2026 IL App (1st) 231336-U
No. 1-23-1336
Order filed November 13, 2026

NOTICE: This order was filed under Illinois Supreme Court Rule 23 and is not precedential except in the limited circumstances allowed under Rule 23(e)(1).

IN THE

APPELLATE COURT OF ILLINOIS

FIRST DISTRICT

FIFTH DIVISION

THE PEOPLE OF THE STATE OF ILLINOIS, Plaintiff-Appellee,

v.

KENYA WASHINGTON, Defendant-Appellant.

Appeal from the Circuit Court of Cook County.
Honorable John F. Lyke Jr., Judge, Presiding.
No. 17 CR 10944

PRESIDING JUSTICE ODEN JOHNSON delivered the judgment of the court.
Justices Wilson and Donnelly concurred in the judgment.

ORDER

¶ 1 *Held*: Defense counsel did not provide ineffective assistance when he failed to request a lesser-included offense jury instruction.

¶ 2 Following a 2023 jury trial, defendant Kenya Washington was convicted of first degree murder (720 ILCS 5/9-1(a)(1) (West 2016)) and aggravated battery (720 ILCS 5/12-3.05(f)(1) (West 2016)) and sentenced to consecutive terms of 22 years and 3 years in prison, respectively. On appeal, defendant contends that her trial counsel was ineffective for failing to request a jury instruction for the lesser-included offense of reckless homicide. For the reasons that follow, we affirm.

¶ 3 Defendant's convictions arose from a street fight involving two groups of people, referred to at trial as "the Cicero group" and "the Lockwood group," in Chicago on May 17, 2017. During the confrontation, defendant, a member of the Cicero group, was alleged to have driven her vehicle into the Lockwood group, killing Naisha Weems and injuring Arnold Misher.

¶ 4 Following arrest, defendant was charged by indictment with one count of intentional or knowing first degree murder (720 ILCS 5/9-1(a)(1) (West 2016)), one count of strong probability first degree murder (720 ILCS 5/9-1(a)(2) (West 2016)), one count of attempted first degree murder (720 ILCS 5/8-4(a), 9-1(a)(1) (West 2016)), and two counts of aggravated battery (720 ILCS 5/12-3.05(c), (f)(1) (West 2016)). (The State nol-prossed one of the counts charging aggravated battery.) In her answer to discovery, defendant stated that she "may raise the defense that she fled from a physical altercation in fear of serious bodily injury and lacked the intent to cause harm to the victim or any other party."

¶ 5 We set forth only the trial evidence relevant to the issue on appeal.

¶ 6 In opening statements, the State argued that defendant made a series of choices that rendered her guilty of murder and attempted murder. Defense counsel argued that defendant, faced with an "armed and violent mob of people," did not choose violence but, rather, "chose to try to get away" in her vehicle and then, without any intent to cause harm, accidently hit Weems and Misher. Several times, counsel asserted that defendant acted "to protect herself" and "get away." Counsel informed the jury that the State faced a "problem" at trial because it had charged defendant with first degree murder and thereby "made a kind of promise" that it would prove "each and every element" of that crime. Specifically, counsel argued that the State carried the burden of proving beyond a reasonable doubt that defendant "intended to kill somebody when she got into that car, [or] that she hit somebody knowing that it might result in their death." Counsel argued that the

State could not "keep [its] promise" where defendant "only ever intended to get herself to safety" and "save herself."

¶ 7 Misher, who self-identified as belonging to the Lockwood group, testified that the Lockwood group and the Cicero group were primarily composed of women and did not get along. For years, "it was just always conflict, different type of beef *** through social media." On the day in question, Denay Brady, who was a member of the Lockwood group, and Alexis Rivers, who was a member of the Cicero group, arranged to fight each other in the early afternoon.

¶ 8 Around 2 p.m., Brady and Rivers fought on Lockwood Avenue in front of their respective supporters. Among other people, Misher noticed defendant in the Cicero group's crowd. At some point, onlookers from both groups sprayed mace and were "throwing punches." Eventually, the groups retreated in opposing directions to "wait around."

¶ 9 Later in the afternoon, the Lockwood group, armed with baseball bats, mace, and sticks, congregated near the intersection of Latrobe Avenue and Fulton Street. At the same time, Misher saw members of the Cicero group assembling at the other end of the block, near Lake Street. The Cicero group was armed with mace, baseball bats, belts, and boards. Eventually, the two groups approached each other on Latrobe, a one-way street. Misher heard people on both sides yelling and "trying to provoke each crowd to come closer" to fight. Defendant was "in the back" of the Cicero group.

