

NOTICE

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2026 IL App (5th) 260075-U

NO. 5-26-0075

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,	)	Shelby County
	)	
v.	)	No. 22-CF-175
	)	
KEVIN D. WICKER,	)	Honorable
	)	Allan F. Lolie Jr.,
Defendant-Appellant.	)	Judge, presiding.

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

ORDER

¶ 1 *Held:* We affirm defendant's convictions where (1) there was sufficient evidence to prove defendant guilty of aggravated assault beyond a reasonable doubt, (2) defendant waived the issue of whether the trial court abused its discretion in denying defendant's for-cause strike to Juror Hinton, and (3) defendant's counsel did not provide ineffective assistance by failing to exercise a peremptory strike on Juror Hinton, where counsel stated that not doing so was a tactical decision, and prejudice did not result.

¶ 2 Following a jury trial, defendant-appellant, Kevin D. Wicker, was found guilty of aggravated assault, obstructing a peace officer, and resisting a peace officer. Defendant was sentenced to one year in prison and up to six months of mandatory supervised release. We find that there was sufficient evidence to find defendant guilty beyond a reasonable doubt on all three counts, and that defendant's counsel at trial did not provide him ineffective assistance.

¶ 3

I. BACKGROUND

¶ 4 Defendant was charged by information with aggravated assault, obstructing a peace officer, and resisting a peace officer. On appeal, defendant only challenges the sufficiency of the evidence for the finding of guilt for the aggravated assault count. The information alleged that defendant, on or about December 2, 2022, knowing Sergeant Brian Litteral to be a peace officer engaged in the execution of his official duties, committed an assault upon him by rapidly advancing “toward [Sgt.] Litteral while pointing and yelling, thereby placing [Sgt.] Litteral in reasonable apprehension of receiving a battery.”

¶ 5 Prior to trial and during *voir dire*, the prospective jurors were asked questions concerning whether they knew defendant, Sgt. Litteral of the Shelbyville Police Department, Officer Matthew Graham of the Shelbyville Police Department, or Sergeant Quincy Wood of the Shelby County Sheriff’s Office. Then-prospective-juror Hinton indicated he knew defendant, stating, “The farmer I used to work for farmed his mother’s ground.” Hinton then indicated that his knowledge of defendant would not prevent him from being a fair and impartial juror, and that he had not discussed the case with defendant. Hinton also indicated he knew the two sergeants and the officer, stating that he was a mechanic and had worked on all of their vehicles. Hinton also indicated that Ofc. Graham was his brother-in-law. Once again, Hinton indicated that his knowledge of the three law enforcement personnel, and his familial connection to one of them, would not prevent him from being a fair and impartial juror, and that he had not discussed the case with any of them.

¶ 6 Prior to jury selection, the trial court informed the attorneys that they would have seven peremptory strikes for the jurors, and one peremptory strike for the alternate. During jury selection defendant’s attorney sought to have Hinton stricken for cause, stating that he was “related to one of the named witnesses.” The trial court denied the for-cause strike to Hinton. Defense counsel

then challenged two other prospective jurors, Cloe and Jennings, for cause, and the trial court granted the strikes. Defense counsel then used three of his seven peremptory strikes on prospective jurors Clements, Agney, and Morse. Defense counsel did not use a peremptory strike on Hinton. Also, after each peremptory strike the trial court informed each attorney the number of peremptory strikes they had used. Hinton was ultimately selected as a juror.

¶ 7 At trial, Sgt. Litteral, Ofc. Graham, and Sgt. Wood all testified. Sgt. Litteral and Ofc. Graham both testified that on the night of the incident they were dispatched to an area after a caller stated that there was a commotion. They arrived at the area in separate vehicles, and patrolled the area, but found nothing out of place or suspicious. After they found nothing, they continued their patrol before meeting at the Shelbyville Police Department later to patrol together in the same vehicle. When they arrived, Sgt. Litteral parked in front of the police department while Ofc. Graham briefly went inside the building. Sgt. Litteral testified that while he was alone outside the police department, a vehicle that matched defendant's approached the police department and parked across the street. Sgt. Litteral and Ofc. Graham both testified that Ofc. Graham left the police department and entered Sgt. Litteral's vehicle.

