

NOTICE
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2012 IL App (4th) 100648-U

Filed 3/12/12

NO. 4-10-0648

IN THE APPELLATE COURT
OF ILLINOIS
FOURTH DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from
Plaintiff-Appellee,)	Circuit Court of
v.)	Vermilion County
JARED M. SMITH,)	No. 09CF570
Defendant-Appellant.)	
)	Honorable
)	Michael D. Clary,
)	Judge Presiding.

JUSTICE APPLETON delivered the judgment of the court.
Presiding Justice Turner and Justice Cook concurred in the judgment.

ORDER

- ¶ 1 *Held:* (1) The trial court did not err in granting the State a 45-day extension of the speedy-trial term where the State sufficiently demonstrated that it exercised due diligence in obtaining test results from the crime lab.
- (2) Defendant failed to establish plain error and thus forfeited the issue of whether the trial court erred by allowing the testimony of two police officers, who testified that they were familiar with defendant.
- (3) Defendant failed to establish plain error and thus forfeited the issue of whether the trial court erred by allowing the jury to learn that defendant had been previously convicted of aggravated discharge of a firearm, an element of the offense of unlawful possession of a weapon by a felon.
- (4) Defendant failed to demonstrate that his trial counsel was ineffective for failing to stipulate to defendant's status as a felon.
- ¶ 2 In May 2010, a jury convicted defendant, Jared M. Smith, of armed robbery while armed with a firearm and unlawful use of a weapon by a felon. The trial court sentenced defendant

to 27 years in prison on the armed-robbery conviction and a concurrent 12-year term on the weapon conviction.

¶ 3 Defendant appeals, alleging (1) the trial court erred by granting the State's request for an extension of the speedy-trial term, (2) the court erred by allowing the State to present evidence that two police officers immediately recognized defendant and knew him by name, and (3) the court erred by allowing the State to inform the jury that defendant had been previously convicted of aggravated discharge of a firearm, an element of one of his current charges. In the alternative, defendant claims his trial counsel was ineffective for failing to stipulate to defendant's status as a felon. We affirm.

¶ 4 I. BACKGROUND

¶ 5 On November 16, 2009, the State charged defendant with two counts: (1) armed robbery with a firearm (720 ILCS 5/18-2(a)(2) (West 2008)), and (2) unlawful possession of a weapon by a felon (720 ILCS 5/24-1.1(a) (West 2008)). Both charges stemmed from an incident on November 13, 2009, at the East Side Tap, a tavern in Danville. Police officers found defendant outside of a home where the homeowner reported that he witnessed defendant empty money from his pockets and leave it in the homeowner's yard. Witnesses at the East Side Tap identified defendant as the armed robber. Patrons in the tavern at the time of the robbery reported that defendant was armed with a semi-automatic handgun though no gun was recovered.

¶ 6 On January 27, 2010, the State filed a motion to obtain a deoxyribonucleic acid (DNA) sample from defendant and to extend the speedy-trial period in order to obtain the results from the crime lab. The trial court conducted a hearing on the State's motion in March 2010. Bruce Stark, a Danville police officer, testified he had asked defendant to submit a DNA sample in

February, but defendant refused until he could speak with his attorney. Approximately 10 days later, defendant consented and Stark obtained the sample and forwarded it to the crime lab for a comparison analysis with evidence found at the scene. The forensic scientist had told Stark that the analysis would require 45 days.

¶ 7 The prosecutor informed the trial court that he was assigned the case on November 25, 2009, the Wednesday before the Thanksgiving holiday. He reviewed the file in December 2009 and determined that DNA testing would be appropriate. In January 2010, he requested a sample from defendant. Initially, defendant declined to submit a sample. At defendant's trial date on February 5, 2010, the trial court granted the State's motion for a sample. Defendant refused to provide a sample without his counsel present. On February 19, 2010, the State secured the sample from defendant.

¶ 8 After considering the evidence and arguments of counsel, and over defendant's objection, the court granted the State's motions, extending the speedy-trial term for 45 days and finding (1) the State had exercised due diligence in obtaining a DNA sample for comparison to evidentiary materials, and (2) there existed reasonable grounds to believe that the results of such comparison would be obtained within 45 days.

