the supreme court reversed our judgment and remanded to this court with directions for us to decide the merits of defendant's ineffective assistance of counsel claim. *People v. Veach*, 2017 IL 120649.

¶ 67 On remand, we follow the supreme court's directions and now agree with defendant that he was denied the effective assistance of trial counsel. Accordingly, we reverse defendant's convictions and remand for further proceedings.

¶ 68 II. ANALYSIS

¶ 69 Defendant argues that he was denied the effective assistance of trial counsel. Specifically, defendant alleges that his counsel's decision to stipulate to the admission of prior consistent statements and bad character evidence during his trial was reversible error. We agree.

¶ 70 A. Defendant's Right to the Effective Assistance of Counsel

¶ 71 In *Maryland v. Kulbicki*, ___ U.S. ___, ___, 136 S. Ct. 2, 2-3 (2015), the United States Supreme Court discussed the sixth amendment right to the effective assistance of counsel, as follows:

> "A criminal defendant 'shall enjoy the right *** to have the Assistance of Counsel for his defence.' U.S. Const., [amend VI]. We have held that this right requires effective counsel in both state and federal prosecutions, even if the defendant is unable to afford counsel. *Gideon v. Wainwright*, 372 U.S. 335, 344 (1963). Counsel is unconstitutionally *in*effective if his performance is both deficient, meaning his errors are 'so serious' that he no longer functions as 'counsel,' and prejudicial, meaning his errors deprive the defendant of a fair trial. *Strickland v. Washington*, 466 U.S. 668, 687 (1984)." (Emphasis in original.)

¶ 72 In *People v. Simpson*, 2015 IL 116512, ¶ 35, 25 N.E.3d 601, the Supreme Court of Illinois recently discussed the defendant's burden when raising an ineffective-assistance-of-counsel claim, writing as follows:

> "To show ineffective assistance of counsel, a defendant must demonstrate that 'his attorney's representation fell below an objective standard of reasonableness and that there is a reasonable probability that, but for counsel's errors, the result of the proceeding would have been different.' *People v. Patterson*, 192 Ill. 2d 93, 107 (2000) (citing *Strickland v. Washington*, 466 U.S. 668, 687, 695 (1984), for this test). A 'reasonable probability' is defined as 'a probability sufficient to undermine confidence in the outcome.' *Strickland*, 466 U.S. at 694. A defendant must satisfy both prongs of the *Strickland* test and a failure to satisfy any one of the prongs

precludes a finding of ineffectiveness. *Patterson*, 192 Ill. 2d at 107."

¶ 73 The United States Supreme Court has also cautioned that when reviewing an ineffective-assistance-of-counsel claim, " 'a court must indulge a strong presumption that counsel's conduct falls within the wide range of reasonable professional assistance.' " *Woods v. Donald*, ___ U.S. ___, 135 S. Ct. 1372, 1375 (2015) (quoting *Strickland*, 466 U.S. at 689). In *Kulbicki*, the Court criticized a federal court of appeals for having "indulged in the 'natural tendency to speculate as to whether a different trial strategy might have been more successful.' " *Kulbicki*, __ U. S. at ___, 136 S. Ct. at 4 (quoting *Lockhart v. Fretwell*, 506 U.S. 364, 372 (1993)).

¶ 74 The Supreme Court of Illinois has also addressed this subject, writing as follows: "We have also made it clear that a reviewing court will be highly deferential to trial counsel on matters of trial strategy, making every effort to evaluate counsel's performance from his perspective at the time, rather than through the lens of hindsight." *People v. Perry*, 224 Ill. 2d 312, 344, 864 N.E.2d 196, 216 (2007). The Supreme Court of Illinois has also provided the following guidance: "[I]n order to establish deficient performance, the defendant must overcome the strong presumption that the challenged action or inaction may have been the product of sound trial strategy. [Citations.] Matters of trial strategy are generally immune from claims of ineffective assistance of counsel." *People v. Manning*, 241 Ill. 2d 319, 327, 948 N.E.2d 542, 547 (2011). " 'Only if counsel's trial strategy was so unsound that he entirely fails to conduct meaningful adversarial testing of the State's case will ineffective assistance of counsel be found.' " *People v. Peterson*, 2017 IL 120331, ¶ 80 (quoting *Perry*, 224 Ill. 2d at 355-56, 948 N.E.2d at 222).

