2015 IL App (2d) 140888-U
No. 2-14-0888
Order filed October 16, 2015

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

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| THE PEOPLE OF THE STATE OF ILLINOIS, | ) | Appeal from the Circuit Court of Du Page County. |
| Plaintiff-Appellee, | ) | |
| v. | ) | No. 06-CF-1790 |
| CHRISTY LENTZ, | ) | Honorable John J. Kinsella, |
| Defendant-Appellant. | ) | Judge, Presiding. |

PRESIDING JUSTICE SCHOSTOK delivered the judgment of the court.
Justices Burke and Spence concurred in the judgment.

**ORDER**

¶ 1 *Held*: The trial court did not err in dismissing the defendant's post-conviction petition at the second stage.

¶ 2 On January 21, 2010, the defendant, Christy Lentz, was convicted of the first-degree murder (720 ILCS 5/9-1-A1 (West 2008)) of her father, Michael Lentz. She was sentenced to 50 years' imprisonment. On direct appeal, this court affirmed defendant's conviction and sentence. *People v. Lentz*, No. 2-10-0448 (2011) (unpublished order under Supreme Court Rule 23). On August 27, 2012, the defendant filed a petition for relief pursuant to the Post-Conviction Hearing Act (Act) (725 ILCS 5/122-1 *et seq*. (West 2012)). The trial court granted the State's motion to dismiss the petition without an evidentiary hearing, and this appeal followed. On appeal, the defendant argues that the trial court erred in dismissing her petition. We affirm.

¶ 3 I. BACKGROUND

¶ 4 On June 9, 2006, the defendant and her sister Jill Baker called the police to the home of their father, whom they had not seen since late May. The police opened a missing person investigation and interviewed the defendant on June 14, 2006. On June 21, 2006, the police went by the father's place of business, Industrial Pneumatics Supply (IPS), where the defendant also worked. The door was locked and there was a handwritten sign saying that the business was closed due to a family emergency. The police officers noticed a smell of decomposition. They obtained a search warrant and searched the business, where they found a wrapped and taped bundle containing human remains. The body inside had been put head-down into a plastic bin and it appeared that unsuccessful attempts to burn the body in the bin had been made. The police then went to the house of Chuck Minauskas, the defendant's boyfriend, where they found the defendant, her daughter Taylor, and Minauskas. They transported all three to the Villa Park police station. The defendant was questioned and gave a statement. At the conclusion of the defendant's statement, she was arrested and charged with the murder of her father.

¶ 5 In her statement to the police, the defendant confirmed that she had waited about two weeks before reporting her father missing because her father often kept things to himself and did not tell her about his activities. She stated that the business her father owned was a distributor of pneumatic tools. The defendant worked for her father and was basically taking over the whole business. The only person who worked at the business other than she and her father was a part-time secretary. The police asked why the defendant had not had the secretary come in to help her with the paperwork since her father had been missing, and the defendant said that the secretary had come in on one or two days. However, the police told the defendant that they had spoken with the secretary, who told them that she had not been at work since May 15th, and that the defendant had been calling her and telling her not to come in because the defendant was doing inventory and her father was crabby.

¶ 6 After a break, the police began pressing the defendant to tell them what was going on. The defendant then told the police that her father came at her with a gun and she pushed him and he shot himself, and she "freaked out." She did not tell her brother and sister or Minauskas what happened. No one else knew. She had driven her father's truck to Kenosha and left it by the side of the road, and took the bus back. The defendant described her father being abusive and bullying toward her, and provided more details about how she dealt with her father's body after he died.

¶ 7 Prior to trial, the defendant moved to suppress her statement. Over several days between May and December 2008, the trial court heard evidence and arguments related to the motion. It ultimately denied the motion to suppress.

¶ 8 A. The State's Case in Chief

¶ 9 The case went to trial before a jury, and the defendant's videotaped statement was played in full. Dr. Jeff Harkey testified as an expert in forensic pathology. He performed the autopsy on the victim. He opined that the victim had been in a state of decomposition for several weeks. The brain matter was well decomposed and had become liquefied. He observed two holes in the back of the head and one hole in the center of the forehead. He determined that these were gunshot wounds. Based on the shape of the wounds left on the skull, Dr. Harkey determined that the holes on the back of the head were entrance wounds and the hole on the front of the skull was an exit wound. Because the brain was liquefied, he was unable to determine the trajectory of the bullets through the brain. He did not find evidence of close range firing. He could not determine what position the victim was in when he was shot. He opined that the victim died as a result of the gunshot wounds to his head.

