



examination; (4) his attorney did not offer a jury instruction on self-defense and failed to object to the previously alleged errors; and (5) hearsay testimony was admitted, and not objected to by his attorney, at his sentencing hearing. For the reasons that follow, we affirm his conviction and sentence.

¶ 3

### FACTS

¶ 4 On May 24, 2007, the defendant was charged, by information, with one count of the unlawful possession of weapons by a felon (720 ILCS 5/24-1.1(a) (West 2006)). On August 13, 2007, the charge was amended to allege one count of the unlawful use of weapons by a felon (720 ILCS 5/24-1.1(a) (West 2006)). The information alleged that on May 19, 2007, the defendant, who had been previously convicted of a felony, knowingly possessed a knife with the intent to use it unlawfully against another.

¶ 5 On August 13, 2007, during *voir dire*, the potential jurors were informed that the defendant was charged with the unlawful use of weapons by a felon. The trial court informed the prospective jurors of the presumption of the defendant's innocence and the State's burden to prove his guilt beyond a reasonable doubt. Defense counsel questioned the prospective jurors on these two fundamental principles during *voir dire*. However, the trial court did not question the potential jurors as to whether they understood and accepted these two principles. Also, the trial court did not inform the potential jurors that the defendant was not required to offer any evidence on his own behalf and that the defendant's failure to testify in his own defense could not be held against him.

¶ 6 At trial, multiple witnesses, including the defendant, testified that the defendant, after an initial altercation with two men, entered his son's trailer before subsequently exiting the trailer armed with a knife. There was also testimony from multiple witnesses that the defendant, while standing in an intersection adjacent to his son's property, made jabbing motions with the knife towards the two men and told them that he was going to kill them.

At the conclusion of the State's case, a certified copy of the defendant's prior conviction for felony domestic battery was admitted into evidence to establish his status as a convicted felon.

¶ 7 During the State's cross-examination of the defendant, the defendant was asked if he had prior felony convictions for domestic battery, aggravated battery, and possession of a controlled substance, to which he replied in the affirmative. Although the defendant had previously sought to preclude the introduction of the aggravated battery conviction, the trial court denied the motion *in limine*, because the victim for that offense was Dustin Pritts, one of the witnesses testifying against the defendant in the present case.

¶ 8 At the close of the case, the defendant requested, and the trial court allowed, the jury to be instructed that the defendant could be found guilty of disorderly conduct, as an alternative to either finding him guilty of the unlawful use of weapons by a felon or finding him not guilty. The defendant did not seek to have the jury instructed on the use of force in self-defense. The jury was instructed that, to find the defendant guilty of the unlawful use of weapons by a felon, the State must prove the following propositions: (1) the defendant knowingly possessed a dangerous knife, (2) the defendant had the intent to use the knife unlawfully against another, and (3) the defendant had previously been convicted of felony domestic battery. The jury found the defendant guilty of the unlawful use of weapons by a felon.

¶ 9 On October 10, 2007, at the defendant's sentencing hearing, Travis Trainer, a police officer, testified that he had arrested the defendant on numerous occasions. One of those arrests was on February 18, 2006, for the unlawful use of weapons and aggravated battery. Officer Trainer testified that he was informed by a young woman that the defendant had grabbed her, banged her head against a wall, punched her in the stomach, and pointed a knife at her when she was at the defendant's residence. This testimony was corroborated, in part,

by Katherine Pritts, who was present at the defendant's residence on the night in question. Officer Trainer also testified that he was informed by another witness that the defendant had an altercation with Dustin Pritts that resulted in Pritts being sent to the hospital. The defendant admitted hitting Pritts on the night in question but claimed that it was in response to Pritts's attempts to strike him first.

¶ 10 The trial court sentenced the defendant to eight years of imprisonment in the Illinois Department of Corrections. The trial court based this sentence on the following factors: (1) the defendant's actions on May 19, 2007, threatened serious harm, (2) the defendant had a lengthy history of criminal activity, (3) the punishment was required to deter others, and (4) the defendant had been given relatively light sentences in the past due to his alcoholism. On October 29, 2007, the defendant filed a motion for the sole purpose of reducing his sentence. On July 1, 2009, after a hearing was conducted, the defendant's sentence was reduced from eight years to seven years, and this timely appeal followed.

