

No. 124538

IN THE  
SUPREME COURT OF ILLINOIS

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PEOPLE OF THE STATE OF ILLINOIS,  Plaintiff-Appellee,  v.  LESLIE MOORE,  Defendant-Appellant.	) Appeal from the Appellate Court of ) Illinois, Third Judicial District, ) No. 3-15-0736 ) ) There on Appeal from the Circuit ) Court of the Twelfth Judicial ) Circuit, ) Will County, Illinois, No. 13-CF- ) 1034 ) ) The Honorable ) Edward A. Burmila Jr., ) Judge Presiding.
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**BRIEF OF PLAINTIFF-APPELLEE  
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## NATURE OF THE ACTION

Defendant appeals from his conviction, following a jury trial, of unlawful possession of a weapon by a felon. No issue is raised on the pleadings.

## ISSUE PRESENTED FOR REVIEW

Whether trial counsel was ineffective because he did not offer to stipulate to the fact of defendant's prior felony conviction.

## STATEMENT OF JURISDICTION

This Court allowed defendant's petition for leave to appeal (PLA) on May 22, 2019. Jurisdiction lies under Supreme Court Rules 315 and 612(b).

## STATEMENT OF FACTS

Defendant Leslie Moore was charged with unlawful possession of a weapon by a felon after a May 16, 2013 traffic stop in which police officers recovered a loaded gun from his car. C9.<sup>1</sup> Defendant had previously been convicted of murder in 1990. Peo. Exh. 4, Certified Statement of Conviction/Disposition, *People v. Moore*, No. 88-CR-14189.

Prior to trial, defendant filed a motion to suppress evidence, alleging that the arresting officer, Will County Sheriff's Deputy Thomas Hannon, lacked probable cause to stop him and unreasonably prolonged the stop. C38-

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<sup>1</sup> Citations to the common law record, report of proceedings, defendant's brief, and the People's and Defendant's Exhibits appear as "C\_\_," "R\_\_," "Def. Br. \_\_," "Peo. Exh.," and Def. Exh.," respectively.

44. Following a hearing, the circuit court denied defendant's motion. C50; R54-131.

Before prospective jurors were brought into the courtroom, the judge asked the parties whether he should inform them of the nature of defendant's prior felony conviction or merely inform them of the fact of the prior felony conviction. R140. The People responded that the prospective jurors should be informed of the nature of the conviction, and defense counsel agreed. *Id.* Accordingly, the circuit court advised the prospective jurors that defendant was previously "convicted of a felony, and that was a murder." *E.g.*, R143.

In opening statements, neither party mentioned the nature of defendant's prior felony conviction. The People explained that because "defendant [was] a convicted felon," he was not allowed to have a gun. R256-58. And in his opening remarks defense counsel emphasized that defendant had no knowledge of the gun in the car and therefore could not be guilty of unlawful possession of the gun. R258-59.

The trial evidence included testimony from Deputy Hannon, who testified that after observing defendant fail to timely signal a turn, he decided to follow him. R271. He then observed that defendant was speeding and initiated a traffic stop. R271-72. Immediately after defendant pulled over, Hannon observed defendant "dip[ ]" his right hand or shoulder toward the car's center console. R272. When Hannon approached on the driver's side of defendant's car, defendant raised both of his hands in the air. R275.

Hannon saw that defendant's hands were shaking, he was sweating, and he appeared nervous. R275, 297. Hannon told defendant to put his hands down and relax and asked for his license and registration, before returning to his squad car to run defendant's license and confirm that the car belonged to defendant. R275-76.

When Hannon returned to defendant's car, he again observed that defendant appeared nervous and was sweating, and that his hands were shaking. R277. Hannon asked defendant to step out of the car and again asked defendant why he was so nervous and why he had raised his hands in the air when Hannon approached the car. R277-78. Defendant responded that he had a loaded firearm in the center console. R278. Hannon then handcuffed defendant as a safety precaution (in case he attempted to retrieve the gun) and called for backup. R279.