¶ 9 In April 2010, the trial court conducted a hearing on defendant's motion to discharge due to the State's violation of the speedy-trial term. Danville police officer Randall Osgood, the evidence custodian, testified he received the items of evidence within one week after the incident of November 13, 2009. However, he did not forward the items to be tested to the crime lab until February 11, 2010.

¶ 10 Defendant asked the trial court to consider Stark's testimony from the hearing on

March 5, 2010, as additional evidence in support of his motion. The State presented no evidence. After considering the arguments of counsel, including the prosecutor's argument that the State "began a process of attempting to get the DNA samples" in January, the court denied defendant's motion for discharge, finding "again *** that due diligence was exercised based on the facts of this case, the case law, and the statute."

¶ 11 At a hearing in April 2010, defendant announced he was ready for trial, but the State requested a continuance based on defendant's late notice of an alibi defense. The trial court granted the State's motion and attributed the delay to defendant.

¶ 12 In May 2010, defendant's jury trial began. First to testify for the State was Joyce Jumps, the bartender who was working at the East Side Tap when it was robbed at approximately 12 p.m. on Friday, November 13, 2009. Jumps was in the midst of waiting on approximately 20 customers, who were eating lunch and cashing their paychecks from nearby businesses. The cash for the paychecks was kept in a separate drawer, not in the cash register. The robber, wearing a dark ski mask and dark clothing, entered the tavern waiving a gun. He shoved several people out of the way and went behind the bar directly to the check-cashing drawer. He held a gun to Jumps' face, as he stuffed the cash from the drawer into his pockets. He moved to the cash register and demanded Jumps open it. She did, as he continued pointing the gun at her. He stuffed the money into his pocket. He warned everyone not to move as he ran out the back door.

¶ 13 Danville police officer John "Andy" Kelley testified that he responded to the call of the armed robbery. As he pulled up in front of the business, several people ran out yelling that the suspect had run out the back door. Kelley drove around to the back and down the alley. He saw Patrick Strangarith, with whom he was familiar, standing on his porch pointing in a northwesterly

direction. Kelley heard from fellow Officer Showers that he had the suspect on the ground at gunpoint. The following exchange occurred:

"Q. So, you approached the black male, prone out, and what do you do?

A. I approached to handcuff, and about that time, Detective Wilson and another detective come up and they ended up handcuffing him.

Q. Now, at that point, did you have any further interaction with the black male that was prone out?

A. No.

Q. Did you have a chance to take a look at him so you could recognize him?

A. Yes. When Detective Wilson was handcuffing him, I recognized the name, but I didn't recognize the face right away. Detective Wilson said, 'Oh, this is Jared Smith.'

Q. So, the person that's now being cuffed that you saw prone out that you described, can you tell the jury if that person is here in the courtroom today?

A. Yes. He's seated at the defense table next to Mr. Mills.

Q. I would ask the record reflect identification, Your Honor.

THE COURT: It will so reflect.

Q. Now, incidentally, are you familiar with the name or

names that the defendant has?

A. Yes.

Q. What names are those?

A. Jared Michael Smith, Michael Jared Smith, Troy Smith.

Q. And based upon your knowledge, they referred to the defendant you identified?

A. Yes.

Q. Thank you. I have no further questions of this witness."

¶ 14 On cross-examination, Kelley testified that he returned to the East Side Tap and spoke with Jumps. Jumps told Kelley that the suspect was wearing black and white Converse canvas tennis shoes.

¶ 15 Officer Calvin M. Showers testified that, as he responded to the East Side Tap, he saw a subject wearing a dark blue sweatshirt walking down the street. When the subject saw Showers, he "took off running across the street westbound." Showers parked his car and pursued the subject on foot. He saw the subject and yelled at him to stop. He complied. Showers identified defendant as the subject he pursued. The officers recovered cash from defendant's pockets (\$726), a blue bank bag in an adjacent yard (\$200), and a pile of cash (\$2,063) placed near a house that the homeowner said defendant had placed there. Police found a total of \$2,989, of which \$145 was sent to the crime lab for DNA analysis as there was blood found on those bills.

