2021 IL App (3d) 180595-U

Order filed March 4, 2021

IN THE

APPELLATE COURT OF ILLINOIS

THIRD DISTRICT

2021

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the Circuit Court
	)	of the 10th Judicial Circuit,
	)	Peoria County, Illinois,
Plaintiff-Appellee,	)	
	)	Appeal No. 3-18-0595
v.	)	Circuit No. 15-CF-722
	)	
BOBBY LEE ARCHIE,	)	Honorable
	)	Paul Gilfillan,
Defendant-Appellant.	)	Judge, Presiding.

JUSTICE HOLDRIDGE delivered the judgment of the court.
Justices Lytton and Wright concurred in the judgment.

ORDER

¶ 1 *Held*: (1) The court did not err in denying the defendant's motion to suppress. (2) Defense counsel was not ineffective.

¶ 2 The defendant, Bobby Lee Archie, appeals his conviction for first degree murder, arguing that (1) the trial court erred in denying his motion to suppress and (2) his counsel was ineffective.

¶ 3 I. BACKGROUND

¶ 4 The defendant was charged with two counts of first degree murder (720 ILCS 5/9-1(a)(1), (2) (West 2014)). The defendant's counsel filed a motion stating that he had a *bona fide* doubt regarding the defendant's fitness to stand trial. The court appointed an expert to conduct a psychological examination of the defendant for fitness and to evaluate the defendant's mental status at the time of the offense. The court appointed Dr. Jean Clore. Dr. Clore issued a report on March 7, 2016. The report stated that the defendant met the DSM-5 criteria for schizophrenia. He had been diagnosed with schizophrenia previously and was being treated with medication. His primary symptoms were auditory hallucinations and delusions. Dr. Clore believed that the defendant was fit to stand trial, noting that he had the ability to understand the nature and purpose of the proceedings against him and to assist in his defense. The court subsequently found the defendant fit to stand trial.

¶ 5 The defendant filed a motion to suppress statements, arguing that his mental and physical condition at the time of his statement to the police prevented a knowing and understanding waiver of his rights and that his statements were the result of improper threats, promises, or communications. A hearing was held on the motion, and Dr. Clore testified for the defendant. The parties stipulated to her qualifications. Dr. Clore stated that she had examined the defendant at least three different times: once to review him for fitness to stand trial, once to administer an intelligence screening, and once to determine his competency to waive his rights pursuant to *Miranda v. Arizona*, 384 U.S. 436 (1966). The intelligence screening she administered was called the Shipley-2. She stated the intelligence test differentiated between verbal and non-verbal intelligence. His verbal score was 44, which was less than the first percentile. The defendant's non-verbal score was 84, which was in the low average range. The non-verbal score indicated the defendant's ability to learn, make decisions, and use logic. Dr. Clore stated that she did not put

much weight into the results of the Shipley-2 test because it was a brief screening tool, a crude estimate, and inconsistent with her experience and evaluation of the defendant's intelligence across her several interactions with him. Dr. Clore stated that the defendant told her he had been in special education and quit school after seventh grade.

¶ 6 Dr. Clore watched the defendant's videotaped interviews. She discussed the *Miranda* rights with the defendant and asked him what the various rights meant. He was able to discuss them with Dr. Clore, and she determined that he understood what each of the rights meant. She also asked him other questions regarding what was happening during the time and assessed whether he felt unduly influenced by the police officers. Based on her watching of the video and questioning of the defendant, she believed that he understood his *Miranda* rights as they had been read to him. Dr. Clore said that she asked the defendant why he decided to talk to the detectives a second time, and he said it sounded like they had a strong case against him, he wanted to "get them off [his] back and wanted to end it," and he was hoping for a lesser sentence.

¶ 7 On cross-examination, Dr. Clore stated that she had reviewed the discovery, including the police reports. When she met with the defendant, she believed that he was exaggerating some things, including his failure to remember. The defendant was able to relate to Dr. Clore that he had been read his *Miranda* rights before and had been in prison for 23 years. The defendant indicated to Dr. Clore that he understood the seriousness of the charge against him and the potential sentence he could receive. He knew who his attorney was. The defendant told Dr. Clore his version of events, displaying a memory relating to the situation. He was well-oriented and his demeanor, facial expressions, and bodily movements were appropriate. Based on her interviews with him and her training and experience, Dr. Clore formed the opinion that the defendant was competent to knowingly and voluntarily waive his rights and understood what those rights were. She stated that

he had those abilities even though he had been diagnosed with schizophrenia. She found that his symptoms were well managed with medication and were not particularly evident in the police interrogations or in her interviews with him. There was no indication on the video that the defendant was hearing any voices. Dr. Clore also found that the defendant was not highly susceptible to suggestibility. There was nothing that concerned her about the defendant's waiver of his *Miranda* rights.

