2025 IL App (5th) 230085-U

NO. 5-23-0085

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Crawford County.
	)	
v.	)	No. 18-CF-25
	)	
ALFRED O. WALDROP,	)	Honorable
	)	Christopher L. Weber,
Defendant-Appellant.	)	Judge, presiding.

JUSTICE MOORE delivered the judgment of the court.
Justices Boie and Vaughan concurred in the judgment.

ORDER

¶ 1 *Held*: We affirm the defendant's conviction and sentence where his claims of ineffective assistance of counsel fail under the standards established in *Strickland v. Washington*, 466 U.S. 688 (1984). Accordingly, the trial court did not err in declining to appoint new counsel upon limited remand as defendant failed to show possible neglect.

¶ 2 Defendant, Alfred O. Waldrop, was convicted of one count of predatory sexual assault of a minor under 13, pursuant to section 11-1.40(a)(1) of the Criminal Code of 2012 (720 ILCS 5/11-1.40(a)(1) (West 2016)), following a jury trial. Defendant initiated his direct appeal in 2019, and this court has retained jurisdiction since that time. See *People v. Waldrop*, 2022 IL App (5th) 190169-U. Following a limited remand, we address all of the defendant's raised contentions. For the following reasons, we affirm.

¶ 3 I. BACKGROUND

¶ 4 In the previous appeal, this court exhaustively recited the facts adduced at trial. See *id.* For consistency, we adopt and incorporate by reference the background set forth in our prior disposition. The background will be supplemented when necessary.

¶ 5 On March 6, 2019, defendant was found guilty of predatory sexual assault of a minor under the age of 13, pursuant to section 11-1.40(a)(1) (*id.*), following a jury trial. On April 11, 2019, defense counsel filed a motion for judgment notwithstanding the verdict or new trial. A hearing on defense counsel's motion took place on April 22, 2019, during which defense counsel argued that the State had failed to prove the material allegation beyond a reasonable doubt. Additionally, defense counsel argued that the trial court erred by allowing multiple forms of hearsay into evidence, which prejudiced the defendant's right to a fair trial. Further, defense counsel argued that the trial court erred by granting the State's section 115-7.3 motion (725 ILCS 5/115-7.3 (West 2016)) filed on January 30, 2019. The trial court denied defense counsel's posttrial motion and sentenced the defendant that same day.

¶ 6 At sentencing, the defendant asked the trial court to grant him a new trial because there was medical evidence withheld by his attorney that demonstrated his innocence. The trial court did not inquire regarding this allegation and sentenced the defendant to 25 years of imprisonment in the Illinois Department of Corrections, followed by 3 years of mandatory supervised release. The defendant then timely appealed.

¶ 7 On direct appeal, the defendant raised three issues for review: (1) ineffective assistance of counsel, (2) the deprivation of a fair and impartial trial, and (3) the trial court's failure to conduct a hearing pursuant to *People v. Krankel*, 102 Ill. 2d 181 (1984). See *Waldrop*, 2022 IL App (5th) 190169-U, ¶ 33. Finding error with respect to the *Krankel* issue, and without addressing the other

issues raised, this court remanded the matter with directions for the limited and sole purpose of the trial court to conduct a *Krankel* hearing. See *id.* ¶ 40.

¶ 8 Upon limited remand, the trial court conducted a *Krankel* hearing as directed, during which defendant, defense counsel, and the State were present. During the hearing, the trial court explained that, following the precedent set by *People v. Moore*, 207 Ill. 2d 68 (2003), it would allow the defendant to elaborate on his claims of ineffective assistance of counsel. The trial court also indicated that defense counsel would have the opportunity to respond and noted that the defendant would be granted "the last word." The defendant then alleged 10 claims of ineffective assistance of counsel. Defense counsel addressed each allegation individually. After the defendant was given "the last word," the trial court took the matter under advisement. On January 20, 2023, the trial court issued a 10-page written order concluding that defendant's claims of ineffective assistance of counsel did not meet the standards established in *Strickland v. Washington*, 466 U.S. 688 (1984). This appeal followed.

