MEMORANDUM DECISION

APPELLANT, PRO SE

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IN THE COURT OF APPEALS OF INDIANA

Ryan Sheckles,
Appellant-Petitioner,

v.

State of Indiana,
Appellee-Respondent

June 4, 2021

Court of Appeals Case No.
20A-PC-344

Appeal from the
Clark Circuit Court

The Honorable
Steven M. Fleece, Judge Pro Tem

Trial Court Cause No.
10C01-1303-PC-6

Vaidik, Judge.

Case Summary

[1] Ryan Sheckles appeals the denial of his petition for post-conviction relief. We affirm.

Facts and Procedural History

[2] The underlying facts are taken largely from this Court's opinion on direct appeal, *Sheckles v. State*, Case No. 10A04-1108-CR-423 (Ind. Ct. App. May 12, 2012), *trans. denied*. Ryan and Robert Sheckles are cousins. On August 25, 2009, Robert called Laisha Smith, whom he had been dating for a couple months, and asked her to drive him and Ryan around so they could sell drugs.

[3] Around 8 p.m., Laisha picked up Ryan and Robert in her father's truck. Ryan sat beside Laisha in the front passenger seat, while Robert sat in the backseat. After making a couple stops, Ryan received several calls from Larry Morrow and directed Laisha to an address on Walnut Street in Jeffersonville.

[4] When they arrived at the address, Larry walked to the passenger side of the truck. Ryan and Larry argued over the price of drugs. Shannon, Larry's ex-wife, approached as the two argued. The argument escalated, and Ryan pulled a gun from his waistband and shot Larry in the face, killing him. Ryan shot Shannon as she turned and fled. Shannon was shot several times but was able to call for help. Shannon was taken to a hospital in Louisville, where she later died of her injuries.

[5] Jeffersonville Police Department officers searched the scene of the shootings and found the corner of a plastic baggie and two cigarettes. The case, however, remained unsolved for nearly a year.

[6] In July 2010, a confidential informant told Jeffersonville Police Department Detective Shawn Kennedy that Laisha was the driver of the truck involved in the shootings. On July 12, Laisha entered into a "Cooperation Agreement" with the State, which required her to "cooperate fully and completely with the Jeffersonville Police Department" about the murders of Larry and Shannon, including answering their questions and testifying at trial. Trial Ex. 63. In exchange for her cooperation, Laisha was given full immunity. During an interview with Detective Kennedy and another detective, Laisha identified Ryan and Robert as being involved. On July 26, Robert entered into a "Cooperation Agreement" with the State. In exchange for his cooperation, the State agreed to "charge and allow Robert Sheckles to plead guilty to the offense of Assisting a Criminal (Class D felony), with a three year executed sentence." *Id.* Robert was then interviewed by the police.

[7] On July 30, the State charged Ryan with two counts of murder. Ryan was represented by two attorneys, Amber Shaw and Jennifer Culotta. After obtaining DNA samples from Ryan, Robert, Laisha, and Larry, the State sent those samples and the two cigarettes found at the scene of the shooting to the Indiana State Police Laboratory. The lab issued a Certificate of Analysis, which identified Ryan's DNA as the major contributor to a mixed DNA profile found on one cigarette (Robert, Laisha, and Larry were excluded as contributors). On

the second cigarette, which also bore a mixed DNA profile, the Certificate of Analysis identified Larry as the major DNA contributor, but Ryan could not be excluded as a contributor (Robert and Laisha were excluded).

[8] In November, Detective Kennedy resigned from the Jeffersonville Police Department over allegations he had solicited sex acts "in exchange for taking care of ticket issues" and provided information to drug dealers. *See* P-C Ex. 7, p. 63.

[9] Ryan's jury trial began on May 31, 2011. The defense theory was Laisha wasn't credible and that Robert, not Ryan, shot and killed Larry and Shannon. The State introduced the two cigarettes, the four DNA profiles, and the Certificate of Analysis from the Indiana State Police Laboratory, which concluded Ryan was the major contributor to the mixed DNA profile on one cigarette found at the scene of the shooting.[1]