¶ 8 Detective Shawn Curry testified that he was investigating the death of Taquila Jackson and had the defendant transported to the police station for questioning on October 22, 2015, around 10:50 p.m. The defendant was placed into an interview room, during which a search warrant was being executed at his residence. The officers interviewed a couple of witnesses before talking to the defendant. Curry read the defendant his *Miranda* rights. The defendant answered all questions appropriately and was never unresponsive to a question. Curry stated that nothing in the interview led him to believe that the defendant did not understand his *Miranda* rights or what was happening. Towards the end of the interview, the defendant asked for an attorney, the interview stopped, and the defendant was transported to the jail. The next day the defendant returned at his request, and his *Miranda* rights were read again. Another detective was on the phone with social services to get the defendant's medication sent over to the jail. Curry stated that they were unsure the last time the defendant had taken his medication.

¶ 9 Detective Jason Leigh stated that he was assisting Curry in the investigation into the murder of Jackson. He did not participate in the first interview of the defendant but did participate in the second interview. The defendant told Leigh he was trying to get in touch with his caseworker to get his list of medication to the jail. Leigh told the defendant he would contact the caseworker. Leigh called the caseworker and was able to obtain the list of medications. The defendant said that

he had not received his medications yet that day. There was nothing in Leigh's interactions with the defendant to suggest that the defendant was in a psychotic state or hallucinating.

¶ 10 The court stated that it viewed the videotape of both interviews. The video showed the defendant come into the interview room on October 22, 2015 (Interview #1). He walked with a bit of a limp. The detectives asked how he hurt his hip, and the defendant said that he had pins put in his hips when he was 9 or 10. The defendant stated that he was on parole for armed robbery. The officers read the defendant his *Miranda* rights. The defendant stated that he had had his rights read to him once before. The defendant stated that he had moved into his residence and then met Jackson. He was introduced to Jackson because her boyfriend, Richard McZee, had gone to prison, and Jackson needed somewhere to live. Jackson moved into a room at the defendant's residence. Jackson and the defendant had a sexual relationship. The defendant said that Jackson was "prostituting" for money for rent and drugs. He said that the last time he had seen Jackson was October 10th or 11th. The defendant stated that he had talked to McZee and thought that maybe Jackson had gone with some guy who had a boat. He spoke with Jackson's family and said that he did not know where she had gone and asked if they knew her new address. He stated that a week later he broke into Jackson's room and noticed that all of Jackson's stuff was gone. The defendant said that Jackson's mattress had been carried outside and placed against the fence when he got home one day. The defendant stated that when he moved the mattress there was no blood on the mattress. The day after he broke into Jackson's room and saw that she was gone, he moved his stuff into the room. He stated that he did not know that the red splatters on the wall, ceiling, and floor was blood, and if he had known, he would not have moved into the room.

¶ 11 The detectives stated that they did not think that Jackson's death was premeditated but thought that there had been an argument. The defendant continued to say that he did not know

what had happened, and he did not do it. He said that he and Jackson were the only two that had keys to the house, but that Jackson let other people come into the house. A detective asked, "what made you have some decency to put a Bible with her?" The detective asked if they would find a bloody hammer in the house. The defendant said he wanted to stop and get a lawyer. The officers said they could not talk to him because he asked for a lawyer, and the defendant then said, "forget that." The officers left the room. The officers came back and said they would not ask questions. The defendant said that McZee killed Jackson and paid the defendant $500 to clean up after him.

¶ 12 The next morning the defendant was brought back into the interview room (Interview #2). The defendant asked if he could make a phone call to his caseworker since he did not get his psychotropic medication that morning. The detective told the defendant he would be waiting for about 45 minutes before the interview began. During this time, the defendant moved around in his seat. At one point, the defendant folded his arms and rocked back and forth for about 5 minutes. He also moved his legs back and forth at one point. The detectives read the defendant his *Miranda* rights again and asked the defendant if he wanted to talk to them or get a lawyer. He said he wanted to talk to them. The detective asked twice whether the defendant was sure. The defendant continued with the story that McZee had paid him money to clean up. He stated that he did not know that McZee had killed her but helped him clean up blood on the kitchen floor. He did not ask McZee any questions about it.