¶ 16 Zachary Porter testified that when he came home for lunch on November 13, 2009, he saw a man bent over by his back door placing money under a decorative stone. The man asked Porter for a glass of water. Porter then saw a police officer in a neighboring yard yelling at them to

get on the ground. Porter identified defendant in court as the man he saw hiding money in his yard.

¶ 17 Officer Phillip Wilson, a detective who responded to the armed-robbery dispatch, testified that, when he arrived on the scene, he saw Showers pointing his weapon at the suspect on the ground. He said he "immediately recognized the subject as being a Michael Jared Smith." He "had dealt with him in the past." The trial court sustained defendant's objection and advised the jury to disregard the last answer. Wilson made an in-court identification of defendant as the suspect on the ground. The following exchange occurred:

"Q. Based upon your personal knowledge—Danville is a relatively compact community—just by your personal knowledge, are you aware of the name or names that are associated with the defendant?

A. Yes.

Q. What names are those?

A. Michael Jared Smith, Jared Smith, he went by the street name of T-Roy."

¶ 18 Officer Mike Bransford testified that he and his partner, Wilson, responded to the scene and saw "a person [he knew] as Jared Michael Smith laying on the ground behind that house." Bransford also made an in-court identification of defendant.

¶ 19 The State called the remaining witnesses: (1) Officer Randall C. Osgood, who testified regarding the chain of evidence; (2) James Kilbury, a customer eating lunch at the East Side Tap at the time of the armed robbery; (3) Patrick Strangaritch, a neighbor who saw a suspect (identified as defendant) running with a gun near his house; (4) John Godkind, Strangaritch's friend,

who was visiting at the time defendant ran by the house with a gun in his hand; (5) Officer Bruce Stark, who testified that he took photographs of the evidence found at the scene and buccal swabs from defendant for DNA analysis; (6) Cynthia Esworthy, who was working in the kitchen at the time of the armed robbery; (7) Scott Deeken, who was also working in the kitchen at the time; (8) Jeff Sirratt, the owner of the East Side Tap; (9) Kelly Biggs, a forensic scientist with the Illinois State Police, who tested the items of evidence and found the DNA matched that of defendant; and (10) Dennis Westfall, an investigator with the Vermilion County State's Attorney's Office, who testified that he transported evidence from the crime lab.

¶ 20 The State requested the trial court take judicial notice of a certified copy of defendant's 2007 conviction of aggravated discharge of a firearm from Vermilion County case No. 04-CF-533. The State rested.

¶ 21 Defendant called (1) Cindy Esworthy, an employee at the East Side Tap, questioning her ability to identify defendant as the armed robber; (2) Bruce Stark, the police detective assigned to the investigation, challenging Esworthy's identification of defendant; and (3) Antonio Luster, defendant's friend, who dropped defendant off near his girlfriend's house at approximately 12 p.m. on the day of the incident.

¶ 22 Defendant testified on his own behalf. He said Luster had just dropped him off at his girlfriend's house. He began walking when he saw someone run across the street. Defendant then saw a police car coming toward him. Because he had marijuana and "a substantial amount of money" in his pocket, he jogged into a yard, threw the marijuana, and then started "dividing up the money" and hiding it. The police caught up to him and arrested him. Defendant also acknowledged that he had been convicted of aggravated discharge of a firearm and had prior "run-ins with the

police." Defendant rested.

¶ 23 In May 2010, the jury found defendant guilty of both charges: armed robbery with a firearm and unlawful possession of a weapon by a felon. In June 2010, defendant filed a motion for a judgment notwithstanding the verdict or, in the alternative, a motion for a new trial, citing several trial errors. Only one of those alleged errors, the trial court's denial of defendant's motion to discharge, is raised in this appeal. At the hearing on defendant's motion, the court denied the motion and proceeded to sentencing. After considering the presentence investigation report, the applicable statutory factors in aggravation and mitigation, and recommendations of counsel, the court sentenced defendant to 27 years in prison for armed robbery with a firearm to be served concurrently to a 12-year term for unlawful possession of a weapon by a felon. The court later denied defendant's motion to reconsider sentence.

