2019 IL App (4th) 170730-U

NO. 4-17-0730

FILED
December 30, 2019
Carla Bender
4th District Appellate
Court, IL

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS, Plaintiff-Appellee, v. HAROLD T. STESKAL, Defendant-Appellant.	))))))))	Appeal from the Circuit Court of Sangamon County No. 15CF208 Honorable Peter C. Cavanagh, Judge Presiding.

JUSTICE DeARMOND delivered the judgment of the court.
Justices Steigmann and Turner concurred in the judgment.

ORDER

¶ 1 *Held*: The appellate court affirmed, finding the trial court properly admonished prospective jurors regarding the *Zehr* principles as required by Illinois Supreme Court Rule 431(b) and defense counsel did not provide ineffective assistance at defendant's jury trial.

¶ 2 In February 2015, the State charged defendant, Harold T. Steskal, with one count of retail theft. Defendant's jury trial took place in August 2017. The jury found defendant guilty and he was sentenced to eight years' imprisonment.

¶ 3 On appeal, defendant argues (1) the trial court erred in admonishing the prospective jurors pursuant to Illinois Supreme Court Rule 431(b) (eff. July 1, 2012) and (2) defense counsel was ineffective. We affirm.

¶ 4 I. BACKGROUND

¶ 5 On February 26, 2015, defendant entered Bergner's Department Store, a retail mercantile establishment located inside White Oaks Mall in Springfield, Illinois. As he moved

about the store's home goods department, a store employee thought defendant's activities were suspicious and asked Travis Howard, a loss-prevention agent, to begin monitoring him. The store's surveillance system captured defendant taking a box of silverware from a shelf, walking around the store with it, and, after stepping behind a pillar, attempting to conceal the box underneath his coat. When defendant left the store, he was followed to the parking lot and apprehended by Howard and the store's manager, Frank Schultz. Defendant was then escorted to the store's loss-prevention office, where he admitted stealing the silverware because he needed money. The police arrived a short time later and arrested defendant.

¶ 6 The next day, the State charged defendant with retail theft (720 ILCS 5/16-25(a)(1) (West 2014)), a Class 3 felony, alleging defendant knowingly took possession of retail merchandise valued and offered for sale in excess of $300 from Bergner's with the intent to permanently deprive Bergner's of its merchandise. Defendant pleaded not guilty. In March 2015, the State filed an information reflecting the same charges against defendant. After several delays caused by defendant's repeated motions to continue, the case proceeded to trial in August 2017.

¶ 7 A. Motion *in Limine*

¶ 8 In September 2016, the State filed a notice of its intent to impeach defendant with a June 2007 conviction for manufacture or delivery of a controlled substance, a Class 3 felony (720 ILCS 570/401 (West 2004)). Defendant filed a response to the notice in August 2017, arguing the conviction was inadmissible because the conviction occurred over 10 years before the trial and was unfairly prejudicial.

¶ 9 The trial court heard the parties' arguments in August 2017, immediately before the trial. The State asserted the conviction was admissible since defendant was not released from his sentence until January 2008. After applying a balancing test, the trial court found it

appropriate to allow impeachment based on defendant's conviction, subject to the condition the State would provide documentation proving the date of defendant's release.

¶ 10 B. Jury Selection

¶ 11 During *voir dire*, the jury was selected from two panels. The trial court first addressed the entire venire with statements reminding the prospective jurors of the State's burden to prove defendant guilty beyond a reasonable doubt and the jury's duty to find defendant guilty only if it found defendant guilty beyond a reasonable doubt. The court then directed its attention to the first panel of prospective jurors and began asking questions to determine their qualifications. After asking the panel some questions as a group, the court turned to the first prospective juror and said:

> "THE COURT: So there's some principles of law that I need to talk to you about.
>
> You understand the Defendant is presumed innocent of the charge against him in this case?
>
> PROSPECTIVE JUROR SHORT: Yes.
>
> THE COURT: And that the State has the burden of proof?
>
> PROSPECTIVE JUROR SHORT: Uh-huh.
>
> THE COURT: That the burden of proof is to prove the case beyond a reasonable doubt?
>
> PROSPECTIVE JUROR SHORT: Yes.
>
> THE COURT: And do you understand that the Defendant need not present evidence nor testify?
>
> PROSPECTIVE JUROR SHORT: Yes.