¶ 9 II. ANALYSIS

¶ 10 A. Ineffective Assistance of Counsel

¶ 11 Defendant first raises the issue of whether he was denied his constitutional right to effective assistance of counsel. To prevail on a claim of ineffective assistance of counsel, the defendant "must demonstrate that counsel's performance was deficient, and that the deficient performance prejudiced the defendant." *People v. Cathey*, 2012 IL 111746, ¶ 23 (citing *Strickland*, 466 U.S. at 687). More specifically, the defendant "must show that counsel's performance was objectively unreasonable under prevailing professional norms and that there is a 'reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different.' " *Id.* (quoting *Strickland*, 466 U.S. at 694). "Surmounting *Strickland*'s high bar is never an easy

task." *Padilla v. Kentucky*, 559 U.S. 356, 371 (2010). "[A] defendant must establish both prongs of the *Strickland* test, such that the failure to establish either precludes a finding of ineffective assistance of counsel." *People v. Cherry*, 2016 IL 118728, ¶ 31. Accordingly, it is not necessary to evaluate both prongs of the *Strickland* test if the defendant makes an insufficient showing on one. *People v. Boyd*, 2018 IL App (5th) 140556, ¶ 19. We review a claim of ineffective assistance of counsel *de novo. People v. Hale*, 2013 IL 113140, ¶ 15**.**

¶ 12 On appeal, the defendant claims he received ineffective assistance of counsel for several reasons: (1) defense counsel failed to object to the State's rebuttal closing argument; (2) defense counsel failed to challenge juror Adam Wesley on the grounds of bias; (3) defense counsel failed to object to the trial court's failure to hold a hearing pursuant to section 115-10 of the Code of Criminal Procedure of 1963 (Code) (725 ILCS 5/115-10 (West 2016)); and (4) defense counsel failed to object to the State's 115-7.3 motion (see *id.* § 115-7.3). Following a review of the record, including the evidence presented at trial, we affirm the defendant's conviction.

¶ 13 1. The State's Rebuttal Closing Argument

¶ 14 Defendant contends his counsel was ineffective for failing to object to statements made in the State's rebuttal closing argument. In the opening portion of the State's closing argument, the State recounted the evidence presented at trial. The State then reviewed the elements[1] of the charged offense and stated that the "real issue" at trial was whether sexual penetration occurred.

[1]Section 11-1.40(a)(1) of the Criminal Code of 2012 provides that "[a] person commits predatory sexual assault of a child if that person is 17 years of age or older, and commits an act of contact, however slight, between the sex organ or anus of one person and the part of the body of another for the purpose of sexual gratification or arousal of the victim or the accused *** and: (1) the victim is under 13 years of age[.]" 720 ILCS 5/11-1.40(a)(1) (West 2016).

The State argued the evidence produced at trial was sufficient to establish the defendant's guilt beyond a reasonable doubt.

¶ 15 In defendant's closing argument, defense counsel stated that, based on the victim's testimony, she had allegedly been abused over 300 times. Defense counsel informed the jury that they had heard testimony from the medical doctor who conducted the rape kit and performed a physical examination on the victim. The doctor testified in detail how the examination was conducted, including an inspection of the victim's hymen. Defense counsel reminded the jury that the doctor testified that the victim's hymen was completely intact, with no contusions or abrasions. Defense counsel argued that the victim was physically "like any other 12 year old" girl, emphasizing that there were "no signs" of sexual abuse. Defense counsel argued that if the victim had truly been abused over 300 times, there would be evidence to support that claim. Defense counsel stressed that there was no evidence "because it didn't happen." Defense counsel concluded her closing argument by reiterating that the jury would need to find proof of penetration beyond a reasonable doubt. Defense counsel stated, "folks, we don't have any evidence of penetration occurring. In fact, I say we have the exact opposite. We have physical evidence from a doctor that penetration did not occur."

¶ 16 In its rebuttal closing argument, the State summarized the victim's testimony, emphasizing that she testified that the defendant had penetrated her. Additionally, the State pointed out that the doctor testified that "94 to 98 percent of the time there are, in these types of cases there aren't physical signs of abuse." The State argued that the medical doctor testified that "there was no complete loss of hymen tissue, which in my opinion, isn't the same thing as saying the hymen isn't intact. It's saying there's no complete loss of hymen tissue."