¶ 13 The detectives said that the best thing the defendant could do was own up to what he had done and show remorse. Curry stated that he did not think the defendant had any feelings. Leigh stated, "Based on stuff you had in your room, I can tell you're a religious man." The defendant agreed that he was. The conversation then moved onto the current location of the defendant's personal effects. Curry stated, "The best thing you can do, Bobby, is show some remorse. God is

looking down on you." Curry stated that he did not think the defendant had feelings but was only worried about himself. Curry pointed at the defendant with a folder in his hand, one to two feet from the defendant's face. Curry said that he knew the defendant did it, but he did not think the defendant was "man enough" to admit it. He said, "I know you did it. I know it, he knows it, God knows it, [Jackson] knows it, everyone knows you killed her."

¶ 14 The defendant was given some lunch and had a break. Leigh came in and spoke with the defendant alone. Leigh stated that there was a difference between premeditation and killing in the heat of passion. He stated:

> "Good people do bad things. It doesn't necessarily make them a bad person. Go all the way bad to Adam and Eve. What did Adam do that he wasn't supposed to do? Eat the apple. It's human nature to make mistakes. Does that make Adam a bad person? No. He made a mistake."

Leigh and the defendant continued to talk about the differences between premeditated and an emotional killing. The defendant explained what premeditated meant. The defendant said that he was going to school to get his GED, he had started a maintenance business, and he was "heavily back in church."

¶ 15 Leigh stated that there was a "really good chance" the defendant was going back to prison, but the question was for how long, which may depend on whether Jackson's murder was premediated. The defendant said he knew Leigh did not want him to say that he did something that he did not do. The defendant said, "If I don't say that I did it, there's still a chance that I'm going to prison, right?" Leigh said that no matter what the defendant said there was a chance he would go to prison. He said that "courts weigh things differently as to why they happened." The defendant said, "I'm going to prison for five, six years, or longer." Leigh stated, "I'm not saying you are, but

it's a good possibility." Leigh said he could not say what would happen because he did not know. Curry came back in and asked if the defendant was going to "do the right thing" and "be a man." Curry stated that whether the defendant went to prison or not was not up to them but was up to the court. Curry stated that it was always better to tell the truth and getting caught lying was worse than just telling the truth. He said if a mistake was made, or he lost his temper, it was understandable. Curry said that if someone does something bad and then continues to lie about it, that makes them look like a "cold-blooded killer." The defendant said that a cold-blooded killer would get no sympathy from the judge or jury and would get life without parole instead of 10 or 15 years. Curry stated that that was not up to them but was up to the judge.

¶ 16 Curry stated that they were at a crossroads, and the defendant had to decide if he was a cold-blooded killer or if something bad happened and a mistake was made. Curry said that people cannot control their emotions sometimes and said, "Emotions are one of those things that God put into you that you cannot control." Sometimes emotions get the better of you and bad things happen. Curry said that God put certain things in everyone that they cannot control, and they are different in everyone. "Sometimes your emotions get the better of you, but that does not mean you are a cold-blooded killer. Which one is it?" Curry asked if the defendant read the Bible. The defendant said he was not familiar with the scriptures, but he did read the Bible and he did go to church. Curry asked, "Did God make you emotional like that, or are you a cold-blooded killer? Which one is it? It's one or the other." The detectives said this was the chance for the defendant to get his story out.

¶ 17 The defendant asked if his story would be put in a written statement. The defendant then took some time to think. He then said that he could not take it anymore that Jackson was bringing other men into the house. He really loved Jackson and tried to change her. He said he went down

to the basement, got a crowbar, opened Jackson's door, and hit her in the head three to five times. He said he threw the crowbar in the trash. The defendant said he took her body outside, but then realized there were too many people outside, so he brought her back inside and let her fall down the basement stairs. He said he wrapped an extension cord around Jackson's ankles and drug her body back up the stairs. He said he put her in a ditch in the ground outside the back of his house. He said he did not put her body in the trash can and did not know how she got there.

¶ 18 The court ultimately denied the motion to suppress, stating that the totality of the circumstances, including Dr. Clore's expert opinion, showed that the officers did not cross the line and the defendant's will was not overcome.

¶ 19 The defendant filed a motion *in limine* pursuant to section 115-10.2a of the Code of Criminal Procedure (Code) (725 ILCS 5/115-10.2a (West 2018)), asking the court to allow statements made by Jackson against Richard McZee in a 2014 case where Jackson sought an emergency order of protection (OP). Jackson sought the OP *pro se* and included a handwritten statement, which said:

> "He gets drunk all the time and always wants to fight and have been to jail for this many times. He always want to call me bitches and whores and this time he through [*sic*] a hammer and it is still in the wall and picked up a tall fan and hit me in the face causing me to have a black eye and bloody nose."