¶ 10 When the two groups were a few car-lengths apart, someone in the Lockwood group sprayed mace, someone in the Cicero group threw a board or a piece of wood, and someone in the Lockwood group sprayed mace a second time. Then, Misher looked up and was struck by a vehicle driven by defendant. Misher added, "[W]hen she came flying, I was in the street towards—I would

be towards her right. She swerved over and she hit me because I was standing there but everybody else got out the street." Misher landed on the curb, injuring his right arm.

¶ 11 Misher knew defendant and was familiar with her vehicle. Shortly before he was hit, he had seen defendant's vehicle parked on Latrobe. He explained that, based on where defendant's vehicle had been parked, she would have driven past an alley before striking him.

¶ 12 When Misher stood, he saw defendant's vehicle stopped in the middle of the street. People were yelling that someone was under the vehicle. Misher ran to the vehicle and saw a person underneath it. He stated, "And then [defendant] couldn't go forward because the person that was under the car I guess was too stuck, so she had to back [up] so—which caused her to kind of run her over some more." After the person was freed, defendant reversed on Latrobe, turned into an alley or intersecting street, and drove away.

¶ 13 Misher recognized Weems as the person who had been underneath defendant's vehicle. Weems's clothing and hair had been ripped off, and she had "big gashes" on her legs. Weems was "out of it" but able to speak. Eventually, she was treated by paramedics. Misher received treatment for his arm at a hospital.

¶ 14 On cross-examination, Misher stated that, when the mace was sprayed a second time, defendant had been standing "behind the crowd." Members of the Cicero group ran away from the mace and "[e]verybody scattered out once the mace was sprayed." Misher saw defendant swerve her vehicle in his direction before it hit him.

¶ 15 Weems's aunt, Akeena Willis, testified that, late in the afternoon on the day in question, she and Weems met Misher and other acquaintances near Latrobe and Fulton. Members of the Cicero group, including defendant and defendant's sister, Kaya Washington, gathered down the block. In addition, a "whole bunch" of people not affiliated with either group were present. Willis

had heard that members of the Lockwood group and the Cicero group had engaged in a fistfight earlier in the afternoon, but neither she nor Weems had been present.

¶ 16 The Cicero group and the Lockwood group approached each other while making threatening statements and displaying mace, bats, and 2x4 boards. When they were 2½ to 3 car-lengths apart, someone in the Lockwood group sprayed mace and someone in the Cicero group threw a board. Defendant, who had been "in the way back" of the Cicero group, ran to her vehicle, which was behind her. She entered the vehicle, sped through the Cicero group, and drove into the Lockwood group. Defendant's vehicle hit Misher, who fell to the side, and then Weems, who fell underneath the vehicle. Defendant stopped and, according to Willis, "tried to go over [Weems] for quite a while, but she couldn't, so she backed *** off" Weems. Defendant reversed to the end of the block and then drove away on an intersecting street.

¶ 17 Chicago police officer Gina Mazzone testified that she and her partner, Officer John Fantauzzi, were dispatched around 3:50 p.m. to a call of a battery in progress near the intersection of Fulton and Lockwood. Upon the officers' arrival, a large crowd in the street dispersed. People were arguing but not physically fighting. A broom and baseball bat were on the ground and Fantauzzi told Mazzone that he smelled mace. The officers left after about 10 minutes.

¶ 18 Mazzone and Fantauzzi were dispatched back to the area about 5:10 p.m. When they arrived, Mazzone saw a woman lying in a pool of blood on the street, surrounded by a group of people. The woman had abrasions and open wounds on her body and was not moving. Eventually, the woman was removed in an ambulance.

¶ 19 Chicago Fire Department paramedic Heather McKeon testified that she and her partner, Nicole DeVoss, responded to the scene around 5 p.m. They found a woman lying in a fetal position on the street, with abrasions to her back, buttock, legs, and arms, and lacerations on her head, thigh,

and ankle. The woman was responsive but confused and could not move her lower extremities. McKeon and DeVoss transported the woman to the hospital, where she later died.