¶ 17 On appeal, the defendant argues that defense counsel was ineffective for failing to object to the State's rebuttal closing argument. Defendant argues this failure allowed the State to "infuse the credibility and power of its office into its closing argument by opining on a medical issue, while misrepresenting the medical doctor's testimony in the process." Further, the defendant claims that the State's rebuttal closing argument undermined the credibility of defense counsel by implying that she had inaccurately represented the doctor's testimony. Defendant asserts that defense counsel's failure to object to the State's closing argument was "blatantly unreasonable." Defendant's brief, however, fails to specifically argue or explain how, absent counsel's alleged error, the result of the proceeding would have been different.

¶ 18 "A reviewing court is not simply a depository into which a party may dump the burden of argument and research." *People ex rel. Illinois Department of Labor v. E.R.H. Enterprises, Inc.*, 2013 IL 115106, ¶ 56. This is because a reviewing court "cannot be expected to formulate an argument for defendant out of whole cloth." *People v. Inman*, 2023 IL App (4th) 230864, ¶ 13. The appellant is required to set forth his points and the reasons therefor with citation to authority, and points not argued are forfeited. Ill. S. Ct. R. 341(h)(7) (eff. Oct. 1, 2020). Again, to prevail on a claim of ineffective assistance of counsel under *Strickland*, the defendant must establish both prongs of the *Strickland* test, such that the failure to establish either precludes a finding of ineffective assistance. *Cherry*, 2016 IL 118728, ¶ 31. Because the defendant has made no attempt in our court to demonstrate *Strickland*'s prejudice prong, his argument is forfeited. See *id.* Having forfeited any argument concerning *Strickland*'s prejudice prong, defendant's claim of ineffective assistance claim fails.

¶ 19 2. *Voir dire*

¶ 20 Next, the defendant argues that he received ineffective assistance from defense counsel because she did not use her final peremptory challenge to remove potential juror Wesley. The decision to exercise a peremptory challenge is regarded as a matter of trial strategy. See *People v. Martin*, 271 Ill. App. 3d 346, 354 (1995). Generally, matters of trial strategy are considered immune from claims of ineffective assistance of counsel. *People v. Smith*, 195 Ill. 2d 179, 188 (2000).

¶ 21 However, it is important to note that our supreme court has never held that an attorney's performance during jury selection is beyond scrutiny under the *Strickland* standard. *People v. Manning*, 241 Ill. 2d 319, 333 (2011). Instead, our supreme court and other reviewing courts have recognized that decisions made during jury selection involve trial strategy and, therefore, deserve significant deference. *Id.* Indeed, *Strickland* itself highlights the necessity of giving considerable deference to the strategic decisions made by defense counsel:

> " 'Judicial scrutiny of counsel's performance must be highly deferential. It is all too tempting for a defendant to second-guess counsel's assistance after conviction or adverse sentence, and it is all too easy for a court, examining counsel's defense after it has proved unsuccessful, to conclude that a particular act or omission of counsel was unreasonable. [Citation.] A fair assessment of attorney performance requires that every effort be made to eliminate the distorting effects of hindsight, to reconstruct the circumstances of counsel's challenged conduct, and to evaluate the conduct from counsel's perspective at the time.' " *Id.* at 333-34 (quoting *Strickland*, 466 U.S. at 689).

¶ 22 Therefore, to satisfy the deficiency prong of the *Strickland* standard, a defendant must overcome a strong presumption that their counsel's actions were based on sound trial strategy,

rather than incompetence. *Strickland*, 466 U.S. at 689. This is accomplished by demonstrating that the performance of defense counsel was so inadequate that it failed to meet the standard of "counsel" guaranteed by the sixth amendment. *Smith*, 195 Ill. 2d at 188. The performance of defense counsel is "measured by an objective standard of competence under prevailing professional norms." *Id.*

¶ 23 On appeal, the defendant acknowledges the aforementioned. However, he argues that "no reasonable strategy was served by senselessly allowing Wesley to be on the jury, and in fact, seems to go against the very strategy that counsel was attempting to execute." The defendant argues that defense counsel successfully challenged numerous potential jurors who expressed discomfort about serving on his case, as well as those who raised concern related to their own children or grandchildren, even if they said they would try to remain unbiased. Additionally, the defendant argues that defense counsel's failure to use her final peremptory challenge on Wesley resulted in the seating of a juror who was biased against him.

