**NOT DESIGNATED FOR PUBLICATION**

COURT OF APPEAL

FIRST CIRCUIT

2011 KA 1551

STATE OF LOUISIANA

VERSUS

BRONZE E. WILLIAMS

**Judgment Rendered: March 23, 2012**

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APPEALED FROM THE TWENTY-SECOND JUDICIAL DISTRICT COURT
IN AND FOR THE PARISH ST. TAMMANY
STATE OF LOUISIANA
DOCKET NUMBER 493848

THE HONORABLE ALLISON H. PENZATO, JUDGE

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**BEFORE: GAIDRY, McDONALD, AND HUGHES, JJ.**

**McDONALD, J.**

The defendant, Bronze Edward Williams, was charged by bill of information with one count of being a felon in possession of a firearm, a violation of La. R.S. 14:95.1, having previously been convicted of simple burglary. He entered a plea of not guilty. Following a jury trial, he was found guilty as charged; sentenced to fourteen years imprisonment at hard labor, without benefit of probation, parole, or suspension of sentence; and fined $1,000.[1] He now appeals, contending the conviction should be reversed due to ineffective assistance of counsel. For the following reasons, we affirm the conviction and sentence.

## FACTS

On June 20, 2010, at approximately 7:20 p.m., Earniesha Lott was riding as a passenger in her mother's vehicle in Covington, Louisiana, along with her six-year-old brother, her nine-year-old sister, and her one-year-old child. Ms. Lott testified at trial that she saw the defendant, who she had previously dated, on the street and threw a "cold drink" at him. The defendant responded by pulling out a gun from the front of his pants and firing approximately six times at the vehicle.

LaKirsha Brooks, Ms. Lott's mother, also testified at trial that, on June 20, 2010, at approximately 7:00 p.m., she was driving her vehicle in Covington with her daughter and other family members in the car. She stated that as she passed the defendant on the side of the road, her daughter threw a coke can out of the window at defendant. She then heard five or six gunshots, and her daughter stated, "He have a gun. Go."

Nicole Harrison, a Probation and Parole Officer with the State of Louisiana Department of Public Safety and Corrections, also testified at trial. She identified the

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[1] The sentencing minutes indicate the defendant was sentenced to fourteen years at hard labor and was fined $1,000. The sentencing transcript indicates the sentence was also imposed without benefit of probation, parole, or suspension of sentence. When there is a discrepancy between the minutes and the transcript, the transcript must prevail. **State v. Lynch**, 441 So.2d 732, 734 (La. 1983).

defendant in court and indicated she supervised him under a probation order following his December 10, 2008 convictions for simple burglary and theft over $500, under Twenty-First Judicial District Court docket number 803,345.

The defendant's June 29, 2010 audio-taped statement concerning the incident was played at trial. He indicated that, on the day of the incident, he was carrying his cousin's firearm. He indicated his cousin had given him the weapon a week earlier and, on the day of the incident, had asked for the return of the weapon. The defendant claimed, while he was in the process of returning the weapon, he was struck by the side mirror of Brooks' vehicle and was then struck by a can thrown out of the vehicle by Ms. Lott. The defendant stated he responded by firing three shots into the ground.

**INEFFECTIVE ASSISTANCE OF COUNSEL**

In his sole assignment of error, the defendant argues trial defense counsel was ineffective, because he failed to object to questioning by the State, which elicited testimony that certain witnesses were afraid of the defendant, and failed to object to testimony from the defendant's probation officer that the defendant had a prior conviction for theft over $500.

A claim of ineffective assistance of counsel is generally relegated to post-conviction proceedings, unless the record permits definitive resolution on appeal. **State v. Miller**, 99-0192 (La. 9/6/00), 776 So.2d 396, 411, cert. denied, 531 U.S. 1194, 121 S.Ct. 1196, 149 L.Ed.2d 111 (2001). A claim of ineffectiveness of counsel is analyzed under the two-pronged test developed by the United States Supreme Court in **Strickland v. Washington**, 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984). In order to establish that his trial attorney was ineffective, the defendant must first show the attorney's performance was deficient, which requires a showing that counsel made errors so serious that he was not functioning as counsel guaranteed by the Sixth Amendment. Secondly, the defendant must prove

the deficient performance prejudiced the defense. This element requires a showing that the errors were so serious that the defendant was deprived of a fair trial; the defendant must prove actual prejudice before relief will be granted. It is not sufficient for defendant to show that the error had some conceivable effect on the outcome of the proceeding. Rather, he must show that, but for the counsel's unprofessional errors, there is a reasonable probability the outcome of the trial would have been different. Further, it is unnecessary to address the issues of both counsel's performance and prejudice to the defendant if the defendant makes an inadequate showing on one of the components. **State v. Serigny**, 610 So.2d 857, 859-60 (La. App. 1st Cir. 1992), writ denied, 614 So.2d 1263 (La. 1993).