¶ 10 Deputy Kevin Farley testified that he worked in the forensics investigation unit with the Du Page County Sheriff's office. He participated in the crime scene investigation at the victim's

business. He testified that he found a bullet hole behind a piece of paper that was taped to the wall. The piece of paper covering the bullet hole had the defendant's fingerprints on it. He recovered the bullet from behind the drywall.

¶ 11 John Collins testified as an expert in firearms and tool identification. Collins analyzed the bullet recovered from behind the wall at the crime scene and bullet fragments that were retrieved during the victim's autopsy. Collins opined that the bullet and bullet fragments were both consistent with .380 caliber automatic ammunition. While the bullet and bullet fragments were consistent with having been fired from the same gun, he could not make a conclusive identification.

¶ 12 Jill Baker testified that she was the defendant's sister and the victim's daughter. Baker testified that she normally spoke with her father every couple of days and became concerned when she had not heard from him. In early June, Baker called the defendant to ask about their father. The defendant told her that he had gone to Door County, Wisconsin. On June 5, 2006, Baker told the defendant that she was going to Door County to look for him. Although initially reluctant, the defendant agreed to go with her. When they arrived at their father's house, it did not look like anyone had been there, but she did find business cards of the victim strewn across the lawn.

¶ 13 On June 9, 2006, Baker agreed to meet the defendant at their father's house in Winfield. When they arrived, the defendant had the key and garage door opener to the home. When they went inside the house, there were multiple rifles and shotguns standing in the corner of the laundry room. When Baker walked into the family room, she saw a spilled bottle of medication, pills all over the floor, a half-eaten plate of food, and family pictures lying all over the ground. Baker walked back out of the house because she thought that her father had committed suicide. Baker and the defendant went back to the defendant's apartment. Baker told the defendant that

she wanted to call the police and the defendant got angry. Ultimately, the defendant agreed to accompany Baker back to their father's house. At that point, Baker called the police to report her father missing.

¶ 14 James Scumaci testified that he was best friends with the victim. In late April or early May 2006, he went with the victim up to his cottage in Door County. They were preparing the cottage to be placed for sale. Anything that was not to be sold with the cottage, they brought back to Illinois. This included antique rifles and handguns, including a .45 automatic hand gun. Scumaci testified that the items were either brought back to the victim's business or the victim's house in Winfield. Scumaci testified that the victim was never physically abusive to the defendant. He acknowledged that the defendant and the victim had occasional disagreements and that the victim had raised his voice and yelled at her. Other than such occasional disagreements, Scumaci believed that the victim and the defendant "got along very well."

¶ 15 Deborah LaRoche, Pat Weldon, Dianna Prium, and Kenneth Prokopec testified regarding their relationship with the victim. They were all friends of the victim and knew the defendant and her daughter Taylor. They believed that the victim had good relationships with both the defendant and Taylor. LaRoche testified that the victim and the defendant had occasional disagreements but she never heard the victim raise his voice at the defendant.

¶ 16 Charlotte Miller testified that she was an accountant and bookkeeper. IPS was one of her clients from 1988 through 2006. She knew the victim very well. The business operated at a profit between 2002 and 2004. In 2005, Miller did not get the paperwork that was needed to complete her accounting duties. She had called the defendant about once a month to ask for the paperwork. After about six months of not receiving anything, she assumed that the defendant was having someone else do the accounting work. In September 2005, the victim came to see her because he wanted to talk about not taking a salary from the business anymore and instead

taking a monthly dividend. At that point she told him that she had not received any paperwork in 2005. The victim looked surprised and agitated. He told her that he would get her the usual paperwork for 2005.

¶ 17 Miller further testified that in late January or early February 2006, the victim again came to her office to discuss a notice he received from the IRS. The victim was agitated that the paperwork for 2005 still had not been given to Miller. Around March or April 2006, the defendant and the victim came to her office because they had received another IRS notice. When the victim realized he owed a large sum of money, he was upset and "hollering," but Miller did not feel fear or apprehension. Miller had another meeting with the victim at her office in May 2006. The victim was trying to understand why the company had lost so much money in 2005. Miller informed him that the defendant had taken an $18,000 salary increase in 2005. Miller testified that, in 2005, the business was several hundred thousand dollars insolvent.

¶ 18 Cecilia Lutzen testified that she worked as a secretary for IPS in 2005 and 2006. She reported to the defendant. Based on her observations, the relationship between the victim and the defendant was good. They did occasionally argue over the business and how the defendant was running it. Lutzen never saw the victim be physically abusive to the defendant. In May 2006, the defendant started calling her and giving her different reasons why she should not come in to work.