¶ 75 Despite our presumption that counsel's strategic trial decisions are reasonable, it can be objectively unreasonable of defense counsel to agree to the admission of inadmissible evidence. *People v. Fillyaw*, 409 Ill. App. 3d 302, 315, 948 N.E.2d 1116, 1130 (2011). It might appear, at the time, that the inadmissible evidence would benefit the defense more than hurt it, in which case defense counsel could legitimately make a tactical decision to refrain from objecting. *People v. Graham*, 206 Ill. 2d 465, 478-79, 795 N.E.2d 231, 240 (2003); *People v. Jackson*, 2013 IL App (3d) 120205, ¶ 29, 2 N.E.3d 374. We should allow "wide latitude" for such tactical decisions (*People v. Cunningham*, 376 Ill. App. 3d 298, 301, 875 N.E.2d 1136, 1140 (2007)), looking at all the circumstances from defense counsel's perspective at the time (*People v. Nowicki*, 385 Ill. App. 3d 53, 82, 894 N.E.2d 896, 924 (2008)).

¶ 76 While being careful to avoid the false superiority of hindsight (*People v. Mabry*, 398 Ill. App. 3d 745, 753, 926 N.E.2d 732, 739 (2010)), we should expect *something* of tactical decisions. They are not immune from scrutiny. Even a tactical decision, such as a decision not to object (*Perry*, 224 Ill. 2d at 344, 864 N.E.2d at 216), has to be "objectively reasonable." (Internal quotation marks omitted.) *Manning*, 241 Ill. 2d at 343, 948 N.E.2d at 556; see also *Simpson*, 2015 IL 116512, ¶ 36, 25 N.E.2d 601; *People v. Moore*, 2012 IL App (1st) 100857, ¶ 53, 964 N.E.2d 1276. A reviewing court decides *de novo* (*People v. Hale*, 2013 IL 113140, ¶ 15, 996 N.E.2d 607; *People v. Morris*, 2013 IL App (1st) 111251, ¶ 116, 997 N.E.2d 847) whether a defendant has rebutted the presumption that refraining from objecting could be considered, under the circumstances, to be a sound trial strategy (*People v. Macias*, 2015 IL App (1st) 132039, ¶ 82, 36 N.E.3d 373).

¶ 77 A defendant suffers prejudice from the deficient performance of defense counsel if there is a "reasonable probability" that, but for the deficient performance, the outcome of the

proceeding would have been more favorable to the defendant. *Minniefield*, 2014 IL App (1st) 130535, ¶ 71, 25 N.E.3d 34. To establish a "reasonable probability," a defendant has to do more than show that the deficient performance, had "some conceivable effect on the outcome." *Strickland v. Washington*, 466 U.S. 668, 693 (1984). Still, a defendant need not go so far as to show that the deficient performance would have "more likely than not altered the outcome." *Id.* Instead, a "reasonable probability" is "a probability sufficient to undermine confidence in the outcome." *Id.* at 694.

¶ 78 The closer the case, the more likely defense counsel's deficient performance altered the outcome. See *People v. Butcher*, 240 Ill. App. 3d 507, 510, 608 N.E.2d 496, 498 (1992).

¶ 79 B. Ineffective Assistance in This Case

¶ 80 1. *Deficient Performance*

¶ 81 A logical preliminary question would be whether the statements Johnny, Matthew, and Renee made to the police were indeed objectionable under the rules of evidence, given that professionally reasonable performance does not require making unmeritorious objections. See *People v. Nieves*, 193 Ill. 2d 513, 527, 739 N.E.2d 1277, 1284 (2000) (no ineffective assistance if "any objection *** would rightfully have been overruled"). According to defendant, the CDs were objectionable on two grounds: (1) they consisted (for the most part) of prior consistent statements, *i.e.*, statements substantially identical to those the witnesses already had made in their testimony on direct examination; and (2) they referred to uncharged bad acts and bad character traits of defendant.

¶ 82 We conclude that both objections would have been valid if defendant's counsel had made them during the jury trial.

¶ 83 a. Prior Consistent Statements

¶ 84 Generally, a prior consistent statement is inadmissible unless (1) the prior consistent statement rebuts a charge that a witness is motivated to testify falsely or (2) the prior consistent statement rebuts an allegation of recent fabrication. Ill. R. Evid. 613(c) (eff. Jan. 1, 2011). Under the first exception, the prior consistent statement is admissible if it was made before the motive to testify falsely came into existence. In other words, at the time the declarant made the prior consistent statement, the declarant lacked any motive to tell a lie. The declarant developed that motive only later, after the prior consistent statement. Under the second exception, a prior consistent statement is admissible if it was made prior to the alleged fabrication.

