NOTICE
Decision filed 09/10/26. 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) 241112-U

NO. 5-24-1112

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,	)	St. Clair County.
	)	
v.	)	No. 22-CF-68
	)	
ANTHONY M. DANLEY,	)	Honorable
	)	John J. O'Gara,
Defendant-Appellant.	)	Judge, presiding.

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

ORDER

¶ 1 *Held*: We affirm defendant's conviction for first degree murder where defendant failed to establish second-prong plain error or ineffective assistance of counsel regarding the selection of a specific juror. The trial court did not err by denying defendant's *pro se* ineffective assistance of counsel claim during a preliminary *Krankel* inquiry without appointing defendant new counsel.

¶ 2 Following a jury trial in the circuit court of St. Clair County, defendant, Anthony M. Danley, was found guilty of first degree murder (720 ILCS 5/9-1(a)(2) (West 2020)), aggravated battery with a firearm (*id.* § 12-3.05(e)(1)), and unlawful possession of a weapon by a felon (*id.* § 24-1.1(a)). The trial court sentenced defendant to an aggregate term of 102 years in prison. Defendant appeals, arguing that he was denied his right to be tried by a fair and impartial jury where the court failed to inquire into a juror's express bias in rejecting the principle that a criminal defendant is presumed innocent. Defendant further argues that defense counsel was ineffective for

failing to prevent the same juror from serving on the jury. Defendant additionally argues that the court erred by denying him *Krankel* relief without the appointment of counsel where he showed possible neglect of the case by defense counsel due to their failure to investigate and call two witnesses who would have corroborated his self-defense claim. See *People v. Krankel*, 102 Ill. 2d 181 (1984). For the following reasons, we affirm.

¶ 3 I. BACKGROUND

¶ 4 On January 27, 2022, defendant was charged, by criminal complaint, with first degree murder, aggravated battery with a firearm, and unlawful possession of a weapon by a felon. The charges were based on allegations that on or about August 5, 2021, defendant shot Antwon Williams in the chest, causing his death, and shot Deangelo Montgomery in the arm, causing him injury. It was also alleged that defendant knowingly possessed a semi-automatic handgun after having been convicted of a forcible felony. The criminal complaint was thereafter superseded by a criminal indictment that made the same allegations. The trial court appointed an assistant public defender, Brian Flynn, to represent defendant.

¶ 5 At a bond reduction hearing held on May 2, 2022, defendant requested that the trial court appoint him a different attorney "because [their] communication [was] broken." The court advised defendant that it did not have the authority to "order the public defender to give [defendant] a different lawyer." The court advised defendant that he could hire an attorney, represent himself, or "go ahead and try to get along with Mr. Flynn."

¶ 6 On May 18, 2023, defendant filed a *pro se* speedy trial demand. On May 30, 2023, defendant filed a *pro se* motion to suppress photo lineup and to dismiss the charges.

¶ 7 On November 6, 2023, defendant filed a *pro se* motion to dismiss all charges due to violations of his constitutional and statutory rights. Defendant alleged that he had requested

defense counsel to invoke his speedy trial rights but counsel refused to do so, causing defendant to file a *pro se* request. Also, on November 6, 2023, defendant filed a *pro se* motion to dismiss appointed counsel and proceed *pro se*. Defendant alleged that counsel failed to file certain motions requested by defendant, failed to communicate with defendant, and failed to investigate the State's allegations against defendant. Defendant further alleged that counsel kept "insisting" that defendant take a plea deal despite defendant's repeated indications that he wanted "a speedy trial not a plea deal." Defendant additionally alleged that counsel advised defendant that he would be unsuccessful at trial and that counsel had "no time to deal with [ ] defendant['s] case."

¶ 8 On November 8, 2023, the trial court addressed defendant's motion to dismiss appointed counsel. The court advised defendant that it would not appoint him a different attorney but that defendant could hire an attorney or represent himself. The court ultimately ruled that defendant would "continue along with appointed counsel."

