

2013 IL App (2d) 111216-U  
No. 2-11-1216  
Order filed March 20, 2013

**NOTICE:** This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

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IN THE  
APPELLATE COURT OF ILLINOIS  
SECOND DISTRICT

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THE PEOPLE OF THE STATE	)	Appeal from the Circuit Court
OF ILLINOIS,	)	of Kane County.
	)	
Plaintiff-Appellee,	)	
	)	
v.	)	No. 09-CF-2320
	)	
TODD T. JENKINS,	)	Honorable
	)	Edward C. Schreiber,
Defendant-Appellant.	)	Judge, Presiding.

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JUSTICE ZENOFF delivered the judgment of the court.  
Justices Schostok and Hudson concurred in the judgment.

**ORDER**

- ¶ 1 *Held:* (1) Defense counsel was not ineffective for failing to object to the admission of prior-conviction records: defendant could not show prejudice where the record did not show that the documents were shown to the jury; (2) defendant was entitled to full credit against his \$200 fine, to reflect the 240 days he spent in presentencing custody.
- ¶ 2 Following a jury trial defendant, Todd T. Jenkins, was convicted of aggravated domestic battery (720 ILCS 5/12-3.3(a-5) (West 2010)). Defendant appeals, contending that (1) he was denied a fair trial where the prosecution was allowed to introduce prejudicial details of his prior convictions;

and (2) he is entitled to credit against his \$200 domestic violence fine for time he spent in pretrial custody. We affirm as modified.

¶ 3 Before trial, the State moved *in limine* to be allowed to impeach defendant with his prior convictions. Defendant moved to bar those convictions. In arguing her motion, the prosecutor stated, “All the State would be allowed to do is to tender the certified conviction which doesn’t go back to the jury \*\*\*.” The trial court granted both motions in part.

¶ 4 At trial, the evidence showed that in February 2009 police were called to the apartment that defendant shared with Melinda Alvarez and her daughter, Mialyssa. Melinda told the 911 dispatcher that her boyfriend had choked her. She testified at trial that defendant did not in fact choke her, she merely made that up. She did not remember telling officers who responded to the call that defendant grabbed her by the throat or that he took out a pistol and threatened to kill her. She admitted writing out a statement to that effect but said that it was not true. The officers testified to the substance of what Melinda told them that night.

¶ 5 Defendant testified. He admitted that he had previously been convicted of a “drug crime,” but that he had “paid [his] debt.” In rebuttal, the State introduced an exhibit consisting of various documents related to defendant’s prior convictions. The exhibit was admitted without objection.

¶ 6 During deliberations, the jury sent several questions to the judge. One asked for equipment so that it could listen to the recordings that had been admitted into evidence. The trial court granted the request.

¶ 7 The jury found defendant guilty. The trial court sentenced him to eight years’ imprisonment and assessed a \$200 domestic violence fine. Defendant timely appealed.

¶ 8 Defendant contends that the court erred by admitting the State's exhibit, which contained irrelevant details about defendant's prior convictions, including the facts that he had been charged with five separate felonies including possession of a weapon, that his bail had been set at \$500,000, and that he was sentenced to six years' imprisonment.

¶ 9 Initially, the State contends that defendant forfeited this issue by failing to object in the trial court. Both an objection at trial and a written posttrial motion raising the issue are necessary to preserve an alleged error for review. *People v. Enoch*, 122 Ill. 2d 176, 186-88 (1988). Here, defendant neither objected contemporaneously to the admission of the documents nor raised the issue in his posttrial motion. Although defendant moved *in limine* to bar evidence of his prior convictions, this was not sufficient to preserve the issue for review. The unsuccessful movant must object when the evidence is offered at trial. *Johnson v. Johnson*, 386 Ill. App. 3d 522, 545 (2008). Thus, defendant has forfeited this issue.