¶ 24 Defense counsel can be considered deficient for failing to exercise a peremptory challenge against a juror who unequivocally shows bias against the defendant. However, when evaluating defense counsel's decisions regarding peremptory challenges, it is not appropriate to focus solely on one response or even a few responses, as this could distort the analysis of whether counsel was indeed deficient. *Manning*, 241 Ill. 2d at 334. Therefore, we must look at the overall responses given by Wesley to determine if he was unequivocally biased such that defense counsel strayed from sound trial strategy by not using her final peremptory challenge against him. *Id.*

¶ 25 Given the entirety of the *voir dire* process involving Wesley, it is clear that Wesley was not unequivocally biased such that defense counsel was deficient in failing to peremptorily challenge him. During individual questioning, Wesley affirmed that he understood and accepted

the principles outlined in Illinois Supreme Court Rule 431(b) (eff. July 1, 2012). Wesley also affirmed that he could apply the law without letting his personal feelings influence his judgment. It was during questioning by the State that Wesley indicated potential struggles with this case. To further explore Wesley's potential bias, defense counsel asked about his familial status. Wesley responded that he was married and had three children, two of whom were daughters under the age of 15. The following colloquy then occurred:

"[DEFENSE COUNSEL]: Can you think of anything in your own life that reminds you of this case?

[WESLEY]: No.

[DEFENSE COUNSEL]: Or do you know of anybody, friends or family, ever been in—

[WESLEY]: No.

[DEFENSE COUNSEL]: —anything like this?

[WESLEY]: No.

[DEFENSE COUNSEL]: So, if you were my client, would you be completely comfortable with you as a juror on this case?

[WESLEY]: Well, I don't know your client, but I would be nervous about fathers with young girls on the jury. But I would try my best.

[DEFENSE COUNSEL]: And so, since you are a father of young girls, you think, you know, coming into this, you're going to have a little bit of a bias?

[WESLEY]: I would rather not, but yes, I believe it does.

[DEFENSE COUNSEL]: Okay. I completely understand. Like I said, none of us want to admit that we have a bias, but, if we do, it's certainly okay. So you believe that you would have a bias then?

[WESLEY]: I possibly could but I would try, I would try my best not to."

In jury selection, the State accepted Wesley as a panel member and tendered Welsey to the defense. The following exchange between defense counsel and the trial court then occurred:

"[DEFENSE COUNSEL]: Your Honor, with regard to Mr. Wesley, the only thing I could say is I think I would object to him for cause only because he indicated, you know, this is a trial that could last two to three days. He said as soon as he's done, he's going to work tonight and he's going to be working for making up for missing today and he would be doing the same thing tomorrow night, so I don't think he could remain an alert juror, somebody that was unbiased, considering he's going to be working all night tonight and tomorrow night I think.

[THE COURT]: Well, my recollection, that was more of what [Chris Wetley's] answer was and that Mr. Welsey's answer, I thought, was that he would have to go to work but didn't anticipate, or I didn't get from the way he stated it that it was, he said either clean up or evaluate clean up—and I can't remember which—but I don't think that's a reason to have him excused for cause. So, with regard to Wesley, are you wanting to exercise your tenth peremptory or not?

[DEFENSE COUNSEL]: No, Your honor."

After Wesley was selected, the trial court noted that it became "necessary for us to seat a fourth panel for us to seat our jury." After 10 additional potential jurors were *voir dired*, the parties ultimately selected a full jury with one alternate.

¶ 26 "Attorneys consider many factors in making their decisions about which jurors to challenge and which to accept." *Manning*, 241 Ill. 2d at 335. Indeed, other potential jurors expressed their ability to remain impartial in a similar manner to Wesley. However, defense counsel exercised peremptory challenges against some of those jurors, but not all. Thus, defense counsel was aware that a juror's parental status could lead some prospective jurors to doubt their ability to remain fair and impartial. More importantly, considering Wesley's responses, it is likely that defense counsel concluded that he was not unequivocally biased. Moreover, the record indicates that, Wesley responded to questioning, saying he would, "try my best" and that he would "try my best not to [be biased]."

¶ 27 At the time Wesley was presented for jury selection, defense counsel had only one peremptory challenge remaining with two jurors and one alternate left to be seated. It is certainly reasonable that, given Wesley's responses indicating a willingness to try his best, counsel strategically chose to impanel Wesley and reserve the last peremptory challenge for other potential jurors. See *id.* at 336 (finding that counsel's decision to reserve two remaining peremptory challenges with three more jurors left to be seated was not unreasonable). Indeed, defense counsel did use the remaining peremptory challenge on another prospective juror. Therefore, defense counsel was not deficient in failing to use her final peremptory challenge against Wesley.