¶ 8 As the two began to pull away, defendant exited his vehicle and quickly approached Sgt. Litteral's vehicle, yelling. Sgt. Litteral rolled down his window and asked defendant if he needed assistance. Defendant placed both hands in Sgt. Litteral's vehicle. Sgt. Litteral described defendant as having put his hands further in the vehicle, close to his arm rest, and that defendant stated he was doing so because "he needed to put fingerprints inside so there was a record of him being there." Defendant yelled at the two, demanding that they get out of the vehicle. Throughout the encounter, Sgt. Litteral described defendant's demeanor as "very erratic," "hostile," "aggressive," "threatening," and "unpredictable"; Ofc. Graham described defendant's demeanor as "aggressive."

¶ 9 Sgt. Litteral testified that defendant was close enough to him while at his window that defendant could have struck him, used a weapon on him, or grabbed a weapon out of Sgt. Litteral's vehicle. Sgt. Litteral and Ofc. Graham both testified that Sgt. Litteral let his foot off the brake and let his vehicle lurch forward to create some distance between him and defendant, and then the two exited the vehicle to speak with defendant. The two learned that defendant was angered because he felt the two did not thoroughly investigate his call earlier about the commotion. The two attempted to explain the steps they took in investigating, but defendant did not appear interested in their explanation. Defendant told Sgt. Litteral that he was detained and he would be placed under arrest by the sheriff. The two testified that defendant kept getting closer to Sgt. Litteral as he was pointing and yelling at him. Sgt. Litteral stated that he had to back away from defendant repeatedly to create enough distance between them to avoid confrontation or "a physical touch." Ofc. Graham only noted Sgt. Litteral having to back away from defendant at one point while in front of the police department and outside of his vehicle.

¶ 10 The two testified that, in an attempt to diffuse the situation, Sgt. Litteral agreed to go with defendant to the Shelby County Sheriff's Office. Sgt. Litteral testified that, though he knew he did not need to go with defendant to the sheriff's office, he believed that "there was a great chance" that defendant "would continue to follow us and just escalate the situation more." Both Sgt. Litteral and Ofc. Graham testified that Sgt. Litteral continued to try to deescalate the situation.

¶ 11 Sgt. Litteral and Ofc. Graham testified that when they arrived at the sheriff's office they were met by Sgt. Wood. Sgt. Wood testified that when he arrived defendant was yelling at the two law enforcement personnel and defendant's demeanor was "erratic." Sgt. Wood also testified that most of defendant's aggression was directed at Sgt. Litteral. All three law enforcement personnel testified that, once outside of the sheriff's office, defendant demanded Sgt. Litteral be arrested by

Sgt. Wood, with both Sgt. Litteral and Sgt. Wood noting the cited reason for arrest was “obstruction and official misconduct.” All three noted that defendant was again approaching Sgt. Litteral, and Sgt. Litteral was again attempting to create space between the two of them.

¶ 12 Eventually, the three decided that defendant could speak to Sgt. Wood, and Sgt. Litteral and Ofc. Graham would leave to continue their patrol. When Sgt. Litteral entered his vehicle, and appeared to be preparing to leave, defendant told him that he was detained and not free to leave. The two sergeants and the officer informed defendant that he could not prevent Sgt. Litteral and Ofc. Graham from leaving. Defendant stood in front of Sgt. Litteral’s vehicle, placed his hands on the hood of the vehicle, and remained resolute that Sgt. Litteral would not be going anywhere.

¶ 13 After multiple demands from the two sergeants and officer to move out from in front of the car, and multiple warnings that not doing so would result in his arrest, defendant was ultimately arrested. Sgt. Litteral and Ofc. Graham testified that, while Sgt. Litteral was effectuating the arrest and placing defendant in handcuffs, defendant pulled one of his arms away. All three testified that when they saw defendant resist, Sgt. Litteral was assisted by the other two in placing defendant in handcuffs. While defendant’s hands were behind his back and the three were trying to place handcuffs on him, he also began “squirming” and “struggling.” Defendant made a comment about Sgt. Litteral “finding something out,” and when Sgt. Litteral asked Sgt. Wood if he heard what defendant said, and if he interpreted it as a threat, defendant stated that it “was a threat.”

¶ 14 Sgt. Litteral testified that there were points during the encounter that he believed defendant was going to batter him. He stated that, though he felt safer when it was he, Ofc. Graham, and Sgt. Wood in front of the sheriff’s office, he still believed he had a chance of being battered by defendant there. He specified that he felt more threatened in front of the police department.