The court found that section 115-10.2a was inapplicable because it concerned a situation where the defendant was the perpetrator of the domestic violence. The court stated that the defendant could not use the paragraph from Jackson's emergency OP application, but that he could bring up the fact that Jackson had obtained an emergency OP against McZee for impeachment purposes. The court was informed that a hammer was found in a bedroom at the defendant's residence. The

hammer was tested but no blood was found on the hammer. The court stated that evidence of the hammer could not be presented at trial.

¶ 20 The evidence at trial established that in the fall of 2015 Jackson lived with the defendant in a residence at 1300 S. Easton Street, where she rented a room for $50 a month. Prior to living with the defendant, Jackson lived, and was in a relationship, with McZee. McZee went to prison for theft, and she and McZee broke up, which precipitated Jackson's move. McZee sent letters to Jackson while he was in prison. While renting the room from the defendant, Jackson started dating a man named Jerome. McZee got out of jail in July 2015 and was also dating someone else. In early October 2015, Jackson started moving her belongings out of the defendant's residence little by little as she planned on moving in with Jerome.

¶ 21 The last time Jackson's family had seen Jackson was October 8, 2015. The defendant went by Jackson's grandmother's house after this date and asked if she had seen Jackson. The defendant said that he had not seen her and that she had taken her things and moved out. A month or two before October, the defendant told Jackson's sister that he loved Jackson. He asked her what he could do to get Jackson to like him. Jackson's sister told him that Jackson had a boyfriend and only liked the defendant as a friend. The defendant persisted in asking for help in developing a relationship with Jackson, including telling Jackson's sister how much he loved Jackson after Jackson went missing. Jackson's family contacted the police on October 19 to file a missing person's report on Jackson.

¶ 22 On October 22, 2015, Clifton White was looking through garbage cans in the alley that ran behind the defendant's residence, searching for aluminum cans to cash in. He looked in a garbage can behind an abandoned residence at 1518 S. Easton Street and found a human body inside that was badly decomposed. White called the police, and he directed them to the garbage can. The body

was later identified as Jackson. Inside the garbage can with Jackson was a Bible that said on the inside cover that it had been presented to McZee, brown gloves, black hair, and an envelope addressed to Jackson. There was a white extension cord tied around Jackson's legs.

¶ 23 Officers knocked on the defendant's door, and the defendant let them inside. They stated that they were investigating the missing persons report of Jackson. The defendant told them he had known Jackson and that she had moved out two weeks prior. They asked for permission to look in Jackson's former room, and the defendant consented. They noticed what appeared to be blood on the floor and the walls. There was furniture in the room. The defendant told the officers that he thought they had seen enough and turned off the light. Curry testified that the defendant seemed very nervous. The defendant indicated that when Jackson moved out, he moved his stuff into the room so that he could rent out his room. Once the officers observed the blood, they stopped looking, secured the residence, and transported the defendant to the police station.

¶ 24 A search warrant was obtained and executed on the defendant's residence, which was videotaped. The video was shown in court. The officers found a blood-stained mattress outside of the residence and blood on the rear steps of the residence and on the basement floor. In an area under the basement stairs, officers found a blood stain, black hair extensions, a respirator mask with red stains on it, white gloves with blood stains on them, and cleaning supplies with muriatic acid. There was also a dresser in the basement with letters inside addressed to Taquila "Jackson McZee." In the defendant's yard the officers found black hair extensions. In a trash can in the defendant's yard, the officers found women's clothing, medicine bottles with the defendant's name, and mail with Jackson's name on it.

¶ 25 An autopsy of the body determined that it had been decomposing for weeks. The cause of death was blunt force trauma to the head. The brown gloves from the garbage can were tested for

DNA and a mixture of at least two DNA profiles were detected. The defendant could not have been excluded as contributing to the male DNA profile, and Jackson could not have been excluded as contributing to the non-male DNA profile.

¶ 26 Leigh testified that he was involved in the investigation. McZee came to the police station voluntarily with Jackson's family, and Leigh conducted a videotaped interview of him. McZee stated that he heard a body was found and hoped it was not Jackson. He appeared calm and answered questions promptly. Leigh told Curry that McZee did not say or do anything that made him believe McZee was involved. On cross-examination, defense counsel asked Leigh if he was aware that Jackson had sought an OP against McZee on September 16, 2014. Leigh stated that he was not aware. Defense counsel then asked if the OP would have made a difference in his assessment of McZee, and Leigh stated that it would not have. Leigh stated that McZee had told him that he had a prior relationship with Jackson, and they had dated for two or three years. He did not indicate when their relationship had ended. McZee told Leigh that he had written to Jackson while he was in prison, and Jackson had not written him back. Defense counsel asked Leigh if he was aware of domestic disturbance calls made between Jackson and McZee in June, August, and September of 2014 when they were living together. Leigh said he did not know about it but that it would not have made a difference in his interview with McZee. Leigh testified that before the second interview of the defendant, the defendant told him he had not taken his psychotropic medication and asked Leigh to call his caseworker to get a list of his medication.