THE COURT: And do you understand that if the Defendant chooses not to testify or present evidence, that decision not to do so may not be used against him in jury deliberations whatsoever. Do you understand that principle?

PROSPECTIVE JUROR SHORT: Yes.

THE COURT: Do you accept all of these principles?

PROSPECTIVE JUROR SHORT: Yes."

¶ 12 In a similar manner, the trial court proceeded to ask the same questions individually to the other prospective jurors in the panel. Before asking the questions, the court clearly directed any juror with "any qualms whatsoever [about the principles], [to] stop me, and we will talk about it." The remaining 14 prospective jurors all stated they affirmatively understood (1) defendant is presumed innocent of the charges against him; (2) the State has the burden to prove its case beyond a reasonable doubt; (3) defendant does not need to present any evidence, testify, or call witnesses; and (4) if the defendant does not testify, the jury cannot use the decision against him. After asking the prospective jurors whether they understood these principles, the court asked each juror if he or she had any questions about the propositions and then asked whether each person accepted them. The prospective jurors individually indicated they had no questions about the propositions and affirmatively stated they accepted all the principles of law.

¶ 13 With the second panel, which had observed all the questions asked of the first panel, the trial court addressed the principles of law in the same manner, except that the court combined the third and fourth propositions by stating, "And you understand that the Defendant need not present evidence nor testify whatsoever. If he decides not to do so, that decision not to

do so may not be used against the Defendant in any way whatsoever during jury deliberation?" Each prospective juror affirmatively stated he or she understood all the principles. As with the first panel, the court also asked whether any of the prospective jurors had questions about these principles and accepted them. Again, none of the prospective jurors indicated they had any questions about the propositions, and all the prospective jurors affirmatively accepted the principles of law.

¶ 14 C. Jury Trial

¶ 15 1. *Detective Benjamin J. Perkins*

¶ 16 Benjamin J. Perkins, a detective and crime scene investigator for the Crime Scenes Services Unit of the Springfield Police Department, testified he was dispatched to Bergner's on March 6, 2015, "to recover a [digital video disc (DVD)] of security camera footage" related to a retail theft. After receiving the DVD from a Bergner's loss-prevention agent, he transported the DVD to the station and placed it into evidence. Perkins obtained no other evidence connected with the case from Bergner's.

¶ 17 2. *Travis Howard*

¶ 18 Travis Howard was the loss-prevention agent on duty at Bergner's the day of the retail theft. As a loss-prevention agent, he was responsible for monitoring shoppers and employees for signs of shoplifting. To do so, he used Bergner's video surveillance system, which consisted of approximately 10 concealed cameras, which can be controlled remotely to rotate and zoom in on suspected shoplifters.

¶ 19 He testified that, at about 4 p.m. on February 26, 2015, a sales associate called the loss-prevention office and reported suspicious activity from a male customer near the home goods department. Using the store's video surveillance system, he located the customer

described by the sales associate. Howard recognized the customer as the person who had approached him 5 to 10 minutes earlier to ask him whether the store carried global positioning system (GPS) devices, which, Howard informed the customer, the store did not sell. In court, he identified the customer as defendant.

¶ 20 While continuing to monitor the customer, Howard observed him pick up a box of silverware the store had available for sale. Defendant then "walked around with it for some time, and then he walked behind a pillar, concealed it in his coat." When Howard thought defendant was leaving the store, he called the store manager and security, left the loss-prevention office, and started personally following defendant. After defendant left the store without making any attempt to pay for the silverware, Howard and the store manager approached defendant in the parking lot and found him with the silverware still concealed under his coat. Howard then escorted defendant back into the store and secured him in the loss-prevention office. The recovered silverware was also sent to the loss-prevention office.