Once Deputy Ambrosini arrived, he took charge of defendant while Hannon entered defendant's car and found a loaded gun in the center console. R280-81. Hannon initially stated that he "retrieved" the gun from the center console. R280. He later clarified that he picked up the gun but did not remove it because he did not know how to unload it.<sup>2</sup> R292, 302; *see also* R111 (similarly stating, during suppression hearing, that he "retrieved" the

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<sup>2</sup> The gun was a small two-shot pistol that was unfamiliar to Hannon. R360 (explaining that the gun only held two bullets).

gun but did not remove it). Instead, he asked Deputy Ambrosini to recover and unload the gun. R285, 292, 302. The gun was not tested for fingerprints because defendant admitted to Hannon that it was in the car. R290-91. After running a criminal background check and learning that defendant was a convicted felon, Hannon placed him under arrest. R288-89.

Hannon further testified that the encounter with defendant was video-recorded by his squad car's dashboard camera, although the exterior audio feed was not working. R289-90. Hannon also explained that because it was low-quality footage, the video did not capture defendant's shoulder-dipping motion when he was initially stopped. R295.

A copy of the video was played for the jury. R291; Peo. Exh. 1 (video). It shows that Hannon pulled defendant over, Peo. Exh. 1 at 1:16:35,<sup>3</sup> requested defendant's license and registration, *id.* at 1:16:53, and returned to his squad car, *id.* at 1:17:41. Hannon then returned to defendant's car and engaged in a brief conversation with defendant, *id.* at 1:19:05, before defendant stepped out of the car, *id.* at 1:19:17. The two men continued to talk behind defendant's car, *id.* at 1:19:24, and about a minute later, Hannon handcuffed defendant, *id.* at 1:20:20. Two minutes after that, Deputy Ambrosini arrived, *id.* at 1:22:33. Hannon then went to the car, opened the

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<sup>4</sup> These times are based on the embedded time-stamp at the top of the screen in People's Exhibit 1.

driver's side door, *id.* at 1:22:37, and leaned over the seat, *id.* at 1:22:40. *Id.* After approximately twelve seconds, he returned to Ambrosini, *id.* at 1:22:52, who then entered the car and returned with a gun, *id.* at 1:23:00 to 1:23:30.

Following Hannon's testimony, the People introduced a certified copy of defendant's murder conviction (Peo. Exh. 4), stating that "[i]t shows that on August 6th of 1990, the defendant was convicted of murder." R309.

Defendant called his best friend, Sheri Walls, whom he had known for twenty or thirty years, to testify on his behalf. R314, 342. Walls stated that she purchased two guns in 2010 and identified a receipt documenting that purchase. R323, 332; Def. Exh. 1 (sales receipt). She identified the gun recovered from the center console of defendant's car as her "favorite gun," R336-37, explaining that it was her "favorite" because she could "carry it everywhere," such as on her hip or ankle, R360.

Walls stated that on May 15, 2013, the day before the traffic stop, she borrowed defendant's car to move to a new apartment. R315-16. She went alone to her old apartment and loaded the car with some clothes and her two handguns. R317. She placed one gun in the glove box and her "favorite gun" in the car's center console. R318, 337. Then she picked up defendant at his home and dropped him off at her new apartment while she ran some errands. R318-20. Walls believed that she had removed both guns and her four cell phones from the car and put them in her purse. R321-22. The next day, she

realized that she had forgotten her “favorite gun” in the center console of defendant’s car. R323, 337.

Defendant testified last. He recalled lending his car to Walls on May 15, 2013 to run errands. R370. He denied any knowledge of guns ever being in the car and denied knowing that a gun was in the car at the time of the traffic stop. R383-84. He denied acting nervous when Hannon pulled him over. R381-82. He gave Hannon his license and registration, and upon returning to the car, Hannon asked defendant what he was doing in Joliet. R366. Defendant told him that he had been watching a basketball game at a friend’s house. *Id.* Hannon then asked defendant to step out of the car, walked him to the trunk, and asked him if he had any weapons or drugs. R367. Defendant told Hannon that he did not have any weapons or drugs and denied telling him about the gun in the center console. R367-68. According to defendant, Hannon then handcuffed him, purportedly for officer safety purposes, and, without further explanation, searched his car and found a gun. R382-85. Defendant could not see what Hannon was doing when he entered the car. R384.