¶ 9 On November 14, 2023, defense counsel filed a notice of defendant's intent to establish the affirmative defense of justifiable use of force in defense of person. At a hearing held the same day, defendant again indicated that he wanted the trial court to appoint him new counsel. The court indicated that it had previously denied defendant's request for the appointment of new counsel. The court advised defendant that it would not appoint him a different attorney but that defendant could hire an attorney or represent himself. Defendant indicated that he did not have funds to hire an attorney and he did not have sufficient knowledge of the law to represent himself. The court found a *bona fide* doubt existed as to defendant's fitness and ordered an evaluation. At a hearing held on December 4, 2023, the trial court found defendant fit to stand trial and Attorney Flynn indicated that another assistant public defender, Gregory Nester, would be assisting him as cocounsel at defendant's trial.

¶ 10 On January 8, 2024, defendant's three-day jury trial commenced. During *voir dire*, the trial court advised the potential jurors that they were under a duty to follow the law and that they could not "disregard the ultimate instructions" in the case. The court also read to the potential jurors the four principles set forth in *People v. Zehr*, 103 Ill. 2d 472, 477 (1984); see Ill. S. Ct. R. 431(b) (eff. July 1, 2012). The court confirmed that all jurors understood and accepted the four *Zehr* principles, including the principle that defendant was presumed innocent of the charges against him. After confirming the potential jurors' understanding and acceptance of the four principles, the court asked the potential jurors to notify the court if they did not understand or accept the principles. No juror responded.

¶ 11 Attorney Flynn subsequently questioned the potential jurors regarding their understanding that defendant was presumed innocent. In doing so, Attorney Flynn asked the potential jurors, "if we were going to have a vote right now, is anybody ready to just vote guilty right now?" No jurors responded. Attorney Flynn then asked the potential jurors, "if we were to have a vote right now, would you vote not guilty?" No jurors responded. Attorney Flynn next asked a single juror why the juror was "not raising [his] hand on not guilty?" One of the jurors did not respond, and Attorney Flynn posed the following question: "You understand my client's presumed innocent?" The juror responded, "[r]ight" and "[y]es." Another juror then responded in the affirmative when Attorney Flynn asked if the juror understood that defendant was presumed innocent. Attorney Flynn then asked the "front row" of potential jurors, "right now if there was a vote, who would vote not guilty?" The following colloquy then took place between Attorney Flynn and several jurors:

> "JUROR: What do you mean not guilty?
> JUROR: We don't know—
> JUROR: We haven't heard any facts.
> MR. FLYNN: Well, this is the point I'm trying to make, that a lot of people think when we start the trial, I want to be neutral, I'm going to be right in the middle, I am neutral. That's not our law. Our law is there's a presumption of innocence.

He is innocent as he sits here. Until he is proven guilty beyond a reasonable doubt, he is innocent, he is not guilty. And that is the point I'm trying to make.

I just want to make sure everybody understands that.

JUROR [NO. 113]: I think there's a difference between innocence and not guilty.

MR. FLYNN: Okay, but, yes, it's—

JUROR [NO. 113]: Not guilty is a verdict.

MR. FLYNN: Well, first of all, would you say your name and number, please?

JUROR [NO. 113]: John ***, 113.

MR. FLYNN: Okay. Okay. But until you—Do you understand until you hear evidence that's been proven beyond a reasonable doubt that he is not guilty, he is innocent?

JUROR [NO. 113]: Again, I have a problem with your terminology.

MR. FLYNN: Right.

JUROR: Yeah.

JUROR [NO. 235]: My name's Todd ***, Juror No. 235.

MR. FLYNN: Sure.

JUROR [NO. 235]: Well, he's trying to say—what we're all trying to say is just because a person is presumed innocent when you come into a courtroom doesn't mean you're automatically going to think, yeah, he's innocent. That's—That's not the deal. That's not why we're here. We're h[ere] to listen to you and listen to the prosecution about what this—supposedly had done or allegedly had done.

So, we do understand the fact that in the court of law in our land that, yeah, you are presumed innocent, but that doesn't mean we think he's guilty or innocent when we step in this door."

¶ 12 Another juror, Juror No. 5, then stated, "And I'm sorry, I speak for myself. I do believe in not guilty until proven." The juror elaborated that she would "assume that the person is innocent until all the facts are laid out and [she could] make a decision." When Attorney Flynn asked the potential jurors if there were any additional questions on the presumption of innocence, no jurors responded.