¶ 27 The defendant's videotaped interview was played for the jury. Curry stated that the information regarding the extension cord around Jackson's ankles had never been released to anyone before the defendant's interview. On cross-examination, Curry stated the investigation would not have changed if he had known that Jackson sought an OP against McZee because Leigh

had not seen any red flags when interviewing McZee, found McZee credible, and the evidence continued to point to the defendant. Curry stated that they had not looked into the domestic disturbance calls between McZee and Jackson because the defendant had already confessed. The State rested.

¶ 28 Dr. Clore testified that the defendant was diagnosed with schizophrenia. She stated that antipsychotic medications used to manage schizophrenia are long-acting and stay in the system so it is unlikely that anyone who missed one day of medication would see symptoms. She stated that it usually takes two to six weeks off medication before symptomology would return, so less than 24 hours without antipsychotic medication would not likely cause any detrimental effects to a patient. Dr. Clore stated that she watched the defendant's videotaped interviews and stated that she did not believe that his schizophrenia interfered with his ability to participate in the interview.

¶ 29 McZee testified that he did not kill Jackson, and that he loved her and was going to marry her. Defense counsel did not ask McZee any questions about the OP.

¶ 30 The defendant testified that he was 53. He had finished the fifth or sixth grade in special education classes. He moved to Peoria after he was paroled from a crime he committed in Missouri. He stated that he sometimes heard voices but as long as he stayed on his medication it did not bother him as much. He also had diabetes. He was working odd jobs, including moving furniture, plumbing, winterizing houses, mowing with a push mower, and landscaping, and going to school to get his GED. He rode a bike to his jobs. The defendant stated that when he was interviewed by the police, he had been off his medicine for a couple of weeks. He stated his confession was not true; he made it up because he was scared that they would not believe him, and they had promised him he would only get three or four days or three or four weeks in prison. He said that he did not kill Jackson. He knew about the extension cord because McZee had told him that he used the

extension cord to tie her legs. The defendant stated that he thought McZee killed Jackson because they were arguing and then the argument suddenly stopped. He did not see Jackson get killed and did not see her in the basement with her legs tied up. He said he could hear people talking about him. The defendant said that he loved Jackson and did not want her to move out. She was making bad decisions with other men and did not like him the way he wanted her to. He agreed that he wanted Jackson's sister to help him get Jackson to like him. He agreed that he knew he was about to lose Jackson. He said he hated her lifestyle but would not hurt her.

¶ 31 The jury found the defendant guilty of first degree murder. The defendant filed a motion for a new trial, arguing, *inter alia*, that the court erred in denying the defendant's motion to suppress and to admit Jackson's statement in her application for an emergency OP. At the hearing on the motion, defense counsel stated:

> "When *** [the State] questioned [McZee] about whether or not he killed Ms. Jackson, I believe that since—unless she's gonna suggest that she opened the door, the Court didn't indicate anything to the contrary concerning my motions so I assume that those rulings were still in effect that I couldn't bring up the letters and—from beyond the grave, *et cetera*, and so I didn't question him about those.
>
> Now perhaps I was wrong in that assumption, but I did want to make the record this was not something that I inadvertently waived. I suppose I could have called a sidebar. I didn't.
>
> Maybe I should of, but that—that is one thing that I hadn't mentioned and I wanted to bring up now because it wasn't for a reason of trial strategy.

> I just simply figured that the Court had made the motion, and if the Court felt differently about how things would of—what he said and the outburst I didn't kill her, I loved her, I was—whatever, the record is what the record is.
>
> I—I wanted to reflect that that's why I did—I did not do anything further along that path as I assumed that was not something that the Court felt was right to change anything so it wasn't trial strategy."

The court denied the motion. The defendant was sentenced to 55 years' imprisonment.

¶ 32 II. ANALYSIS

¶ 33 On appeal the defendant argues (1) the court erred in denying his motion to suppress and (2) trial counsel was ineffective for failing to support his theory that McZee actually killed Jackson.

