NOTICE
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2026 IL App (5th) 250291-U

NO. 5-25-0291

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

NOTICE
This order was filed under Supreme Court Rule 23 and is not precedent except in the limited circumstances allowed under Rule 23(e)(1).

THE PEOPLE OF THE STATE OF ILLINOIS, Plaintiff-Appellee, v. SCOTTIE E. STOVALL, Defendant-Appellant.	)))))))))	Appeal from the Circuit Court of Macon County. No. 24-DT-25 Honorable Michael B. Baggett, Judge, presiding.

JUSTICE BARBERIS delivered the judgment of the court.
Presiding Justice Cates and Justice Sholar concurred in the judgment.

ORDER

¶ 1 *Held*: The trial court did not err in failing to appoint *Krankel* counsel, because defendant's *pro se* allegations of ineffective assistance of counsel failed to show possible neglect of his case.

¶ 2 Following a jury trial in the circuit court of Macon County, defendant, Scottie E. Stovall, was convicted of driving under the influence (625 ILCS 5/11-501(a)(2) (West 2022)). Following sentencing, the court conducted a preliminary inquiry into defendant's *pro se* claims of ineffective assistance of counsel pursuant to *People v. Krankel*, 102 Ill. 2d 181 (1984), and denied the claims without appointing new counsel. Defendant now appeals, challenging the trial court's handling of his *pro se* ineffective-assistance claim.

¶ 3 I. BACKGROUND

¶ 4 On October 21, 2024, a jury found defendant guilty of driving under the influence of alcohol. On February 28, 2025, the court sentenced defendant to 24 months' probation, 240 hours of community service, a $500 fine, various probation conditions, and 90 days in the county jail stayed pending compliance. The evidence at trial established the following.

¶ 5 On February 3, 2024, Jeffrey Benton heard loud talking and screaming in his front yard. When he looked outside, he observed a shoeless person lying in his front yard talking on a cell phone. Benton also saw a small Chevrolet pickup truck stuck in a nearby field approximately 115 feet from his home. Benton called police between 8 and 9 p.m. and later identified the person as Scottie E. Stovall.

¶ 6 Macon County Sheriff's Deputies Seth Major and Blake Pistorius responded around 9 p.m. and encountered defendant near an intersection that was located about 150 yards from the truck. Deputies Major and Pistorius verified defendant's identity through dispatch. Defendant was not wearing shoes, smelled of alcohol, had glassy and bloodshot eyes, slurred speech, appeared confused, and had difficulty keeping his balance. Defendant admitted consuming alcohol while denying that he had been driving or knew about the truck stuck in the field. Deputy Major placed defendant in the squad car to warm up; weather records reflected temperatures of 37 degrees Fahrenheit at 8:54 p.m. and 35 degrees Fahrenheit at 9:54 p.m., with winds of 14 miles per hour.

¶ 7 Deputy Pistorius went to the truck in the field and found shoes in the mud by the driver's side, which defendant acknowledged were his and put on. During a subsequent search, Deputy Pistorius located the truck keys on defendant; the truck was registered to defendant.

¶ 8 Deputy Major's body-camera footage depicting the street encounter was published to the jury, showing defendant staggering, providing identifying information, stating he had "not

enough" to drink, indicating he had walked from a friend's house near a gas station, and denying he had been driving; the deputies had him sit in the squad car to warm up.

¶ 9 Deputy Pistorius's body-camera footage, also admitted and published, depicted both the scene near the vehicle and subsequent field sobriety testing and the Warning to Motorist at the station. At the station, Deputy Pistorius administered three standardized field sobriety tests in accordance with his training and national standards: horizontal gaze nystagmus (HGN), walk-and-turn, and one-legged stand.

¶ 10 Defendant exhibited six HGN clues and failed the walk-and-turn and one-legged stand tests, the latter despite being allowed to choose the foot on which to balance. Deputy Pistorius acknowledged medical conditions can cause nystagmus and that standardized tests are 70 to 75% accurate under laboratory conditions. After being read a written Warning to Motorist, defendant refused breathalyzer testing.

¶ 11 The defense presented testimony from defendant's friend, Russell Cramer, that defendant visited around 7 p.m., drank about half of a 24-ounce beer, and did not appear intoxicated. Defendant later called Cramer in a panic stating he was stuck and shoeless but could not give directions. When Cramer located defendant, police were already present.

¶ 12 Defendant testified he suffers from a nerve disease in his right foot, including "RSD," and a congenital hip condition. Defendant left Cramer's, drove onto a private drive, became stuck in mud while maneuvering, and left the truck to facilitate pickup after losing his shoes in the field. Defendant acknowledged acting strangely but attributed this to cold weather, panic attacks, delayed pain medication, and coping through humor. Defendant denied intoxication despite admitting he had a drink earlier in the evening.

¶ 13 The defense sought to introduce photographs of defendant's feet, which were admitted into evidence to demonstrate his RSD. The defense also sought to introduce an X-ray of defendant's hip, which was excluded for lack of foundation and authentication. Defense counsel pursued a theory that hypothermia, rather than alcohol, explained defendant's behavior and signs observed by the deputies.