[1] Ryan argues his trial counsel were ineffective for not challenging the chain of custody for Exhibits 1-6 (the two cigarettes and the four DNA profiles). But as the State points out, Ryan did not raise this issue in his amended post-conviction petition, and the post-conviction court did not address this issue in its order. Appellee's Br. p. 32; *see also* Appellant's P-C App. Vol. II pp. 62-69 (amended petition), 9-33 (post-conviction court's order). Ryan has waived this issue. *See Pruitt v. State*, 903 N.E.2d 899, 906 (Ind. 2009) ("Pruitt did not raise the claim that trial counsel failed to investigate and discover the fact that he was referred to special education in eighth grade. The post-conviction court (PC court) therefore did not discuss this claim in its order, and it is not available for this Court's review."), *reh'g denied*; *Koons v. State*, 771 N.E.2d 685, 691 (Ind. Ct. App. 2002) ("Issues not raised in the petition for post-conviction relief may not be raised for the first time on post-conviction appeal. The failure to raise an alleged error in the petition waives the right to raise that issue on appeal." (citations omitted)), *trans. denied*.

[10] The State did not call Detective Kennedy as a witness. The State called Laisha and Robert as witnesses under their Cooperation Agreements. Laisha testified about her agreement and the events of August 25, 2009. Specifically, she testified Ryan shot Larry and Shannon. When Robert took the stand, he answered some initial questions but then declared he was "plead[ing] the fifth" and had "nothing to say" and that the statements he made to the police during his interview were coerced. Trial Tr. p. 753. When the State asked Robert if it was his signature on the Cooperation Agreement, Robert responded:

> A That ain't no more. That ain't no -- mother fu** that deal man, give me up out of this courtroom.
>
> REPORTER'S NOTE: Several people yelling in the courtroom to get witness to sit down.
>
> [THE STATE]: Sit down.
>
> THE COURT: Sit down, sit down. I'm telling you, have a seat until we are done.
>
> Q Now, does this fairly and accurately reflect certainly your signature, in fact, this is the plea deal that you agreed to.
>
> A I don't agree to sh*t. Fu** that deal, fu** all you all.
>
> REPORTER'S NOTE: Several people yelling in the courtroom to get witness to sit down.
>
> [THE STATE]: Sit down, down.

> THE COURT: All right. Let's have a hearing outside the presence of the jury for a minute please. Madam Bailiff, I'll place the jury in your care.
>
> (JURY LEAVES THE COURTROOM)

Id. at 755-56. While the jury was out of the courtroom, the State withdrew Robert's immunity and plea, and he was "discharge[d]."[2] *Id.* at 758. Trial counsel did not request an admonishment or move for a mistrial. When the jury was brought back into the courtroom, the trial court said, "The prior witness Robert Sheckles has been discharged and won't be available for any further questioning by either side." *Id.* at 765.

[11] During its closing argument, the State argued the evidence was "overwhelming" that Ryan shot Larry and Shannon. *Id.* at 929-30. However, the State told the jury that the trial court would be giving them an instruction on "aiding and abetting" that says

> if you knowingly or intentionally aid, induce or cause another person to commit a crime you are just as guilty as the person who committed it. [The trial court is] going to give you that instruction because it is the law in Indiana[.] If you aid somebody in committing a crime, you are guilty or if you commit the crime, you are guilty. And that's the two bas[e]s of liability in the State of Indiana for a crime.

[2] Robert was never charged in connection with the shootings. *See* Appellant's P-C App. Vol. II p. 82.

Id. at 929. The trial court gave Final Instruction No. 7, a comprehensive instruction on accomplice liability, *see* P-C Ex. 4, p. 26, and Final Instruction No. 8, which provides, "Defendant's mere presence at the scene is not enough to sustain a conviction on an accessory theory." *Id.* at 27.

[12] On the second day of deliberations, the jury sent a note to the trial court. In the presence of the attorneys, the trial court read the note aloud, which stated, "[D]oes Ryan Sheckles need or have to have the gun in his hand to be guilty as stated in the charges, or according to Indiana State law is a person guilty if he participates? We are not lawyers and don't know how to interpret certain instructions." Trial Tr. pp. 1019-20.

[13] The State and trial counsel argued back and forth as to how to answer the jury's question. Ultimately, without objection from either party, the trial court returned to the jury the following note: "A person may be found guilty of murder if he [knowingly or intentionally] commits, aids, induces or causes the murder." *Id.* at 1037.

[14] Shortly thereafter, the jury found Ryan guilty of both counts. The trial court sentenced him to sixty years on each count, to be served consecutively.

[15] Ryan appealed to this Court, raising numerous issues. We affirmed his convictions and 120-year sentence. *See Sheckles*, Case No. 10A04-1108-CR-423. Our Supreme Court denied transfer.