¶ 13 After Attorney Flynn questioned the jurors, the trial court made the following statement to the jurors:

"I just want to address one brief issue with everyone here.

Everyone understands, I think, that being a juror is—is a tough spot. You have to listen to the evidence presented, you're going to apply the facts to the law and make a verdict therefrom and do it from a spot where you believe that you've considered the facts and you've also obeyed the law. Right?

And everyone here understands that the defense is under no burden to prove anything? They don't have to say or show anything. Do we all agree with that? They don't have to show a thing. Right? And if the State doesn't prove enough evidence beyond a

reasonable doubt, then it's not guilty. If they do prove this case beyond a reasonable doubt, then it is guilty. But that's your call. Not mine. Right?

So that's what we put you in, a tough spot here just be able to without giving you the facts, be able to determine that.

But everyone understands that core principle of law, that the defense is under no obligation to provide any evidence here. Right? You all understand that?

Okay. I think that was maybe some of the confusion from some of the jury, from some of the questions that were asked of you. I hope I've cleared that up. All right?"

¶ 14 During jury selection, Juror No. 235 was tendered by the State in the State's first grouping of four jurors. Defense counsel used two peremptory challenges on the State's first grouping but accepted Juror No. 235 to serve on the jury panel. Juror Nos. 113 and 5 were not selected to the final panel.

¶ 15 The State presented evidence at trial generally establishing that defendant and Williams were involved in a fistfight at "the Landing" the evening of August 5, 2021. Williams injured defendant's nose during the fight. Williams and defendant reconciled and shook hands afterward. Later, Williams and Montgomery went to Brandy Heidelberg's home to play cards. Defendant arrived at Brandy's home at some point and shot Williams and Montgomery. Williams, who was shot in the chest, died from his injuries and Montgomery, who was shot in the arm, survived. Multiple witnesses at the house, including Montgomery, testified that they did not see Williams with a gun and that they only saw defendant with a gun. A gun was found on Williams's person when first responders arrived at the scene. A forensic scientist testified that the 20 shell casings and 5 projectiles collected from the crime scene were fired from the same gun and that none were fired from the gun recovered from Williams.

¶ 16 Defendant testified that he went to Brandy's house with his cousin "Raheim" and his girlfriend Tiffany Williams, Williams's sister. Defendant left Brandy's house with Raheim and Tiffany, then returned with Raheim to pick up Jasmine Mayfield, Tiffany's cousin. When defendant went back inside of the house, Brandy told him that Jasmine had gone to the store.

Raheim asked defendant for the car keys so he could retrieve his cigarettes from the car. Both Williams and Montgomery then approached defendant inside the house. According to defendant, both Williams and Montgomery had guns and defendant believed both men were going to shoot him. Defendant testified that Montgomery was reaching for his gun in his waistband and that Williams pointed his gun at defendant. Defendant testified that he shot Williams and Montgomery in self-defense. The parties stipulated that defendant had previously been convicted of a qualifying felony.

¶ 17 At the jury instruction conference, the trial court granted defense counsel's request to instruct the jury on second degree murder. The jury was also instructed as follows:

> "The defendant is presumed to be innocent of the charges against him. This presumption remains with him throughout every stage of the trial and during your deliberations on the verdict and is not overcome unless from all the evidence in this case you are convinced beyond a reasonable doubt that he is guilty.
>
> The State has the burden of proving the guilt of the defendant beyond a reasonable doubt, and this burden remains on the State throughout the case. The defendant is not required to prove his innocence."

Following deliberations, the jury found defendant guilty on all counts.

¶ 18 On January 23, 2024, defendant filed a *pro se* motion for ineffective assistance of counsel. Defendant's motion included various claims of ineffective assistance of counsel. Relevant here, defendant alleged that Attorneys Flynn and Nester failed to investigate potential witnesses who could have assisted in his defense. Shortly thereafter, on February 6, 2024, Attorneys Flynn and Nester filed a posttrial motion raising several alleged trial errors. Defense counsel filed an amended posttrial motion on April 24, 2024.