¶ 19 Larry Bower testified that he worked as a salesman for IPS for 23 years. He started in 1983 and left in 2006. Sales had declined in 2004, 2005, and 2006. He testified that the interaction between the defendant and the victim at work was generally civil. They would occasionally get into arguments but he never saw the victim berate or scream profanities or derogatory terms at the defendant.

¶ 20 B. The Defendant's Case in Chief

¶ 21 Robin Dupre testified that the victim was her father-in-law and that she was married to the victim's son, Michael Lentz, Jr. (Lentz Jr.). Dupre had worked at IPS for a period of time in 1999. She stopped working there because of the way the victim treated the defendant. The victim had a reputation for being physically abusive with his family. The night of the victim's wife's funeral in 1999, Dupre received a phone call at about 10 p.m. from Baker, who was at the victim's house. Dupre went to the victim's home and witnessed the victim throwing pots and pans. After the police arrived, Baker went home with Dupre and lived with her and Lentz Jr. for six months.

¶ 22 Gene Scott testified that he and his wife lived across the street from the victim and the victim's wife. Scott had a son that was the same age as Lentz, Jr. When his son and Lentz Jr. were about 10 years old, they were playing ball in the street. A car came down the street and stopped. The driver then spoke to the boys and at some point exited the vehicle. The victim came up and punched the driver. The driver, who had fallen to the ground, got back in his car and drove away.

¶ 23 Scott recalled another incident where the victim's wife, Nancy, came over to the house at night shaking and crying. She said the victim was drunk and was breaking furniture and dishes. She was afraid and asked if Scott would accompany her back to her house. Scott went with her and started to help clean up. Three chairs in the dining room were tipped over and a couple of vases were knocked over. There was glass on the kitchen floor and in the carpeting. Scott's wife testified that the victim had a reputation for being violent and physically and verbally abusive.

¶ 24 Jackie Passow testified that she was the defendant's cousin. Her Aunt Nancy, the defendant's mother, was about ten years older than her. She remembered sleeping over at her Aunt Nancy's once, when Lentz Jr. was just a baby. On that night, she saw the victim throw a lamp at her Aunt Nancy. When Passow was 18 years old, she was at her Aunt Nancy's house for

Christmas. Lentz Jr., who was eight, opened a Christmas gift and the defendant, who was two, wanted it. When Lentz Jr. did not give it to her, the victim grabbed Lentz Jr. by the shoulders and flung him into the hallway. Then the victim started kicking his son down the hallway and calling him names. When her Aunt Nancy tried to intervene, the victim flung his arm back at her, knocked her away, and told her to "stay the f*** out of it." Passow testified that the victim had a reputation for being mean, abusive, and violent.

¶ 25 The defendant testified on her own behalf. The defendant testified that she moved out of the family home when she was 16 because she was tired of the way her father treated her mother. Her father screamed at and hit her mother often. She moved back home in 1999, when her mother was sick. Taylor had already been born.

¶ 26 The defendant recalled an incident that occurred when she was eight years old. Her father had come home drunk and did not like what had been prepared for dinner. Her father asked her mother to make him something else, but she refused. Her father got angry and proceeded to take everything out of the refrigerator and throw it into the backyard. When the defendant's mother tried to stop him, he hit her in the face with the back of his hand. When the defendant was between 10 and 12, she remembered her father being upset that her mother was on the phone so he picked up the cradle of the phone and whipped it at her mother's head. The phone hit her mother in the ear and she started bleeding. Another time, when her mother had forgotten to pack her father's shaving kit for a business trip, her father grabbed her mother by the throat and shoved her against the wall.

¶ 27 The defendant testified that after she graduated high school, she began to do secretarial work at IPS. When her mother became ill and died in 1999, her duties at the business increased. She started handling customer service, paying bills, balancing the checkbook, and paying taxes. When she was growing up the victim was not physically abusive to her but he was verbally

abusive. He would scream, yell, and swear at her. Between the summer and fall of 2005, her father started to physically abuse her. The defendant recalled an incident when her father dragged her by the arm from the office to the back shop because he was angry that light bulbs she had purchased were burning out too soon. The dragging left bruises on her arm. On another occasion, her father pulled her by the hair when she attempted to walk away during a confrontation. In 2005 or 2006, IPS fell behind on paying sales taxes. When her father found out, he started to yell at the defendant and hit her in the head.