¶ 15 After the testimony of the law enforcement personnel, the State and defense rested. After less than half an hour of deliberation, defendant was then found guilty by the jury of aggravated assault, obstructing a peace officer, and resisting arrest. Defendant subsequently filed a posttrial motion for judgment notwithstanding the verdict or, in the alternative, a motion for a new trial or an order to vacate for juror bias. In the motion, defendant asserted that the evidence was insufficient to support a finding of guilt and that Juror Hinton should have been stricken for cause, where he was one of the victim's brother-in-law.

¶ 16 Prior to sentencing on January 16, 2026, there was a hearing on defendant's posttrial motions the same day. When asked by the trial court if he used a peremptory strike on Hinton, the defense attorney stated that he did not and that there were "no peremptories left." The trial court stated that it might have been inclined to grant defendant's motion if defense counsel had exhausted all his peremptory strikes, or had exhausted them all and the trial court declined to provide more upon request, but that had not happened. Defense counsel stated that he had discussed the possibility of using a peremptory strike on Hinton with defendant but, "I think I'm the quarterback and I ultimately made the decision. He wanted me to bump him and I chose not to for various tactical reasons."

¶ 17 Defendant was ultimately sentenced to one year in the Department of Corrections and up to six months of mandatory supervised release. This timely appeal followed.

¶ 18 II. ANALYSIS

¶ 19 Defendant argues three issues on appeal: (1) that the evidence was not sufficient to prove defendant guilty beyond a reasonable doubt of aggravated assault, (2) the trial court abused its discretion when it failed to strike Juror Hinton for cause, and (3) trial counsel was ineffective for failing to use a peremptory strike on Juror Hinton. The State responds, asserting (1) that the

evidence was sufficient to support a finding of guilt beyond a reasonable doubt for aggravated assault, (2) that defendant waived his right to challenge Juror Hinton as an accepted juror where he failed to utilize an available peremptory strike, and (3) that counsel did not provide ineffective assistance because it was a chosen trial strategy and prejudice did not result. For the following reasons, we affirm.

¶ 20 A. Sufficiency of the Evidence

¶ 21 “A criminal conviction will not be set aside unless the evidence is so improbable or unsatisfactory that it creates a reasonable doubt of the defendant’s guilt.” *People v. Collins*, 106 Ill. 2d 237, 261 (1985) (citing *People v. Vriner*, 74 Ill. 2d 329, 342 (1978); *People v. Manion*, 67 Ill. 2d 564, 578 (1977); *People v. Bybee*, 9 Ill. 2d 214, 221 (1956)). “When considering a challenge to a criminal conviction based upon the sufficiency of the evidence, this court will not retry the defendant.” *People v. Smith*, 185 Ill. 2d 532, 541 (1999) (citing *People v. Wittenmyer*, 151 Ill. 2d 175, 191 (1992)). “[T]he relevant question is whether, after viewing the evidence in the light most favorable to the prosecution, *any* rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.” (Emphasis in original.) *Jackson v. Virginia*, 443 U.S. 307, 319 (1979). “Testimony may be found insufficient under the *Jackson* standard, but only where the record evidence compels the conclusion that no reasonable person could accept it beyond a reasonable doubt.” *People v. Cunningham*, 212 Ill. 2d 274, 280 (2004). “[T]he weight of the evidence and credibility of witnesses is strictly within the competence of the fact finder.” *People v. Ellis*, 74 Ill. 2d 489, 496 (1978) (citing *People v. Orlando*, 380 Ill. 107, 119 (1942); *People v. Novotny*, 41 Ill. 2d 401, 412 (1968); *People v. Yarbrough*, 67 Ill. 2d 222, 227 (1977)).

¶ 22 “A person commits aggravated assault when, in committing an assault, he *** knows the individual assaulted to be *** [a] peace officer *** performing his *** official duties.” 720 ILCS

5/12-2(b)(4.1)(i) (West 2022). “A person commits an assault when, without lawful authority, he or she knowingly engages in conduct which places another in reasonable apprehension of receiving a battery.” *Id.* § 12-1(a). “A person commits battery if he or she knowingly without legal justification by any means (1) causes bodily harm to an individual or (2) makes physical contact of an insulting or provoking nature with an individual.” *Id.* § 12-3(a).