¶ 14 On cross-examination of Deputy Major, defense counsel attempted to use an online WebMD article regarding hypothermia, but the trial court sustained objections based on foundation and authentication and did not admit the article. The court nonetheless permitted counsel to explore hypothermia indicators in questioning.

¶ 15 Deputy Major testified he had basic first-aid and emergency-recognition training, which covered hypothermia. Deputy Major did not observe defendant shivering, with blue lips, or with hand color changes indicating hypothermia. Deputy Pistorius testified he had no specific hypothermia training beyond summoning medical aid for severe shivering, which he did not observe during his interaction with defendant.

¶ 16 Following deliberations, the jury found defendant guilty of driving under the influence of alcohol. At sentencing, the trial court admonished defendant regarding his appellate rights and the need for a postsentencing motion to challenge the sentence.

¶ 17 In a written motion for new trial, defense counsel challenged, among other issues, the trial court's denial of a defense motion to strike Benton's testimony for initial nonidentification, the State's recall of Benton, admission of Deputy Major's HGN testimony, and exclusion of the WebMD hypothermia article under Illinois Rule of Evidence 201 (eff. Jan. 1, 2011). Defense counsel also reported that defendant believed counsel's performance was deficient and would seek

to raise ineffective assistance on appeal, while counsel himself did not assert his own ineffectiveness. On February 28, 2025, the court denied the motion for new trial.

¶ 18 That same day, following sentencing, the trial court conducted a preliminary inquiry into defendant's *pro se* ineffective-assistance claims. Defendant claimed that defense counsel was unreceptive to his input regarding opening and closing arguments; failed to emphasize that his truck keys were not found until a third search; failed to challenge a police report statement that an officer smelled alcohol from the truck; and, as to the hypothermia-based defense, that had he known counsel's approach he would have had his physicians review the videos to explain hypothermia and his nerve condition affecting circulation. Defense counsel responded that he consulted with defendant, incorporated some suggestions, chose not to pursue tangential report discrepancies, and, regarding medical evidence, had discussed experts with defendant but his office would not fund an expert, so information needed to come from defendant or, as attempted, online clinical materials.

¶ 19 The trial court found counsel's representation competent and zealous, noting that counsel "was actively engaged in preparing for the trial" and that, based on the court's observation of counsel's representation, counsel was "competent and zealous" and appeared neither unprepared nor unwilling to put forth his best effort. With respect to the proposed expert testimony, the court credited counsel's representation that the issue had been discussed and concluded that, "as a matter of strategy and as a matter of economy," obtaining an expert would have been difficult. The court also doubted that defendant's physicians would have testified without being retained as paid experts, and ultimately concluded that counsel's failure to pursue that route was not evidence of ineffective assistance.

¶ 20 On March 25, 2025, defense counsel informed the trial court that he would not be filing a motion challenging the sentence and requested that a notice of appeal be prepared. Defendant subsequently appealed.

¶ 21 II. ANALYSIS

¶ 22 On appeal, defendant challenges the trial court's failure to appoint new counsel following the preliminary *Krankel* inquiry. He contends that defense counsel was ineffective for failing to present medical evidence supporting his hypothermia defense. The State maintains that the trial court properly declined to appoint new counsel after conducting its inquiry.

¶ 23 The Illinois Supreme Court's decision in *Krankel*, 102 Ill. 2d 181, developed a common-law procedure to address *pro se* posttrial claims of ineffective assistance of counsel. *People v. Teen*, 2023 IL App (5th) 190456, ¶ 43. Under that procedure, the trial court must initially determine whether the defendant's allegations show possible neglect of the case. *People v. Jackson*, 2020 IL 124112, ¶ 97. If the allegations concern matters of trial strategy or are otherwise without merit, the court may decline to appoint new counsel. *Teen*, 2023 IL App (5th) 190456, ¶ 43. If the allegations demonstrate possible neglect, the court should appoint independent counsel to investigate and represent the defendant at a subsequent *Krankel* hearing. *Id.*

¶ 24 The preliminary inquiry may be conducted in several ways. The trial court may rely on its observations of counsel's performance, question counsel about the defendant's allegations, question the defendant, or use some combination of these approaches. *People v. Moore*, 207 Ill. 2d 68, 78-79 (2003). When the court conducts an adequate inquiry and reaches the merits of the defendant's claims, its determination is reviewed for manifest error. *Jackson*, 2020 IL 124112, ¶ 98. "Manifest error is error that is clearly evident, plain and indisputable." *Id.*

¶ 25 Here, the trial court conducted an adequate preliminary inquiry. It allowed defendant to explain each claim, permitted counsel to respond, and considered those explanations before ruling. The court also relied on its firsthand observations, noting that it had presided over the trial and found trial counsel's representation of defendant to be "competent and zealous." Accordingly, the procedural requirements of *Krankel* were satisfied. The issue is whether the court manifestly erred in concluding that defendant's allegations did not demonstrate possible neglect.

¶ 26 On appeal, defendant specifically argues that counsel was ineffective for failing to retain an expert on hypothermia or, alternatively, to have defendant's physician review the video of the incident and offer an opinion as to whether defendant's symptoms were consistent with hypothermia, compounded by his preexisting medical conditions, rather than intoxication.