¶ 28 On May 19, 2006, her father picked up the defendant and Taylor and they went to breakfast together. Her father then dropped the defendant off at IPS and brought Taylor to school. After he dropped Taylor at school, he came to IPS and went into the shop to start working. When the mail arrived, the defendant noticed there was a letter from the IRS. She knew her father would be angry so she left the letter on the secretary's desk. At some point her father came back to the office area and opened the letter. He began to scream and swear. He told the defendant he wanted to see all the files "on this" and walked into his office. He then walked back out of his office, walked through the main secretary area where the defendant was still standing, and proceeded into the defendant's office. She heard him open one of the file cabinets and then slam it really hard. The defendant then started to walk into her office. The victim was yelling at her and started to raise his arms. She saw that he had a gun in his hands. She reached down, grabbed his hand and then he fell against the desk. When he fell, he twisted backwards and caught himself with his hands on the desk. She stumbled backward with the gun in her hands. When the victim began to straighten up, she shot him twice because she was terrified that he was going to kill her. The victim fell to the ground. She was shaking, dropped the gun, and walked out. She crouched on the floor by the secretary's desk and began to cry. At

some point, she went back to her father and said "Dad, Dad," but he did not answer. She then grabbed her things and left. She walked about a mile to her boyfriend's house.

¶ 29 A few days later, she returned to the office. Her father and the gun were still lying on the floor. She placed a tarp over him and put him in the back shop. She placed him in a blue garbage can. She ripped up the carpeting in her office that had blood on it and threw it and the gun away at a gas station. On June 9, 2006, she drove her father's truck to Kenosha and left it there. She took a bus home. On June 13, 2006, she went back to the business and noticed a bad smell. She went to Target to buy a bunch of air fresheners, but they did not make the smell go away. At that point, she lit some papers in the garbage can containing her father's body. The plastic can started to melt and it created a lot of smoke so she grabbed a fire extinguisher and put it out. A couple days later she wrapped the can and body in layers of clothing and tape. She did not tell anyone about the incident because she was scared and afraid and wanted it to go away. She was terrified of the victim and was scared that he was going "to get up and come back out."

¶ 30 C. Closing Arguments and Jury Verdict

¶ 31 In closing argument, the State argued that the evidence showed that the defendant walked into the office, where her father was sitting at a desk facing the wall, and shot him twice in the back of the head. The location of the bullet hole in the wall—three feet, four inches from the ground—was consistent with the victim being shot while he was sitting down.

¶ 32 The State noted that the defendant's testimony at trial as to how the shooting occurred was different than what she described in her police statement. The State argued that her story changed because she later realized that the physical evidence would not support her initial story that her father had shot himself. The State argued that the defendant did not cover up her father's death because she was afraid; she did it because she was covering up a murder. The State argued that the defendant would not have gone to such great lengths to cover up the murder

if she was justified. The State then reviewed the sequence of events after the murder, including how the defendant treated her father's body. The State argued that these facts demonstrated that it was not self-defense and the defendant was not justified in murdering her father.

¶ 33 The defendant argued in closing that she had nothing to gain by murdering her father. There was no life insurance policy and she could have only revived the family business with her father's help. The defendant further argued that she had been abused her whole life by her father, verbally and physically. The evidence showed that her father was the initial aggressor. There was testimony as to his violent and angry temper, while the defendant had never had a problem with violence in her life. She originally told a different story to the police because she was scared and afraid.

¶ 34 The defendant also argued that the State had failed to present relevant evidence that was readily available. The defendant argued that the State could have measured the angle of the bullet hole in the wall and figured out where the victim was when he was shot. If the State had done so, the defendant argued that it would have shown that the victim was not sitting at a desk. Further, the State did not test the chair or the desk for blood and, if they had done so, it would have showed that there was no blood because the victim was not shot while sitting at the desk. The defendant argued that the State did not have medical, physical, or scientific evidence to support its theory. Rather, all the State had was "guesswork and speculation."

¶ 35 On January 21, 2010, the jury found the defendant guilty of first-degree murder. Following the denial of her posttrial motion, the defendant was sentenced to 50 years' imprisonment. Following the denial of her motion to reconsider sentence, the defendant filed a direct appeal. On direct appeal, this court affirmed the defendant's conviction and sentence. *People v. Lentz*, No. 2-10-0448 (2011) (unpublished order under Supreme Court Rule 23). Our supreme court denied the defendant's petition for leave to appeal.

¶ 36 D. Post-Conviction Proceedings

¶ 37 On August 27, 2012, the defendant filed a timely petition for relief pursuant to the Act (725 ILCS 5/122-1 *et seq*. (West 2012)). The defendant raised three claims in her petition, all alleging the ineffective assistance of trial counsel. The defendant's first claim was that trial counsel was ineffective in failing to support her claim of self-defense with testimony from a mental health expert. Such testimony would have explained the defendant's apprehension of imminent bodily harm and her subsequent behavior after she shot her father, and was necessary to support her claim of self-defense. In support of this claim, the defendant attached an affidavit from Dr. Ruth Kuncel, a licensed clinical psychologist and forensic psychologist.

