

authority entered into the dwelling place of Ralph Riccuci with the intent to commit a theft therein. The State also charged him with one count of aggravated identity theft (720 ILCS 5/16G-20(a)(1) (West 2008)), alleging he knowingly used a credit card of Ralph Riccuci, a person over the age of 60, to fraudulently obtain goods. Defendant pleaded not guilty. In March 2010, the State amended the residential-burglary charge to allege an accountability theory.

¶ 7 In April 2010, defendant's jury trial commenced. Amyi Peikett testified she lived with her boyfriend, Joe Riccuci, and his father, Ralph Riccuci. She stated defendant was a friend of Joe and defendant had stayed at the house on occasion. On December 18, 2009, Peikett woke up and saw defendant in her bedroom. He told her he was returning a coat. Defendant then left.

¶ 8 Joe Riccuci testified he went downstairs to see if defendant actually left the coat in the house. When he did not find it, Joe told his dad that they needed to find defendant to retrieve the coat. The Riccucis started searching for defendant and found him wearing the coat outside of a Walgreens. After Joe told defendant he needed the coat back, defendant took it off and returned it. Defendant then declined a ride.

¶ 9 Defendant returned to the Riccuci house a few days later. Joe confronted him about a missing credit card, which defendant denied taking. Joe then responded to the prosecutor's questions on the confrontation as follows:

"Q. Did you accuse him essentially of using the card,
taking the card?

A. Yes.

Q. Okay. And what was his response?

A. He denied it.

Q. Okay.

A. He said that, you know, he looked me in the eyes, and he said: Why would I do that to you, Joe? You know, if I got arrested doing something like this, I would definitely go back to prison."

Defense counsel immediately objected, claiming at a sidebar that the testimony about defendant going back to prison was prejudicial. When the trial court asked how the situation could be cleared up, defense counsel stated "Disregard." The court then told the jurors "to disregard any reference that the witness made in regard to the defendant being in prison. You can consider everything else he said, but not in regard to his comment about going back to prison."

¶ 10 Ralph Riccuci testified he was 66 years old. On December 18, 2009, he returned home in the morning and heard a noise upstairs. Thinking it was his son, he did not make much of it. He then heard someone come down the stairs and the front door close. He called for his son but did not receive an answer. Ralph walked to the front door and saw defendant walking down the street. Ralph and Joe proceeded to look for defendant and found him at the Walgreens.

¶ 11 Later that evening, Ralph was doing his banking on the Internet when he received a notice that charges had been made on a credit card, formerly used by his deceased wife, that he kept in a checkbook box on a desk in his bedroom. He checked the box but found no credit card. Ralph contacted the police.

¶ 12 Chris Schmidt, a manager at Walgreens, testified he provided a printout to the police indicating two transactions of cigarettes that took place involving the Riccuci credit card on December 18, 2009. One transaction took place at 10:23 a.m. and the other occurred at 1:07

p.m.

¶ 13 Jennifer Wheeler, an assistant manager at an Ayerco gas station and convenience store, testified she provided the police with a credit-card receipt showing a \$40 purchase on the Riccuci credit card at 1:11 p.m. on December 18, 2009.

¶ 14 Emily Sandrock, a crime-scene technician with the Quincy police department, testified she processed the desk where the credit card was kept for fingerprints. She observed a fingerprint on a checkbook box but was unable to lift the print successfully. She sent the box to the state crime lab for processing. She also sent a fingerprint card, containing defendant's fingerprints, from the files of the Quincy police department.

¶ 15 Tracy Sulwer, a forensic scientist with the Illinois State Police, testified she specializes in fingerprint comparison and identification. She stated her tests revealed the fingerprint on the checkbook box lid matched the fingerprint sample of defendant.

¶ 16 Quincy police detective Bryan Dusch testified he interviewed defendant on December 31, 2009, about the alleged burglary at the Riccuci home. Defendant stated he was at the house to return a coat and had left it on a chair downstairs. Defendant believed the credit card was used by Henry Speirs at various places in Quincy. Defendant denied using the card.

¶ 17 Detective Dusch testified the Walgreens' transaction records indicated the Riccuci card was used to purchase cigarettes at 10:22 a.m. and the purchaser gave November 25, 1983, as his date of birth. Dusch stated the date corresponds with defendant's date of birth. Dusch reviewed the surveillance video and observed defendant making the transaction. Cigarettes were again purchased at 1:07 p.m. and the date of birth provided matched that of defendant's half-brother. The surveillance video showed defendant making the purchase. Dusch stated the credit

card was also used at 1:11 p.m. at the Ayerco gas station. The surveillance video showed defendant making a purchase and carrying a Walgreens shopping bag.