¶ 28 Alternatively, the defendant argues that he was denied a fair trial because two potential jurors, Christiana Stinson and Jerry Bradberry, made "highly prejudicial comments" during the *voir dire* process. Although the defendant acknowledges that both Stinson and Bradberry were removed for cause, he argues that

> "even if the other jurors selected to serve admitted to no bias, their exposure to [Stinson and Bradberry's] comments without any admonishment from the trial court, combined with

> the presence of one juror with actual bias created the likelihood or appearance of bias throughout the entire jury."

The defendant argues that this situation constitutes structural error, which requires automatic reversal. To support this argument, the defendant relies upon *Peters v. Kiff*, 407 U.S. 493 (1972).

¶ 29 An error is considered structural when it "renders a criminal trial fundamentally unfair or unreliable in determining guilt or innocence." *People v. Averett*, 237 Ill. 2d 1, 12-13 (2010). We acknowledge that our supreme court has established that a trial before a biased jury would constitute a structural error that necessitates automatic reversal. See *People v. Rivera*, 227 Ill. 2d 1, 19-20 (2007)). However, a defendant must demonstrate that such bias actually existed. *Id.*

¶ 30 In this case, the defendant has failed to demonstrate actual bias and instead relies on speculation. The speculative nature of the defendant's claim is apparent in his appellate brief, where he states that "it might be impossible to know exactly what effects [Stinson's and Bradberry's] comments had on the jury." Moreover, the defendant provides no evidence that he was tried before a biased jury or even a single biased juror, as we have found that Wesley was not unequivocally biased. See *id.* at 20. Nor does the defendant suggest that any member of the jury, apart from Welsey, was subject to removal for cause. *Id.*

¶ 31 It is important to note that if the facts in this case had shown that the defendant was tried before a biased jury, his conviction would have been reversed without question. *People v. Glasper*, 234 Ill. 2d 173, 200-01 (2009). However, no such facts exist in this case, especially considering that the record indicates that the jurors were properly admonished and instructed not to form prejudicial inferences against the defendant. *Id.* at 201. To assume otherwise would mean assuming that jurors ignore the law and the instructions given to them, which contradicts our precedent that instructs us to make the opposite presumption. *Id.* Therefore, we reject defendant's

argument that automatic reversal is warranted. In arriving at this conclusion, we find that the defendant's reliance upon *Kiff*, 407 U.S. 493, is without merit because the facts are distinguishable from the present case and *dicta* is not binding authority. *American Telephone & Telegraph Co. v. Village of Arlington Heights*, 174 Ill. App. 3d 381, 386 (1988).

¶ 32 We note, here, that the defendant argues that defense counsel was ineffective for failing to ask for a discharge of the entire venire after Stinson and Bradberry made "highly prejudicial comments." However, the defendant's brief does not articulate the basis of his ineffective assistance of counsel argument and does not set forth how he was prejudiced. As the defendant's brief fails to support his argument that he received ineffective assistance of counsel, this argument is forfeited on appeal. See Ill. S. Ct. R. 341(h)(7).

¶ 33 3. Section 115-10 Hearing

¶ 34 Defendant's third claim of ineffective assistance of counsel relates specifically to the State's 115-10 motion. Section 115-10 of the Code provides that certain evidence shall be admitted as an exception to the hearsay rule under the following circumstances:

> "(1) The court finds in a hearing conducted outside the presence of the jury that the time, content, and circumstances of the statement provide sufficient safeguards of reliability; and
>
> (2) The child *** either:
>
> (A) testifies at the proceeding; or
>
> (B) is unavailable as a witness and there is corroborative evidence of the act which is the subject of the statement; and
>
> (3) In a case involving an offense perpetrated against a child under the age of 13, the out of court statement was made before the victim attained 13 years of age of within

3 months after the commission of the offense, whichever occurs later, but the statement may be admitted regardless of the age of the victim at the time of the proceeding." 725 ILCS 5/115-10(b) (West 2016).