¶ 34 I. Motion to Suppress

¶ 35 A defendant's constitutional rights are violated when his conviction is based "in whole or in part, on an involuntary confession, regardless of its truth or falsity." *Miranda*, 384 U.S. at 464, n.33. The test for determining whether a confession was voluntary is "whether the defendant made the statement freely, voluntarily, and without compulsion or inducement of any sort, or whether the defendant's will was overcome at the time he or she confessed." *People v. Gilliam,* 172 Ill. 2d 484, 500 (1996). When weighing the voluntariness of a confession, we consider the totality of the circumstances, including: (1) the defendant's age, experience, background, physical condition, intelligence, education, and mental capacity at the time of questioning; (2) the duration and legality of the detention and questioning; and (3) whether there was any physical or mental abuse, including threats or promises made by police. *People v. Hughes*, 2015 IL 117242, ¶ 31. "No single factor is dispositive." *Id.* We apply a two-part standard of review when reviewing the trial court's

ruling on a motion to suppress. *People v. Murdock*, 2012 IL 112362, ¶ 29. On findings of fact and credibility assessments, we defer to the trial court and reverse only if the decision is against the manifest weight of the evidence. *Id.* However, we review *de novo* the trial court's ultimate finding on voluntariness. *Id.* "A reviewing court may consider evidence presented both at trial and at the pretrial hearing in determining whether the trial court erred in denying a motion to suppress." *People v. Lee*, 2012 IL App (1st) 101851, ¶ 25.

¶ 36 Here, the defendant's age, experience, and physical condition all weigh in favor of finding that the confession was voluntary. The defendant was 51 years old at the time of the offense and had previous experience with the criminal justice system. While he had pins in his hip from when he was a child and was diabetic, this did not prevent him from being active. He rode his bike to his various odd jobs, which included moving furniture, plumbing, winterizing houses, mowing with a push mower, and landscaping, all of which required a high level of physical activity. The record does not indicate any other physical impairments, and the videotape does not indicate that the interrogation was hampered by the pins in the defendant's hip or his diabetes.

¶ 37 Although the defendant had a low IQ and level of education and was diagnosed with schizophrenia, any deleterious effects were mitigated in such a way as to undermine any argument of involuntariness. The defendant did have a verbal IQ of 44 and a non-verbal IQ of 84 based on the Shipley-2 test that Dr. Clore executed. However, Dr. Clore stated that she did not put much stock in this test because it was a brief screening tool, a crude estimate, and inconsistent with her experience and evaluation of the defendant's intelligence across her several interactions with him. The defendant did not complete middle school but had been taking classes at the time to complete his GED. The defendant had been diagnosed with schizophrenia, but Dr. Clore stated that his symptoms were well managed with medication and were not particularly evident in the video of

the police interrogations or in her interviews with him. There was no indication on the video that the defendant was hearing any voices. We note that the defendant moved around a lot while he waited for the detectives, and we cannot say that his rocking back and forth at one point was symptomatic of his schizophrenia and not just boredom. While the defendant points out that he had not had his medication on the morning of Interview #2, Dr. Clore testified that medications like the ones prescribed to the defendant were long-acting and stay in the system so it is unlikely that the defendant would have any detrimental effects from being off the medication for less than 24 hours. She stated that it usually takes two to six weeks off medication before symptomology would return.[1] Dr. Clore stated that she watched the defendant's videotaped interviews and did not believe that his schizophrenia interfered with his ability to participate in the interview. The court obviously found Dr. Clore credible as it based its decision in part on her testimony, and we do not find that such a credibility determination was against the manifest weight of the evidence.

¶ 38 Moreover, the defendant was read his *Miranda* rights on two occasions, at the start of both the first and second interviews. Dr. Clore discussed the *Miranda* rights with the defendant, and he was able to explain what each one was. Based on her interviews with him and her training and experience, Dr. Clore formed the opinion that the defendant was competent to knowingly and voluntarily waive his rights and understood what those rights were, even with his low Shipley score and schizophrenia. There was nothing that concerned her about the defendant's waiver of his *Miranda* rights. The defendant's understanding of his rights was confirmed by his asking for an attorney at the end of Interview #1.

[1] We note that the defendant points to jail records that indicate symptoms of his schizophrenia. However, these symptoms were noticed three weeks after the defendant's interrogation and have no bearing on his symptomology at the time of his interrogation.

¶ 39 The defendant does not contend, and the record does not show, that there was any issue with the legality of the defendant's detention or questioning. The defendant's interviews were appropriate in length and broken up into sessions in order to give the defendant a break. Interview #1 comprised of two 30-minute sessions with a break in between. Interview #2 consisted of a 48-minute session, a break for lunch, and then a second session that was around 50 minutes before the defendant began his confession. The duration of the defendant's questioning and detention were appropriate. See, *e.g.*, *People v. Willis*, 215 Ill. 2d 517, 537-38 (2005) (holding that the defendant's three interrogations over a 73-hour period, where the first interrogation was more than four hours, was not improper).