¶ 20 Chicago police detective Brian Drees testified that, while investigating the incident, he viewed video captured by surveillance cameras affixed to an automobile repair business at the corner of Lake and Latrobe. Portions of the footage were entered into evidence as exhibits and published. Relevant to this appeal, Drees viewed and described a portion of footage referred to by the State as "Clip Six from Disk 1."

¶ 21 This court has reviewed "Clip Six from Disk 1." The clip depicts a portion of Latrobe between Lake and Fulton. At the beginning of the clip, which is time-stamped 5:03 p.m., defendant's vehicle is parked on Latrobe, across the street from the automobile repair business and just north of an alley. Other vehicles are parked on both sides of Latrobe, a one-way southbound street. About 12 people stand in the street near defendant and her vehicle, while more pedestrians stand a few car-lengths away.

¶ 22 After about 1½ minutes, the people on the street walk south toward Fulton, loosely grouped together. About nine people are in front of defendant and about five are behind her as they walk past two parked vans that partially obscure the camera's view of the street. After most of the people, including defendant, have walked south out of the frame, several people reappear, running north on Latrobe. Among them is defendant. She runs north on the parkway grass on the west side of Latrobe, into the street, across the mouth of the alley, and to her vehicle. Defendant opens the driver's door, enters the vehicle, rolls up the driver's window, and starts driving south. She drives through the middle of a group of 10 to 12 pedestrians who are in the street near the alley and continues out of view of the camera.

¶ 23 About 22 seconds later, defendant's vehicle reappears, driving in reverse on Latrobe toward Lake. The vehicle passes pedestrians who are partially obscured from the camera's view by the two parked vans. The vehicle then continues past other parked vehicles until it exits the camera's frame.

¶ 24 In court, Drees noted that, when defendant ran to her vehicle on the video, she did not fall or rub her face or eyes. Drees further noted that, after defendant entered her vehicle, she drove southbound "around the crowd of people" and did not hit them before she left the camera's view. Finally, Drees noted that when defendant's vehicle returned to view, traveling northbound in reverse, it did not hit anyone standing in the street near the alley. On cross-examination, Drees agreed that, if a person is sprayed with mace, rubbing the face or eyes could possibly "make it worse."

¶ 25 Dr. Ponni Arunkumar, the chief medical examiner for Cook County, testified that she reviewed Weems's autopsy. She concluded that Weems's injuries were consistent with having been pinned under a vehicle and dragged along pavement. The cause of death was multiple injuries due to being struck by a vehicle and the manner of death was homicide.

¶ 26 Defense counsel moved for acquittal, arguing that the State had not established "the requisite intent or knowledge" for "the murder, attempt murder, or the aggravated battery." The trial court denied the motion.

¶ 27 Kaya Washington, defendant's sister, testified that she and defendant were present for the early-afternoon fight between Brady and Rivers but did not get involved. Mace was sprayed and the police arrived. After the observers dispersed, Kaya and defendant went to a friend's home near the intersection of Latrobe and Lake. Later, Kaya and defendant joined a group gathered on the sidewalk and the street outside the friend's home for a birthday celebration.

¶ 28 At some point, Kaya noticed 25 to 30 people approaching from the south on Latrobe. People in the approaching crowd were armed with baseball bats, pots, knives, and mace, and were yelling obscenities. Kaya and her friends walked toward the crowd "just a little" to "see what was going on."

¶ 29 A woman at the front of the approaching crowd sprayed mace or bear spray twice. Kaya was hit by the spray. She ran inside her friend's home because she was afraid an armed member of the crowd would hurt her while she was incapacitated by the mace. Kaya did not know where defendant was during the incident and did not see anyone struck by a vehicle.

¶ 30 Defendant testified that she observed the fight between Brady and Rivers but left the scene after she was sprayed with mace. She went to a nearby friend's home and rinsed her eyes. Later that day, she was outside that home with a group of acquaintances when a larger group of about 30 people slowly approached with baseball bats, brooms, sticks, and pans. She recognized several people in the group, including some who "had a history of jumping on girls [and] Facebook Live streaming and beating them up all the time." Defendant was worried, but after her sister and a friend approached the crowd, defendant hesitantly joined them and other people "to see what was actually going on and what was this all about."

¶ 31 A woman in the approaching crowd sprayed bear repellant, which defendant recognized from childhood camping trips, producing an orange, foggy cloud. Defendant was in "excruciating pain" from the spray; her face burned and she felt like she could not breathe. She had been maced in the past, but this substance was "way worse."