¶ 19 On April 24, 2024, the trial court held a hearing on defendant's *pro se* motion for ineffective assistance of counsel. The court considered each claim of ineffective assistance of counsel raised in defendant's motion. In support of his allegation that Attorneys Flynn and Nester failed to investigate witnesses, defendant explained that his attorneys should have investigated and called defendant's cousin Raheim and Jasmine Mayfield, both of whom were at the house around the time of the shooting and would have testified on his behalf at trial. Defendant claimed that the two witnesses would have testified "that the situation wasn't what it was. It wasn't that." Defendant clarified that the two witnesses would have testified that "everybody had a gun[,]" not just defendant. In response, Attorney Flynn stated that defendant was initially reluctant to provide his cousin's identity and that when defendant eventually provided Raheim's name, it was too close to trial and Raheim was "not really somebody we could track down." Defendant claimed that he provided the names of the witnesses to counsel a year before trial. The court questioned whether the witnesses were inside of the house at the time of the shooting. The court determined that the witnesses would not have made a difference because the evidence demonstrated that "all the casings" were "charged from [defendant's] gun alone." The court stated, "So, I don't see how—under *Krankel*, I don't see how it's necessarily ineffective."

¶ 20 The trial court revisited defendant's claim that defense counsel were ineffective for failing to investigate the two witnesses later in the hearing. The court reasoned that counsel's decision not to call the witnesses was "a strategic choice" because counsel could have reasonably determined that the jury was more likely to believe defendant's testimony as to what he was thinking at the time he shot Williams and Montgomery. Attorney Nester clarified that Raheim had asked for the keys and was "headed back out to the car" at the time defendant shot Williams and Montgomery. Attorney Nester explained that there was a "question as to how much [Raheim] would have known

as to what took place as he [was] walking out to the car." For this reason, Attorney Nester did not know "how much [Raheim] would have been able to add to getting the second degree instruction."

¶ 21 The trial court ultimately denied defendant's motion and declined to appoint counsel. In doing so, the court stated as follows:

> "I think it's very clear that there's not specifics there, that it's strategic, and that based on the evidence that this Court saw presented during this case, and the Court saw everything, I don't see any indication of ineffective assistance of counsel, and that request—that inquiry under *Krankel* is decided in the negative. I will not appoint additional counsel to further proceed with post-trial motions or anything else at this point."

The court additionally denied the posttrial motion filed by defense counsel.

¶ 22 Also, on April 24, 2024, the trial court held a sentencing hearing. After considering the evidence and arguments of the parties, the court sentenced defendant to 65 years in prison for first degree murder, 25 years in prison for aggravated battery with a firearm, and 12 years in prison for unlawful possession of a weapon by a felon. The court ordered that all sentences would run consecutively.

¶ 23 On May 28, 2024, defense counsel filed a motion to reduce or modify defendant's sentence. The trial court denied defendant's motion to reconsider sentence on October 2, 2024. Defendant filed a timely notice of appeal.

¶ 24 II. ANALYSIS

¶ 25 On appeal, defendant argues that he was denied his right to be tried by an impartial jury, where Juror No. 235 served on the jury after rejecting the principle that a defendant in a criminal trial is presumed innocent. Defendant alternatively argues that the trial court erred by failing to

appoint him new counsel following a preliminary *Krankel* inquiry, where he showed possible neglect of the case by his attorneys. We address defendant's arguments in turn.

¶ 26 1. Juror No. 235

¶ 27 Defendant first claims that he was "denied his right to be tried by an impartial jury—a structural error—where the trial court failed to further inquire into [Juror No. 235's] express bias in rejecting the presumption of innocence principle and where counsel did not challenge [Juror No. 235] during *voir dire*." Defendant acknowledges that he failed to preserve this issue for review by objecting at trial and by including the issue in a posttrial motion. See *People v. Sebby*, 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."). Defendant maintains, however, that this court may review the issue under the second prong of the plain-error doctrine or as a claim of ineffective assistance of counsel.