¶ 40 The record does not show that there was any sort of physical abuse perpetrated by the officers during the interrogation, nor does it show that the detectives threatened the defendant or made him any promises. While the defendant points to indications by the detectives that the judge or jury may look more favorably on a confession and showing of remorse, this does not amount to a promise or improper coercion. See *People v. Kellerman*, 342 Ill. App. 3d 1019, 1027 (2003) ("To constitute an offer of leniency that renders a confession inadmissible, a police statement must be coupled with a suggestion of a specific benefit that will follow if the defendant confesses."). The detectives clearly stated to the defendant multiple times that the ultimate charges, verdict, and sentencing was not up to them. Moreover, the defendant argues that the detectives' appeals to God amounted to improper coercion. However, without some evidence of physical or psychological coercion, mere references to God or faith coupled with exhortations to tell the truth and seek God's forgiveness do not render a defendant's confession involuntary. *Berghuis v. Thompkins*, 560 U.S. 370, 387 (2010); *People v. Bowen*, 87 Ill. App. 3d 221, 226 (1980).

¶ 41 Our review of the videotape shows that the defendant was able to effectively communicate with the detectives, did not show any signs of confusion or uncertainty, and displayed an appropriate affect and demeanor. The defendant did not appear to be intimidated, answered the questions appropriately, and understood what was being asked. See *People v. Slater*, 228 Ill. 2d 137, 160-61 (2008). The videotape did not indicate that the defendant's will was overborn, and Dr. Clore also found that the defendant was not highly susceptible to suggestibility. Based on the totality of the circumstances, we find that the defendant's confession was voluntary.

¶ 42 In coming to this conclusion, we note that the defendant spends multiple paragraphs in his brief discussing how police minimization or maximization of the moral seriousness or legal consequences of an offense can increase the likelihood of an involuntary confession. While the defendant cites articles and out-of-state cases for this proposition, he does not cite to any caselaw that has applied such a factor to the voluntariness equation in Illinois, and we will not be the first to do so.

¶ 43 II. Ineffective Assistance of Counsel

¶ 44 A defendant's claim of ineffective assistance of counsel is analyzed under the two-prong test set forth in *Strickland v. Washington*, 466 U.S. 668, 687 (1984). To prevail on such a claim, a defendant must show both that (1) counsel's performance fell below an objective standard of reasonableness, and (2) a reasonable probability exists that, but for counsel's deficient performance, the result of the proceeding would have been different. *People v. Henderson*, 2013 IL 114040, ¶ 11. Counsel's performance must be competent, not perfect. *People v. Evans*, 209 Ill. 2d 194, 220 (2004). Counsel is presumed to know the law (*People v. Perkins*, 229 Ill. 2d 34, 51 (2007)), and we "must indulge a strong presumption that counsel's conduct falls within the wide range of reasonable professional assistance; that is, the defendant must overcome the presumption

that, under the circumstances, the challenged action 'might be considered sound trial strategy.' " *Strickland*, 466 U.S. at 689 (quoting *Michel v. Louisiana*, 350 U.S. 91, 101 (1955)). "Neither mistakes in strategy nor the fact that another attorney with the benefit of hindsight would have proceeded differently is sufficient to establish ineffective assistance of counsel." *People v. Dobbs*, 353 Ill. App. 3d 817, 827 (2004). Moreover, a defendant cannot rely on speculation or conjecture to justify his claim of ineffective assistance. *People v. Holman*, 164 Ill. 2d 356, 369 (1995). "Because the defendant must satisfy both prongs of this test, the failure to establish either is fatal to the claim." *People v. Jackson*, 2020 IL 124112, ¶ 90.

¶ 45 The defendant raises three separate claims of ineffective assistance of counsel, which we will consider in turn.

¶ 46 A. Admissibility of *Pro Se* Written Statement

¶ 47 The defendant argues that counsel was ineffective for only arguing that Jackson's written statement on the emergency OP was admissible under section 115-10.2a of the Code. Specifically, the defendant argues that the statement was admissible under Illinois Rules of Evidence 804(b)(1)(A) (eff. Jan. 1, 2011) and 803(3) (eff. Apr. 26, 2012), and counsel was ineffective for failing to make such arguments.