¶ 85 The State does not invoke either of those exceptions to the rule against prior consistent statements, and we no reason to suppose that Johnny Price, Matthew Price, and Renee Strohl had a motive to fabricate that arose *after* they made their statements to the police. The CDs merely bolstered their credibility by showing that they had made earlier statements consistent with their testimony at trial, which is what the rule prohibiting prior consistent statements was designed to prevent.

¶ 86 b. Uncharged Bad Acts and Bad Character Traits

¶ 87 "Evidence of other crimes, wrongs, or acts is not admissible to prove the character of a person in order to show action in conformity therewith except" as provided in various sections of the Code of Criminal Procedure (725 ILCS 5/115-7.3, 115-7.4, 115-20 (West 2012)), none of which is applicable here. Ill. R. Evid. 404(b) (eff. Jan. 1, 2011).

¶ 88 Defendant argues the CDs were inadmissible not only because they contained many prior consistent statements but also because they accused him of uncharged bad acts and bad character traits. Specifically, defendant refers to the following representations in Johnny

Price's recorded statement to the police: (1) defendant claimed to be a member of the Latin Kings, a street gang, and wanted Johnny Price to make gang signs; (2) defendant forced Johnny Price to consume narcotics; (3) defendant had "problems" with Johnny Price; and (4) defendant cut Strohl's throat and chased after Johnny Price because he wanted to kill all the witnesses. Regarding Matthew Price's recorded statement, defendant argues he "made the unfairly prejudicial comment that defendant 'was a real big alcoholic, and that's all he does now is drink.' "

¶ 89 Defendant also argues that Renee Strohl, in her recorded statement, made the following unfairly prejudicial comments about his character: (1) "I don't like [defendant] coming to my house whenever he's intoxicated because he gets violent. His mother has told me, I've never experienced anything up until today, heard stories of other people that had been hurt by him when he drinks hard alcohol"; (2) shortly before the incident, defendant's mother "called and asked me to tell [defendant] that he had court at [9 a.m.] and if he was going to be home. And[] I said, ['']Blackie[,] you have court at nine.['] And he said, ['']I'm gonna be home by 10['] "; (3) during the evening hours, defendant asked Strohl to invite Lizzie G. over because he wanted to have sex with her; (4) "The only thing that [defendant] said to me that made me angry was he told me that that Lizzie girl had given him [oral sex] on my daughter's bed, and he was like[,] ['G]ive me a high five,['] and I just said[,] ['L]ook, I told you I did not want anybody doing anything on that bed['] "; and (5) defendant "talked about if Derrall Enlow would come to the house[,] [defendant] would for certain kill him and he wouldn't clean up any of the blood."

¶ 90 The State argues that the evidence of uncharged bad acts of which defendant complains was admissible because these bad acts were "intertwined" with the charged offenses, *i.e.*, the cutting of Matthew Price's and Renee Strohl's throats, and "provided the background for the events immediately surrounding the charged conduct." We disagree.

¶ 91 Under the continuing narrative doctrine, evidence of other bad acts can be admissible if, without such evidence, things people did at the time of the offense would seem implausible or inexplicable. *Pikes*, 2013 IL 115171, ¶¶ 19-20, 998 N.E.2d 1247; *People v. Stevenson*, 2014 IL App (4th) 130313, ¶ 48, 12 N.E.3d 179; *People v. Carter*, 362 Ill. App. 3d 1180, 1189-90, 841 N.E.2d 1052, 1059-60 (2005). In other words, evidence that a defendant committed uncharged wrongs can be admissible if such evidence provides a necessary background to people's behavior at the time of the charged crime—behavior that otherwise would make no sense to the jury. See *People v. Slater*, 393 Ill. App. 3d 977, 992-93, 924 N.E.2d 1039, 1052 (2009). In such a case, the evidence of other bad acts would be offered not to prove that the defendant is a wicked person who, by nature, is prone to commit crime; instead, the evidence would be offered to present a coherent, logically intelligible narrative of the charged crime. *Carter*, 362 Ill. App. 3d at 1191, 841 N.E.2d at 1061.