¶ 28 Under the plain-error doctrine, a reviewing court may consider an unpreserved issue when "(1) a clear or obvious error occurred and the evidence is so closely balanced that the error alone threatened to tip the scales of justice against the defendant, regardless of the seriousness of the error," or when "(2) a clear or obvious error occurred and that error is so serious that it affected the fairness of the defendant's trial and challenged the integrity of the judicial process, regardless of the closeness of the evidence." *People v. Piatkowski*, 225 Ill. 2d 551, 565 (2007). "In plain-error review, the burden of persuasion rests with the defendant." *People v. Thompson*, 238 Ill. 2d 598, 613 (2010).

¶ 29 "The initial analytical step under either prong of the plain error doctrine is determining whether there was a clear or obvious error at trial." *Sebby*, 2017 IL 119445, ¶ 49 (citing *Piatkowski*, 225 Ill. 2d at 565). Prejudice is presumed under the second prong of plain-error review due to the

importance of the right involved. *Thompson*, 238 Ill. 2d at 613. Our supreme court has "equated the second prong of plain-error review with structural error," noting that " 'automatic reversal is only required where an error is deemed "structural," *i.e.*, a systemic error which serves to "erode the integrity of the judicial process and undermine the fairness of the defendant's trial." ' " *Id.* at 613-14 (quoting *People v. Glasper*, 234 Ill. 2d 173, 197-98 (2009) (quoting *People v. Herron*, 215 Ill. 2d 167, 186 (2005)). "A finding that defendant was tried by a biased jury would certainly satisfy the second prong of plain-error review because it would affect his right to a fair trial and challenge the integrity of the judicial process." *Thompson*, 238 Ill. 2d at 614.

¶ 30 Here, defendant has failed to meet his burden of demonstrating Juror No. 235 was biased. Defendant asserts that Juror No. 235 "expressly rejected the principle that a defendant in a criminal trial is presumed innocent." In our view, however, the record does not support this assertion. It is undisputed that the trial court asked each potential juror, including Juror No. 235, if they understood and accepted the *Zehr* principles, which included the principle that a defendant is presumed innocent. Each potential juror, including Juror No. 235, indicated that they understood and accepted each principle, including the principle that defendant was presumed innocent. Accordingly, it is undisputed that the court complied with the requirements of *Zehr* and Illinois Supreme Court Rule 431(b), both of which were "intended to help ensure a fair and impartial jury." *Thompson*, 238 Ill. 2d at 609.

¶ 31 Defense counsel then questioned the jurors regarding their understanding of each principle. In doing so, defense counsel asked the potential jurors, "if we were going to have a vote right now, is anybody ready to just vote guilty right now?" No jurors responded. Defense counsel then asked the potential jurors, "if we were to have a vote right now, would you vote not guilty?" No jurors responded. Defense counsel then again asked the "front row" of potential jurors, "right now, if

there was a vote, who would vote not guilty?" This question then prompted a discussion between defense counsel and several individual jurors, including Juror No. 235.

¶ 32 One juror asked defense counsel what he meant by "not guilty." Another juror then stated that they had not "heard any facts." Defense counsel then stated that "there's a presumption of innocence" and that counsel was trying to demonstrate to the jurors that defendant was not guilty until he was proven guilty beyond a reasonable doubt. Juror No. 113 then stated that there was "a difference between innocence and not guilty" and that "[n]ot guilty [was] a verdict." When defense counsel asked Juror No. 113 if they understood that defendant was not guilty until he was proven guilty beyond a reasonable doubt, Juror No. 113 stated that they had "a problem with [defense counsel's] terminology." At that point, Juror No. 235 stated as follows:

> "Well, he's trying to say—what we're all trying to say is just because a person is presumed innocent when you come into a courtroom doesn't mean you're automatically going to think, yeah, he's innocent. That's—That's not the deal. That's not why we're here. We're h[ere] to listen to you and listen to the prosecution about what this—supposedly had done or allegedly had done.
>
> So, we do understand the fact that in the court of law in our land that, yeah, you are presumed innocent, but that doesn't mean we think he's guilty or innocent when we step in this door."