¶ 38 Dr. Kuncel opined that the defendant suffered a lifetime of emotional abuse from her father and suffered from battered woman syndrome. Dr. Kuncel opined that the years of abuse and repeated threats put the defendant in a state of hyper-arousal such that, when the victim pulled a gun on the defendant, she believed that it would do no good to run and that she had to shoot to ensure that the victim could not get up and kill her. Dr. Kuncel also opined that the defendant's behavior after the murder was consistent with battered woman syndrome. The defendant did not call the police because a battered woman often has no expectations that others will help. The defendant tried to hide the body because she wanted to make the situation go away and her ineffectual method of disposing of the body was indicative of the defendant's anxiety, disorganized thinking, and lack of coping skills. The defendant's inconsistencies in her initial statement to the police were because she expected punishment regardless of her innocence because her father had punished her all her life for things that were not her fault.

¶ 39 The defendant's second contention in her post-conviction petition was that trial counsel was ineffective in failing to call several witnesses that would have bolstered her claims of self-defense. In support, the defendant attached the affidavits of Taylor, Minauskas, Minauskas's

father, and Jennifer Keleman. Taylor stated in her affidavit that she had witnessed the victim physically abuse and threaten the defendant. Minauskas and his father both stated that the victim abused alcohol, swore and yelled at the defendant, and had threatened to kill the defendant. Keleman stated that she was friends with the defendant in high school. At that time, the victim abused alcohol, had a bad temper, and was physically abusive to the defendant. The defendant argued that the testimony set forth in the affidavits was critically important because, while other witnesses had testified about the victim's history of violence, none of them testified about violence specifically targeted at the defendant.

¶ 40 The defendant's final contention in her post-conviction petition was that trial counsel was ineffective in failing to call an expert in crime scene reconstruction and bullet trajectories to refute the State's theory as to how the shooting took place. In support she attached the affidavit of Gerald Styers. Styers stated that he had extensive training in ballistics and crime scene reconstruction. He stated that the claim that the victim was shot "execution style" was inconsistent with the lack of contact or soft-contact range firing, meaning that there was no gunpowder found on the victim's head. Further, without a detailed crime scene analysis, which the State did not do, there was no way to know whether the victim was shot while sitting at a desk. He opined that the defendant's testimony that the shooting took place following a struggle was equally plausible based on the firearms evidence. The defendant argued that an expert such as Styers, who could have corroborated her version of how the shooting took place with forensic evidence, was crucial to her defense.

¶ 41 On March 15, 2013, the trial court dismissed the defendant's petition as frivolous and patently without merit. This court reversed the trial court's judgment, holding that that trial court was without authority to enter a summary dismissal more than 90 days after the petition was filed and docketed. *People v. Lentz*, 2014 IL App (2d) 130332, ¶ 15. On remand, on July 30, 2014,

the trial court granted the State's motion to dismiss the petition. Thereafter, the defendant filed a timely notice of appeal from that order.

¶ 42 II. ANALYSIS

¶ 43 On appeal, the defendant argues that the trial court erred in granting the State's motion to dismiss because she made a substantial showing that she was deprived of her right to the effective assistance of trial counsel. The defendant noted that her entire theory at trial was that she acted in self-defense. Thus, her defense hinged on eliciting sufficient evidence that she had a reasonable belief that her life was in imminent danger. The defendant argues that testimony from a mental health expert would have explained why she shot her father in self-defense and why she did not immediately report the shooting; testimony from certain lay witnesses would have established the victim's history of physical violence against the defendant; and testimony from a ballistics expert would have demonstrated that crime scene evidence supported the defendant's explanation of how the shooting took place. The defendant therefore contends that her petition should be remanded for an evidentiary hearing pursuant to the third stage of the Act (725 ILCS 5/122-6 (West 2010)).