¶ 23 “Whether the victim was placed in reasonable apprehension of receiving a battery is a question that the fact finder must resolve.” *In re Gino W.*, 354 Ill. App. 3d 775, 777-78 (2005) (citing *In re C.L.*, 180 Ill. App. 3d 173, 181 (1989)). “In assessing reasonable apprehension, the victim need not testify expressly that he was in apprehension of receiving a battery.” *Id.* at 778 (citing *People v. Ferguson*, 181 Ill. App. 3d 950, 953 (1989)). “[R]easonable apprehension is an objective standard, meaning that ‘the apprehension must be one which would normally be aroused in the mind of a reasonable person.’ ” *Id.* at 779 (quoting *C.L.*, 180 Ill. App. 3d at 178, quoting W. Keaton, Prosser & Keaton on Torts § 10, at 44 (5th ed. 1984)). “Although an objective standard applies, courts may still consider facts about the respondent of which the victim is aware.” *Id.* (citing *C.L.*, 180 Ill. App. 3d at 178).

¶ 24 On appeal, the only element of the crime defendant asserts was not proven beyond a reasonable doubt is whether Sgt. Litteral had a “reasonable apprehension” of receiving a battery. As the “credibility of witnesses is strictly within the competence of the fact finder,” and defendant does not challenge Sgt. Litteral, Ofc. Graham, or Sgt. Wood’s credibility, we view their testimonies in the light most favorable to the prosecution.

¶ 25 Here, Sgt. Litteral and Ofc. Graham both testified that defendant approached Sgt. Litteral aggressively, yelling at them and demanding they exit the vehicle. Both testified that Sgt. Litteral felt the need to create space from defendant multiple times because defendant was getting too close

while being so aggressive. As Sgt. Litteral testified, defendant's behavior was erratic and unpredictable. Defendant was angry at them for what he perceived as them not doing their jobs. He placed his hand inside Sgt. Litteral's vehicle and next to Sgt. Litteral to "leave fingerprints," and aggressively advanced on Sgt. Litteral to the point that Sgt. Litteral stated that he felt the need to keep backing away to prevent a "confrontation" or a "physical touch." The fear of that "physical touch," would be Sgt. Litteral attempting to avoid imminent "physical contact of an insulting or provoking nature."

¶ 26 Contrasting this with the only two cases from our state that defendant cites, there are clear distinctions. In *Taylor*, the defendant stated from 7 to 10 feet away, through the airlock doors of a courthouse, that she was going to "kick [the deputy's] ass," and the court determined that does not rise to the level of assault. See *People v. Taylor*, 2015 IL App (1st) 131290. Though there is testimony in the case at bar that defendant was not always within striking distance of Sgt. Litteral, there is also testimony that defendant was within striking distance at least three separate times: at Sgt. Litteral's vehicle window, while Sgt. Litteral was having to back away from defendant in front of the police department, and when Sgt. Litteral was effectuating defendant's arrest. This situation is clearly different from a situation where an angry individual shouts a threat through the closed doors of a courthouse as they depart.

¶ 27 Defendant also cites *Floyd*, where the defendant stared at the victim for two or three minutes, rode his bicycle to a stop beside her, and said "come here you," which was also determined not to be an assault. See *People v. Floyd*, 278 Ill. App. 3d 568 (1996). The phrase the defendant used in *Floyd* is less a threat and more an unwelcome invitation. Beyond that fact, however, is the fact that it was not simply words in the case at bar, there was aggression to the point that Sgt. Litteral had to move away from defendant multiple times to create a safe distance

between the two of them. There is a clear factual distinction between those in *Floyd* and the case at bar.

¶ 28 From the evidence presented, the jury could reasonably find that Sgt. Litteral had a reasonable apprehension of a battery. Therefore, there was sufficient evidence to find defendant guilty beyond a reasonable doubt.

¶ 29 B. Abuse of Discretion in Denying For-Cause Challenge

¶ 30 We next address defendant's argument concerning whether the trial court abused its discretion when denying defendant's for-cause strike to Juror Hinton. As both the State and defendant acknowledge in their briefs, it is well established that a defendant failing to exhaust all his peremptory strikes waives a challenge to the denial of a for-cause challenge on appeal. See *Spies v. People*, 122 Ill. 1, 258 (1887)¹; *People v. Pendleton*, 279 Ill. App. 3d 669, 677 (1996)²; *People v. Walls*, 2022 IL App (1st) 200167, ¶ 42³; *People v. Wilson*, 303 Ill. App. 3d 1035, 1042 (1999).⁴ We see no reason to depart from the well-established caselaw, therefore we deem this issue waived.

¶ 31 C. Ineffective Assistance for Not Utilizing a Peremptory Strike

¶ 32 Defendant last contends that his trial counsel was ineffective for failing to utilize one of his remaining peremptory strikes to remove Juror Hinton. Where defendant does not contend, and

¹"We cannot reverse this judgment for errors committed in the lower court in overruling challenges for cause to jurors, even though defendants exhausted their peremptory challenges, unless it is further shown that an objectionable juror was forced upon them and sat upon the case after they had exhausted their peremptory challenges."

