FIRST DISTRICT COURT OF APPEAL
STATE OF FLORIDA

No. 1D20-1355

WILLIE MAE THORNTON,

Appellant,

v.

STATE OF FLORIDA,

Appellee.

On appeal from the Circuit Court for Escambia County.
Gary L. Bergosh, Judge.

October 6, 2021

WINOKUR, J.

Willie Mae Thornton appeals the lower court's order denying her motion for postconviction relief under Florida Rule of Criminal Procedure 3.850 following an evidentiary hearing. She raises two issues on appeal, claiming first that the lower court erred by concluding that trial counsel was not ineffective for failing to file a motion to suppress her allegedly coerced confession. Second, she claims the lower court erred by concluding trial counsel was not ineffective for agreeing to publish a redacted version of the same confession, because the jury was deprived of the opportunity to independently determine whether her confession was coerced. The coercion, she claims, was based on detectives telling her that her

son could possibly face the death penalty. We find no error and affirm.

I

On the afternoon of September 13, 2014, the T & M Food Mart was robbed. The owner—who was working as the clerk at the time—was found dead behind the counter with a gunshot wound to the back of his head. Law enforcement ultimately developed Thornton as a suspect after her DNA was found on a glove left at the scene. Additionally, the gun used in the shooting was owned by Thornton's boyfriend.

Thornton was interviewed by detectives twice and both interviews were recorded. In her first interview, she initially denied any involvement and denied taking a glove into the store. But after learning the glove contained her DNA, she admitted she was present when her son suddenly decided to shoot the clerk and rob the store. She claimed she did not see it coming but admitted she helped in the cover up effort by removing the store's surveillance camera. She also agreed that she and her son proceeded to shop for groceries at another store (where they were recorded on camera). During this first interview, Thornton asked if the State Attorney could work out a deal for her in exchange for testifying against her son, Dontonio Thornton.

Dontonio was arrested and separately interviewed. He confessed to the robbery as well as to premeditated murder, but stated he committed both at the behest of his mother. He reportedly told law enforcement that she planned the robbery because she needed the money. And she planned the murder, telling her son he would have to shoot the store clerk because the store clerk had a gun. He also stated that his mother supplied him with the gun he used to shoot the store clerk.

During her second interview with law enforcement, Thornton was confronted by the possibility that her son could face the death penalty. They also told her that the word in the community was she was letting her son take the sole blame for the robbery and murder. Thornton ultimately admitted her involvement in the

robbery but maintained she did not commit premeditated murder and did not know Dontonio was going to kill the store clerk.

Thornton was indicted on one count of first-degree murder on alternative theories of felony murder as a principal and premeditated first-degree murder. At trial, over Thornton's objection, a redacted portion of the first interview recording was admitted into evidence.[1] However, trial counsel did not object to admission of a redacted portion of the second interview recording.

Just before publication of the recordings to the jury, the jury was told that each recording was redacted to cut out irrelevant small talk between Thornton and law enforcement. But the redacted portion of the second interview included the death penalty discussion. Thus, the jury did not hear law enforcement tell Thornton that her son may face the death penalty or tell her what people in her community were saying about her letting her son take the blame.

However, the redactions also ensured that the jury did *not* hear that Thornton had been on probation or had a prior criminal record. Nor did the jury hear law enforcement tell Thornton what her son said about her involvement, that she is the person who planned the robbery and the murder.

The jury convicted Thornton of premeditated first-degree murder. Her judgment and sentence were affirmed on direct appeal. *See Thornton v. State*, 202 So. 3d 413 (Fla. 1st DCA 2016).

Thornton timely filed a motion for postconviction relief under Florida Rule of Appellate Procedure 3.850, raising several claims of ineffective assistance of counsel centering primarily around Thornton's second recorded interview and confession. The trial

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[1] Trial counsel objected on the basis that the first recorded interview was unduly prejudicial, and the State was only introducing it to paint Thornton as a liar considering her conflicting statements in the second recorded interview. The State argued that the first interview statement could be admitted because it contained her admission against interest.

court granted an evidentiary hearing on three of Thornton's claims: that Thornton's trial counsel was ineffective for failing to file a motion to suppress her confession in the second recorded interview because it was allegedly given under duress when she was told her son was facing the death penalty (claims one and four); and that Thornton's trial counsel, alternatively, was ineffective for failing to challenge the redactions in Thornton's second recorded interview because the jury was deprived of the opportunity to hear the death penalty discussion and independently determine whether it coerced her confession (claim three). [2]

At the evidentiary hearing, Thornton's trial counsel testified that he decided not to file a motion to suppress after reviewing the unredacted video interviews for "police techniques or the circumstances" that would "make some or all of her statements involuntary." He explained that by "involuntary," he meant that "it would overcome her free will, that they were coercive rather than persuasive or manipulative." He further explained that he considered whether to file a motion to suppress based on the threat of her son receiving the death penalty.