¶ 92 That does not mean the evidence is *automatically* admissible for that purpose. For the sake of presenting a coherent narrative, the evidence of other bad acts *may be* admissible, but even when evidence of other bad acts has a relevant purpose other than to show the defendant's propensity to commit crime, the trial judge must weigh the probative value of the evidence against its unfairly prejudicial effect. *Id.* at 1191-92, 841 N.E.2d at 1061. Although it is possible that the trial court, in weighing the probative value of this evidence against its unfair prejudice, might have admitted some of it, most of it was seriously prejudicial and not probative.

¶ 93 For instance, we do not see how defendant's alleged declaration of membership in the Latin Kings and his forcing Johnny Price to smoke K2 were probative of anything other than defendant's supposed aggressive, violent, unsavory character. It would be one thing if Johnny Price told the police, unequivocally: "Defendant wanted me to make gang signs, but I refused to

do so, and he forced me to smoke K2, but one hit is all I would take. He became irate at me because of these refusals, and he threatened to beat me up. That's when Matthew Price told him, 'You'll have to go through me first.' " If Johnny Price had told the police that, one might infer that defendant "went through" Matthew Price by cutting his throat, in which case what happened before would have been necessary to a coherent narrative. But Johnny Price merely told the police that defendant had unspecified "problems" with him, and Johnny Price only speculated that defendant threatened to beat him up. Further, Johnny Price could only speculate what defendant and Matthew Price told one another regarding him, if indeed they had any conversation at all regarding him. Thus, the probative value of this evidence was minimal when compared to its significant prejudice to defendant.

¶ 94 That defendant had been known to hurt people when he got drunk was nothing more than evidence of his propensity for violence. Had defense counsel objected to it, there would have been nothing to weigh. The only possible function of this evidence was to suggest that, as someone who had a known history of hurting people when drunk, defendant was just the type of person who would cut the throats of Matthew Price and Renee Strohl in a drunken rage.

¶ 95 The references to defendant's supposed membership in the Latin Kings, his forcing someone to smoke a dangerous narcotic, and his being a violent drunk clearly were clearly prejudicial and had no probative value. We can discern no strategic reason to acquiesce in the presentation of that improper and unfairly prejudicial evidence.

¶ 96 Again, whether to object is a strategic decision. *Perry*, 224 Ill. 2d at 344, 864 N.E.2d at 216. Although we should give "wide latitude" to strategic decisions (*Cunningham*, 376 Ill. App. 3d at 301, 875 N.E.2d at 1140), we should expect them to be "objectively reasonable" (*Manning*, 241 Ill. 2d at 343, 948 N.E.2d at 556). We are unable to see how it was objectively

reasonable for defense counsel to agree to the *wholesale* presentation of the statements that Johnny Price, Matthew Price, and Renee Strohl had made to the police. The agreement is inexplicable; it makes no sense.

¶ 97 Defense counsel's stated reason for entering into the agreement was simply incorrect. He explained to the trial court that if he used the statements for impeachment, as he intended to do, he would "open the door" anyway and the statements in their entirety would "[come] in." Likewise, the prosecutor alluded to "the doctrine of completeness." Actually, as defendant explains in his brief, the doctrine of completeness makes additional parts of a statement admissible only to the extent necessary to "prevent the jury from being misled, to place the admitted portion in context so that a true meaning is conveyed, or to shed light on the meaning of the admitted portion." *People v. Craigen*, 2013 IL App (2d) 111300, ¶ 46, 997 N.E.2d 743. We do not see how the impeaching parts of the statements would have been misleading in the absence of a presentation of the statements in their entirety.

¶ 98 Defense counsel's all-or-nothing assumption was incorrect. See *People v. Caffey*, 205 Ill. 2d 52, 90-91, 792 N.E.2d 1163, 1189 (2001). Illinois Rule of Evidence 106 (eff. Jan. 1, 2011), which addresses the completeness doctrine, provides that "[w]hen a writing or recorded statement or part thereof is introduced by a party, an adverse party may require the introduction at that time of any other part or any other writing or recorded statement which ought in fairness to be considered contemporaneously with it." The committee comment to Rule 106 provides the following:

> "Rule 106 permits the admission contemporaneously of any other part of a writing or recording or any other writing or recording which 'ought in fairness' be considered at the same time. Prior Illinois law appears to have limited the concept

> of completeness to other parts of the same writing or recording or an addendum thereto. The 'ought in fairness' requirement allows admissibility of statements made under separate circumstances." Ill. R. Evid. 106, Committee Comments.