¶ 21 As Howard waited for the police to arrive, he interviewed defendant and began preparing an incident report. Howard testified that defendant admitted taking the silverware because he needed money. He noted the admission in his report. Howard also recorded the price of the silverware in the report, which was $360. He stated he determined the price of the silverware by both looking at the price shown on the box and the price generated by the computer after inputting the silverware's barcode. When the police arrived, Howard showed them the surveillance video. The police then arrested defendant but did not take the silverware into evidence, which remained with Bergner's loss-prevention office.

¶ 22 Howard also testified he provided the DVD of the surveillance footage of the theft to the police on March 6, 2015. He said the video was an accurate depiction of what happened.

The State entered the DVD into evidence without objection by the defense and played it before the jury.

¶ 23 3. *Frank Schultz*

¶ 24 Frank Schultz, the general manager at Bergner's for the past 14 years, testified he had been at work on the day of the theft. Although he normally is not involved with shoplifting incidents, he assists occasionally when only one loss-prevention agent is on duty. He indicated it was a normal procedure for the loss-prevention agent to create a report for shoplifting incidents. Schultz could not describe how the report was generated. However, he stated the price for stolen merchandise is determined by the price tag on the item, which is the retailer's suggested price and does not reflect any sales promotions. Schultz further testified that the recovered merchandise is stored in the loss-prevention office, but it does not remain there indefinitely.

¶ 25 4. *Officer Darrin Divjak*

¶ 26 Darrin Divjak, an officer for the Springfield Police Department, testified to receiving a call around 4:15 p.m. advising him Bergner's had detained someone for committing retail theft. After arriving at the store, he viewed the surveillance footage and determined the store had detained the same person seen in the video taking the box of silverware, which was defendant.

¶ 27 Although Divjak testified he examined and noted the price of the silverware for his report, he followed normal procedures and did not take the silverware into evidence or take pictures of the box. He determined the price of the silverware by looking at the price tag on the box. He recalled the price was $360.

¶ 28 5. *Defendant*

¶ 29 Upon notice that defendant would testify in his own behalf, the State presented an exhibit from the Illinois Department of Corrections indicating defendant was released from his 2007 conviction within the last 10 years. The trial court then asked defendant the following:

"THE COURT: So you understand, you'll be more than likely impeached with this prior conviction in front of the jury with regard to your credibility after—or as you testify, sir.

THE DEFENDANT: Yes, sir. Yes, Your Honor.

THE COURT: And knowing that, you've chosen and stick with your decision to testify?

THE DEFENDANT: Yes, Your Honor."

¶ 30 Defendant admitted he took the silverware from Bergner's and acknowledged he was the same person depicted in the store's surveillance footage. However, defendant testified the value of the silverware was $260, which he knew from looking at the price tag. He did not recall telling the loss-prevention agent he took the silverware because he needed money. Instead, he took the silverware because he "was hungry. I was addicted to drugs, and I was addicted to pain pills, and I was sick."

¶ 31 Immediately after defendant provided a reason for taking the silverware, defense counsel asked the following questions:

"Q. Now, speaking of your addiction, you do have a prior criminal record, is that right?

A. Yes, I do.

Q. Approximately—

A. I'm not proud of it, but yeah, I do.

Q. Approximately 2008, you had a prior felony, is that correct?

A. Yes.

Q. And that day in question, when you saw the video, when you walked out of the store, security stopped you. What's your recollection of what happened?

A. Yeah. I just grabbed it and stuck it under my coat, and I walked up to the shelf and it said, $260. I figured I could get something to eat and get some pills, and I just—all of a sudden I just grabbed it."

¶ 32 During closing arguments, the State advised the jury that it could consider defendant's prior conviction for the purpose of determining whether defendant testified truthfully and noted the jury had the power to decide whether defendant was telling the truth. The State also indicated the jury could consider defendant's self-interest in testifying about the price of the silverware and ignore his testimony. Defense counsel readily acknowledged defendant had taken the silverware from Bergner's because he wanted to "get a fix that night." However, he stressed the State had not met its burden in proving the silverware was valued over $300 since it had produced no photo of the box or price tag as evidence.