But, based on his review, trial counsel concluded that the death penalty discussion was not "so coercive [that it] overcame [Thornton's] free will . . . based on the totality of the circumstances." In reaching this conclusion, trial counsel noted that the evidence, in its entirety throughout the interviews showed that "Ms. Thornton planned a robbery. . . . She furnished the instrumentality. . . . She furnished the firearm that was used to kill the victim; she furnished the transportation; she furnished the plan." He noted that she could have obtained someone else, but she chose her son. "She picked her son because she knew, being his mother, that he would do anything to help her, . . . including commit a crime, without question." Trial counsel also reasoned that Thornton did not display motherly feelings toward her son at

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[2] Thornton also alleged in claim two that her conviction was unconstitutional because the prosecution failed to disclose evidence favorable to her. The lower court denied this claim, but this ruling has not been challenged on appeal.

the first interview. "When confronted with the glove . . . and her DNA there, instead of going ahead and fessing up to what her part was in it, instead, she put the whole thing on her son. Now, is she concerned about her son getting the death penalty at that point? I don't think so." He further noted that she asked the State Attorney for a deal for herself and voiced, "I'm fixing to hang my child."

Trial counsel also explained that, at the second interview, law enforcement's interview technique appealed to Thornton's sense of her standing in the community and was not coercive. They told her that "folks in the community and your family are saying that you are letting Dontonio ride this bus by himself."

As to the redactions, trial counsel testified that redacting the two recorded interviews was part of his comprehensive trial strategy. He explained that he wanted to keep the jury from hearing those portions of the interviews revealing that Thornton was on probation, had a prior criminal record, and had some medical conditions. He also redacted excerpts from the second recorded interview so that the jury would not hear law enforcement confront Thornton with her son's statements about her role as the planner of the robbery-murder.

On the death penalty issue, trial counsel testified that he made a tactical decision to redact law enforcement's statements to Thornton, that her son may face the death penalty. Trial counsel believed that, had he argued that Thornton's second confession was coerced, the State could introduce the son's statements claiming Thornton planned the robbery-murder. As redacted, however, trial counsel explained he could argue, consistently with the first recorded interview, that Thornton had no knowledge the robbery or the murder were going to occur and played no role in planning them.

Following the evidentiary hearing, the trial court denied Thornton's motion for postconviction relief. On claims one and four, the trial court found that counsel's decision not to file a motion to suppress was reasonable under the totality of the circumstances, primarily relying on the case of *Martin v. State*, 107 So. 3d 281 (Fla. 2012). In *Martin*, detectives' comments to the defendant about a possible death penalty sentence during a three-

and-a-half-hour interview were found not to have coerced a confession; rather, the comments were part of a conversation regarding possible penalties the defendant could face in the absence of further explanation regarding what happened. *Id.* at 302. Based on *Martin* and the totality of the circumstances, the trial court concluded that "trial counsel's decision not to pursue a motion to suppress was reasonable, and there was no reasonable probability a motion to suppress would have been granted."

On claim three, the trial court found that counsel's strategy in redacting portions of the recorded interviews was reasonable and even favorable to Thornton. The trial court reasoned that, considering the incriminating statements made by Thornton's son and conveyed by law enforcement in the redacted portion of the second interview recording, there was no reasonable probability of a different outcome.

Thornton was granted a belated appeal by this Court. She now seeks review of the lower court's order denying postconviction relief on claims one and four (raised together as one issue) and claim three.

II

"Claims of ineffective assistance present mixed questions of law and fact." *Trotter v. State*, 932 So. 2d 1045, 1051 (Fla. 2006) (citing *Occhicone v. State*, 768 So. 2d 1037, 1045 (Fla. 2000)). In reviewing the trial court's ruling following an evidentiary hearing, "[t]his Court independently reviews the trial court's legal conclusions and defers to the trial court's findings of fact." *Id.*

To prevail on a claim of ineffective assistance of counsel, the movant "must demonstrate that defense counsel's performance was deficient, and that the defendant was prejudiced by that deficiency." *Martinez v. State*, 317 So. 3d 1245 (Fla. 1st DCA), *reh'g denied,* (2021) (citing *Strickland v. Washington*, 466 U.S. 668 (1984)). "To satisfy the first prong, '[t]he defendant must allege specific facts that, when considering the totality of the circumstances, are not conclusively rebutted by the record and that demonstrate a deficiency on the part of counsel which is detrimental to the defendant.'" *Id.* (quoting *Blackwood v. State*,

946 So. 2d 960, 968 (Fla. 2006)). "And to succeed on the prejudice prong, the defendant must demonstrate a reasonable probability that, but for counsel's errors, the result of the proceeding would have been different." *Id.* (citing *Strickland*, 466 U.S. at 694). "'A reasonable probability is a probability sufficient to undermine confidence in the outcome." *Id.* The defendant must demonstrate a likelihood of a different result which is substantial and not just conceivable. *Harrington v. Richter*, 562 U.S. 86, 112 (2011).

