NOTICE
Decision filed 09/02/26. The text of this decision may be changed or corrected prior to the filing of a Petition for Rehearing or the disposition of the same.

2026 IL App (5th) 250059-U

NO. 5-25-0059

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,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Clinton County.
	)	
v.	)	No. 23-CF-221
	)	
JOSEPH P. MOORE,	)	Honorable
	)	Douglas C. Gruenke,
Defendant-Appellant.	)	Judge, presiding.

JUSTICE CLARKE[*] delivered the judgment of the court.
Presiding Justice Cates and Justice Hackett concurred in the judgment.

ORDER

¶ 1 *Held*: Defense counsel was not ineffective for failing to move to suppress defendant's statement to police, or by agreeing to a stipulated bench trial, because defendant did not meet the prejudice prong under *Strickland*.

¶ 2 The defendant, Joseph P. Moore, challenges his conviction for possession of methamphetamine with intent to deliver following a stipulated bench trial, arguing that his trial counsel was ineffective for failing to move to suppress his statement to police that he was "trying to sell" the methamphetamine in his possession and for stipulating to the statement's admission at trial. For the following reasons, we affirm.

[*]Justice Moore was originally assigned to the panel before his retirement. See *Cirro Wrecking Co. v. Roppolo*, 153 Ill. 2d 6 (1992). Justice Clarke was substituted on the panel, has read the briefs, and listened to oral arguments.

¶ 3 I. BACKGROUND

¶ 4 On September 18, 2023, the defendant was charged by information with unlawful possession of methamphetamine with intent to deliver, unlawful possession of methamphetamine, unlawful possession of a hypodermic needle, and unlawful possession of drug paraphernalia. The charges arose from an early-morning encounter at the CC Food Mart in Breese, Illinois, on September 15, 2023. Officer Thomas Wuest responded to a report of a suspicious person "acting odd." Employees were escorting the defendant out when Officer Wuest arrived. Officer Wuest described the defendant as "incoherent," but noted that he did not smell of "alcohol or anything on him."

¶ 5 Because the defendant had arrived on a motorcycle and appeared unsteady, Officer Wuest offered him a courtesy ride for safety. The defendant accepted, handed Officer Wuest his backpack (which Officer Wuest secured in the front passenger floorboard), and sat in the rear cage area. After driving about a block, Officer Wuest coordinated with Clinton County Sheriff's Deputy Scott Voss to complete the ride, allowing Officer Wuest to remain within his jurisdiction. During the transfer, Deputy Voss saw a used hypodermic syringe on the rear floorboard of Officer Wuest's vehicle, near the defendant's feet. The defendant was then taken into custody, advised of his *Miranda* rights (*Miranda v. Arizona*, 384 U.S. 436 (1966)), and both he and the backpack were searched.

¶ 6 The backpack contained a blue eyeglass case holding a clear plastic spoon with crystalline residue and a brown glass pipe commonly used to inhale methamphetamine; a black sunglasses case with a cannabis grinder and rolling papers; a pouch and jar containing 8.4 and .49 grams of cannabis respectively; multiple plastic containers with a crystal-like substance that field-tested

positive for methamphetamine, weighing approximately 2 grams and 15 grams, respectively; an electronic scale; and cigarettes containing cannabis.

¶ 7 When questioned, the defendant denied owning the methamphetamine, stating he was "just trying to sell it for a friend" to raise bail money for people arrested the night before. On April 3, 2024, defense counsel moved to suppress all evidence seized from the backpack, but did not seek suppression of the defendant's post-*Miranda* statement regarding selling the methamphetamine.