¶ 33 The jury found defendant guilty of retail theft over $300.

¶ 34 D. Posttrial Proceedings

¶ 35 In September 2017, defense counsel filed a motion for a new trial. The trial court denied the motion and proceeded with sentencing. After considering the nature of the offense,

defendant's criminal history, and other relevant factors, the court sentenced defendant to eight years in the Illinois Department of Corrections.

¶ 36 This appeal followed.

¶ 37 II. ANALYSIS

¶ 38 A. Rule 431(b) Admonishments

¶ 39 Defendant argues the trial court committed plain error by failing to properly admonish the potential jurors as required by Illinois Supreme Court Rule 431(b) (eff. July 1, 2012), commonly referred to as the four *Zehr* principles (see *People v. Zehr*, 103 Ill. 2d 472, 469 N.E.2d 1062 (1984)). Specifically, defendant contends the trial court failed to ensure the potential jurors understood and accepted each enumerated principle because the court asked the jurors whether they accepted all the *Zehr* principles in a single question to each juror, rather than ask whether the jurors accepted each individual principle through four separate questions. We disagree.

¶ 40 We first note, as defendant acknowledges, he did not raise this issue before the trial court, which "ordinarily results in forfeiture of the issue." *People v. Vesey*, 2011 IL App (3d) 090570, ¶ 14, 957 N.E.2d 1253. However, where the defendant demonstrates a plain error affecting a substantial right, appellate courts may consider the claim. Ill. S. Ct. R. 615(a) (eff. Jan. 1, 1967). Accordingly, to prevail, the defendant must prove a plain error occurred. *People v. Herron*, 215 Ill. 2d 167, 187, 830 N.E.2d 467, 479 (2005). Plain error occurs "(1) when '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) when '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. Sebby*, 2017 IL 119445, ¶ 48, 89 N.E.3d 675 (quoting *People v. Piatkowski*, 224 Ill. 2d 551, 565, 870 N.E.2d 403, 410 (2007)). Before this issue can be resolved, we must first determine whether the trial court's admonishments complied with Rule 431(b). See *People v. Cosby*, 231 Ill. 2d 262, 273, 898 N.E.2d 603, 610 (2008) ("[T]he first step in plain-error review is to determine whether error occurred.").

¶ 41 Under Rule 431(b), the trial court must ask each potential juror, either individually or as part of 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 if a defendant does not testify it cannot be held against him or her; however, no inquiry of a prospective juror shall be made into the defendant's decision not to testify when the defendant objects." Ill. S. Ct. R. 431(b) (eff. July 1, 2012).

"[T]rial judges must strictly comply with Rule 431(b)" (*People v. McGuire*, 2017 IL App (4th) 150695, ¶ 35, 92 N.E.3d 494), which "mandates a specific question and response process." *People v. Thompson*, 238 Ill. 2d 598, 607, 939 N.E.2d 403, 409 (2010). This process requires a trial court to "ask each potential juror whether he or she understands and accepts each of the principles in the rule," and "the rule requires an opportunity for a response from each prospective juror on their understanding and acceptance of those principles." *Thompson*, 238 Ill. 2d at 607.

However, the rule "does not dictate a particular methodology for establishing the prospective jurors' understanding or acceptance of those principles." *People v. Quinonez*, 2011 IL App (1st) 092333, ¶ 49, 959 N.E.2d 713. "The failure to properly admonish the jury as to the four basic *Zehr* principles in criminal prosecutions is plain error." *People v. Stevens*, 2018 IL App (4th) 160138, ¶ 75, 115 N.E.3d 1207.