¶ 33 After viewing Juror No. 235's statement in context, we fail to see how Juror No. 235 unequivocally rejected the presumption of innocence. As noted, Juror No. 235 indicated that he understood and accepted the *Zehr* principles when questioned by the trial court. It is our view that defense counsel's question caused confusion amongst the potential jurors and placed them in the uncomfortable position of having to vote. Defense counsel asked the potential jurors, none of

whom were well versed in specific legal terms, if they would vote not guilty before having heard any evidence in the case. Defense counsel's question deviated from the standard language of the presumption of innocence set forth in *Zehr* and Rule 431(b). Juror No. 235 attempted to explain the confusion when he made the statement referenced above. Notably, however, Juror No. 235 did not expressly state that he rejected the presumption of innocence, nor did he expressly indicate that he would vote guilty without having heard any evidence. Rather, Juror No. 235 indicated that he did "understand the fact that in the court of law in our land that, yeah, you are presumed innocent." While Juror No. 235 followed this statement up with the statement that it did not "mean we think he's guilty or innocent when we step in this door[,]" Juror No. 235 made no statement indicating that he was unwilling to follow the principle that defendant was presumed innocent after receiving the law and instructions from the court. Thus, in our view, there was no statement of bias made by Juror No. 235.

¶ 34 Moreover, contrary to defendant's argument, the record reveals that the trial court addressed any potential confusion raised by defense counsel's questioning regarding the presumption of innocence. In doing so, the court stated, "we put you in, a tough spot here just be able to without giving you the facts, be able to determine that." The court clarified that the defense was under no obligation to present evidence and that the State had the burden of proving defendant guilty beyond a reasonable doubt. No jurors indicated disagreement or lack of understanding. In addition, Juror No. 235 was a part of the entire panel that received a jury instruction on the presumption of innocence prior to deliberations. At the outset of *voir dire*, the court advised the potential jurors that they were under a duty to follow the law and that they could not "disregard the ultimate instructions" in the case. See *People v. Taylor*, 166 Ill. 2d 414, 438 (1995) ("The jury is presumed to follow the instructions that the court gives it.").

¶ 35 For these reasons, we conclude that defendant has failed to demonstrate either that he was tried before a biased jury or that the trial court erred by failing to further inquire into Juror No. 235's alleged bias. See*People v. Metcalfe*, 202 Ill. 2d 544, 555 (2002) ("We decline to impose a duty upon a trial court to *sua sponte* excuse a juror for cause in the absence of a defendant's challenge for cause or exercise of a peremptory challenge."). Accordingly, defendant has failed to meet his burden of demonstrating that a clear or obvious error occurred with regard to the selection of Juror No. 235 to the panel and, thus he has failed to establish plain error.

¶ 36 Defendant additionally argues that defense counsel was ineffective for failing to challenge Juror No. 235. To prevail on a claim of ineffective assistance of counsel, "a defendant must show both that his counsel's performance was so seriously deficient as to fall below an objective standard of reasonableness and that the deficient performance so prejudiced defendant as to deny him a fair trial." *Id*. at 555 (citing *Strickland v. Washington*, 466 U.S. 668, 687-88 (1984)). "[C]ounsel's actions during jury selection are generally considered a matter of trial strategy." *People v. Manning*, 241 Ill. 2d 319, 333 (2011). "Accordingly, counsel's strategic choices are virtually unchallengeable." *Id.* (citing *People v. Palmer*, 162 Ill. 2d 465, 476 (1994)). However, "[d]efense counsel can be considered deficient for failing to exercise a peremptory challenge against a juror who unequivocally shows bias against the defendant." *People v. Waldrop*, 2025 IL App (5th) 230085-U, ¶ 24. Because we have determined that defendant failed to demonstrate that Juror No. 235 was unequivocally biased, we conclude that defense counsel was not ineffective for failing to challenge Juror No. 235. As noted, Juror No. 235 did not unequivocally reject the principle that defendant was presumed innocent. Juror No. 235 also did not indicate that he would vote guilty before hearing any evidence. We additionally note that Juror No. 235 was in the first grouping of four jurors tendered by the State. Defense counsel utilized peremptory challenges on

two of the four jurors tendered by the State in that grouping but accepted Juror No. 235. It was not unreasonable strategy for defense counsel to save some of the peremptory challenges for the additional groupings tendered by the State. Accordingly, we reject defendant's argument that he received ineffective assistance of counsel during the jury selection process.