¶ 11

#### ANALYSIS

¶ 12 The first issue raised on appeal by the defendant is that he was denied a fair trial when the jury was presented with evidence, in violation of section 111-3(c) of the Code (725 ILCS 5/111-3(c) (West 2006)), that he had a prior felony conviction. A defendant must make a contemporaneous objection and raise the issue in a posttrial motion to avoid procedural default. *People v. Davis*, 205 Ill. 2d 349, 361 (2002). If an issue is procedurally defaulted, the standard of review of that issue on appeal is plain error. *Id.* In addressing a plain error contention, the court must "first determine whether error occurred at all, because, in the absence of error, there can be no plain error." *People v. Brant*, 394 Ill. App. 3d 663, 677 (2009). Because the defendant did not object to the presentation of his prior conviction for felony domestic battery to the jury, we apply a plain error standard of review to his claim that he was denied a fair trial.

¶ 13 In the case at bar, the defendant was charged with the unlawful use of weapons by a felon. The statute under which the defendant was charged provides, in pertinent part, as follows:

"§ 24-1.1 Unlawful Use or Possession of Weapons by Felons or Persons in the Custody of the Department of Corrections Facilities.

(a) It is unlawful for a person to knowingly possess on or about his person or on his land or in his own abode or fixed place of business any weapon prohibited under Section 24-1 of this Act or any firearm or any firearm ammunition if the person has been convicted of a felony under the laws of this State of any other jurisdiction."  
720 ILCS 5/24-1.1(a) (West 2006).

¶ 14 The defendant argues that section 111-3(c) applies to section 24-1.1, because it serves as a sentencing enhancement to section 24-1. Section 111-3(c) states as follows:

"(c) When the State seeks an enhanced sentence because of a prior conviction, the charge shall also state the intention to seek an enhanced sentence and shall state such prior conviction so as to give notice to the defendant. However, the fact of such prior conviction and the State's intention to seek an enhanced sentence are not elements of the offense and may not be disclosed to the jury during trial unless otherwise permitted by issues properly raised during such trial. For the purposes of this Section, 'enhanced sentence' means a sentence which is increased by a prior conviction from one classification of offense to another higher level classification of offense \*\*\*." 725 ILCS 5/111-3(c) (West 2006).

¶ 15 Section 24-1, which prohibits the unlawful use of weapons, provides, in pertinent part, as follows:

"(a) A person commits the offense of unlawful use of weapons when he knowingly:

\*\*\*

(2) Carries or possesses with intent to use the same unlawfully against another, a dagger, dirk, billy, dangerous knife, razor, stiletto, broken bottle or other piece of glass, stun gun or taser or any other dangerous or deadly weapon or instrument of like character \*\*\*." 720 ILCS 5/24-1(a)(2) (West 2006).

¶ 16 The essential elements of the unlawful use of weapons by a felon are: (1) the knowing possession of a weapon prohibited by section 24-1 and (2) a prior felony conviction. See *People v. Gonzalez*, 151 Ill. 2d 79, 85 (1992); *People v. Allen*, 382 Ill. App. 3d 594, 600 (2008). However, the reference in section 24-1.1(a) to the possession of weapons prohibited by section 24-1 incorporates the mental state of "intent to use it unlawfully against another" as another element if the weapon in question is one listed in section 24-1(a)(2). *People v. Crawford*, 145 Ill. App. 3d 318, 324 (1986). Even with the incorporation of this mental state as one of its elements in certain instances, section 24-1.1 "is *not* merely an 'upgraded' version of the offense created by section 24-1; rather, it is a separate, distinct offense." (Emphasis in original.) *Gonzalez*, 151 Ill. 2d at 88. "[T]he fact that the offender [of section 24-1.1] must be a convicted felon is merely an element of the crime, it is not an 'enhancement' provision." *Allen*, 382 Ill. App. 3d at 600 (quoting *Gonzalez*, 151 Ill. 2d at 88). In fact, shortly after section 24-1.1 was adopted, our supreme court noted that the requirement that the offender be a felon was contained in the same subsection that contained the other elements of the offense. *People v. Palmer*, 104 Ill. 2d 340, 349 (1984).

¶ 17 The defendant seeks to distinguish *Gonzalez* from this case by pointing out that the defendant in *Gonzalez* was charged with the unlawful use of weapons by a felon for possessing a handgun, a weapon that does not require the State to prove the intent to use it unlawfully against another. However, the fact that the State must prove the defendant's intent to use the weapon unlawfully against another if the defendant possesses a kitchen knife does

not change the fact that the unlawful use of weapons by a felon is a distinct offense from the unlawful use of weapons. In fact, regardless of whether a defendant is charged with the unlawful use of weapons by a felon for possessing a gun or a kitchen knife, the charge read to the jury will include the phrase "by a felon," thereby signifying to the jury that the defendant's status as a felon must be proven to convict him.