¶ 42 Citing *Thompson*, and *People v. McCovins*, 2011 IL App (1st) 081805-B, 957 N.E.2d 1194, defendant contends "collapsing" the four principles into one question regarding acceptance (as opposed to asking a total of four questions about acceptance—one question for each principle) was insufficient to meet the rule's requirements because it did not "provide a meaningful opportunity for each juror to respond to each distinct concept." However, neither of these cases, nor the rule, require courts to stringently ask in single questions whether each juror understands each principle and, in another set of questions, whether each juror accepts each principle.

¶ 43 In *Thompson*, the trial court violated Rule 431(b) because it did not ask the prospective jurors "whether they understood and accepted that defendant was not required to produce any evidence on his own behalf" or question if they accepted the presumption of innocence principle. *Thompson*, 238 Ill. 2d at 607. While the supreme court clearly indicated either omitting a principle or failing to ask a juror's acceptance as to any of the principles violated Rule 431(b), the court did not state trial courts must question jurors about each principle separately. *Thompson*, 238 Ill. 2d at 607. Instead, at a minimum, trial courts must "address each of the enumerated principles" and ask the jurors if they understand and accept these principles. *Thompson*, 238 Ill. 2d at 607.

¶ 44 In *McCovins*, the trial court did not omit any of the principles but discussed them intermittently "during the trial court's prefatory comments to the venire along with basic courtroom procedure and scheduling" and ended the entire colloquy with a single question "asking whether there was any juror who could not 'abide by' or who 'dispute[d]' 'any or some or all of the principles.' " *McCovins*, 2011 IL App (1st) 081805-B, ¶ 32. The court considered it problematic "that the trial court essentially 'collapsed' the four Rule 431(b) principles and included them into one question." *McCovins*, 2011 IL App (1st) 081805-B, ¶ 33. However, the inquiry was not problematic because the trial court asked one question. The problem was the way the trial court asked the question. The trial court erred because the court bound the four *Zehr* legal principles with all its prefatory comments and did not clarify its single question about "abiding by" or "disputing" his statements pertained to those principles. *McCovins*, 2011 IL App (1st) 081805-B, ¶¶ 36-37. Since there was no way to "ascertain whether the potential jurors understood and accepted each of the four Rule 431(b) principles[,]" the trial court violated Rule 431(b). *McCovins*, 2011 IL App (1st) 081805-B, ¶ 36.

¶ 45 Here, unlike *Thompson* or *McCovins*, the trial court's admonishments to the potential jurors complied with Rule 431(b). The court clearly asked the potential jurors in both panels whether they understood each principle. After each question, every juror stated he or she understood each respective principle. The court also directly asked the jurors whether they accepted all those principles. Again, every juror stated he or she accepted all the principles. The record shows the court addressed each principle, asked straightforward questions, did not stray from the purpose of addressing the legal principles, and gave each juror time to respond and ask questions about the principles. As the record indicates the jurors understood and accepted the Rule 431(b) principles, the court's admonishments and inquiries were sufficient.

¶ 46 Thus, the trial court complied with Rule 431(b)'s requirements. Accordingly, defendant has failed to establish plain error and no further analysis is warranted. Where defendant fails to meet his burden demonstrating plain error occurred, the procedural default of forfeiture will be honored by the reviewing court. *People v. Naylor*, 229 Ill. 2d 584, 593, 893 N.E.2d 653, 659-60 (2008).

¶ 47 B. Ineffective Assistance of Counsel

¶ 48 Defendant argues defense counsel was ineffective for questioning him in a manner which required him to state merely that he had a prior conviction without specifying the offense. Defendant contends this "mere-fact" of his prior conviction improperly impeached him, prejudiced the jury against him by allowing them to speculate about the nature of his conviction, and entitles him to a new trial. We disagree.