But "the right to introduce an entire writing or conversation is not absolute." *People v. Moore*, 2012 IL App (1st) 100857, ¶ 48, 964 N.E.2d 1276. The additional parts of a statement or recording introduced under the completeness doctrine must be relevant. *Id.* That is, the additional parts must place the statement " 'in proper context so that a correct and true meaning is conveyed to the jury.' " *Craigen*, 2013 IL App (2d) 111300, ¶ 45, 997 N.E.2d 743 (quoting *Lawson v. G.D. Searle & Co.*, 64 Ill. 2d 543, 556, 356 N.E.2d 779, 786 (1976)). "The doctrine of completeness does not give the party an automatic right to introduce material which is otherwise inadmissible." *Moore*, 2012 IL App (1st) 100857, ¶ 48, 964 N.E.2d 1276.

¶ 99 In this case, as far as we can surmise, defense counsel mistakenly assumed that introducing a portion of a witness interview would allow the State to introduce that interview in its entirety, regardless of the relevancy or otherwise inadmissible nature of the remainder of the statement. Defense counsel's assumption was incorrect.

¶ 100 2. *Prejudice*

¶ 101 This was a close case. Johnny, Matthew, and Renee were flawed witnesses.

¶ 102 That Johnny Price, who apparently was in possession of a cell phone, would refrain from calling 9-1-1 is somewhat troubling but perhaps is explainable in that he assumed his grandmother, whom he apparently did call, would call 9-1-1. If Johnny Price, however, declined Gayla Jenkins's offer to call 9-1-1 (as she testified he did), that is a real problem, considering that, for all Johnny Price knew, his first cousin and his first cousin's girlfriend were at that very moment lying in their front room, bleeding to death. That Jenkins (as she also testified) saw

Johnny Price laughing while talking on his cell phone, immediately after he fled the scene of the throat cutting, could suggest he was not quite as devastated as he at first presented himself to be.

¶ 103 As for Matthew Price, he was a felon, and one can only wonder about his level of consciousness after consuming alcohol, hydrocone powder, cannabis, and K2.

¶ 104 According to Matthew Price, defendant dropped the knife onto the floor when he pushed defendant down onto the bed. Detective Anthony West testified, however, that he found the knife on top of the television table, as pictured in People's exhibit No. 32.

¶ 105 There also was the discrepancy between what Matthew Price told Wright, Broom, and Pedigo and what he told the jury. It is unclear what motive those three would have had to lie. They all described themselves as Matthew Price's longtime friends, and Pedigo even testified that Matthew Price was like a brother to her. According to Wright's testimony, Matthew Price told her that *Johnny Price* had cut his and Renee Strohl's throats because Johnny Price had given them money to buy drugs for his own use and they had consumed the drugs instead of giving them to him, Johnny Price. Pedigo testified that Matthew Price had told her *three times* it was Johnny Price who had cut his throat. And Broom testified that Matthew Price had told her both defendant *and* Johnny Price were standing behind him when his throat was cut. Thus, the testimony of Matthew Price, a felon and a heavy drug user, was in direct contradiction to what he supposedly had told his friends: Wright, Broom, and Pedigo.

¶ 106 As for Renee Strohl, she admitted she had no idea who had cut her throat. Hydrocodone and rum, consumed together, probably did not enhance her alertness.

¶ 107 Based on the foregoing reasoning, we conclude that a reasonable probability existed that the wholesale presentation of the police statements made a difference in the outcome. "The danger in prior consistent statements is that a jury is likely to attach disproportionate signif-

icance to them. People tend to believe that which is repeated most often, regardless of its intrinsic merit, and repetition lends credibility to testimony that it might not otherwise deserve." *People v. Smith*, 139 Ill. App. 3d 21, 33, 486 N.E.2d 1347, 1355 (1985). In their statements to the police, Johnny Price and Matthew Price repeated their accounts again and again. In addition to being influenced by this repetition, the jury could have been inclined to think that a mean drunk who was a member of a street gang was just the sort of person who would cut someone's throat. The record shows prejudice. We therefore reverse the trial court's judgment on the ground of ineffective assistance of trial counsel.

¶ 108 III. CONCLUSION

¶ 109 For the reasons stated, we reverse the trial court's judgment and remand for further proceedings.

¶ 110 Reversed and remanded.