¶ 32 Worried that she would be hit or stabbed, defendant ran. She could not see clearly and was "battling" to keep her eyes open. She did not rub her eyes because she knew from prior experience that doing so would "make it worse." When defendant arrived at her vehicle, her vision was "very

blurred and [she] could see more color images than anything." She entered the vehicle and closed the window so no one could grab or snatch her out of the vehicle.

¶ 33 Defendant testified that the only thing on her mind at that moment was to get away. She did not turn her vehicle into the alley in front of her because her "human instinct just told [her] to go straight." Moreover, there was "always traffic" in the alley and it was "always just full of people." She did not reverse because she "didn't have good skills in backing up and reversing cars." When asked whether she was thinking about hurting someone as she started driving forward, she answered, "Those were never my intentions to hurt anybody, no."

¶ 34 Defendant drove straight on Latrobe but quickly realized her vehicle "wouldn't go forward anymore." She had not seen Misher or Weems and did not know what she had hit. As defendant manipulated the gearshift, people surrounded her, yelling and kicking the vehicle. At that point, defendant "backed up as best as [she] could." She drove in reverse to Lake, turned east, and drove to her boyfriend's residence. There, her boyfriend told her that people on social media were saying she hit someone.

¶ 35 Defendant concluded her direct examination by reiterating that it "was never in [her] mind that day" to harm anyone and her "only intent or thought" was "[t]o just get to safety."

¶ 36 On cross-examination, defendant acknowledged that after she was sprayed with bear repellant, she did not run to the police, run into the automobile repair business, or enter her friend's apartment building to rinse her face, as she did earlier that afternoon. Instead, she ran "very fast" from the sidewalk, through the grass, off the curb, and down the street to her car. Although she had bear spray in her eyes, she did not fall or stumble as she ran, did not have to feel around to find her vehicle, and had no trouble finding the door handle, entering the vehicle, closing the door, starting the ignition, putting the vehicle in gear, or steering. When asked, "So this bear mace was

so debilitating that you needed to use deadly force to defend yourself, but you're able to do all these tasks; is that right?" she answered, "I wasn't try[ing] to defend myself. I wasn't. I was just trying to get away. I wasn't trying to defend myself." Defendant also acknowledged that her vehicle was on top of Weems for about 10 seconds and that she did not hit any vehicles when she drove in reverse on Latrobe to Lake.

¶ 37 At the jury instruction conference, defense counsel requested a self-defense instruction. The State did not object and the court decided to give the instruction. The State then argued that, because the jury would be instructed on self-defense, it should be instructed on second degree murder as well. However, the State also requested that, if the court did not give a second degree murder instruction, then, "in an abundance of caution," defendant should "be questioned about her decision not to ask for that instruction so that the record is clear that it's an informed decision that she's made with consultation of counsel."

¶ 38 The trial court observed that, according to case law cited by the State, whether to ask for a second degree murder instruction in such circumstances rested with counsel, not the defendant. The State agreed that "[t]hat is what the case law seems to suggest." Defense counsel concurred, stating it was the attorneys' decision and that the defense team had "had significant discussions about this with the defendant," who was aware of the situation. Defense counsel stated, "And there certainly are reasons to not want—I'm sure Your Honor understands, why I might not want it. And I don't. That's the decision that we made." The court ruled that a second degree murder instruction would not be given.

¶ 39 In closing, the State argued that defendant chose to use her vehicle as a deadly weapon and urged the jury to find her guilty of all charges.

¶ 40 Defense counsel began his argument by reminding the jury that the case involved charges of first degree murder and attempted first degree murder. Counsel stated, "This is not a case where recklessness is enough. This case is not charged as a reckless homicide or an involuntary manslaughter charge where you can say it's enough to prove that somebody drove crazy down the road, reckless down the road, and somebody got killed." Counsel continued, "That's not what they charged. That's not enough." Counsel reiterated that the State did not have to prove carelessness or recklessness, adding, "First degree murder is about the most serious charge anybody can face and proving it obviously requires a lot. It's not easy to prove first degree murder, nor should it be." Several times, counsel noted that the State had not charged defendant with recklessness. Counsel argued repeatedly that defendant should not have been charged with murder and maintained that the State had not met its burden of proof.

¶ 41 In rebuttal, the State argued, among other things, "[T]his case wasn't charged as a reckless homicide because it's not a reckless homicide."