¶ 35 In this case, the trial court held a hearing in December of 2018 to discuss pending pretrial motions, including the State's section 115-10 motion. During the hearing, the State offered a DVD recording of the victim's interview at the Children's Advocacy Center (CAC), which was marked as Exhibit 1. Additionally, the State offered what was marked as Exhibit 2, which contained statements made by the victim to Dickerson and her two minor friends. The State pointed out that it did not believe defense counsel had "any objection to [the exhibits] being proffered for the Court's ruling." In response, defense counsel stated, "That's correct, Your Honor. I have no objection to the proffer for the purposes of the Court reviewing these matters so they can make a ruling in this. I just object for hearsay for trial purposes." With the parties' agreement, the trial court took the matter under advisement and conducted an *in camera* review of the submitted exhibits. Two days after the hearing, the trial court ruled by docket entry stating, "Motion to Admit per 725 ILCS 5/115-10 granted."

¶ 36 On appeal, the defendant argues that defense counsel was ineffective "by failing to object to the trial court's failure to hold a hearing pursuant to Section 115-10, and by failing to object to additional out-of-court statements that were not included in the State's pretrial motion to admit [the victim's] out-of-court statements." The defendant sets forth that the State's motion made no reference to the statements made by the victim directly to Wells or Mullins. The State argues that a hearing pursuant to section 115-10 took place. In reply, the defendant argues that the State mistakes the fact that the court heard the State's section 115-10 motion for having conducted a proper hearing. In the alternative, the defendant argues that, if counsel was not ineffective, the trial

court committed plain error when it failed to conduct a hearing pursuant to section 115-10 of the Code. The defendant argues that without such a hearing, the court could not adequately assess whether the time, content, and circumstances of the victim's statements provided sufficient safeguards of reliability. To support this argument, the defendant states, *inter alia*, that the trial court did not discuss its findings on the record or in a written order. The defendant acknowledges he did not properly preserve this alternative argument for appeal. See *People v. Sebb*y, 2017 IL 119445, ¶ 48 ("To preserve a purported error for consideration by a reviewing court, a defendant must object to the error at trial and raise the error in a posttrial motion. [Citation.] Failure to do either results in forfeiture."). However, he contends that the issue is reviewable under the first prong of the plain error doctrine, which provides for review where the evidence is "so closely balanced that the error alone threatened to tip the scales of justice against [defendant]." *Id.*

¶ 37 Plain-error review under the first prong, the closely balanced prong, is similar to an analysis for ineffective assistance of counsel insofar as a defendant in either instance must show prejudice. *People v. White*, 2011 IL 109689, ¶ 133. Specifically, a defendant must show:

> "that the evidence is so closely balanced that the alleged error alone would tip the scales of justice against him, *i.e.*, that the verdict 'may have resulted from the error and not the evidence' properly adduced at trial (see *People v. Herron*, 215 Ill. 2d 167, 178 (2005) (plain error); or that there was a 'reasonable probability' of a different result had the evidence in question been excluded (see *Strickland*, 466 U.S. at 694)." *Id.*

Additionally, "[b]oth analyses are evidence-dependent and result-oriented." *White*, 2011 IL 109689, ¶ 134. Following a review of the evidence presented at trial, even if we were to assume, *arguendo*, that there was error in the admissions of evidence concerning the victim's out of court

statements, the evidence against the defendant is such that he cannot show prejudice for purposes of either analysis.

¶ 38 In this case, evidence of the victim's out-of-court statements did not tip the scales against the defendant. The factual posture set forth in our disposition of the defendant's prior appeal (see *Waldrop*, 2022 IL App (5th) 190169-U) demonstrates how heavily the evidentiary balance weighed in the State's favor. At trial, the victim testified that in February of 2018, the defendant had raped her. Specifically, the victim testified that the defendant "put his penis in my vagina." The victim testified that the abuse took place on a chair in the living room. The victim testified that the defendant placed a jacket over her lap to cover her up, and she believed the use of the jacket was meant to prevent anyone from seeing the abuse. The victim testified that the abuse began when she was six years old and continued over the years. However, during the incident that occurred in February 2018, she was 12 years old. At trial, the victim testified that she was 13 years old.

¶ 39 Further, Wells testified that after the victim's CAC interview, she and Mullins went to the defendant's residence, where the victim lived, to collect additional evidence. During their visit, the victim identified two flannel jackets as the ones placed over her during the defendant's abuse. The two jackets were admitted as evidence at trial. Jennifer Acosta-Talbot, a forensic scientist with the State of Illinois Police, testified that she examined the two flannel jackets and found six semen stains that were extracted for testing. Dana Pitchforth, a forensic scientist with the State of Illinois Police, testified that she performed DNA analysis on the six semen stains extracted by Acosta-Talbot and determined that the male DNA belonged to the defendant and that there was a minor DNA profile as well, from which the victim could not be excluded. Pitchforth testified that she only analyzed the semen samples and did not test the entire jacket for other DNA.