¶ 18 The defendant is correct that section 111-3(c) has been applied to enhanced sentencing provisions in statutes for driving while intoxicated, criminal sexual assault, and retail theft. See *People v. Robinson*, 368 Ill. App. 3d 963, 977 (2006); *People v. Beasley*, 307 Ill. App. 3d 200, 211-12 (1999); *People v. Contreras*, 241 Ill. App. 3d 1023, 1025-26 (1993). However, these enhanced sentencing provisions are contained within the same section of the Code that contains the penalties for committing an initial offense, as opposed to distinct sections of the Code prohibiting "retail theft by a felon," "criminal sexual assault by a felon," or "driving while intoxicated by a felon." See 625 ILCS 5/11-501 (West 2006); 720 ILCS 5/12-13 (West 2006); 720 ILCS 5/16A-10 (West 2006). Section 24-1.1, however, pertains to an offense distinct from the offense described in section 24-1. *Gonzalez*, 151 Ill. 2d at 88. Therefore, section 24-1.1 is *not* an enhanced sentencing provision with respect to section 24-1, so section 111-3(c) does not apply.

¶ 19 Although we need not decide the issue here, a more apt inference from the cases cited by the defendant concerning the application of section 111-3(c) would be that section only applies to section 24-1.1 if the State seeks to introduce evidence of the defendant's prior conviction of a "forcible felony," his status as a parolee, or some other *sentencing* factor. See 720 ILCS 5/24-1.1(e) (West 2006). Because section 111-3(c) does not apply to section 24-1.1 as a sentencing enhancement provision of section 24-1, there was no error by the trial court in allowing evidence of the defendant's prior conviction for felony domestic battery. As there was no error, the defendant cannot establish plain error on this issue.

¶ 20 We next consider the defendant's contention that he was deprived of a fair and impartial jury because the trial court did not fully comply with Supreme Court Rule 431(b) (eff. May 1, 2007). Because the defendant did not raise this objection during *voir dire* or in his posttrial motion, we employ a plain error standard of review to the defendant's claim. See *People v. Thompson*, 238 Ill. 2d 598, 611 (2010). The first step under plain error review is to determine whether an error occurred at all. *Id.* at 613.

¶ 21 Supreme Court Rule 431(b) states as follows:

"The court shall ask each potential juror, individually or in a group, whether that juror understands and accepts the following principles: (1) that the defendant is presumed innocent of the charge(s) against him or her; (2) that before a defendant can be convicted the State must prove the defendant guilty beyond a reasonable doubt; (3) that the defendant is not required to offer any evidence on his or her own behalf; and (4) that the defendant's failure to testify cannot be held against him or her \*\*\*.

The court's method of inquiry shall provide each juror an opportunity to respond to specific questions concerning the principles set out in this section." Ill. S. Ct. R. 431(b) (eff. May 1, 2007).

¶ 22 To comply with Rule 431(b), "[t]he trial court must ask each potential juror whether he or she understands and accepts each of the principles in the rule." *Thompson*, 238 Ill. 2d at 607. The questioning may be performed either individually or in a group but "requires an opportunity for a response from each prospective juror on their understanding and acceptance of [the Rule 431(b)] principles." *Id.* In *Thompson*, our supreme court held that the trial court had necessarily violated Rule 431(b) when it failed to address the rule's third principle and did not ask the prospective jurors whether they accepted the first principle. *Id.*

¶ 23 In the case at bar, there is no question that the trial court violated Rule 431(b). The trial court only mentioned the first two principles of the rule to the potential jurors at *voir*

*dire*, without inquiring as to each potential juror's understanding and acceptance of those principles. Moreover, the trial court did not even mention the last two principles of Rule 431(b) to the potential jurors.