A

Thornton first claims the lower court erred by denying claims one and four because, under the totality of the circumstances, her second recorded confession was clearly involuntary and coerced by the death penalty discussion. Thus, trial counsel was ineffective for failing to file a motion to suppress. We disagree.

The test to determine whether a confession is involuntary and coerced is whether it was the product of free will and rational choice. *Martin*, 107 So. 3d at 298. This is determined based on "an examination of the totality of the circumstances surrounding the confession." *Id.* (citing *Traylor v. State*, 596 So. 2d 957, 964 (Fla. 1992)). As noted by the lower court, in *Martin*, a discussion of the death penalty by detectives with a defendant was found not to have been coercive but simply to be part of a conversation regarding possible penalties the defendant could face. Here, as in *Martin*, the death penalty was a real possibility for Thornton's son based on the execution of a store clerk during the commission of a felony.

But even assuming that counsel should have filed a motion to suppress, we find no error in the lower court's conclusion that there is no reasonable probability the motion to suppress would have been granted. The lower court found that counsel's decision was reasonable based on a review of the totality of the circumstances. And the totality of the circumstances—particularly the unredacted interviews—reflect that Thornton's free will was not overcome by detectives mentioning her son's potential exposure to the death penalty. Instead, the record shows that, when faced with the DNA evidence tying herself to the crime during the first interview, instead of being overwhelmed by motherly love, Thornton blamed her son, admitted only to helping cover up his crime, and asked for

the State Attorney to work out an immunity deal for her. She needed the deal because, in her words, she was "fixing to hang my child." During the second interview, even after law enforcement discussed her son's potential liability for the death penalty and attempted to appeal to her sense of her standing in the community if she let her son take all the blame, Thornton still only confessed to the robbery. She maintained that her son acted on his own in the killing and that she did not know what he was going to do.

Based on this record, we find no error in the lower court's conclusion that Thornton's confession during the second interview was not coerced by mention of her son's potential exposure to the death penalty. We also find no error in the lower court's conclusion that there is no reasonable probability that a motion to suppress her statement would have been granted. Thus, we affirm the lower court's order denying claims one and four.

B

Thornton next argues that the lower court erred in denying claim three—an alternative to claims one and four—because trial counsel's failure to challenge publication of the redacted version of the second recorded interview severely prejudiced her trial defense. Because the death penalty discussion was redacted, she reasons that the jury was deprived of the opportunity to determine whether the death penalty discussion coerced her confession. We disagree and find no error in the lower court's conclusion that trial counsel employed sound trial strategy by agreeing to publish a redacted version of the interviews to the jury.

"[S]trategic choices made after thorough investigation of law and facts relevant to plausible options are virtually unchallengeable." *Strickland*, 466 U.S. at 690. "Reasonable decisions regarding trial strategy, made after deliberation by a claimant's trial attorneys in which available alternatives have been considered and rejected, do not constitute deficient performance under *Strickland*." *Schoenwetter v. State*, 46 So. 3d 535, 554 (Fla. 2010) (citing *Occhicone*, 768 So. 2d at 1048).

Here, trial counsel considered his options and chose, as a matter of strategy, to redact those portions of the second recorded

interview that conflicted with Thornton's first recorded interview and contained prejudicial information concerning her probation and criminal record status. Moreover, counsel's decision was particularly reasonable because the redacted version of the recorded interview was *favorable* to Thornton. It enabled trial counsel to argue, consistently with Thornton's first recorded statement, that she neither planned the robbery-murder nor knew her son was going to commit the robbery-murder before the incident suddenly began.

But even assuming that counsel should have permitted the jury to hear the entire recording and draw its own conclusion on the coercive effect of the death penalty discussion, we agree there is no reasonable probability of a different outcome. It is unlikely the jury would have believed Thornton's confession was coerced and then disregarded it given her willingness to "hang her child," which was what the jury heard when the first recorded interview was published. And had the full unredacted interview been published, the jury would have learned that her son told detectives that Thornton planned the robbery and the murder. This information was highly prejudicial to the defense.

Based on this record, we find no error in the lower court's conclusion that counsel made a reasonable, strategic decision to keep highly prejudicial information out of the hearing of the jury. Thus, we affirm the lower court's order denying claim three.

III

Because we find no error in the lower court's conclusion that trial counsel was not ineffective for failing to either file a motion to suppress the second recorded interview or ensure the jury heard an unredacted version of this interview, we affirm.

ROWE, C.J., and LEWIS, J., concur.

Not final until disposition of any timely and authorized motion under Fla. R. App. P. 9.330 or 9.331.

Willie Mae Thornton, pro se, Appellant.

Ashley Moody, Attorney General, and Holly N. Simcox, Assistant Attorney General, Tallahassee, for Appellee.