¶ 37 2. *Krankel*

¶ 38 Defendant next argues that the trial court erred by failing to appoint *Krankel* counsel to represent defendant in his posttrial ineffective assistance of counsel claims. Defendant maintains that the court applied "the wrong standard" and that he showed his attorneys engaged in possible neglect by failing to investigate and call two witnesses.

¶ 39 When a defendant makes a posttrial claim of ineffective assistance of counsel, the trial court must conduct a preliminary inquiry and examine the underlying factual matters. *Krankel*, 102 Ill. 2d at 189. The procedure set forth in *Krankel* provides the trial court with an opportunity to fully consider ineffective assistance of counsel claims to limit issues on appeal. *People v. Roddis*, 2020 IL 124352, ¶ 34. When a defendant makes an explicit complaint of ineffective assistance of counsel, the defendant is entitled to a *Krankel* inquiry. *People v. Thomas*, 2017 IL App (4th) 150815, ¶ 26.

¶ 40 "The trial court must conduct an adequate inquiry into allegations of ineffective assistance of counsel, that is, inquiry sufficient to determine the factual basis of the claim." *People v. Banks*, 237 Ill. 2d 154, 213 (2010). "[A] trial court's method of inquiry at a [preliminary] *Krankel* hearing is somewhat flexible." *People v. Flemming*, 2015 IL App (1st) 111925-B, ¶ 85. An adequate inquiry may generally include "(1) questioning the trial counsel, (2) questioning the defendant, [or] (3) relying on [the court's] own knowledge of the trial counsel's performance in the trial." *People v. Peacock*, 359 Ill. App. 3d 326, 339 (2005).

¶ 41 "If the 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 *pro se* motion." *Roddis*, 2020 IL 124352, ¶ 35. "However, if the allegations show possible neglect of the case, new counsel should be appointed." *Id.* We review *de novo* whether the trial court properly conducted a preliminary *Krankel* inquiry. *People v. Jolly*, 2014 IL 117142, ¶ 28. "However, if the trial court has properly conducted a *Krankel* inquiry and has reached a determination on the merits of the defendant's *Krankel* motion, we will reverse only if the trial court's action was manifestly erroneous." *People v. Jackson*, 2020 IL 124112, ¶ 98.

¶ 42 Here, the record demonstrates that the trial court separately considered each of defendant's claims of ineffective assistance of counsel at the preliminary *Krankel* hearing. In doing so, the court questioned defendant and both defense counsel regarding the allegations of each claim. In response to the court's inquiries regarding defendant's allegation that Attorneys Flynn and Nester failed to investigate witnesses, defendant explained that his attorneys should have investigated and called defendant's cousin Raheim and Jasmine Mayfield, both of whom were at the house around the time of the shooting and would have testified on his behalf at trial. Defendant claimed that the two witnesses would have testified "that the situation wasn't what it was. It wasn't that." Defendant clarified that the two witnesses would have testified that "everybody had a gun[,]" not just defendant. In response, Attorney Flynn stated that defendant was initially reluctant to provide his cousin's identity and that when defendant eventually provided Raheim's name, it was too close to trial and Raheim was "not really somebody we could track down." Defendant claimed that he provided the names of the witnesses to counsel a year before trial. The court determined that the witnesses would not have made a difference in the trial outcome because the evidence

demonstrated that "all the casings" were "charged from [defendant's] gun alone." The court stated, "So, I don't see how—under *Krankel*, I don't see how it's necessarily ineffective."

¶ 43 When the trial court revisited this claim later in the hearing, the court reasoned that the decision not to call the witnesses was "a strategic choice" because counsel could have reasonably determined that the jury was more likely to believe defendant's testimony as to what he was thinking at the time he shot Williams and Montgomery. Attorney Nester clarified that Raheim had asked for the keys and was "headed back out to the car" at the time defendant shot Williams and Montgomery, raising questions about how much Raheim would have known. For this reason, Attorney Nester did not know how much Raheim would have added to obtaining the second degree instruction. The court found that counsel's decision not to call the two witnesses was strategic. The court further found, "based on the evidence that this Court saw presented during this case, and the Court saw everything, I don't see any indication of ineffective assistance of counsel, and that request—that inquiry under *Krankel* is decided in the negative."