The defendant argues trial defense counsel was ineffective for failing to object to the following questioning of Ms. Harrison:

> Q. Specifically, did you supervise [the defendant] under a probation order?
>
> A. Yes.
>
> Q. And calling your attention to Case No. 803345, are you familiar with that case?
>
> A. May I refer to my records?
>
> Q. Sure.
>
> A. Yes, sir.
>
> Q. And was [the defendant] convicted of a crime?
>
> A. Yes, he was.
>
> Q. And where was he convicted of that crime?
>
> A. In the 21st Judicial District in Tangipahoa Parish.
>
> Q. And what was [the defendant] convicted of?
>
> A. Simple [b]urglary and [t]heft over $500.

The defendant also argues trial defense counsel was ineffective for failing to object to the following questioning of Ms. Lott:

Q. Is there any doubt in your mind that [the defendant] any doubt in your mind that he shot at you, shot his gun?

A. He shot it.

Q. Are you still scared today?

A. (Witness nods head).

Q. Are you afraid of what is going to happen after today?

A. Yes.

Additionally, the defendant argues trial defense counsel was ineffective for failing to object to the following questioning of Ms. Brooks:

Q. Are you scared of [the defendant]? Are you scared of [the defendant]?

A. (Witness nods head).

Q. Are you scared about being in court today?

A. (Witness nods head).

Q. Are you scared about testifying?

A. (Witness nods head).

The defendant argues the above questioning was objectionable, because it placed before the jury the fact of his prior conviction of theft over $500 and established that Ms. Lott and Ms. Brooks had an ongoing fear of him.

Allegations of ineffectiveness relating to the choice made by counsel to pursue one line of defense as opposed to another constitute an attack upon a strategy decision made by trial counsel. **State v. Allen**, 94-1941 (La. App. 1st Cir. 11/9/95), 664 So.2d 1264, 1271, writ denied, 95-2946 (La. 3/15/96), 669 So.2d 433. The investigation of strategy decisions requires an evidentiary hearing[2] and, therefore, cannot possibly be reviewed on appeal. Further, under our adversary system, once a defendant has the assistance of counsel, the vast array of trial

[2] The defendant would have to satisfy the requirements of La. Code Crim. P. art. 924, et seq., in order to receive such a hearing.

decisions, strategic and tactical, which must be made before and during trial rest with an accused and his attorney. The fact that a particular strategy is unsuccessful does not establish ineffective assistance of counsel. **State v. Folse**, 623 So.2d 59, 71 (La. App. 1st Cir. 1993). In the instant case, given the totality of the State's evidence, the lack of objection by trial defense can be a logical trial strategy if counsel feels the responses to the questioning at issue were not prejudicial enough to further draw the jury's attention to them with an objection.

Moreover, even assuming, arguendo, trial counsel performed deficiently, the defendant has failed to prove prejudice to the defense. He does not show that, but for the counsel's unprofessional errors, there is a reasonable probability the outcome of the trial would have been different. The defendant's own statement established that he not only possessed, but fired, a firearm on the day of the incident. His claims that he was returning the weapon to his cousin did not establish an affirmative defense. There is no requirement for conviction under La. R.S. 14:95.1 that the convicted felon possess the firearm with the intent to use it in an illegal manner. **State v. Becnel**, 2004-1266 (La. App. 5th Cir. 5/31/05), 904 So.2d 838, 849 n.8; **State v. Recard**, 97-754 (La. App. 3d Cir. 11/26/97), 704 So.2d 324, 330, writ denied, 97-3187 (La. 5/1/98), 805 So.2d 200. Further, the reason a convicted felon possesses a firearm is irrelevant under La. R.S. 14:95.1. **Id.**

This assignment of error is without merit or otherwise not subject to appellate review.

**CONVICTION AND SENTENCE AFFIRMED.**