Affirmed and Memorandum Opinion filed February 1, 2011.

In The

Fourteenth Court of Appeals

NO. 14-10-00548-CR

QUENTIN DEWAYNE RIDLEY, Appellant

V.

THE STATE OF TEXAS, Appellee

On Appeal from the 10th District Court
Galveston County, Texas
Trial Court Cause No. 09CR1173

MEMORANDUM OPINION

Appellant, Quentin DeWayne Ridley, appeals from his conviction for burglary of a habitation. A jury found appellant guilty, and the trial judge assessed his punishment at 28 years in prison. In his sole issue on appeal, appellant contends that his conviction should be overturned because he received ineffective assistance of counsel due to trial counsel's failure to raise a particular defense or any defense. We affirm.

Discussion

The parties are well-acquainted with the facts of this case, so we need not recount them in detail here. Appellant was charged with burglary of a habitation. At trial, the

owners and residents of the house in question, Henry Helms and Ruby Helms, testified that they awoke one morning to find that their bathroom window had been broken into and various items removed from the house. They also testified to finding a wallet on the bathroom floor. Detective Frank Price of the Dickinson Police Department indicated in his testimony that appellant became a suspect in the case because items contained in the wallet found at the scene appeared to belong to him, including a driver's license.

As stated above, in his sole issue, appellant contends that he received ineffective assistance of counsel because his trial counsel failed to raise a defense. The Sixth Amendment to the United States Constitution guarantees the right to reasonably effective assistance of counsel in criminal prosecutions. U.S. Const. amend. VI; *McMann v. Richardson*, 397 U.S. 759, 771 n.14 (1970). In reviewing an ineffective assistance claim, an appellate court "must indulge a strong presumption that counsel's conduct [fell] within the wide range of reasonable professional assistance; that is, [appellant] must overcome the presumption that, under the circumstances, the challenged action might be considered sound trial strategy." *Strickland v. Washington*, 466 U.S. 668, 689 (1984). Under the two-pronged Strickland test, in order to demonstrate ineffective assistance of counsel, a defendant must first show that counsel's performance was deficient, *i.e.*, that his assistance fell below an objective standard of reasonableness; second, a defendant must affirmatively prove prejudice by showing a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different. *Thompson v. State*, 9 S.W.3d 808, 812 (Tex. Crim. App. 1999). Any allegation of ineffectiveness must be firmly founded in the record, and the record must affirmatively demonstrate the alleged ineffectiveness. *Id.* at 813. Appellant bears the burden of proving by a preponderance of the evidence that counsel was ineffective. *Id.*

In his brief, appellant specifically charges that his trial counsel "never raised the issue that the defendant's wallet was planted at the crime scene by the real burglar . . . never made that argument or mentioned the possibility of the defendant's wallet [being]

planted." Appellant then concludes that "[t]rial counsel rested without calling any witnesses or asserting any theory of the case on the Defendant's innocence to the jury."[1] We disagree with appellant's allegation that counsel failed to raise a defense and specifically that counsel failed to suggest to the jury that the wallet could have been left at the scene by someone other than appellant.

During voir dire, the issue of whether evidence could be "planted" or a suspect "framed" for a crime was raised, and several jurors expressed concern regarding those possibilities. As the trial progressed, defense counsel repeatedly emphasized three themes: (1) the scarcity of evidence suggesting appellant was the burglar, (2) perceived deficiencies in the police investigation, and (3) the lack of evidence establishing that appellant possessed the wallet around the time of the burglary. Specifically regarding the third theme, counsel questioned witnesses about the fact that the wallet was moved prior to arrival of the police at the scene, the fact appellant told police (after being arrested on the burglary charge) that he had lost his wallet, and the fact that the wallet was not checked for fingerprints. During closing argument, counsel revisited each of the themes and particularly emphasized the third, concluding that had the police fingerprinted the wallet, "it might have said who the real burglar was."

Although counsel never said the words "planted" or "framed," the implication from his cross-examination of the witnesses and closing argument was clear: the actual burglar conceivably could have planted appellant's wallet at the scene to frame appellant. Further, while counsel did not call any additional witnesses for direct examination, the record demonstrates that counsel was able to present a defense through cross-examination of the State's witnesses. *See In re A.D.*, 287 S.W.3d 356, 366 (Tex. App.—Texarkana 2009, pet. denied) (declining to hold counsel's performance was deficient where counsel was able to get information into evidence through cross-examination of State's witness).[2]

[1] Appellant does not challenge the sufficiency of the evidence to support the conviction.

[2] It is also well-established that to obtain relief on an ineffective assistance of counsel claim based on failure to call a witness, an appellant must show the witness's availability to testify and that his or her

Accordingly, appellant has failed to meet the first prong of *Strickland* because he has failed to demonstrate that counsel's performance was deficient. *See Thompson*, 9 S.W.3d at 812. We overrule appellant's sole issue.

The trial court's judgment is affirmed.

/s/ Martha Hill Jamison
Justice

Panel consists of Justices Brown, Boyce, and Jamison.

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testimony would have been of some benefit to the defense. *See, e.g.*, *Ex parte White*, 160 S.W.3d 46, 52, (Tex. Crim. App. 2004) (orig. proceeding). Appellant here has not demonstrated or even suggested that any uncalled witnesses could have supported the defense.