¶ 40 Based on the foregoing, the defendant's claim of plain error predicated on closely balanced evidence is without merit. See *White*, 2011 IL 109689, ¶¶ 133-134. Accordingly, we cannot conclude that there was a reasonable probability of a different result had the victim's out-of-court statements been excluded. Consequently, the defendant's ineffective assistance of counsel claim likewise fails. See *id.* ¶ 148.

¶ 41 4. The State's Section 115-7.3 Motion

¶ 42 Defendant's final claim of ineffective assistance of counsel pertains to section 115-7.3 of the Code. See 725 ILCS 5/115-7.3 (West 2016). To begin our analysis, we set forth the general common law principles relevant to this section. Under the common law, other crimes evidence is not admissible to demonstrate the defendant's propensity to commit the charged crime. *People v. Donoho*, 204 Ill. 2d 159, 170 (2003). Evidence of other crimes is only admissible for specific relevant purposes, such as demonstrating *modus operandi*, consciousness of guilt, motive, absence of mistake, design, or knowledge. *People v. Banks*, 161 Ill. 2d 119, 137 (1994).

¶ 43 Section 115-7.3 of the Code (725 ILCS 5/115-7.3) provides an exception to the common law rule prohibiting the introduction of evidence to show propensity in cases, where, as here, a defendant is accused of predatory sexual assault of a child. Under section 115-7.3, evidence of another criminal sexual assault may be admissible, provided that it has probative value, and may be considered for its bearing on any matter to which it is relevant. *Id.* § 115-7.3(b). When evidence of other crimes meets the statutory requirements of relevance and contains probative value, it is presumed admissible unless its probative value is substantially outweighed by its prejudicial effect. *Id.* The statute provides:

> "In weighing the probative value of the evidence against undue prejudice to the defendant, the court may consider:

(1) the proximity in time to the charged or predicate offense;

(2) the degree of factual similarity to the charged or predicate offense; or

(3) other relevant facts and circumstances." *Id.* § 115-7.3(c)

¶ 44 The record reveals that on January 30, 2019, the State filed a motion pursuant to section 115-7.3 of the Code seeking to admit evidence that the victim had previously been sexually abused by the defendant. During a hearing on the motion, the State indicated that the motion:

> "deals with the State being able to specifically argue any propensity, not for any other victims but basically propensity for the victim in this specific case ***; that she is allowed to discuss the totality of the allegations and relationship, sexual acts perpetrated against her by Mr. Waldrop and the allegations of those, the propensity evidence has all been disclosed to the State in written statements and specifically the video-recorded statement that has been provided to defense counsel and also reviewed by the Court.
>
> The State just wants to have, make sure everything is clean; that the allegations of prior conduct other than just February 17th is able to be discussed in the testimony and evidence put forth by the State, Your Honor, and as allowed by statute."

Defense counsel objected to the State's motion, arguing that her objection was limited to evidence that had not been disclosed during discovery. The State then told the trial court that it anticipated the victim would testify about the instances of sexual abuse that had occurred over a period of years, which had already been disclosed, including sexual acts that took place at different locations in the home. That same day, the trial court granted the State's motion.

¶ 45 On appeal, the defendant claims that defense counsel should have objected and argued that the evidence subject to the State's section 115-7.3 motion was far more prejudicial than probative. Defendant argues that the failure to raise this objection allowed the State to "introduce more than

300 instance of illegal sexual conduct." On this basis, the defendant argues that defense counsel was ineffective. To affirmatively demonstrate that prejudice resulted from defense counsel's failure, defendant cites to *People v. Cardamone*, 381 Ill. App. 3d 462 (2008), claiming that he was "similarly prejudiced."