¶ 44 Defendant maintains that the trial court incorrectly applied the *Strickland* standard and failed to employ the "possible neglect" standard required for a preliminary *Krankel* inquiry. However, as defendant acknowledges in his reply brief to this court, our supreme court has foreclosed similar arguments. See *Roddis*, 2020 IL 124352, ¶ 56; see also *Jackson*, 2020 IL 124112, ¶ 105. In *Roddis*, our supreme court noted as follows:

> "The trial court, most familiar with the proceedings at issue, remains best situated to serve the interests of judicial economy by extinguishing conclusory claims. We decline to unduly limit the most effective arbiter between patently frivolous claims and those showing possible neglect. The court can 'base its evaluation of the defendant's *pro se* allegations of ineffective assistance on its knowledge of defense counsel's performance at

trial and the insufficiency of the defendant's allegations on their face.' " *Id.* (quoting *People v. Moore*, 207 Ill. 2d 68, 79 (2003)).

Our supreme court further reasoned that "even in preliminary *Krankel* inquiries, a trial court must be able to consider the merits *in their entirety* when determining whether to appoint new counsel on a *pro se* posttrial claim of ineffective assistance of counsel. This serves both the ends of justice and judicial economy." (Emphasis in original.) *Id.* ¶ 61.

¶ 45 Similarly here, the trial court did not err by considering the merits of defendant's claims while conducting a preliminary *Krankel* inquiry. In addition, the trial court properly concluded that defense counsel were not ineffective for failing to call Mayfield and Raheim as witnesses at defendant's trial. It is well settled that the decision of " '[w]hether to call certain witnesses *** [is a] matter[ ] of trial strategy, generally reserved to the discretion of trial counsel.' " *Jackson*, 2020 IL 124112, ¶ 106 (quoting *People v. Kidd*, 175 Ill. 2d 1, 45 (1996)).

¶ 46 At the hearing, both Attorney Flynn and Attorney Nester stated that they were aware of Mayfield and Raheim. As the court noted, Mayfield was not inside of the house at the time of the shooting, as evidenced by defendant's own trial testimony that Mayfield had gone to the store. Although Mayfield could have testified that she had seen Williams and Montgomery with guns earlier that evening, Mayfield could not have testified that both Williams and Montgomery threatened defendant with guns at the time defendant shot the two men. Accordingly, the court could have concluded that the decision not to call Mayfield as a witness was a matter of trial strategy.

¶ 47 Attorney Flynn explained that, due to defendant's late disclosure of Raheim, he was unable to track down Raheim prior to trial. The trial court apparently found Attorney Flynn's explanation credible. Attorney Nester agreed with the court that their decision not to call Raheim was strategic,

where the evidence demonstrated that Raheim was walking to the car when the shooting occurred. Attorney Nester explained that they felt the jury was more likely to believe defendant's testimony—that both Williams and Montgomery had guns and that defendant shot the men because he believed they were going to shoot him first—over the testimony of Raheim who was not focused on the shooting when it occurred. We also note that additional trial evidence demonstrated that a gun was found on Williams's person, which supported defendant's testimony that Williams had a gun and contradicted other witnesses' testimonies that Williams did not have a gun. Defense counsel was able to obtain a second degree murder instruction based on defendant's testimony. Accordingly, the court could have reasonably concluded that the decision not to call Raheim as a witness was a matter of trial strategy.

¶ 48 Because defendant's allegation that defense counsel were ineffective for failing to call two witnesses related to matters of trial strategy, such allegation cannot serve as the basis of a *Krankel* claim. We therefore conclude that the trial court properly conducted a preliminary *Krankel* inquiry and that the court did not manifestly err when it denied defendant's *pro se* posttrial motion alleging ineffective assistance of counsel without appointing new counsel.

¶ 49 III. CONCLUSION

¶ 50 For the foregoing reasons, we affirm the judgment of the circuit court of St. Clair County.

¶ 51 Affirmed.