¶ 8 At the May 8, 2024, hearing on the defendant's motion to suppress, defense counsel argued the backpack search was not a lawful search incident to arrest, because the bag was secured in the police vehicle's front seat. Officer Wuest testified that, as the defendant was escorted from the store, he was "out of sorts," staggering, and "barely could walk," with slurred speech; the defendant at the time also denied drug or alcohol use. Deputy Voss testified he believed the defendant was under the influence, noting the syringe, his instability when removed from the car, and his knowledge of the defendant's erratic conduct in the store. On May 24, 2024, the trial court denied the motion, citing the inevitable discovery rule, finding that although officers initially lacked authority to search the backpack, the evidence would inevitably have been discovered during jail booking.

¶ 9 On November 13, 2024, shortly before the stipulated bench trial, the defendant confirmed he would stipulate to the State's evidence and rely on the court to determine whether the proof established guilt beyond a reasonable doubt. The parties' stipulation recounted the CC Food Mart encounter, the courtesy ride, the syringe observation, and the backpack search. It also included the defendant's statement that he was trying to sell methamphetamine to get bail money for individuals arrested the previous night. The court found the defendant guilty on all four counts.

¶ 10 On January 15, 2025, the defendant was sentenced to nine years in the Illinois Department of Corrections for count I. Count II, the lesser-included possession of methamphetamine, merged with count I. Counts III and IV each carried a fine and mandatory assessments. On January 27, 2025, defendant filed a notice of appeal.

¶ 11 II. ANALYSIS

¶ 12 On appeal, the defendant argues that his trial counsel was ineffective for failing to file a motion to suppress his post-*Miranda* statement, in which he admitted his intent to sell the methamphetamine found in his backpack so that he could obtain bail money for friends. He additionally asserts that his trial counsel was ineffective for agreeing to stipulate to the admission of that statement during his stipulated bench trial. The State, in response, argues that the defendant failed to demonstrate that the result of the stipulated bench trial would have been different absent his volunteered statement to police, where the quantity of the drugs and paraphernalia demonstrated his guilt. In his reply brief, the defendant contends that the failure of counsel to file a motion to suppress the statement was not based on trial strategy or the futility of the motion.

¶ 13 A criminal defendant has a constitutional right to effective assistance of counsel. U.S. Const., amends. VI, XIV; Ill. Const. 1970, art. I, § 8. To determine whether counsel provided ineffective assistance, we look to the standard set forth in *Strickland v. Washington*, 466 U.S. 668 (1984). *People v. Albanese*, 104 Ill. 2d 504, 526-27 (1984). To prevail on a *Strickland* claim, "a 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, a 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). "[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. We do not need to evaluate whether counsel's performance was deficient if we determine that the defendant cannot show prejudice. *People v. Hale*, 2013 IL 113140, ¶ 17. With this in mind, we consider defendant's specific claims on appeal.

¶ 14 The defendant first argues that his counsel was ineffective for failing to file a motion to suppress his statement to police regarding his intention to sell the drugs in his backpack. According to the defendant, the totality of the circumstances demonstrated that the defendant was "grossly intoxicated" at the time he made the statement, and its introduction prejudiced him because it "helped" secure his conviction for the unlawful possession with the intent to deliver charge. See 720 ILCS 646/55(a)(1) (West 2022). Despite the defendant "acting erratic," "unstable," "under the influence of something," and "very incoherent," trial counsel failed to contest his ability to knowingly, intelligently, and voluntarily waive his rights under *Miranda*, 384 U.S. 436.

¶ 15 The decision whether to seek suppression of evidence and what theory of suppression to argue are generally matters of trial strategy that will not support a claim of ineffective assistance. *People v. Balark*, 2019 IL App (1st) 171626, ¶ 34; *People v. Rodriguez*, 312 Ill. App. 3d 920, 925 (2000). To establish prejudice resulting from the failure to file a motion to suppress, a defendant must show that the motion to suppress would have been meritorious and that there is a reasonable probability that the outcome of the trial would have been different had the evidence been suppressed. *People v. Gayden*, 2020 IL 123505, ¶ 28.