¶ 24 This appeal followed.

¶ 25 II. ANALYSIS

¶ 26 A. Speedy Trial

¶ 27 Defendant was in custody 171 days before his trial began. Of those 171 days, only 19 does he admittedly tribute to himself in terms of a delay in getting to trial. Forty-five of those days were spent waiting for DNA results from the crime lab, a request by the State and granted by the trial court. Defendant claims the court erred in allowing the 45-day extension of the speedy-trial term because the State failed to show sufficient evidence of due diligence in timely submitting the evidence to the crime lab. The decision of whether to grant an extension lies within the trial court's discretion, and this court will not disturb its determination absent a clear abuse of discretion. *People v. Exxon*, 384 Ill. App. 3d 794, 798 (2008). Additionally, in reviewing the trial court's decision, this

court examines the entire record as it existed at the time the trial court considered the motion for extension. *People v. Terry*, 312 Ill. App. 3d 984, 990 (2000).

¶ 28 Pursuant to section 103-5(a) of the Code of Criminal Procedure of 1963 (725 ILCS 5/103-5(a) (West 2008)), a court must try a person in custody within 120 days from the date he was taken into custody. However, the trial court may grant a one-time extension of up to 60 days where the State has been unable to obtain evidence despite its due diligence and has provided reasonable grounds for the court to believe that it will do so at a later date. 725 ILCS 5/103-5(c) (West 2008). Defendant claims the State failed to show due diligence in securing defendant's DNA for forensic testing and forwarding the evidence collected for comparison. The items of evidence were recovered on November 13, 2009, but were not forwarded to the crime lab until February 11, 2010. Defendant's sample was not collected and forwarded for comparison until February 19, 2010. Defendant claims the State knew defendant already had a DNA sample in the State's database, so it was unnecessary to wait for defendant to submit a sample. He argues the State's actions fail to demonstrate due diligence and it was error for the court to find otherwise.

¶ 29 At the April 12, 2010, hearing on defendant's motion to discharge, the State claimed it exerted due diligence without success. Defendant was arrested and taken into custody on November 13, 2009. The case was filed on November 16, 2009. The prosecutor was assigned the case on November 25, 2009, the Wednesday before Thanksgiving. In early December 2009, the prosecutor reviewed the file and determined that DNA testing would be appropriate. In January 2010, the prosecutor requested defendant provide a DNA sample. Defendant initially refused, forcing a February 5, 2010, hearing on the issue. The trial court granted the State's request but, on February 10, 2010, defendant refused to submit a sample without the presence of his attorney. The

State obtained the sample from defendant on February 19, 2010, and forwarded it to the crime lab.

¶ 30 The State argued that it exercised due diligence by obtaining the sample from defendant and submitting the items of evidence for testing. The State further claimed that relying on defendant's sample already in the database would have presented identification problems at trial. For sufficient proof at trial, *i.e.* proof beyond a reasonable doubt, the State was required to submit a known sample from defendant, not one vulnerable to concerns as to whether the sample tested was actually defendant's.

¶ 31 In presenting his argument in this appeal, defendant attempts to distinguish this court's decision in *People v. Colson*, 339 Ill. App. 3d 1039 (2003), a similar case addressing the trial court's extension of the speedy-trial term based on the State's exercise of due diligence without success. There, the defendant was arrested and taken into custody on November 27, 2000, and remained incarcerated until his trial on April 12, 2001, after 135 days in custody. *Colson*, 339 Ill. App. 3d at 1041. In January 2001, the State was granted an extension to obtain DNA test results. *Colson*, 339 Ill. App. 3d at 1041. On February 22, 2001, the State filed a second motion to continue for DNA testing due to a backlog at the crime lab. *Colson*, 339 Ill. App. 3d at 1045. The results came back on March 21, 2001, and the State filed for another continuance on March 28, 2001, but the record did not indicate whether this subsequent request was granted. The defendant's trial began on April 11, 2001, day 135. *Colson*, 339 Ill. App. 3d at 1046.