¶ 44 The Act provides a remedy to criminal defendants who have had substantial violations of their constitutional rights during their criminal trial. See *People v. Vernon*, 276 Ill. App. 3d 386, 391 (1995). A post-conviction proceeding is not an appeal *per se*, but a collateral attack upon a final judgment. See *People v. Lester*, 261 Ill. App. 3d 1075, 1077 (1994). The trial court must review the petition within 90 days, and may summarily dismiss it if the court finds that it is frivolous and patently without merit. *People v. Pendleton*, 223 Ill. 2d 458, 472 (2006). If the petition is not dismissed during this period, the trial court will docket it for further proceedings. *Id.*

¶ 45 Once a petition reaches the second stage, the defendant bears the burden of making a substantial showing of a constitutional violation. *People v. Coleman*, 206 Ill. 2d 261, 277 (2002). At the second stage, all well-pleaded facts are taken as true unless they are positively rebutted by the trial record. *Pendleton*, 223 Ill. 2d at 473. Mere conclusions cannot serve as the basis for post-conviction relief. *People v. Coleman*, 183 Ill. 2d 366, 381-82 (1998). If a defendant makes a substantial showing of a constitutional violation, then the petition is advanced to the third stage for an evidentiary hearing. *Id.* We review the dismissal of a post-conviction petition at the second stage without an evidentiary hearing *de novo*. *People v. Edwards*, 195 Ill. 2d 142, 156 (2001).

¶ 46 As to the defendant's claims that she was deprived of the effective assistance of trial counsel, the standards set forth in *Strickland v. Washington*, 466 U.S. 668 (1984), apply. *People v. Albanese*, 104 Ill. 2d 504, 526-27 (1984). To warrant an evidentiary hearing on a petition alleging ineffective assistance of trial counsel, a defendant must show both that his counsel's performance "fell below an objective standard of reasonableness" (*Strickland*, 466 U.S. at 688) and 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). "A reasonable probability is a probability sufficient to undermine confidence in the outcome." *Id.*

¶ 47 To satisfy the first portion of the *Strickland* test, a defendant must show that his attorney's performance fell below an objective standard as measured by prevailing professional norms. *People v. Spann*, 332 Ill. App. 3d 425, 430 (2002). There is a strong presumption, which a defendant must overcome, that counsel's performance "falls within the wide range of reasonable professional assistance." *People v. Miller*, 346 Ill. App. 3d 972, 982 (2004). In general, "[d]ecisions concerning which witnesses to call at trial and what evidence to present on

defendant's behalf" are "matters of trial strategy" which are "generally immune from claims of ineffective assistance of counsel." *People v. Reid*, 179 Ill. 2d 297, 310 (1997).

¶ 48 To satisfy the second prong of the *Strickland* test, the defendant must show that defense counsel's deficiencies so prejudiced the defendant as to deprive her of a fair trial with a reliable result. *Spann*, 332 Ill. App. 3d at 430. The prejudice prong of *Strickland* is not simply an "outcome-determinative" test and thus does not require that a defendant demonstrate that the result of the proceeding would have been different. *People v. Manning*, 241 Ill. 2d 319, 327 ((2011). Rather, the prejudice prong may be satisfied if defendant can show that counsel's deficient performance rendered the result of the trial unreliable or the proceeding fundamentally unfair. *People v. Simms*, 192 Ill. 2d 348, 362 (2000). A defendant must satisfy both prongs of the *Strickland* test to prevail on an ineffective assistance of counsel claim, and a failure to establish either deficiency or prejudice will be fatal to the claim. *Id.*

¶ 49 A. Failure to Call a Mental Health Expert

¶ 50 The defendant's first contention is that trial counsel was ineffective in failing to call a mental health expert to support her claim of self-defense and explain her actions following the shooting. The defendant notes that, prior to trial, she and trial counsel discussed the possibility of calling a mental health expert to address the issue of battered woman syndrome, but such an expert was never consulted nor called to testify at trial. The defendant argues that an expert in battered woman syndrome would have helped the jury understand the defendant's state of mind at the time of the shooting and that the failure to offer such testimony was objectively unreasonable.

¶ 51 We hold that the defendant failed to make a substantial showing that trial counsel was unreasonable in failing to call an expert in battered woman syndrome to testify at trial. There is no precedent in this state for applying battered woman syndrome to a father-daughter

relationship. Rather, the syndrome has been repeatedly described as applying to women who have experienced physical or emotional abuse over an extended period of time in an "intimate" marital-like relationship. *State v. Stewart*, 719 S.E.2d 876, 884 fn. 7 (W. Va. 2011); *Cusseaux v. Pickett*, 652 A.2d 789, 793-94 (N.J. Super. Ct. Law Div. 1994); *People v. Torres*, 488 N.Y.S.2d 358, 361 (N.Y. Crim. Term 1985). All the cases cited by the defendant, in support of her argument that the battered woman syndrome should have been raised as a defense, involved marital-like relationships. See *People v. Evans*, 271 Ill. App. 3d 495, 497 (1995) (defendant wife charged with the murder of her husband); *People v. Minnis*, 118 Ill. App. 3d 345, 346 (1983) (defendant murdered her boyfriend); *Dando v. Yukins*, 461 F.3d 791, 793, 798 (6th Cir. 2006) (boyfriend-girlfriend relationship); *Paine v. Massie*, 339 F. 3d 1194, 1196-1197 (10th Cir. 2003) (the defendant wife fatally shot husband). The defendant and the victim in this case were not involved in such a relationship.