¶ 49 A defendant's claim of ineffective assistance of counsel is analyzed under the two-pronged test set forth in *Strickland v. Washington*, 466 U.S. 668 (1984). *People v. Veach*, 2017 IL 120649, ¶ 29, 89 N.E.3d 366. To prevail, "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). To establish deficient performance, the defendant must show "counsel's performance 'fell below an objective standard of reasonableness.' " *People v. Valdez*, 2016 IL 119860, ¶ 14, 67 N.E.3d 233 (quoting *Strickland*, 466 U.S. at 688). Prejudice is established when a reasonable probability exists that, but for counsel's unprofessional errors, the result of the proceeding would have been different. *People v. Evans*, 209 Ill. 2d 194, 219-20, 808 N.E.2d 939, 953 (2004) (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). "We review a defendant's claim of ineffective assistance of counsel in a bifurcated fashion, deferring to the trial court's findings of fact unless they are contrary to the manifest weight of the evidence, but assessing *de novo* the ultimate legal question of whether counsel was ineffective." *People v. Manoharan*, 394 Ill. App. 3d 762, 769, 916 N.E.2d 134, 141 (2009).

¶ 50 Contrary to defendant's assertion that defense counsel impeached him using the mere-fact method, defense counsel's conduct did not constitute impeachment of his client. "Under the mere-fact method of impeachment, the jury is informed of the fact that the witness committed a past crime, not the precise offense." *People v. Harvey*, 211 Ill. 2d 368, 383, 813 N.E.2d 181, 190 (2004). The supreme court has rejected the mere-fact method of impeachment, citing concerns the method "may result in unfair prejudice to the defendant arising from jury speculation as to the nature of the prior unnamed crime." *People v. Atkinson*, 186 Ill. 2d 450, 459, 713 N.E.2d, 532, 536-37 (1999). However, regardless of the method employed, "[t]he purpose of impeachment is to destroy credibility." *People v. Mason*, 324 Ill. App. 3d 762, 766, 756 N.E.2d 365, 369 (2001). When testimony or evidence is elicited by defense counsel under direct examination without the purpose of impeaching the witness, the concerns associated with the mere-fact method of impeachment are inapplicable. See *People v. Milligan*, 327 Ill. App. 3d 264, 269, 764 N.E.2d 555, 560 (2002) (quoting *People v. Hester*, 271 Ill. App. 3d 954, 959, 649 N.E.2d 1351, 1356-57 (1995) ("If evidence of the prior conviction is admissible independently of impeachment purposes—and therefore independent of *Montgomery*—then the *Montgomery* test becomes inapposite." (Internal quotation marks omitted.)); see also *People v. Williams*, 317 Ill. App. 3d 945, 950, 742 N.E.2d 774, 779 (2000) (finding the use of the defendant's prior conviction was not "offered by the State to impeach defendant but by the defense to explain why

defendant lied to the police" and relegating the issue of ineffective assistance of counsel to a matter of trial strategy).

¶ 51 Here, the record shows defense counsel was not attempting to destroy defendant's credibility. Immediately before defendant testified, the State expressed its intention to impeach defendant with his prior conviction, which the trial court previously determined was admissible. The court also ensured defendant understood the probability of the State impeaching him with his prior conviction on cross-examination. Defense counsel then chose to use the conviction in connection with defendant's drug addiction, simultaneously taking control over the disclosure so it could be presented in the best light and suggesting to the jury defendant was being honest about his testimony. See *People v. DeHoyos*, 64 Ill. 2d 128, 131, 355 N.E.2d 19, 21 (1976) ("This is an example of 'the practice which permits the party who calls a witness with a criminal record to prove the record on direct examination.' [Citation.] It is not impeachment of one's own witness; on the contrary it is an anticipatory disclosure designed to reduce the prejudicial effect of the evidence on the witness' credibility. The evidence is admissible on the ground that 'The proponent of a witness need not allow such information damaging to his credibility to be first established on cross-examination ***.' [Citation.]"). That the State later told the jury it could use defendant's admission of his prior conviction as a basis to assess credibility does not change the nature of defense counsel's actions. See *People v. Blue*, 189 Ill. 2d 99, 127, 724 N.E.2d 920, 935 (2000) ("Courts allow prosecutors great latitude in making closing arguments. [Citation.] In closing, the State may comment on the evidence and all inferences reasonably yielded by the evidence."). As a result, defendant's ineffective assistance of counsel claim is essentially a question over trial strategy and must be viewed in that context. *Cf. Williams*, 317 Ill. App. 3d at 950.