¶ 42 The jury found defendant guilty of first degree murder and aggravated battery, and not guilty of attempted first degree murder.

¶ 43 Defense counsel filed a posttrial motion arguing, *inter alia*, that the jury instructions regarding the elements of first degree murder, while accurately stating the law in general, were misleading and overbroad as applied to the facts of the case. In a supporting memorandum, counsel asserted that "[i]f instructions on reckless homicide and recklessness in general had been provided," the jury could have "evaluate[d] the difference between knowledge and recklessness." Counsel concluded that, had the jurors been instructed on this difference, they would not have convicted defendant of first degree murder.

¶ 44 In a written response, the State asserted that the court did not err by not instructing the jury on reckless homicide. Noting that the defense refused second degree murder instructions at trial, the State argued that defendant "was only interested in an outright acquittal, not in a 'compromise verdict' on a lesser included offense." The State maintained that defendant was "quite simply *** regretting" the "all-or-nothing" defense strategy.

¶ 45 Following a hearing, the trial court denied defendant's posttrial motion, finding that "the Defense not asking for a reckless homicide instructi[on] was trial strategy."

¶ 46 At sentencing, the court merged "the murder charge" and imposed consecutive prison terms of 22 years for first degree murder 3 years for aggravated battery.

¶ 47 On appeal, defendant contends that trial counsel was ineffective for failing to request a jury instruction for the lesser-included offense of reckless homicide where the facts and counsel's arguments matched the elements of that offense. Defendant argues that counsel's main theory of defense at trial was self-defense, but that during closing argument, counsel "suddenly presented an alternative scenario," namely, that defendant had been reckless. Defendant asserts that, by not having the jurors instructed on reckless homicide, counsel deprived them of the opportunity to agree with this alternative theory. Defendant maintains that counsel's decision to provide an alternative theory but then fail to provide the jury with any means of accepting that theory was unreasonable. She further argues that, because there is "no viable explanation for counsel's oversight," counsel's decision not to request the instruction cannot be attributed to trial strategy. Finally, defendant argues that she was prejudiced, as a reasonable probability exists that the jury would have convicted her of reckless homicide had it been instructed on that offense.

¶ 48 Claims of ineffective assistance of counsel are governed by the standard set forth in *Strickland v. Washington*, 466 U.S. 668, (1984). See *People v. Albanese*, 104 Ill. 2d 504 (1984). To

establish a claim of ineffective assistance, a defendant must show both that her counsel's performance was deficient and that the deficient performance prejudiced her. *Strickland*, 466 U.S. at 687. More specifically, a defendant must demonstrate that her counsel's performance was objectively unreasonable under prevailing professional norms (*id.* at 694), overcome a "strong presumption" that counsel's alleged error was part of a "sound trial strategy" (*People v. Houston*, 226 Ill. 2d 135, 144 (2007)), and establish a "reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different" (*Strickland*, 466 U.S. at 694).

¶ 49 In this case, where defendant's challenge does not involve findings of fact made by the trial court, we consider *de novo* whether defendant has stated a claim for ineffective assistance of counsel. See *People v. Ortega*, 2020 IL App (1st) 162516, ¶ 24. A reviewing court need not address both prongs of the *Strickland* inquiry if the defendant makes an insufficient showing as to one prong. *Strickland*, 466 U.S. at 697.

¶ 50 We find that defendant has not established the performance prong of *Strickland* where counsel's decision not to request a jury instruction on reckless homicide reflected a reasonable "all-or-nothing" trial strategy.

¶ 51 An "all-or-nothing" strategy is one where, because the theory of defense is that the defendant is not guilty of any crime, the defense declines the fact finder's consideration of lesser-included offenses. See *People v. Fields*, 2017 IL App (1st) 110311-B, ¶ 28; *People v. Denison*, 2021 IL App (2d) 200546-U, ¶ 46; Ill. S. Ct. R. 23(e)(1) (eff. June 3, 2025) (nonprecedential orders entered on or after January 1, 2021, may be cited for persuasive purposes). In a jury trial, the defense may rationally employ such a strategy because, if a lesser-included offense instruction is not tendered, the defendant may avoid being exposed to potential criminal liability. *People v.*

Medina, 221 Ill. 2d 394, 409 (2006); see also *People v. Barlow*, 2025 IL App (1st) 221011-U, ¶ 28 (noting that counsel may choose not to submit a jury instruction on a lesser-included offense due to an all-or-nothing defense "in which the jury being presented only the greater offense may acquit altogether"); Ill. S. Ct. R. 23(e)(1) (eff. June 3, 2025) (nonprecedential orders entered on or after January 1, 2021, may be cited for persuasive purposes). In contrast, if the defense tenders a lesser-included instruction, it is "in essence stipulating that the evidence is such that a jury could rationally convict [the defendant] of the lesser-included offense." *Medina*, 221 Ill. 2d at 409.