[16] In 2013, Ryan filed a pro se petition for post-conviction relief, which was amended by counsel in 2019. The petition raised twenty issues. A hearing was held in November 2019. At the hearing, Ryan introduced into evidence news articles about Detective Kennedy's November 2010 resignation from the Jeffersonville Police Department regarding allegations he had solicited sex acts "in exchange for taking care of ticket issues" and provided information to drug dealers. *See* P-C Ex. 7, p. 63. Attorney Culotta, who became an attorney in 1987 and had devoted the majority of her career to criminal cases, testified about her memory of Detective Kennedy:

> I remember that Mr. Kennedy had been terminated. I don't recall why. I do remember that he was not going to be called by the government and I remember Ms. Shaw and I talking about that fact that since he was not going to be called by the government and his rol[e] was minor in this investigation and there were other witnesses that it would be improper to call a witness for the sole purpose of impeaching him.

P-C Tr. p. 14.

[17] Attorney Shaw, who became an attorney in 1997, testified they did not depose Detective Kennedy because the State indicated it was not calling him as a witness. *Id.* at 43-45. During an earlier deposition, which was admitted into evidence at the hearing, Attorney Shaw said she knew Detective Kennedy resigned based on allegations he had solicited sex acts for "fixing" tickets and provided information to drug dealers. P-C Ex. 8, p. 71. She said they

investigated no further because "other than maybe that CI, it seemed most of everything he did some other officer was there too." *Id.*

[18] Neither Attorney Culotta nor Attorney Shaw could recall much about the confidential informant; however, at her deposition Attorney Shaw testified about a note she had made in the file:

> I remember in my notes that it said [we] talked about the confidential informant and my notes were just do we even care who or about that person as far as who she was or who it was in reference to giving us her. So, I don't think that we, I think, it was one of those points with everything going on with the judge and the continuances, you know, we had to make decisions on which lines of evidence were the most fruitful to follow.

Id. at 77.

[19] In January 2020, the post-conviction court issued findings and conclusions denying relief.

[20] Ryan, pro se, now appeals.

Discussion and Decision

[21] Ryan appeals the denial of his petition for post-conviction relief. A defendant who files a petition for post-conviction relief must establish the grounds for relief by a preponderance of the evidence. *Hollowell v. State*, 19 N.E.3d 263, 268-69 (Ind. 2014). If the post-conviction court denies relief, and the petitioner appeals, the petitioner must show the evidence leads unerringly and

unmistakably to a conclusion opposite that reached by the post-conviction court. *Id.* at 269.

[22] Ryan contends his trial counsel rendered ineffective assistance of counsel. When evaluating a defendant's ineffective-assistance-of-counsel claim, we apply the well-established, two-part test from *Strickland v. Washington*, 466 U.S. 668 (1984). *Bobadilla v. State*, 117 N.E.3d 1272, 1280 (Ind. 2019). The defendant must prove (1) counsel rendered deficient performance, meaning counsel's representation fell below an objective standard of reasonableness as gauged by prevailing professional norms, and (2) counsel's deficient performance prejudiced the defendant, i.e., but for counsel's errors, there is a reasonable probability the result of the proceeding would have been different. *Id.*

I. Detective Kennedy

[23] Ryan makes several arguments about Detective Kennedy. First, Ryan argues his trial counsel were ineffective for failing to investigate the allegations about Detective Kennedy. While effective representation requires adequate pretrial investigation and preparation, we do not judge an attorney's performance with the benefit of hindsight. *McKnight v. State*, 1 N.E.3d 193, 200-01 (Ind. Ct. App. 2013). When deciding a claim of ineffective assistance for failure to investigate, we apply a great deal of deference to counsel's judgments. *Id.* at 201. Indeed,

> [S]trategic choices made after thorough investigation of law and facts relevant to plausible options are virtually unchallengeable; and strategic choices made after less than complete investigation are reasonable precisely to the extent that reasonable professional

> judgments support the limitation on investigation. In other words, counsel has a duty to make reasonable investigations or to make a reasonable decision that makes particular investigations unnecessary.

Strickland, 466 U.S. at 690-91. In addition, establishing failure to investigate as a ground for ineffective assistance of counsel requires going beyond the trial record to show what an investigation, if undertaken, would have produced. *Id.* (citing *Woods v. State*, 701 N.E.2d 1208, 1214 (Ind. 1998), *reh'g denied*). "'This is necessary because success on the prejudice prong of an ineffectiveness claim requires a showing of a reasonable probability of affecting the result.'" *Id.* (quoting *Woods*, 701 N.E.2d at 1214).