¶ 18 Detective Dusch interviewed defendant a second time and confronted him with the surveillance tapes. Defendant admitted he had not returned the coat to the Riccuci home. Defendant also admitted using the credit card at Walgreens and Ayerco. Defendant claimed he went to the Riccuci home with Henry Speirs to act as a lookout while Speirs burglarized the home. Dusch did not have any evidence that Speirs was in the house, but he did have evidence that Speirs used the card.

¶ 19 Following closing arguments, the jury found defendant guilty on both counts. In May 2010, the trial court sentenced him to 11 years on the residential-burglary conviction and 5 years on the aggravated-identity-theft conviction with the sentences to run concurrent to each other. This appeal followed.

¶ 20

II. ANALYSIS

¶ 21 Defendant argues his convictions for residential burglary and aggravated identity theft should be reversed because the jury was informed he had previously been in prison and the Quincy police department had his fingerprints on file. The State points out defendant failed to preserve his allegations of error by not raising it in a posttrial motion. See *People v. Hestand*, 362 Ill. App. 3d 272, 279, 838 N.E.2d 318, 324 (2005) (a defendant must object at trial and raise the issue in a posttrial motion to preserve the issue for review). Defendant concedes the issues are forfeited but asks this court to review them under the plain-error doctrine.

¶ 22 The plain-error doctrine allows a court to disregard a defendant's forfeiture and consider unpreserved error under the following two scenarios:

"(1) a clear or obvious error occurred and the evidence is so closely balanced that the error alone threatened to tip the scales of justice against the defendant, regardless of the seriousness of the error, or (2) a clear or obvious error occurred and that error is so serious that it affected the fairness of the defendant's trial and challenged the integrity of the judicial process, regardless of the closeness of the evidence." *People v. Sargent*, 239 Ill. 2d 166, 189, 940 N.E.2d 1045, 1058 (2010).

Under both prongs of the plain-error analysis, the burden of persuasion remains with the defendant. *People v. Lewis*, 234 Ill. 2d 32, 43, 912 N.E.2d 1220, 1227 (2009). As the first step in the analysis, we must determine whether any error occurred at all. *People v. Thompson*, 238 Ill. 2d 598, 613, 939 N.E.2d 403, 413 (2010).

¶ 23 "The term 'other-crimes evidence' encompasses misconduct or criminal acts that occurred either before or after the allegedly criminal conduct for which the defendant is standing trial." *People v. Spyrès*, 359 Ill. App. 3d 1108, 1112, 835 N.E.2d 974, 977 (2005). Evidence suggesting or implying the defendant has engaged in prior criminal activity is inadmissible unless relevant. *People v. Nieves*, 193 Ill. 2d 513, 529, 739 N.E.2d 1277, 1284 (2000). The evidence is inadmissible because "[s]uch evidence overpersuades the jury, which might convict the defendant only because it feels he is a bad person deserving of punishment." *People v. Richardson*, 123 Ill. 2d 322, 339, 528 N.E.2d 612, 617 (1988). Other-crimes evidence may be admissible, however, to prove "*modus operandi*, intent, identity, motive or absence of mistake." *People v. Wilson*, 214 Ill. 2d 127, 136, 824 N.E.2d 191, 196 (2005).

¶ 24

A. Joe Riccuci's "Prison" Comment

¶ 25

Defendant first takes issue with Joe Riccuci's testimony that defendant told him he would "go back to prison" if he got arrested. The comment suggested defendant had previously engaged in criminal activities and spent time in prison as a result. It was irrelevant to the charges in this case, and thus the testimony was error.

¶ 26

Now that we have found error in this case, we return to the plain-error doctrine. Defendant does not argue the evidence in this case was closely balanced but contends we should review the error under the second prong of the plain-error doctrine. The second prong "is invoked only if the error is so fundamental to the integrity of the judicial process and so prejudicial to the defendant that the trial court could not cure the error by sustaining an objection or instructing the jury to disregard the error." *People v. Brooks*, 187 Ill. 2d 91, 136, 718 N.E.2d 88, 113 (1999).