¶ 32 In analyzing the defendant's claim of error, this court noted that the "speedy-trial statute must be liberally construed in a defendant's favor because it enforces a constitutional right." *Colson*, 339 Ill. App. 3d at 1047. Whether the State exercised due diligence is to be determined on a case-by-case basis. *Colson*, 339 Ill. App. 3d at 1047. The burden of proving due diligence rests

with the State, though the phrase is not defined by statute. *Colson*, 339 Ill. App. 3d at 1047. In our decision, we noted that the Fifth District held that " 'the State should tender a full explanation of each and every step taken to complete DNA testing within the 120-day speedy[-]trial term.' " *Colson*, 339 Ill. App. 3d at 1047 (quoting *People v. Battles*, 311 Ill. App. 3d 991, 998 (2000)). The Fifth District had also applied a "reasonable and prudent person" standard in determining whether the course of action taken was one that such a person "intent upon completing tests within 120 days would follow." *Colson*, 339 Ill. App. 3d at 1047 (quoting *Battles*, 311 Ill. App. 3d at 998).

¶ 33 After considering the appropriate standards, this court found the State "did not delay excessively in getting the DNA materials to the lab." *Colson*, 339 Ill. App. 3d at 1048. Nor, did the "lab *** take an excessively long time in getting the results processed." *Colson*, 339 Ill. App. 3d at 1048. The defendant was arrested on November 27, 2000, the State submitted defendant's samples to the crime lab on January 19, 2001, and the results were received on March 21, 2001. *Colson*, 339 Ill. App. 3d at 1048. We held: "In short, while the State could have perhaps done better, it pursued a course of action meant to get the DNA testing done as soon as possible." *Colson*, 339 Ill. App. 3d at 1048. We affirmed the trial court's finding of due diligence.

¶ 34 The same analysis applies here. Though the State could have perhaps done better, it arguably pursued a course of action intent on getting the results as soon as possible. Soon after defendant's arrest and the filing of the charges, the case was assigned to a prosecutor, who, after reviewing the file, requested a DNA sample from defendant. Defendant's argument that his sample was already in the database fails for the identification problems raised by the State and noted earlier. To adequately prove its case, the State would be required to submit a "current known" sample for testing. This was not a sample needed for a probable-cause determination or suspect identification.

Rather, the State had to carry its burden of proof beyond a reasonable doubt and any aged samples included in the database would not suffice. Based on this record and given our deferential standard of review, we find the trial court did not err in granting the extension and finding the State had exercised due diligence in securing DNA test results.

¶ 35 B. Evidentiary Challenges

¶ 36 Defendant next claims the trial court erred by (1) allowing the police officers to testify they immediately recognized defendant, and (2) allowing the jury to know that defendant had been previously convicted of aggravated discharge of a firearm to establish his status as a felon, rather than not naming the specific felony. In the alternative, defendant claims his trial counsel was ineffective for failing to stipulate to his status as a felon.

¶ 37 Defendant has forfeited these claims by failing to raise objections at trial or include them in his posttrial motion. *People v. Enoch*, 122 Ill. 2d 176, 186 (1988). Conceding forfeiture, defendant nevertheless requests that this court review the claims under the second prong of the plain-error doctrine, arguing that the errors were so serious as to deny him a fair trial. *People v. Mullen*, 141 Ill. 2d 394, 401-02 (1990). Defendant does not argue that the evidence was closely balanced and therefore, he does not proceed under the first prong of a plain-error analysis. Nevertheless, our analysis is the same; when confronted with a plain-error argument, the first step is to determine whether any error occurred at all. *People v. Sargent*, 239 Ill. 2d 166, 189 (2010).

¶ 38 1. *Admission of Police Officers' Identification Testimony*

¶ 39 Defendant claims the officers' testimony that they recognized defendant right away prejudiced him in the eyes of the jury, in that it demonstrated that defendant "had numerous prior encounters" with the Danville police department. We note defendant's trial counsel objected to the

second officer's testimony (Officer Wilson) in this regard but not the first (Officer Kelley) or third (Officer Bransford). Nor did counsel raise the issue in his posttrial motion.