¶ 27 The decision whether to retain or call an expert witness is generally regarded as a matter of trial strategy. In *Hinton v. Alabama*, 571 U.S. 263 (2014), the United States Supreme Court described the selection of an expert witness as a "paradigmatic example" of a strategic choice that, when made after a thorough investigation of the relevant law and facts, is "virtually unchallengeable." *Id*. at 275 (quoting *Strickland v. Washington*, 466 U.S. 668, 690 (1984)). Illinois courts likewise recognize that decisions concerning whether to present expert or other witness testimony generally involve matters of trial strategy in the *Krankel* context. See *Jackson*, 2020 IL 124112, ¶ 106; *People v. Eggleston*, 363 Ill. App. 3d 220, 226 (2006); *People v. Parsons*, 261 Ill. App. 3d 663, 665 (1994).

¶ 28 The record here does not demonstrate possible neglect. Defense counsel stated on the record that he and defendant had discussed calling a doctor regarding hypothermia but that the public defender's office could not afford to retain or pay an expert witness. Defendant acknowledges in his reply brief that there was no arguable deficiency in counsel's failure to retain

an outside expert. His remaining argument is that counsel should have asked defendant's own physicians to review the video and testify without compensation. However, defendant did not allege that either physician was willing to do so. The trial court likewise observed that defendant's physician was unlikely to testify without compensation. Thus, defendant has not identified an available source of no-cost expert testimony; he has identified only the possibility that such testimony might have been available.

¶ 29 The funding limitation is consistent with *People v. Russell*, 385 Ill. App. 3d 468 (2008), in which the court held that an indigent defendant charged with misdemeanor DUI was not entitled to expert-witness fees under section 113-3(d) of the Code of Criminal Procedure (725 ILCS 5/113-3(d) (West 2004)). *Russell*, 385 Ill. App. 3d at 474-75. Defendant concedes that, under *Russell*, there was no arguable deficiency in counsel's failure to retain an outside expert. We do not interpret *Russell* as preventing counsel from looking for other sources of medical evidence. Instead, *Russell* explains the resource limitations counsel faced. Here, counsel stated that the possibility of calling a doctor had been discussed, but the defense lacked the resources to pay an expert. Nothing in the record establishes that defendant's physicians were willing to provide the proposed testimony without compensation.

¶ 30 Nor did defense counsel abandon the hypothermia theory. Counsel cross-examined the deputies regarding their training in recognizing and responding to medical emergencies and specifically questioned them about the signs of hypothermia. One deputy testified that his training included hypothermia, but stated that he observed no signs of hypothermia in defendant, such as shivering or blue lips. Counsel then questioned the deputies about other potential symptoms, including changes in hand color, slow or shallow breathing, confusion, memory loss, drowsiness, slurred speech, loss of coordination, and a slow or weak pulse. The deputies acknowledged

uncertainty about several of those symptoms and agreed that hypothermia could progress in severity and constituted a medical emergency. Although the court excluded WebMD materials offered by defendant for lack of foundation, it permitted counsel to question the deputies about indicators of hypothermia, further demonstrating that counsel pursued the theory within the evidentiary constraints of the trial. Thus, the record reflects that counsel pursued the hypothermia theory through cross-examination and the evidence available to the defense, rather than simply abandoning the theory.

¶ 31 Defendant's reliance on *People v. Lawson*, 2019 IL App (4th) 180452, and *People v. Popoca*, 245 Ill. App. 3d 948 (1993), is misplaced. In *Lawson*, counsel failed to call an identified witness who could have significantly impeached the State's sole eyewitness, and counsel's reasons for not doing so were internally inconsistent. *Lawson*, 2019 IL App (4th) 180452, ¶ 47. In *Popoca*, counsel had never investigated obtaining an expert. *Popoca*, 245 Ill. App. 3d at 953-56. Here, by contrast, counsel explained that the possibility of calling a doctor had been discussed, identified the financial limitation on retaining an outside expert, and pursued the hypothermia theory through cross-examination of the police. Thus, unlike in *Lawson* and *Popoca*, the record contains an explanation for counsel's actions and does not establish that counsel inexplicably failed to pursue available evidence.

¶ 32 In short, defendant's allegations do not show that defense counsel ignored the hypothermia theory or failed to consider medical testimony. Counsel considered calling a doctor, lacked the resources to retain an outside expert, and pursued the issue through cross-examination of the deputies. Defendant has not established that his physicians were willing and available to testify without compensation. At most, defendant identifies an additional step counsel might have taken. At the preliminary *Krankel* stage, however, that speculation does not demonstrate possible neglect.

See *Moore*, 207 Ill. 2d at 78-79. Given the steps counsel took and the resource limitations reflected in the record, the opposite conclusion from the trial court's finding of no possible neglect is not clearly evident. We therefore cannot say that the trial court manifestly erred in denying defendant's request for the appointment of new counsel.

¶ 33 III. CONCLUSION

¶ 34 For the forgoing reasons, we affirm the judgment of the circuit court of Macon County.

¶ 35 Affirmed.