¶ 52 Furthermore, the defendant's testimony did not demonstrate that she suffered physical abuse over an extended period of time. *Stewart*, 719 S.E.2d at 884 n. 7. The defendant testified that the physical abuse did not begin until the summer or fall of 2005. The defendant only testified about three incidents of abuse that occurred between that time and the time of the murder in May 2006. Accordingly, based on the nature of the relationship and the short duration and limited number of incidents of abuse, we cannot say that counsel was ineffective in failing to investigate battered woman syndrome as a possible theory of defense. See *People v. Pecoraro*, 175 Ill. 2d 294, 324 (1997) ("[w]here circumstances known to counsel at the time of his investigation do not reveal a sound basis for further inquiry in a particular area, it is not ineffective for the attorney to forgo additional investigation"). Weighing the viability of various defenses is within the range of strategic decisions that are generally immune from claims of ineffective assistance of counsel. *Reid*, 179 Ill. 2d at 310. It was sound trial strategy for counsel

to rely on the theory of self-defense rather than risk hurting the self-defense theory by stretching it to include what would have been, under the circumstances in this case, a novel legal theory. See *Haight v. Commonwealth*, 41 S.W.3d 436, 448 (Ky. 2001) (counsel will never be considered ineffective for failing to advance a novel legal theory), *overruled on other grounds by Leonard v. Commonwealth*, 279 S.W.3d 151 (Ky. 2009). As the defendant has failed to establish a deficiency, her ineffective assistance claim necessarily fails.

¶ 53 B. Lay Witnesses

¶ 54 The defendant's next contention on appeal is that trial counsel was ineffective in failing to call witnesses to corroborate the victim's physical abuse of the defendant. The defendant's daughter Taylor stated in her affidavit that she had witnessed the victim pushing, shoving, and pulling the defendant by the ear on several occasions. Taylor also overheard the victim threaten to kill the defendant. In addition to corroborating the victim's violent nature and alcohol abuse, Minauskas and his father also heard the victim threaten to kill the defendant. The defendant argues that the testimony of Taylor, Minauskas, and Minauskas's father[1] would have been direct evidence of the victim's violent conduct toward the defendant and would have supported her claim of self-defense at trial. The defendant notes that, while there was evidence at trial of the victim's reputation for being abusive and violent, as well as evidence of the victim's physical

[1] In her post-conviction petition, the defendant also alleged that trial counsel was ineffective in failing to call Jennifer Keleman to testify at trial, and she attached an affidavit from Keleman to her post-conviction petition. However, on appeal, the defendant does not argue that trial counsel was ineffective in failing to call Keleman. In fact, in her reply brief, the defendant states that she is abandoning any such argument.

abuse of his wife and son, there was no direct evidence corroborating the defendant's testimony that her father physically and emotionally abused her.

¶ 55 Decisions concerning whether to call certain witnesses on a defendant's behalf are matters of trial strategy, reserved to the discretion of trial counsel. *People v. Enis*, 194 Ill. 2d 361, 378 (2000). Such decisions enjoy a strong presumption that they reflect sound trial strategy and are, therefore, generally immune from claims of ineffective assistance of counsel. *Id.* This is not the case, however, where counsel's strategy was so unsound that no meaningful adversarial testing was conducted. *Id.* As related to a claim on ineffective assistance, the reasonableness of counsel's conduct must be judged on the facts of the particular case and viewed as of the time of counsel's conduct. *Id.* at 381. Counsel may be deemed ineffective for failure to present exculpatory evidence of which he is aware, including witnesses whose testimony would support an otherwise uncorroborated defense. *People v. Gibson*, 244 Ill. App. 3d 700, 703-04 (1993). Whether a failure to investigate the testimony of a potential witness amounts to incompetence depends on the value of the evidence to the case. *People v. Marshall*, 375 Ill. App. 3d 670, 676 (2007).