¶ 40 Defendant's claim brings to light the proposition that "[t]he law distrusts the inference that because a person has committed other crimes, he or she is more likely to have committed the current crime." *People v. Manning*, 182 Ill. 2d 193, 214 (1998). Because this inference is easily made by a jury, generally, evidence that tends to demonstrate only that proposition, with no other probative value, is excluded. *Manning*, 182 Ill. 2d at 214.

¶ 41 The admission of evidence is a matter within the discretion of the trial court. *People v. Watson*, 338 Ill. App. 3d 765, 779-80 (2003). "Although the prosecutor did not argue that the officer's prior acquaintance with defendant was evidence of a criminal history, that implication may be conveyed by testimony of this nature, and for that reason it is better avoided, unless somehow relevant (see *People v. Stover*, 89 Ill. 2d 189 (1982))." *People v. Bryant*, 113 Ill. 2d 497, 514 (1986). Although this testimony did not appear to be otherwise relevant, we find the admission of this testimony does not rise to the level of plain error under the second prong of the plain-error doctrine.

¶ 42 Defendant has not established that the officers' testimony that they recognized defendant was so serious that it affected the fairness of the trial. On determining the seriousness of an error, our supreme court has stated:

"Under the second prong of plain-error review, '[p]rejudice to the defendant is presumed because of the importance of the right involved, "regardless of the strength of the evidence." ' [Citations.] In *Glasper*, this court equated the second prong of plain-error review with structural error, asserting that 'automatic reversal is only required

where an error is deemed "structural," *i.e.*, a systemic error which serves to "erode the integrity of the judicial process and undermine the fairness of the defendant's trial." ' ' " (Emphasis in original.) *People v. Thompson*, 238 Ill. 2d 598, 613-14 (2010), (quoting *People v. Glasper*, 234 Ill. 2d 173, 197-98 (2009), quoting *People v. Herron*, 215 Ill. 2d 167, 186 (2005)).

"The Supreme Court has recognized errors as ' "structural" and thus subject to automatic reversal, only in a "very limited class of cases." ' " *Glasper*, 234 Ill. 2d at 198 (quoting *Neder v. United States*, 527 U.S. 1, 8 (1999), quoting *Johnson v. United States*, 520 U.S. 461, 468-69 (1997)).

¶ 43 The error at issue here—the testimony of the two police officers (the third was not admitted into evidence upon defendant's objection) that they recognized defendant from previous encounters—differs markedly from the structural errors that have been found to justify reversal under the second prong of the plain-error doctrine. Such structural errors affect "the framework within which the trial proceeds, rather than simply an error in the trial process itself." *Arizona v. Fulminante*, 499 U.S. 279, 310 (1991). They deprive defendants of "basic protections," such as the complete deprivation of counsel or a trial before a biased judge or jury. *Neder*, 527 U.S. at 8-9. We are not confronted with that type of error, nor has defendant demonstrated such.

¶ 44 As stated above, the reason the officers' testimony should be avoided is because it tends to create an inference that, because defendant has apparently had previous contacts with the police, he has presumably committed other crimes, and therefore, it seems likely that he committed the crime in question.

¶ 45 However, in this case, it is a known fact that defendant has committed at least one

prior felony, as he was on trial for committing unlawful possession of a weapon by a felon. Defendant cannot argue that the alleged error of admitting the officers' testimony rose to the level of plain error when the potential prejudice resulting from the error is nonexistent. The jury was instructed that defendant had been convicted of a prior felony and therefore, it was a given that he had at least one previous encounter with the police. Further, at the close of all evidence, the trial court instructed the jury to "disregard questions which were withdrawn or to which objections were sustained." If the trial court erred in allowing the officers' testimony in the two instances to which defendant did not object, it was harmless error at best. We conclude defendant forfeited this claim for purposes of review and subsequently failed to establish plain error.