¶ 27

As noted, Riccuci's testimony regarding defendant's statement that he would be sent back to prison was irrelevant. However, the comment was not made in direct response to a question by the prosecutor. Riccuci simply offered the statement after he had already answered the prosecutor's question. Defendant's claim the prosecutor intended to solicit the remark is wholly speculative. Defense counsel made a timely objection, and the trial court instructed the jury to disregard any reference Riccuci made to defendant being in prison. The erroneous testimony was not mentioned again. The jurors were also instructed after the close of evidence that they should disregard testimony the court had refused or stricken. We find the court sufficiently cured the error such that any harm was minimal.

¶ 28

In connection with this issue, defendant argues defense counsel was ineffective

for suggesting the trial court instruct the jury to disregard the remark instead of requesting a mistrial. "To prevail on a claim of ineffective assistance of counsel, a defendant must show both that counsel's performance was deficient and that the deficient performance prejudiced the defendant." *People v. Petrenko*, 237 Ill. 2d 490, 496, 931 N.E.2d 1198, 1203 (2010) (citing *Strickland v. Washington*, 466 U.S. 668, 687 (1984)). To establish deficient performance, the defendant must show his attorney's performance fell below an objective standard of reasonableness. *People v. Evans*, 209 Ill. 2d 194, 219, 808 N.E.2d 939, 953 (2004) (citing *Strickland*, 466 U.S. at 687). Prejudice is established when a reasonable probability exists that, but for counsel's unprofessional errors, the result of the proceeding would have been different. *Evans*, 209 Ill. 2d at 219-20, 808 N.E.2d at 953 (citing *Strickland*, 466 U.S. at 694). A defendant must satisfy both prongs of the *Strickland* standard, and the failure to satisfy either prong precludes a finding of ineffective assistance of counsel. *People v. Clendenin*, 238 Ill. 2d 302, 317-18, 939 N.E.2d 310, 319 (2010).

¶ 29 In the case *sub judice*, defendant cannot establish his counsel was ineffective. It was not objectively unreasonable for counsel to object to the testimony and then seek an instruction that the jury disregard the remark. Moreover, requesting the drastic remedy of a mistrial would have been properly denied. Defendant cannot show he was prejudiced by the failure to request a mistrial, given the overwhelming evidence of his guilt. Thus, we find no plain error to excuse defendant's forfeiture of this issue.

¶ 30 B. Emily Sandrock's "Fingerprint Standard" Testimony

¶ 31 Defendant also argues the jurors might have inferred defendant had engaged in prior criminality based on Emily Sandrock's testimony that she sent the checkbook box to the

state crime lab, along with defendant's fingerprint standards obtained from the fingerprint files of the Quincy police department. We find no error.

¶ 32 "[T]he steps in the investigation of a crime and the events leading up to an arrest are relevant when necessary and important to a full explanation of the State's case to the trier of fact." *People v. Lewis*, 165 Ill. 2d 305, 346, 651 N.E.2d 72, 91 (1995). However, "evidence of other crimes is not admissible merely to show how the investigation unfolded *unless* such evidence is also relevant to specifically connect the defendant with the crimes for which he is being tried." (Emphasis in original.) *Lewis*, 165 Ill. 2d at 346, 651 N.E.2d at 91.

¶ 33 Here, Sandrock testified to the steps she took in the investigation—dusting for fingerprints, collecting the checkbook box, and sending the box along with defendant's known fingerprint standards to the state crime lab. The fact that she obtained defendant's fingerprint standard was relevant to the investigation given that she sent the standard to the lab. Moreover, "[a] law enforcement officer's isolated and ambiguous statement that he obtained defendant's fingerprints from a state agency's database does not by itself indicate that defendant has a criminal background." *People v. Jackson*, 304 Ill. App. 3d 883, 894, 711 N.E.2d 360, 369 (1999); see also *People v. Foster*, 82 Ill. App. 3d 634, 638, 402 N.E.2d 943, 946 (1980) (noting a police photo "merely states that the police had a photograph of the defendant in their records").

¶ 34 While Sandrock was testifying, the State did not elicit testimony or present evidence of defendant being in custody or that he had a prior conviction. The State did not introduce evidence that he committed other, unrelated crimes. Instead, the testimony that the Quincy police department had defendant's fingerprints on file involved steps taken in the investigation of the charged crimes. It cannot be said to have overpersuaded the jury on the issue

of defendant's guilt. Thus, as no error occurred in this instance, the plain-error doctrine does not apply.

¶ 35

III. CONCLUSION

¶ 36 For the reasons stated, we affirm the trial court's judgment. As part of our judgment, we award the State its \$50 statutory assessment against defendant as costs of this appeal.

¶ 37 Affirmed.