¶ 24 Although the trial court violated Rule 431(b), the defendant must show plain error, as a violation of the rule does not automatically require the reversal of a defendant's conviction. *Thompson*, 238 Ill. 2d at 611. In Illinois, the plain error doctrine "allows a reviewing court to consider an unpreserved error when: (1) the evidence is close, regardless of the seriousness of the error; or (2) the error is serious, regardless of the closeness of the evidence." *People v. Clark*, 406 Ill. App. 3d 622, 636 (2010) (citing *People v. Herron*, 215 Ill. 2d 167, 186-87 (2005)). Regardless of which prong of the plain error analysis is applied, "the burden of persuasion remains with the defendant." *Id.* (citing *Herron*, 215 Ill. 2d at 187). To meet the first prong, the defendant must prove "that the evidence was so closely balanced that the error alone severely threatened to tip the scales of justice against him or her." *Id.* (citing *Herron*, 215 Ill. 2d at 187). The appellate court has previously held that a defendant does not meet his burden under this prong when the evidence against him was overwhelming. *People v. Russell*, 409 Ill. App. 3d 379, 393 (2011). In *Russell*, this overwhelming evidence was the testimony of two eyewitnesses who put the defendant at the scene of the crime and the corroboration of part of that testimony through physical evidence recovered by the police. *Id.*

¶ 25 Here, the defendant has failed to meet his burden with regard to the first prong of plain error analysis. Because the defendant's status as a convicted felon was well established and the defendant admitted to knowingly possessing a knife on May 19, 2007, the only issue as to the defendant's guilt was whether he had the intent to use the knife unlawfully against another person. Multiple witnesses, including the defendant, testified that the defendant was within the safety of his son's trailer before arming himself with a kitchen knife. Also, two

witnesses testified that the defendant was waving the knife around and making jabbing motions with it towards them as he threatened to kill or cut them, while a third witness testified that the defendant was armed with the knife and yelling at the two men so loudly so as to wake him up. The defendant himself testified that he was within a couple of feet of the witnesses when the altercation took place. This evidence as to the defendant's intent to use the kitchen knife unlawfully against the two men was overwhelming. Accordingly, the first prong of plain error analysis was not met.

¶ 26 To meet the second prong, "the defendant must prove that the error was so serious that it affected the fairness of the trial and the integrity of the judicial process." *Clark*, 406 Ill. App. 3d at 636 (citing *Herron*, 215 Ill. 2d at 187). The critical question as to the second prong of plain error concerning a Rule 431(b) error is whether a biased jury was impaneled. See *Thompson*, 238 Ill. 2d at 614. However, our supreme court has held that there is to be no presumption that the jury was biased merely because the trial court did not fully comply with the requirements of Rule 431(b). *Id.* The appellate court has previously held that plain error requiring reversal did not occur when the trial court failed to question the prospective jurors about the last two principles of Rule 431(b) when the defendant presented evidence and testified in his defense. *People v. Lara*, 408 Ill. App. 3d 732, 737-38 (2011). As to the error in not questioning potential jurors about the first two principles listed in Rule 431(b), the appellate court has held that a defendant's burden under the second prong of plain error is not met where the trial court and the prosecutor touched upon those principles during *voir dire*, with the trial court asking other questions relating to impartiality not listed in Rule 431(b). *Russell*, 409 Ill. App. 3d at 395-96.

¶ 27 In the case at bar, the trial court's failure to mention to the prospective jurors that the defendant does not have to offer evidence on his behalf or that the defendant's failure to testify cannot be held against him did not constitute plain error, because the defendant

testified and called witnesses in his own defense. Likewise, the trial court's error in not questioning the potential jurors about their understanding and acceptance of a defendant's presumption of innocence and the State's burden in proving a defendant's guilt beyond a reasonable doubt did not constitute plain error, because those two principles were touched upon by the trial court or defense counsel during *voir dire*, the trial court's statements to the jurors immediately before opening statements, and the defense's opening statement. A statement of these two principles was also included in the instructions given by the trial court to the jury before deliberations began. Because the jurors were informed of the first two principles in Rule 431(b) on multiple occasions, and because the defendant both presented his own evidence and testified in his own defense, the failure of the trial court to strictly comply with the requirements of Rule 431(b) did not deny the defendant a fair and impartial jury.

¶ 28 Next, we take up the defendant's argument that he was denied a fair trial because the trial court admitted his prior convictions for impeachment purposes and allowed the State to introduce them on its cross-examination of him. Because the defendant failed to object to this conduct at trial or in his posttrial motion, we again employ a plain error standard of review. See *Davis*, 205 Ill. 2d at 361. After so doing, we conclude that even if we were to assume, *arguendo*, that the court erred to the extent the defendant contends, the defendant cannot meet his burden under the first prong of plain error, because the evidence against him at trial was overwhelming. *Russell*, 409 Ill. App. 3d at 393; *People v. Nyberg*, 275 Ill. App. 3d 570, 583 (1995) (no reversal required for improper cross-examination of witness concerning defendant's prior bad acts when evidence against defendant was overwhelming). Likewise, satisfying the second prong of plain error requires that the error is serious enough to affect "the fairness of the trial and the integrity of the judicial process." *Clark*, 406 Ill. App. 3d at 636. Here, the defendant cannot meet his burden under the second prong of plain