¶ 46 *2. Stipulation As To Defendant's Status as a Felon*

¶ 47 Defendant also claims the trial court erred by informing the jury that defendant had been previously convicted of aggravated discharge of a firearm to establish his status as a felon. Defendant claims the court and counsel should have agreed to inform the jury by stipulation rather than naming the specific felony offense. According to defendant, all the jury needed to know was that he had been convicted of a felony, not that the prior felony involved a firearm.

¶ 48 "Prior to January 26, 2001, Illinois case law did not require the State to accept a defendant's stipulation of a prior felony conviction when such conviction is a required element of the charged offense." *People v. Lindsey*, 324 Ill. App. 3d 193, 199 (2001). This court's decision in *People v. Peete*, 318 Ill. App. 3d 961, 969 (2001), changed that. In *Peete*, this court held that the trial court should approve a stipulation, if requested by the defendant, that the defendant is a prior convicted felon without elaboration. *Peete*, 318 Ill. App. 3d at 969.

¶ 49 Here, defendant did not offer to stipulate and therefore, according to *Peete*, where no

stipulation is requested, the trial court is not required to automatically exclude any evidence of the nature of the prior conviction. *Lindsey*, 324 Ill. App. 3d at 199 (citing *Peete*, 318 Ill. App. 3d at 969). Thus, according to *Peete*, the trial court did not err in providing the jury with the name of defendant's prior felony. However, defendant contends his counsel was ineffective for failing to stipulate to defendant's status as a felon.

¶ 50 After the close of evidence, the State asked the trial court for guidance on how to present the jury with the information regarding defendant's prior conviction. Defendant's counsel interposed that he would have "no problem" with the court reading the "[c]ase number, charge, [and] conviction date, which should be sentencing date." The court instructed the jury that defendant could "consider evidence of defendant's prior conviction of the offense of aggravated discharge of a firearm for the purpose of determining whether the State has proved" the proposition that defendant has previously been convicted of a felony.

¶ 51 To prove counsel rendered ineffective assistance, a defendant must satisfy the two-pronged test set forth in *Strickland v. Washington*, 466 U.S. 668 (1984). The purpose of the two-pronged test is to determine whether counsel's performance so undermined the adversarial process as to cause the results of the trial to be unreliable, possibly unjust, and violative of defendant's sixth amendment right to counsel. *People v. Whitmore*, 241 Ill. App. 3d 519, 525 (1993). Under the first prong, defendant must establish that counsel's performance fell below an objective standard of reasonableness. Under the second prong, defendant must show counsel's deficient performance resulted in actual prejudice and, but for counsel's errors, the outcome of the proceedings would have been different. *Whitmore*, 241 Ill. App. 3d at 525.

¶ 52 We begin with the presumption that counsel's performance falls within the wide range

of reasonable professional assistance and, therefore, great deference is given to counsel's performance. *Whitmore*, 241 Ill. App. 3d at 525. A reviewing court will not review counsel's performance when it involves judgment, strategy, or trial tactics. *Whitmore*, 241 Ill. App. 3d at 525.

¶ 53 Defendant does not explain how counsel's conduct was objectively unreasonable. He relies on the law after this court's decision in *Peete*, which provides that, if defendant requests to stipulate, the trial court must accept the stipulation. However, defendant presents no authority to establish that failing to stipulate constitutes ineffective assistance of counsel. It appears from this record that counsel's decision not to stipulate may have been a strategic or tactical one. Counsel may have decided he would rather the jury know the nature of defendant's prior felony so as to avoid jury speculation that defendant had been previously convicted of armed robbery or something more serious. See *People v. Atkinson*, 186 Ill. 2d 450, 459 (1999).

¶ 54 We conclude that defendant forfeited this issue as well, and he failed to prove that the alleged error of advising the jury of the nature of his prior conviction was of such magnitude as to constitute plain error. In addition, defendant failed to establish that his counsel was ineffective under the standards of *Strickland* for failing to offer to stipulate to his status as a felon.

¶ 55 III. CONCLUSION

¶ 56 For the foregoing reasons, 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.

¶ 57 Affirmed.