¶ 16 Here, even assuming, *arguendo*, that the defendant's motion to suppress the statement would have been meritorious, the defendant's claim fails where he is unable to show prejudice. To

prove the defendant guilty of possession with intent to deliver, the State was required to prove beyond a reasonable doubt that, among other things, the defendant intended to deliver the narcotics in his possession. While the defendant contends that his statement was the only direct evidence of intent, Illinois precedent recognizes that circumstantial evidence can independently support a finding of intent to deliver. See *People v. Robinson*, 167 Ill. 2d 397, 408 (1995) ("Because direct evidence of intent to deliver is rare, such intent must usually be proven by circumstantial evidence.").

¶ 17 The quantity of a controlled substance alone can be sufficient evidence to prove intent to deliver beyond a reasonable doubt where the amount of the controlled substance could not reasonably be viewed as designed for personal consumption. *Id.* at 410-11. However, when the seized substance is in an amount that may be considered consistent with personal use, additional evidence of intent to deliver is required to support a conviction. *Id.* at 411. Other factors that may be probative of intent to deliver include the high purity of the drug confiscated; the possession of weapons; the possession of large amounts of cash; the possession of police scanners, beepers, or cellular telephones; the possession of drug paraphernalia; and the manner in which the substance is packaged. *Id.* at 408. These factors are not exclusive, and the determination of whether the inference of intent to deliver was sufficiently raised must be made on a case-by-case basis. *Id.* at 412-13.

¶ 18 In this case, the defendant, after laboratory testing, was in possession of 16.5 grams of methamphetamine. This is a significant amount of narcotics, and supports the inference that the defendant intended to deliver the methamphetamine. We note that the amount of methamphetamine possessed by the defendant was not the lowest amount in the statutory scheme for possession with the intent to deliver. See 720 ILCS 646/55(a)(2)(A) (West 2022) (regarding

possession of less than five grams with intent to deliver). Thus, we find that this is the type of case in which the evidence supports the conclusion that the amount in possession was not for the defendant's personal use. In addition, during the search of the defendant's backpack, which the circuit court found would not be suppressed, the officers located a scale. We note that the presence of the scale, which is often used in the sale of narcotics, adds to the inference of intent to deliver the methamphetamine. See, *e.g.*, *Robinson*, 167 Ill. 2d at 408; *People v. Williams*, 200 Ill. App. 3d 503, 518 (1990); *People v. McCarty*, 356 Ill. App. 3d 552, 565-66 (2005); *People v. Wilkerson*, 2016 IL App (1st) 151913, ¶ 70. The defendant was also found in possession of drug paraphernalia, including a clear plastic spoon with a crystal-type residue on it, and a glass pipe used for inhaling methamphetamine. Moreover, the defendant had multiple containers that tested positive for methamphetamine. While the methamphetamine was not divided into individual baggies, and it does not appear that the defendant was found to be in possession of weapons or a large quantity of cash, the absence of these other factors does not mean the State failed to meet its burden absent the defendant's statement to officers where other factors supported a reasonable inference that intent to deliver was present. Thus, the circumstantial evidence was independently sufficient without the defendant's statement to support his conviction for possession of methamphetamine with intent to deliver. Therefore, the defendant fails to establish prejudice under *Strickland* where the evidence against him, even without his statement, was overwhelming and established the requisite intent to deliver.

¶ 19 The defendant also contends that his trial counsel was ineffective for agreeing to a stipulation as to the defendant's statement to the police that he was trying to sell the methamphetamine to get bail money for individuals who had been arrested. Where we found *supra* that the defendant cannot demonstrate a reasonable probability exists that the result would have

been different had his statement been suppressed, we similarly find that he cannot establish prejudice in defense counsel's stipulation to the statement where the evidence against him, even without his statement, was overwhelming to establish the requisite intent to deliver.

¶ 20 III. CONCLUSION

¶ 21 For the foregoing reasons, we affirm the judgment of the circuit court of Clinton County.

¶ 22 Affirmed.