error on account of the inclusion of his prior felony convictions for impeachment purposes because the trial court had already properly admitted two of the defendant's prior felony convictions, and the inclusion of two more felony convictions was unlikely to have much of an effect on the jury in regard to its objectivity and fairness, especially when the convictions complained of were the least recent convictions introduced by the State. Moreover, improper questioning of a defendant on cross-examination does not require reversal when the information elicited is already part of the trial record. *People v. Jackson*, 22 Ill. App. 3d 873, 882 (1974). Therefore, the State's cross-examination of the defendant as to his prior convictions for domestic battery and aggravated battery does not satisfy the defendant's burden under the second prong of plain error, because the convictions had already been properly admitted to satisfy an element of the offense and to impeach the defendant's credibility, respectively. The fact that the jury was properly allowed to hear about the defendant's prior convictions for domestic battery and aggravated battery, albeit not during cross-examination, also means that the State's cross-examination of the defendant about his prior convictions for possession of a controlled substance was not plain error, given its, at most, minimal impact on the jury. Therefore, the defendant has failed to establish plain error arising from either the admission of prior felony convictions for impeachment purposes or the State's cross-examination of him about those convictions.

¶ 29 We next consider the defendant's argument that he was denied the effective assistance of counsel based on counsel's failure to: (1) object to the use of his felony conviction for domestic battery to satisfy an element of the unlawful use of weapons by a felon, (2) ensure that the trial court strictly complied with the requirements of Supreme Court Rule 431(b) (eff. May 1, 2007), (3) object to the admission of his prior convictions for impeachment and their use against him on cross-examination, and (4) offer an instruction to the jury on the issue of self-defense. For a defendant to establish ineffective assistance of counsel, he must prove

that the counsel's performance was deficient to the point of falling below an objective reasonableness standard for the profession *and* that this deficiency prejudiced the defendant so as to deprive him of a fair trial. *Strickland v. Washington*, 466 U.S. 668, 687 (1984). A defendant's failure to satisfy both prongs of the *Strickland* test precludes a finding of ineffective assistance of counsel. *People v. Wilson*, 191 Ill. 2d 363, 370 (2000). To prove the required prejudice under *Strickland*, a defendant must "show that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." *Strickland*, 466 U.S. at 694. "A reasonable probability is a probability sufficient to undermine confidence in the outcome." *Id.* "Judicial scrutiny of counsel's performance must be highly deferential." *Id.* at 689.

¶ 30 We can easily dispose of the defendant's first three alleged grounds for ineffective assistance of counsel. Because the defendant's prior felony conviction for domestic battery was entered into evidence to satisfy a necessary element of the unlawful use of weapons by a felon, his counsel's failure to object to its use was not deficient. Although defense counsel did not object to the trial court's failure to strictly comply with Supreme Court Rule 431(b) (eff. May 1, 2007), this was not serious enough to produce a reasonable probability that the defendant would have been found not guilty had the objection been made, because the jurors were informed of the first two principles of Rule 431(b) numerous times and the defendant testified and presented evidence in his own defense. Similarly, defense counsel's failure to object to the defendant's prior convictions for possession of a controlled substance being used for impeachment purposes and to the State's cross-examination of the defendant about prior felony convictions would not have produced a reasonable possibility that the outcome of the trial would have been different had the objections been made. This is because the jury was properly informed of two of the defendant's felony convictions for other reasons and the evidence against the defendant was overwhelming. In short, because the defendant could not

establish plain error on any of these issues, the failure by defense counsel to object on these issues fails one, or both, of the prongs of the *Strickland* test.

¶ 31 As to the defendant's fourth alleged justification for a finding of ineffective assistance of counsel, that defense counsel failed to offer a jury instruction on self-defense, we find it equally unpersuasive. Section 7-1(a) of the Criminal Code of 1961 states as follows:

"A person is justified in the use of force against another when and to the extent that he reasonably believes that such conduct is necessary to defend himself or another against such other's imminent use of unlawful force. However, he is justified in the use of force which is intended or likely to cause death or great bodily harm only if he reasonably believes that such force is necessary to prevent imminent death or great bodily harm to himself or another, or the commission of a forcible felony." 720 ILCS 5/7-1(a) (West 2006).