The People’s closing argument emphasized that the video corroborated Hannon’s version of events. R392-93. Hannon and defendant both testified that defendant had been handcuffed for safety reasons, but Hannon explained that the safety concern was based on defendant’s admission that he had a gun in the car. R393. The video corroborated defendant’s admission



that the gun was in the center console because Hannon was in the car for only seconds, Peo. Exh. 1 at 1:22:40 to 1:22:54, before he located the gun in the center console, suggesting that he knew precisely where the gun was located. R394-95. The People further emphasized that Walls's ownership of the gun was irrelevant because "the gun is in the vehicle when the defendant's pulled over, he's a convicted felon, and he knows the gun is there." R395-96. The People also discussed the jury instructions requiring proof that defendant had previously been convicted of a felony (here, murder). R396-97. The People argued that they had proved this element by introducing the certified statement of defendant's 1990 murder conviction.

*Id.*

Defense counsel's closing argument focused on defendant's knowledge and argued that Walls's and defendant's testimony proved that defendant did not know the gun was in the car. R400-01, 403. Counsel also emphasized the lack of audio on the dash cam video and the fact that the prosecution did not test the gun for fingerprints. R401-02. On rebuttal, the People reiterated that the video and Hannon's testimony proved defendant's guilt and that defendant, because of his conviction for murder, could not possess a gun. R403-11.

The jury instructions also addressed the requirement that the People prove that defendant had previously been convicted of murder, and explained that the evidence of defendant's prior conviction should be used "only for the

purpose of determining whether the State has proved that proposition.” C68. Following deliberations, the jury found defendant guilty, and he was sentenced to seven years in prison. C56, 80; R421, 442.

Defendant appealed, arguing that trial counsel was ineffective for failing to offer to stipulate to his felon status, among other claims. *People v. Moore*, 2018 IL App (3d) 150736-U, ¶ 2. Relying on *Strickland v. Washington*, 466 U.S. 668 (1984), the appellate court assumed that counsel’s performance was deficient but found that defendant was not prejudiced. *Moore*, 2018 IL App (3d) 150736-U ¶¶ 36-38. Had counsel offered to stipulate to the prior felony conviction, the jury still would have learned that defendant had committed a felony and could speculate that he was convicted of “the most serious crime.” *Id.* ¶ 38. Additionally, Hannon’s testimony, which included defendant’s admission to having a gun in the car, prevented any reasonable probability of a different trial outcome. *Id.* ¶¶ 12, 38. Justice Holdridge dissented, finding no strategic reason to admit the prior conviction into evidence and prejudice resulting from its admission because the evidence was otherwise close. *Id.* ¶¶ 44-46 (Holdridge, J., dissenting).

### **STANDARD OF REVIEW**

Defendant’s claim of ineffective assistance of counsel is reviewed de novo. *People v. Bew*, 228 Ill. 2d 122, 127 (2008).

**ARGUMENT****Defendant's Trial Counsel Provided Effective Assistance.**

Under the familiar two-prong standard established in *Strickland v. Washington*, 466 U.S. 668 (1984), counsel is ineffective when (1) his performance is deficient, and (2) the defendant is prejudiced as a result. *Id.* at 687. Counsel is deficient if his performance falls below an objective standard of reasonableness. *Id.* at 688. A defendant must overcome the strong presumption that counsel's actions were the result of sound trial strategy before they can be deemed deficient. *People v. Evans*, 186 Ill. 2d 83, 93 (1999). And a defendant is prejudiced by counsel's deficiency if "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," in this context, is a "probability sufficient to undermine confidence in the outcome." *Id.* Defendant must prove both *Strickland* prongs to prevail on an ineffective assistance claim. *People v. Peterson*, 2017 IL 120331, ¶ 79.

The majority below correctly found that defendant did not demonstrate *Strickland* prejudice. *Moore*, 2018 IL App (3d) 150736-U, ¶ 38. Had counsel offered to stipulate to his prior felony, defendant likely would have suffered some prejudice resulting from jury speculation about the nature of his prior crime. Moreover, Hannon's testimony, which revealed defendant's admission

to having a loaded gun in the car, foreclosed any reasonable probability that an offered stipulation would have led to a different outcome at trial. *Id.* ¶ 38.

Defendant contends that the majority's reliance on *People v. Atkinson*, 186 Ill. 2d 450 (1999), when addressing the question whether trial counsel's performance was deficient, was improper because that case dealt with the admission of felony convictions for impeachment purposes. Def. Br. at 25-26. But regardless of whether counsel's performance was deficient (as the appellate court assumed without deciding), this Court should affirm because defendant was not prejudiced. *See People v. Williams*, 2016 IL 118375, ¶ 33 (This Court is "not bound by the appellate court's reasoning and may affirm for any basis presented in the record."); *Strickland*, 466 U.S. at 697 (court may address prejudice first if it is easier to dispose of ineffectiveness claim on that basis).