[24] Here, trial counsel knew about the allegations concerning Detective Kennedy but decided not to investigate them because (1) the State indicated it was not calling him as a witness and (2) his role in the investigation was "minor." As the post-conviction court found, counsel "made a considered tactical decision in regards to their handling of Detective Kennedy." Appellant's P-C App. Vol. II p. 20.

[25] But even assuming counsel were deficient for not investigating the allegations about Detective Kennedy, Ryan has failed to prove prejudice. While Ryan presented news articles that Detective Kennedy resigned from the Jeffersonville Police Department because of misconduct allegations, he presented no evidence those allegations had any nexus to this case. In other words, Ryan did not prove what an investigation, if undertaken, would have produced.

[26] Ryan next argues his trial counsel were ineffective for not moving to exclude evidence obtained by Detective Kennedy due to his "personal and professional shortcomings." Appellant's Br. p. 17. We first note Ryan doesn't specify what evidence Detective Kennedy collected that counsel should have moved to exclude; rather, he refers to evidence in general terms. *See id.* at 16 ("In part, [Detective Kennedy] was responsible for finding and collecting evidence that implicated the appellant, cell phones, interview witnesses and other."). In any event, according to Attorney Shaw, they did not challenge Detective Kennedy's actions because "most of everything he did some other officer was there too." As the post-conviction court found, "Whether or not Detective Kennedy was under any scrutiny does not tend to diminish the reliability of the evidence where any other involved Detective is not shown to be associated with any wrong-doing, and not otherwise connected to Detective Kennedy's wrong-doing." Appellant's P-C App. Vol. II p. 21. Counsel were not ineffective on this basis.

[27] Finally, Ryan argues his trial counsel were ineffective for not "challeng[ing] the identity or the existence of the alleged confidential informant that provided the initial tip to Det. Kennedy" so they could determine whether a confidential informant even existed or "whether the informant was one of the local drug dealers that Det. Kennedy was in association with at the time he was investigating [him]." Appellant's Br. pp. 17-18. According to Attorney Shaw, counsel discussed the confidential informant but decided the informant's identity did not matter and they needed to spend their time on other issues. But

even if counsel were deficient for not challenging the identity or existence of the confidential informant, Ryan did not prove what an investigation, if undertaken, would have produced. Without such evidence, Ryan cannot establish prejudice.[3]

II. Robert's Testimony

[28] Ryan argues his trial counsel were ineffective for not requesting an admonishment or moving for a mistrial following Robert's outburst and refusal to testify. Ryan raised a similar issue on direct appeal:

> [Ryan] argues that fundamental error resulted when the trial court failed to "remove the jury promptly upon the first sign of trouble" and to admonish the jury after afterwards.

Sheckles, Case No. 10A04-1108-CR-423. We found no fundamental error, reasoning that because "Robert was to be a witness for the State, his sudden refusal to testify was a setback for the State." *Id.*

[3] Regarding the confidential informant, Ryan also argues his trial counsel were ineffective for (1) not challenging the probable-cause affidavit for his arrest because it did not contain information about the confidential informant's veracity, reliability, or basis of knowledge and (2) not "mov[ing] to exclude the use of Laisha Smith's information/testimony as being fruits of the C.I.'s information whose credibility was not established or no information regarding the basis of his or her knowledge given." Appellant's Br. p. 19. But as the State points out, Ryan did not argue his trial counsel were ineffective on this basis in his amended post-conviction petition, and the post-conviction court did not address this issue in its order. *See* Appellee's Br. p. 30 n.3; *see also* Appellant's P-C App. Vol. II pp. 62-69 (amended petition), 9-33 (post-conviction court's order). Ryan has waived this issue. *See Pruitt*, 903 N.E.2d at 906; *Koons*, 771 N.E.2d at 691.

[29] We acknowledge "fundamental error and prejudice for ineffective assistance of trial counsel present two substantively different questions." *Benefield v. State*, 945 N.E.2d 791, 805 (Ind. Ct. App. 2011). "[A] finding that the error did not rise to fundamental error does not automatically rule out the possibility that the error resulted in prejudice sufficient to establish ineffective assistance" because the bar to establish prejudice for ineffective assistance of counsel is lower. *Id.*

[30] But Ryan has not cleared that bar here. At the post-conviction hearing, Attorney Culotta testified they did not request an admonishment because "more often than not it draws more attention to the fact that the person said something." P-C Tr. p. 16. As we explained on direct appeal, Robert was a key witness for the State, and his outburst and refusal to testify was a setback for the State—not Ryan. Although Ryan claims Robert's outburst "prejudiced" him, *see* Appellant's Br. p. 32, he does not explain how he was prejudiced instead of the State.[4] Counsel were not ineffective for not requesting an admonishment or moving for a mistrial.