¶ 32 To be entitled to an instruction on self-defense, a defendant must present some evidence of all the necessary elements of that defense. *People v. Davis*, 254 Ill. App. 3d 651, 669 (1993). Very slight evidence on each element of self-defense is all that is required to entitle the defendant to the instruction on that defense. See *People v. Jones*, 175 Ill. 2d 126, 132 (1997). Generally, a defendant seeking to use the defense of self-defense must not be the aggressor in the altercation. See 720 ILCS 5/7-4 (West 2006); *People v. Walker*, 58 Ill. App. 3d 535, 538 (1978).

¶ 33 In the case at bar, the defendant testified that he entered his son's trailer after having an altercation with two men. He admitted that he could have locked the door to his son's trailer and remained there in safety. The defendant further testified that the two men with whom he had the initial altercation did not approach his son's trailer to break in or even knock on the door. He also testified that he exited his son's trailer, without provocation, armed with a kitchen knife. The defendant also admitted that he was yelling at the two men

from a distance of only a few feet while brandishing the knife. Regardless of who was at fault in the initial altercation and that the defendant was eventually outnumbered three to one, the defendant's testimony about the events that took place after he exited his son's trailer fails to provide any evidence of the necessary self-defense elements that force was being threatened against the defendant, that the defendant was not the aggressor, or that the defendant reasonably believed that a danger existed. Therefore, the defendant would not have been entitled to an instruction on self-defense, even if it had been sought. The defendant's counsel, therefore, did not commit error when he failed to seek such an instruction. See *People v. Wells*, 346 Ill. App. 3d 1065, 1073-74 (2004) (defendant's counsel was not ineffective for not developing self-defense theory when the facts of the case did not support it).

¶ 34 We turn now to the defendant's argument that he was denied a fair sentencing hearing because unreliable hearsay was permitted by the trial court and because his counsel was ineffective for not objecting to this hearsay evidence. The defendant did not object to this hearsay during the sentencing hearing, so we apply a plain error standard of review. See *Davis*, 205 Ill. 2d at 361. To prove the ineffective assistance of counsel at a sentencing hearing, a defendant must prove that counsel's actions fell below an objective standard of reasonableness for the profession and that, but for the deficiency, there was a reasonable probability that a different sentence would have been given. See *People v. Hall*, 194 Ill. 2d 305, 354 (2000).

¶ 35 As stated previously, the defendant cannot satisfy his burden under the first prong of plain error because the evidence against him was overwhelming. Similarly, he cannot meet his burden under the second prong, because there was no error in admitting the hearsay evidence at his sentencing hearing. Even though the rules of evidence are relaxed in a sentencing hearing, any evidence offered must still be relevant and reliable. *People v.*

*Armstrong*, 183 Ill. 2d 130, 152 (1998). Hearsay evidence from a police officer about a defendant's criminal activity is admissible at a sentencing hearing when it is based on the officer's official investigation of that activity. *People v. Aleman*, 355 Ill. App. 3d 619, 627 (2005). A sentencing court may consider "crimes of which the defendant has not been convicted, including crimes for which the defendant has not been prosecuted." *People v. Rose*, 384 Ill. App. 3d 937, 941 (2008) (citing *People v. Jackson*, 149 Ill. 2d 540, 548 (1992)).

¶ 36 In the case at bar, the record reflects that the hearsay testimony offered by Officer Trainer at the defendant's sentencing hearing was not double hearsay. Officer Trainer only spoke about the specific instances in which he had personally arrested the defendant on prior occasions. After making one such arrest for the unlawful use of weapons by a felon and aggravated battery, Officer Trainer interviewed several witnesses, one of which told him that the defendant had assaulted her, while another witness told him that she saw the defendant push another man down. Although Officer Trainer was off duty on the night he arrested the defendant on that occasion, his questioning of the witnesses was part of his official investigation into the events that had taken place that night. Moreover, the hearsay testimony was partially corroborated by two witnesses and the defendant at the sentencing hearing. Given all these factors, the hearsay testimony of Officer Trainer was admissible at the defendant's sentencing hearing, as it was both relevant and reliable. The fact that the defendant was never prosecuted for the offenses he allegedly committed did not preclude hearsay concerning those offenses from being admitted at his sentencing hearing. Therefore, it was not error to allow the hearsay testimony presented at the defendant's sentencing hearing, so no plain error was present and defense counsel did not provide ineffective assistance.

¶ 37

CONCLUSION

¶ 38 For the foregoing reasons, we affirm the defendant's conviction and sentence.

¶ 39 Affirmed.