¶ 52 Illinois courts have "repeatedly recognized that the decision to pursue an all-or-nothing defense is a 'valid trial strategy.' " *People v. Jackson*, 2018 IL App (1st) 150487, ¶ 29 (citing *People v. Walton*, 378 Ill. App. 3d 580, 589 (2007) (collecting cases)). In general, an all-or-nothing defense is not unreasonable unless the strategy reflects counsel's misapprehension of the law. *Walton*, 378 Ill. App. 3d at 589. That an all-or- nothing strategy proved unsuccessful does not mean counsel rendered ineffective assistance. *People v. Fields*, 2017 IL App (1st) 110311-B, ¶ 28.

¶ 53 Here, counsel's choice to forego an instruction on a lesser-included offense reflected a reasonable all-or-nothing trial strategy. As defendant notes, counsel alluded to self-defense in opening statements. Later, counsel also requested a self-defense instruction, which, had that theory been accepted by the jury, would have allowed defendant to avoid criminal liability. However, on cross-examination, defendant stated, "I wasn't try[ing] to defend myself. I wasn't. I was just trying to get away. I wasn't trying to defend myself." Given this testimony, the likelihood of the jury finding that defendant acted in self-defense was not high.

¶ 54 As such, it was reasonable for counsel, in addition to requesting a self-defense instruction, to employ an all-or-nothing strategy in the pursuit of a full acquittal—a strategy that was foreshadowed by counsel's opening argument that the State would be unable to prove defendant

guilty of first degree murder. Counsel could reasonably have concluded that the best approach was to deny the jury the ability to convict on a lesser-included offense in the hope that the jury found the evidence of intent or knowledge to be unconvincing. Counsel's strategy depended on the jury not receiving a lesser-included instruction for reckless homicide. Therefore, we cannot find that counsel acted unreasonably.

¶ 55 We are mindful of defendant's argument that counsel's decision to forego a reckless homicide instruction "cannot be discounted as trial strategy given that the record established that counsel's decision was based on a misapprehension of the law." Defendant asserts that this misapprehension was demonstrated by counsel's posttrial argument that the trial court erred in not instructing the jury on recklessness. She argues that reasonable counsel would have known that the party who desires a specific instruction bears the burden of tendering it to the court and that a trial court is only required to offer an instruction *sua sponte* if it relates to the elements of the offense, the presumption of innocence, or the burden of proof.

¶ 56 We disagree with defendant's suggestion that counsel did not know the defense bore the burden of tendering a lesser-included instruction. During the jury instruction conference, the State raised the issue of a lesser-included instruction on second degree murder. After discussion, the court, the State, and defense counsel agreed that the decision to ask for such an instruction rested with the defense. Counsel informed the court that the defense team had discussed the issue with defendant and stated, "And there certainly are reasons to not want—I'm sure Your Honor understands, why I might not want it. And I don't. That's the decision that we made." This exchange demonstrates not only that counsel knew it was the defense's duty to seek an instruction on a lesser-included offense, but also that he strategically chose not to seek such an instruction.

¶ 57 We also disagree with defendant that counsel's posttrial argument that the trial court erred in not *sua sponte* giving a lesser-included instruction demonstrates a misapprehension of the law underlying the all-or-nothing strategy utilized at trial. Rather, we agree with the State that counsel's posttrial argument "represented trial counsel's best effort to snatch a semblance of victory from the jaws of defeat" and was simply an unsuccessful "attempt to convince the court to set aside those verdicts and grant defendant a new trial."

¶ 58 In summary, counsel did not act unreasonably in employing an all-or-nothing trial strategy and, as part of that strategy, choosing not to seek a jury instruction on reckless homicide. Consequently, we need not consider the prejudice prong of the *Strickland* test. See *Strickland*, 466 U.S. at 697. Defendant's claim of ineffective assistance of counsel fails.

¶ 59 For the reasons set forth above, we affirm the judgment of the circuit court.

¶ 60 Affirmed.