¶ 46 It is evident that *Cardamone* is distinguishable from the present case and is not relevant authority to establish a basis for the defendant to surmount *Strickland*'s high bar. In *Cardamone*, the defendant, a gymnastics coach, was charged with sexually abusing his students. *Id.* at 466. The State introduced evidence of at least 158 instances of uncharged conduct involving 15 additional and separate alleged victims, in accordance with section 115-7.3 of the Code. *Id.* at 491-93. The *Cardamone* court found that the significant volume of evidence related to the uncharged conduct was "overwhelming and undoubtedly more [unduly] prejudicial than probative." *Id.* at 497. In this case, the other crimes evidence was related to the same victim and involved the same conduct, which was necessary to provide context for the defendant's charges. Additionally, the testimony regarding the defendant's uncharged conduct can be described as a "summary," as it simply recounted the defendant's actions.

¶ 47 In addition, the objection proposed by the defendant would have been futile. Defense counsel is not obligated to make futile objections in order to provide effective assistance. *People v. Smith*, 2014 IL App (1st) 103436, ¶ 64. Limiting the victim's testimony to only the charged conduct would have portrayed the incident as isolated, unfairly undermining her credibility. See *People v. Adams*, 2023 IL App (2d) 220061, ¶ 81. This court has stated:

> "The trier of fact is entitled to view the sexual conduct within the context of the actual relationship between defendant and complainant. *** Limiting complainant's testimony to one incident would make the incident appear isolated. This limitation would place an unfair

> strain upon the credibility of complainant's testimony concerning the charged offenses. Moreover, the probative value of such evidence far outweighs any prejudicial effect on defendant." *People v. Tannahill*, 152 Ill. App. 3d 882, 887 (1987).

Thus, the defense counsel's failure to object did not cause the type of prejudice that *Strickland* requires. See *People v. Patterson*, 2014 IL 115102, ¶ 81. In reaching this conclusion, we reject defendant's reliance upon *Cardamone*, 381 Ill. App. 3d 462, to support his claim of prejudice.

¶ 48 B. *Krankel*

¶ 49 In the alternative, the defendant requests that this court consider whether the trial court erred by not appointing new counsel after the *Krankel* hearing. Defendant argues that he prompted the appointment of new counsel by showing possible neglect for the reasons discussed above. Where the trial court properly conducted a preliminary *Krankel* inquiry and has reached a determination on the merits of defendant's *Krankel* motion, we will reverse only if the trial court's action is manifestly erroneous. *People v. Jackson*, 2020 IL 124112, ¶ 98. "Manifest error is error that is clearly evident, plain, and undisputable." *Id.*

¶ 50 In 1984, the Illinois Supreme Court in *Krankel* announced the manner in which the court should handle ineffective assistance of counsel posttrial claims. *People v. Krankel*, 102 Ill. 2d 181 (1984). Since that time, and in accordance therewith, a common law procedure has developed that "is triggered when a defendant raises a *** posttrial claim of ineffective assistance of trial counsel." *People v. Jolly*, 2014 IL 117142, ¶ 29. It is well-settled law that in such situations, the trial court is not automatically required to appoint new counsel for a defendant. *Id.* "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 *** motion." *Moore*, 207 Ill. 2d at 78. If, on the other hand, "the allegations show possible neglect of the case, new counsel should be

appointed" to represent the defendant at a hearing on the defendant's claims. *Id.* This ensures that newly appointed counsel can independently evaluate the defendant's allegations, and it also avoids "the conflict of interest that trial counsel would experience if trial counsel had to justify his or her actions contrary to [the] defendant's position." *Id.* However, in any case that is remanded for a proper preliminary *Krankel* inquiry, if the trial court determines that the defendant's claims are without merit, "the court may then deny the motion and leave standing [the] defendant's convictions and sentences." *Id.* at 81. If that happens, the defendant remains able to "appeal his assertion of ineffective assistance of counsel along with his other assignments of error." *Id.* at 81-82.

¶ 51 Clearly, *Krankel* claims center on an evaluation of whether trial counsel was ineffective. Such an evaluation requires the application of standards established in *Strickland v. Washington*, 466 U.S. 688 (1984). Since we have determined that the defendant's allegations of ineffectiveness did not meet the standards established in *Strickland*, 466 U.S. 688, we determine that defendant has failed to establish possible neglect. See *Jackson*, 2020 IL 124112, ¶ 106; see also *People v. Boose*, 2025 IL App (4th) 231467, ¶ 49. Accordingly, the trial court's failure to appoint new counsel did not constitute manifest error. See *id.*

¶ 52 III. CONCLUSION

¶ 53 For the foregoing reasons, we affirm the defendant's conviction and sentence.

¶ 54 Affirmed.