III. Accomplice Liability

[31] Ryan makes three arguments about accomplice liability. First, he argues his trial counsel were ineffective for not objecting when the State "misstated and improperly argued Indiana Law in regards to accomplice liability" "[d]uring

[4] Ryan also argues his trial counsel should have cross-examined Robert. But Ryan has made no showing what Robert would have testified to and therefore cannot establish prejudice on this issue.

opening statement and closing argument." Appellant's Br. p. 25. In support of his argument, Ryan cites pages 143-44 of the trial transcript. *See id.* (citing "Tr., pp. 143-144"). However, Ryan does not identify the State's alleged misstatements of law. Although Ryan provides citations to pages 143-44 of the trial transcript, these citations are to voir dire—not opening statement or closing argument. Moreover, there is no discussion of accomplice liability on these pages. Ryan has waived review of this issue. *See* Ind. Appellate Rule 46(A)(8)(a).

[32] Second, Ryan argues his trial counsel were ineffective for not ensuring the jury was instructed that mere presence at the scene is not enough to convict a defendant on an accomplice theory. Appellant's Br. pp. 27-28. But as the State points out, Final Instruction No. 8 provides just that: "Defendant's mere presence at the scene is not enough to sustain a conviction on an accessory theory."[5] P-C Ex. 4, p. 27.

[33] Last, Ryan argues his trial counsel were ineffective for acquiescing to the trial court's additional instruction to the jury during deliberations that "[a] person may be found guilty of murder if he [knowingly or intentionally] commits, aids, induces or causes the murder." Trial Tr. p. 1037. Ryan raised this issue on direct appeal under the fundamental-error doctrine, and we found no fundamental error because "the jury did not understand the accomplice liability

[5] In his reply brief, Ryan does not respond to the State's pointing out what Final Instruction No. 8 says.

instruction, and the trial court responded, addressing only their claimed point of confusion." *Sheckles*, Case No. 10A04-1108-CR-423. As explained above, the bar to establish prejudice for ineffective assistance of counsel is lower than the bar to establish fundamental error. Ryan claims he was prejudiced by the additional instruction because the jury was not instructed that mere presence at the scene is not enough to convict a defendant on an accomplice theory. But the jury was given such an instruction. *See* P-C- Ex. 4, p. 27. Ryan has failed to show he was prejudiced by the additional instruction.

IV. Closing Arguments

[34] Finally, Ryan argues his trial counsel were ineffective for not objecting to these comments made by the State during closing argument: (1) defense attorneys will do "three things[:] Confuse, conceal, and create" and (2) "You just saw an academy award appearance of [Attorney Culotta] showing you smoke and mirrors." Trial Tr. pp. 990, 1001-02.[6] But as the State points out, Ryan did not raise this issue in his amended post-conviction petition, and the post-conviction court did not address this issue in its order. Appellee's Br. pp. 35-36; *see also* Appellant's P-C App. Vol. II pp. 62-69 (amended petition), 9-33 (post-conviction court's order). Ryan has waived this issue. *See Pruitt*, 903 N.E.2d at 906; *Koons*, 771 N.E.2d at 691.

[6] Although Ryan challenged three comments in his opening brief, he withdrew his challenge to one of the comments in his reply brief. *See* Appellant's Reply Br. p. 9 n.3.

[35] Waiver notwithstanding, Ryan raised this issue on direct appeal under the fundamental-error doctrine. Although we found the comments were "inappropriate" because they "denigrat[ed] defense counsel," we concluded there was no fundamental error. *Sheckles*, Case No. 10A04-1108-CR-423. Recognizing the bar to establish prejudice is lower, Ryan did not prove there is a reasonable probability the result of the proceeding would have been different. The evidence against Ryan was strong—an eyewitness identified Ryan as the shooter and his DNA placed him at the scene—and the challenged comments did not mispresent the facts or law. Counsel were not ineffective.

[36] Affirmed.

Bradford, C.J., and Brown, J., concur.