¶ 52 A strong presumption exists that counsel's action or inaction was the product of sound trial strategy. *People v. Davis*, 2014 IL App (4th) 121040, ¶ 19, 22 N.E.3d 1167. "Decisions concerning which witnesses to call at trial and what evidence to present on defendant's behalf ultimately rest with trial counsel" and are considered matters of trial strategy which are generally "immune from *** ineffective assistance of counsel" claims. *People v. West*, 187 Ill. 2d 418, 432, 719 N.E.2d 664, 673 (1999). Moreover, "a mistake in trial strategy or an error in judgment by defense counsel will not alone render representation constitutionally defective." *People v. Peterson*, 2017 IL 120331, ¶ 80, 106 N.E.3d 944. Instead, a reviewing court is to be "highly deferential to trial counsel on matters of trial strategy, making every effort to evaluate counsel's performance from his perspective at the time, rather than through the lens of hindsight." *People v. Perry*, 224 Ill. 2d 312, 344, 864 N.E.2d 196, 216 (2007). "A defendant can overcome the strong presumption that defense counsel's choice of strategy was sound if counsel's decision appears so irrational and unreasonable that no reasonably effective defense attorney, facing similar circumstances, would pursue such a strategy." *People v. French*, 2017 IL App (1st) 141815, ¶ 80, 72 N.E.3d 1214.

¶ 53 As described above, defense counsel asked defendant about whether he had a prior conviction in connection with defendant's drug addiction after being assured the State would impeach defendant with the conviction. By asking defendant about his felony conviction before the State had the chance to impeach him, defense counsel clearly intended to prevent the jury from focusing on defendant's criminal history, which it may have been more prone to do had defendant specifically identified the type of felony or had it been elicited through adversarial questioning conducted by the State during cross-examination. Additionally, defense counsel's method allowed him to preemptively connect defendant's drug addiction to his prior felony in an

effort to make him appear more honest and sympathetic to the jury. It gave the jurors an opportunity to consider defendant as someone who struggled, had some troubles, but ultimately admitted to his problems, which is also why he admitted to stealing the silverware in the first place. This was a reasonable strategy.

¶ 54 Defendant argues defense counsel's method of eliciting his prior conviction was unreasonable, and thus deficient, because naming the offense would have given more credence to defendant's testimony about being a drug addict. However, this misstates the standard defendant must prove. The test is not whether defense counsel could have been more reasonable, but whether defense counsel's conduct was so unreasonable that no other attorney would make the same choice. *Cf. French*, 2017 IL App (1st) 141815, ¶ 80. Further, asking defendant to state the type of offense he committed would not necessarily have the same effect as merely acknowledging a prior felony conviction since defendant's prior conviction for manufacture or delivery of a controlled substance, while relating to drugs, does not implicitly indicate the exact nature of defendant's conduct. See 720 ILCS 570/401 (West 2004) (penalizing the knowing "(i) manufacture or deliver, or possess with intent to manufacture or deliver, a controlled or counterfeit substance or controlled substance analog or (ii) possess any [listed] methamphetamine manufacturing chemical *** with the intent to manufacture methamphetamine or the salt of an optical isomer of methamphetamine or an analog thereof"). If defense counsel had asked defendant to name the offense, the jury still could have been left to speculate about defendant's prior conviction. Accordingly, defense counsel's decision to elicit only the existence of defendant's conviction was not unreasonable. Besides, all counsel was attempting to do was soften the blow of the State's submission of defendant's certified copy of conviction and place it in a more sympathetic light to the jury.

¶ 55 Thus, defense counsel's performance was not objectively unreasonable, and defendant's claim of ineffective assistance of counsel fails.

¶ 56 III. CONCLUSION

¶ 57 For the reasons stated, we affirm the trial court's judgment.

¶ 58 Affirmed.