¶ 56 In the present case, trial counsel may not be deemed ineffective for failing to call Taylor, Minauskas, and Minauskas's father to testify at trial. The defendant has failed to overcome the presumption that not introducing their testimony was sound trial strategy since testimony from these witnesses likely would have carried little weight with the jury due to their relationship with the defendant. *People v. Lacy*, 407 Ill. App. 3d 442, 466 (2011) (failure to call witness was trial strategy because witness was related to the defendant and her testimony would have been afforded little weight); *People v. Hominick*, 177 Ill. App. 3d 18, 33-34 (1988) (the relationship of a witness to the defendant can be shown as bearing on the question of bias).

¶ 57 Moreover, counsel cannot be deemed deficient because the affidavits of Minauskas and his father would not have corroborated the defendant's testimony that the victim became physically abusive in the summer or fall 2005. See *Gibson*, 244 Ill. App. 3d at 703-04. Minauskas and his father stated generally that the victim was abusive towards the defendant and that they had heard the victim threaten to kill the defendant. However, neither Minauskas nor his father gave any time frame as to when such behavior occurred.

¶ 58 We acknowledge that Taylor's testimony would have corroborated the defendant's testimony as to the victim's abusive behavior. In her affidavit, Taylor stated that, when she was six or seven years old, she witnessed the victim hit or shove the defendant and she heard him threaten to kill the defendant. Based on her current age, the behavior she witnessed would have occurred during the summer or fall of 2005. Nonetheless, as stated, counsel cannot be deemed deficient since Taylor's testimony would likely have carried little weight with the jury. *Lacy*, 407 Ill. App. 3d at 466. Further, even if counsel could be considered deficient in failing to call Taylor to testify at trial (see *Gibson*, 244 Ill. App. 3d at 703-04 (failure to present corroborating evidence may be deemed ineffective)), the defendant has failed to establish prejudice. The evidence in this case was not closely balanced: the defendant's testimony that she shot her father in self-defense was contradicted by her videotaped statement, and the evidence showed that the defendant had taken extraordinary measures to conceal the crime. Accordingly, based on the potential witnesses' bias and the other evidence of the defendant's guilt at trial, the defendant has not made a substantial showing that the failure to call the foregoing lay witnesses to testify at trial was ineffective assistance of counsel and she is not entitled to an evidentiary hearing on this issue. *Coleman*, 183 Ill. 2d at 381-82.

¶ 59 C. Expert in Crime Scene Reconstruction

¶ 60 The defendant's final contention on appeal is that trial counsel was ineffective in failing to call an expert in crime scene reconstruction to refute the State's theory that the victim was shot from behind while seated at a desk doing paperwork. In his affidavit, Styers opined that, without a detailed crime scene analysis, there was no proof that the victim was shot while seated at a desk. He further opined that absent crime scene reconstruction, which the State did not perform, it was equally plausible that the shooting took place as the defendant testified, following a struggle over the gun. The defendant also argues that even if the failure to call an expert in crime scene reconstruction was not ineffective assistance by itself, it was ineffective when combined with trial counsel's other failures.

¶ 61 In the present case, the failure to call a crime scene reconstruction expert was not ineffective assistance of counsel because the defendant has failed to make a substantial showing of prejudice. *Id.* Trial counsel argued vehemently at trial that the State had failed to provide sufficient medical, physical, and scientific evidence to support its theory. Trial counsel noted in closing argument that the State failed to conduct an impact site analysis on the bullet in the wall and that such analysis would have revealed where the victim was when he was shot. Trial counsel also argued that the State failed to test the bullets for fingerprints or test the desk and chair for blood. As such, the failure to call a crime scene reconstruction expert was not prejudicial. Styer's affidavit indicated that he would have testified that, in the absence of scientific evidence, the defendant's theory was "equally plausible." Here, the jury was presented with two plausible theories and chose the State's theory. An expert simply testifying that the defendant's theory was equally plausible would not have changed that result, as trial counsel vehemently argued the same point. *People v. Enis*, 194 Ill. 2d 361, 394 (2000) (trial counsel's decision to challenge that State's lack of physical evidence, rather than call a member of the police crime laboratory to testify, was a matter of trial strategy and was not deficient).

Additionally, there is no indication that, had further crime scene investigation been completed, it would have actually provided exculpatory evidence.

¶ 62 The defendant argues that even if the failure to call an expert in crime scene reconstruction was not ineffective assistance by itself, it was ineffective when combined with trial counsel's other failures. However, we have rejected the defendant's other claims of ineffective assistance of counsel, concluding that counsel's performance was not deficient. Because we have rejected every claim of error, cumulative-error analysis is not necessary. *People v. Perry*, 224 Ill. 2d 312, 356 (2007).

¶ 63 CONCLUSION

¶ 64 For the foregoing reasons, we affirm the judgment of the circuit court of Du Page County.

¶ 65 Affirmed.