Contrary to defendant's assertion, *People v. Walker*, 211 Ill. 2d 317 (2004), does not demand a finding of prejudice. Def. Br. at 22-23. *Walker's* "very narrow" holding requires the People to accept an offered stipulation to a defendant's felon status. 211 Ill. 2d at 341. But it made no holding obligating defense counsel to offer to stipulate to a prior felony, nor did it suggest that failing to offer a stipulation established *Strickland* prejudice.

At trial, defendant's murder conviction was mentioned a single time during the People's case-in-chief, when the jury heard that it had occurred twenty-five years earlier. R309. And during closing argument, the People

referenced the murder conviction only while discussing the jury instructions and proof of his prior felony conviction. R396-98, 403; *cf. Walker*, 211 Ill. 2d at 342 (People's use of prior conviction — initially admitted to prove felon status — to also improperly argue theory of case increased resulting prejudice). The court also gave a limiting instruction advising the jury to only consider defendant's murder conviction to determine whether he was previously convicted of murder. C68; R416; *see People v. Parker*, 335 Ill. App. 3d 474, 488 (1st Dist. 2002) (finding negligible prejudice from prior felony conviction in light of overwhelming evidence and limiting instruction on consideration of prior felony).

Moreover, the evidence at trial supported defendant's guilt. *People v. Harris*, 182 Ill. 2d 114, 137 (1998) (defendant is not prejudiced by counsel's errors where evidence of guilt is overwhelming). Defendant and Hannon gave similar accounts of the traffic stop, with a few key differences. Hannon testified that defendant was acting nervous, and that he admitted that a loaded gun was in the car, which prompted Hannon to handcuff him and call for backup. R275, 277-79. Defendant denied this, but agreed that he was handcuffed as a safety precaution, though he offered no explanation why such a safety precaution would be necessary if he had not admitted that there was a loaded gun in the center console. R364-65, 367-68, 381-83, 385.

Contrary to defendant's assertion that this case presented a credibility contest between the witnesses, the dash cam video corroborated Hannon's

testimony. Def. Br. 21; *see People v. Patterson*, 2014 IL 115102, ¶ 87 (considering on appellate review whether physical evidence corroborated victim's testimony and discredited defendant). In the video, Hannon is seen speaking with defendant and handcuffing him after a brief conversation. Peo. Exh. 1 at 1:19:24 to 1:20:20. When backup arrives, Hannon opens the car door, leans over the driver's seat for approximately twelve seconds, and returns to Ambrosini, who then removes a gun from the car. *Id.* at 1:22:37 to 1:23:30. That Hannon was in the car for such a short period of time supports an inference that he knew to go directly to the center console to retrieve the gun because defendant had told him that it was there.

In light of the evidence presented, defendant cannot demonstrate a reasonable probability that a stipulation would have resulted in a different outcome at trial. *Strickland*, 466 U.S. at 694.

**CONCLUSION**

This Court should affirm the appellate court's judgment.

October 8, 2019

Respectfully submitted,

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**CERTIFICATE OF COMPLIANCE**

I certify that this brief conforms to the requirements of Rules 341(a) and (b). The length of this brief, excluding the pages containing the Rule 341(d) cover, the Rule 341(h)(1) statement of points and authorities, the Rule 341(c) certificate of compliance, the certificate of service, and those matters to be appended to the brief under Rule 342(a), is thirteen pages.

/s/ Richard J. Cook  
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**PROOF OF FILING AND SERVICE**

Under penalty of law as provided in 735 ILCS 5/1-109, the undersigned certifies that the statements set forth in this instrument are true and correct. On October 8, 2019, the foregoing **Brief for Plaintiff-Appellee, People of the State of Illinois** was filed with the Clerk of the Supreme Court of Illinois, using the court's electronic filing system, which provided service of such filing to the email addresses of the persons named below:

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Additionally, upon its acceptance by the court's electronic filing system, the undersigned will mail thirteen copies of the **Brief of Plaintiff-Appellee People of the State of Illinois** to the Clerk of the Supreme Court of Illinois, 200 East Capitol Avenue, Springfield, Illinois 62701.

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