¶ 48 Hearsay evidence consists of an out-of-court statement offered to prove the truth of the matter asserted and is usually inadmissible due to its lack of reliability, unless it falls into an exception to the hearsay rule. *People v. Caffey*, 205 Ill. 2d 52, 88-89 (2001). Illinois Rule of Evidence 804(b)(1)(A) provides a hearsay exception for an unavailable witness when the witness testified "at another hearing of the same or a different proceeding, *** if the party against whom the testimony is now offered *** had an opportunity and similar motive to develop the testimony by direct, cross, or redirect examination." Merely establishing that a party had an opportunity to

develop testimony at a prior hearing does not necessarily establish the party had an *adequate* opportunity. *People v. Rice*, 166 Ill. 2d 35, 40 (1995). Determining whether ample opportunity to develop the testimony at a prior hearing existed must be decided on the circumstances of each case. *Id.* at 39.

¶ 49 The defendant relies on section 202(d) of the Illinois Domestic Violence Act of 1986 (Domestic Violence Act) (750 ILCS 60/202(d) (West 2014)), which states that, for *pro se* OP petitions, "The court shall provide, through the office of the clerk of the court, simplified forms and clerical assistance to help with the writing and filing of a petition under this Section by any person not represented by counsel. In addition, that assistance may be provided by the state's attorney." Moreover, the defendant notes that section 212(b) of the Domestic Violence Act provides that the state's attorney's office "may, but need not" offer counsel to a petitioner. 750 ILCS 60/212(b) (West 2014).

¶ 50 It is clear, here, that Jackson's *pro se* written application for an emergency OP would not have been admissible under Rule 804(b)(1)(A). The State was not a party to Jackson's emergency OP. The record does not contain any indication that the State had the opportunity to develop Jackson's testimony or counseled her in any way. Just because the state's attorney's office had the statutory authority to help with the writing and filing of OPs does not mean that they did so in this case. Section 202(d) does not even require state's attorney's offices to offer such assistance but solely says that it "may" be provided. Moreover, the petition sought was an *ex parte* emergency OP; McZee was not provided notice, was not present, and was not given the opportunity to rebut the allegations against him. See *Whitten v. Whitten*, 292 Ill. App. 3d 780, 785-86 (1997).

¶ 51 Rule 803(3) provides a hearsay exception for "A statement of the declarant's then existing state of mind, emotion, sensation, or physical condition (such as intent, plan, motive, design,

mental feeling, pain, and bodily health)." "Statements that indicate the declarant's state of mind are admissible as exceptions to the hearsay rule when the declarant is unavailable to testify, there is a reasonable probability that the proffered statements are truthful, and the statements are relevant to a material issue in the case." *Caffey*, 205 Ill. 2d at 91.

¶ 52 Here, Jackson's *pro se* written statement seeking an emergency OP does not fall within this exception. The written statement did not purport to give any indication of Jackson's state of mind at the time she wrote it. She did not describe feeling afraid, as the defendant suggests, but instead solely provided a factual recitation of events she stated happened previously. The written statement was also over a year before Jackson was murdered. Moreover, the statement was not inherently reliable so as to merit exception to the hearsay rule. Since the written statement in the application for an emergency OP would not have been admissible under Rule 804(b)(1)(A) or Rule 803(3), counsel was not ineffective for failing to raise its admissibility under these rules.

¶ 53 B. Impeachment with the OP

¶ 54 Next, the defendant argues that counsel was ineffective for failing to introduce the physical copy of the emergency OP Jackson obtained against McZee and for failing to impeach McZee with the OP. First, the failure to introduce the physical copy of the emergency OP did not prejudice the defendant. Defense counsel asked both of the detectives about the OP Jackson had obtained against McZee. Thus, the jury heard that Jackson had obtained an OP, and we fail to see how the physical copy of the order would have provided any further evidence. Second, during the motion *in limine* the court specifically stated that defense counsel could use the OP solely to question the detectives. We cannot see how counsel was ineffective for following this order. We note that the defendant does not challenge the propriety of such a decision by the trial court.

¶ 55 C. Admittance of the Hammer

¶ 56 Lastly, the defendant argues that counsel was ineffective for failing to object to the court's *sua sponte* motion to exclude any evidence of the hammer that was found in the defendant's house. We find the failure to object to be trial strategy. The court did not allow introduction of Jackson's statement that said McZee had hit her in the head with a hammer. Moreover, Jackson's cause of death was blunt force trauma to the head and the murder weapon was never found. While the defendant confessed to hitting Jackson with a crowbar, introduction of a hammer found in the bedroom the defendant had used prior to Jackson's death could have been prejudicial to the defendant.

¶ 57 III. CONCLUSION

¶ 58 The judgment of the circuit court of Peoria County is affirmed.

¶ 59 Affirmed.