¶ 10 In his opening brief, defendant implicitly acknowledges the forfeiture, but contends that his attorney's failure to object amounted to ineffective assistance of counsel. A claim of ineffective assistance of counsel requires a defendant to establish that (1) his attorney's performance fell below an objective standard of reasonableness and (2) there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different. *Strickland v. Washington*, 466 U.S. 668, 687-88, 694 (1984). Courts indulge a strong presumption that counsel's conduct is the result of strategic choices rather than incompetence. *People v. Evans*, 186 Ill. 2d 83, 93 (1999). A defendant must satisfy both prongs of *Strickland*. "However, if the ineffective-assistance claim can be disposed of on the ground that the defendant did not suffer prejudice, a court need not decide whether counsel's performance was constitutionally deficient."

*People v. Griffin*, 178 Ill. 2d 65, 74 (1997). Here, defendant cannot establish prejudice, because the record does not show that the allegedly improper exhibit was ever shown to the jury.

¶ 11 A defendant who testifies may be impeached by proof of a prior conviction. *People v. Harden*, 2011 IL App (1st) 092309, ¶ 44. However, “[c]are must be taken \*\*\* to delete irrelevant and prejudicial surplusage such as the details of the nature of the crime of which the witness was convicted.” *People v. Arroyo*, 339 Ill. App. 3d 137, 152 (2003). Once a defendant admits having a prior conviction, there is no need to aggravate the impeachment by introducing a certified copy of the conviction. *People v. Pitts*, 257 Ill. App. 3d 949, 954 (1994).

¶ 12 We agree with the State, however, that while the documents might have included prejudicial information about defendant’s prior convictions, the record gives no indication that those documents were shown to the jury in the courtroom or went back to the jury room during deliberations. Defendant cites nothing in the record showing that the particular exhibit in question was to be shown to the jury or sent back to the jury room. No witness testified about the exhibit, and defendant acknowledges that, unlike in the usual case, there was no discussion about which exhibits would go back to the jury room. Moreover, the only discussion in the record about the documents is the prosecutor’s statement that the exhibit would *not* be shown to the jury. Thus, to the extent the record contains any discussion of the subject, it seems to indicate that the documents were not in fact given to the jury.

¶ 13 Defendant points to the jury’s question about equipment to play the recordings and infers that all of the exhibits must have gone to the jury. We disagree. None of the jury’s questions referred specifically to the conviction documents, and we cannot view the jury’s question relating to certain exhibits as establishing that *all* of the exhibits went to the jury. Because the prosecutor had stated

her intention not to send to the jury the documents establishing defendant's prior convictions, and nothing in the record demonstrates the contrary, we must view counsel's failure to object as a sound trial strategy, not wishing to call additional attention to the information. Accordingly, defendant cannot establish ineffective assistance of counsel. Defendant does not argue that the admission of the improper evidence amounted to plain error. Thus, we have no reason to overlook defendant's forfeiture.

¶ 14 In any event, for essentially the same reasons noted above, defendant's argument would fail on the merits. A trial judge is presumed to know the law and apply it properly, and this presumption may be overcome only by an affirmative showing to the contrary in the record. *People v. Howery*, 178 Ill. 2d 1, 32 (1997). Although they were technically admitted, the record does not affirmatively show that the documents were given to the jury, so defendant cannot overcome the presumption that the trial court acted properly. Thus, we affirm defendant's conviction.

¶ 15 Alternatively, defendant contends that he is entitled to credit against his \$200 domestic violence fine for time he spent in pretrial custody. The State confesses error.

¶ 16 In general, anyone incarcerated on a bailable offense is entitled to a credit of \$5 per day against any fine imposed. 725 ILCS 5/110-14(a) (West 2010). The domestic violence fine (see 730 ILCS 5/5-9-1.5 (West 2010)) is subject to the credit. *People v. Irvine*, 379 Ill. App. 3d 116, 132-33 (2008). Here, as the State concedes, defendant spent 240 days in custody before trial, and thus he is entitled to full credit against the fine. Thus, we modify the judgment to show the fine satisfied, and we affirm as modified.

¶ 17 Affirmed as modified.