²"[W]e found no case in which a court has found grounds for reversal where the defendant used peremptory challenges on venire members the trial court should have dismissed for cause, unless the defendant exhausted all of his peremptory challenges and an objectionable juror sat on the jury."

³"[E]ven assuming this was error on the trial court's part, the failure to remove a juror for cause is grounds for reversal only if the defense has exercised all of its peremptory challenges and the objectionable juror was allowed to sit on the jury."

⁴"[T]he failure to challenge a juror for cause or by peremptory challenge waives any objection to that juror."

the record does not support the assertion, that “his counsel failed to oppose the prosecution throughout the *voir dire* proceeding as a whole, but that his counsel failed to do so with [a single juror],” the *Strickland* standard is the correct standard on review. *People v. Metcalfe*, 202 Ill. 2d 544, 561 (2002). The analysis for ineffective assistance of counsel is two-prong. First, “defendant must show that counsel’s representation fell below an objective standard of reasonableness.” *Strickland v. Washington*, 466 U.S. 668, 688 (1984). Second, “defendant must show that there is a reasonable probability that, but for trial counsel’s unprofessional errors, the result of the proceeding would have been different.” *Id.* at 694. “To prevail, *** defendant must satisfy both prongs of the *Strickland* test. [Citation.] The failure to satisfy either prong of the *Strickland* test precludes a finding of ineffective assistance of counsel.” *People v. Yankaway*, 2025 IL 130207, ¶ 62.

¶ 33 “The benchmark for judging any claim of ineffectiveness must be whether counsel’s conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied on as having produced a just result.” *Strickland*, 466 U.S. at 686. “When a convicted defendant complains of the ineffectiveness of counsel’s assistance, defendant must show that counsel’s representation fell below an objective standard of reasonableness.” *Id.* at 687-88. “[T]he performance inquiry must be whether counsel’s assistance was reasonable considering all the circumstances.” *Id.* at 688. When reviewing defense counsel’s performance, we must make every effort “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 689. “[A] court must indulge a strong presumption that counsel’s conduct falls within the wide range of reasonable professional assistance; that is, *** defendant must overcome the presumption that, under the circumstances, the challenged action might be considered sound trial strategy.” (Internal

quotation marks omitted.) *Id.* “Matters of trial strategy are generally immune from claims of ineffective assistance of counsel.” (Internal quotation marks omitted.) *People v. Manning*, 241 Ill. 2d 319, 327 (2011). Decisions regarding whether “to file or not file a motion” and “concerning which witnesses to call at trial and what evidence to present on defendant’s behalf” are both matters of trial strategy. *People v. Bryant*, 128 Ill. 2d 448, 458 (1989); *People v. Reid*, 179 Ill. 2d 297, 310 (1997).

¶ 34 “An error by counsel, even if professionally unreasonable, does not warrant setting aside the judgment of a criminal proceeding if the error had no effect on the judgment. *** Accordingly, any deficiencies in counsel’s performance must be prejudicial to the defense in order to constitute ineffective assistance under the Constitution.” *Strickland*, 466 U.S. at 691-92. “[D]efendant must show that there is a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different.” *Id.* at 694. “In making this determination, a court hearing an ineffectiveness claim must consider the totality of the evidence before the judge or jury.” *Id.* at 695.

¶ 35 Even assuming, *arguendo*, that trial counsel’s “tactical” decision does not constitute sound trial strategy, prejudice did not result. The evidence here overwhelmingly supports a finding of guilt beyond a reasonable doubt; at minimum, Sgt. Litteral had a reasonable apprehension of a physical touch of an insulting or provoking nature from defendant. Further, defendant has failed to show a “reasonable probability” that but for trial counsel utilizing a peremptory strike and removing Hinton from the venire, the proceeding would have been different. As the evidence in this case was overwhelming, there is no reasonable probability the result would have been different even without Juror Hinton. Since both prongs of *Strickland* must be satisfied by defendant to

succeed on the claim and we find no prejudice, we then find counsel did not provide ineffective assistance.

¶ 36

III. CONCLUSION

¶ 37 Therefore, we affirm the conviction of defendant where the evidence was sufficient to prove aggravated assault beyond a reasonable doubt, defendant waived his for-cause claim, and counsel was not ineffective.

¶ 38 Affirmed.