Illinois Official Reports

Appellate Court

People v. Patton, 2022 IL App (4th) 210561

Appellate Court Caption	THE PEOPLE OF THE STATE OF ILLINOIS, Plaintiff-Appellee, v. DAKOTA PATTON, Defendant-Appellant.
District & No.	Fourth District No. 4-21-0561
Filed	December 8, 2022
Decision Under Review	Appeal from the Circuit Court of Vermilion County, No. 20-CF-114; the Charles C. Hall, Judge, presiding.
Judgment	Affirmed in part and remanded with directions.
Counsel on Appeal	James E. Chadd, Catherine K. Hart, Joshua Scanlon, and Salome Kiwara-Wilson, of State Appellate Defender's Office, of Springfield, for appellant. Jacqueline M. Lacy, State's Attorney, of Danville (Patrick Delfino, David J. Robinson, and John M. Zimmerman, of State's Attorneys Appellate Prosecutor's Office, of counsel), for the People.
Panel	JUSTICE STEIGMANN delivered the judgment of the court, with opinion. Justices Harris and Bridges concurred in the judgment and opinion.

OPINION

¶ 1 In February 2020, the State charged defendant, Dakota Patton, with being an armed habitual criminal (count I) (720 ILCS 5/24-1.7(a) (West 2018)), possession of a stolen firearm (count II) (*id.* § 24-3.8), and two counts of possession of a weapon by a felon (counts III and IV) (*id.* § 24-1.1(a)). In December 2020, defendant filed a first amended motion to suppress evidence, which the trial court denied following a January 2021 hearing. In August 2021, the trial court conducted a stipulated bench trial and found defendant guilty of possession of a weapon by a felon (count III). In September 2021, the trial court sentenced defendant to 10 years in prison.

¶ 2 Defendant appeals, arguing the trial court erred by (1) denying defendant's motion to suppress evidence because there was no reasonable suspicion to justify the traffic stop that led to the discovery of the firearm and (2) failing to conduct a *Krankel* inquiry after the defendant told the court that his right to testify in his own defense was violated (*People v. Krankel*, 102 Ill. 2d 181, 464 N.E.2d 1045 (1984)).

¶ 3 We disagree with defendant's first argument but conclude the record is inadequate to review defendant's second argument. Accordingly, we affirm the trial court's judgment denying defendant's motion to suppress and remand for the limited purpose of conducting a preliminary *Krankel* inquiry.

¶ 4 ### I. BACKGROUND

¶ 5 #### A. The Charges Against Defendant

¶ 6 In February 2020, the State charged defendant with being an armed habitual criminal (count I) (720 ILCS 5/24-1.7(a) (West 2018)), possession of a stolen firearm (count II) (*id.* § 24-3.8), and two counts of possession of a weapon by a felon (counts III and IV) (*id.* § 24-1.1(a)). The charges alleged, generally, that on February 14, 2020, defendant, while on parole (count IV) and having previously been convicted of possession of a weapon by a felon (count I) and robbery (count III), possessed a Ruger .380 semiautomatic firearm, knowing it to have been stolen (count II).

¶ 7 #### B. Defendant's Motion to Suppress Evidence

¶ 8 In December 2020, defendant filed a first amended motion to suppress evidence, alleging that the February 14, 2020, traffic stop, during which the police discovered the Ruger .380, was unsupported by probable cause or reasonable suspicion of criminal activity.

¶ 9 In January 2021, the trial court conducted a hearing on defendant's motion.

¶ 10 ##### 1. *T.J. Davis*

¶ 11 T.J. Davis testified that he was employed as a detective with the Danville Police Department. Davis stated that on February 12, 2020, he spoke with Donald Taylor at Carle Hospital in Urbana, Illinois. Taylor was "a gunshot victim on February 8th." Davis stated that the shooting took place "[a]t the Blue Store" (a convenience store located at 801 North Vermilion Street, Danville, Illinois). Davis testified that Taylor told him that "[h]e left the Blue Store and was traveling on his bicycle when he was shot by a male in a white shirt. He mentioned a silver truck that was parked in the alley behind [AutoZone]." Davis stated that

Taylor did not describe the male who shot him in any further detail, such as by including race, height, or clothing. Taylor described the truck only as silver.

¶ 12 Davis also testified that he reviewed surveillance video obtained from the Blue Store. Defense counsel pointed to defendant and asked, "In this video, the Defendant seated at this table, the defense table *** was in that video correct?" Davis replied "[y]es" and described having viewed the following on the video:

> "[Defendant] initially walked up from the east off of Woodbury [Street], him and another subject, walked across the parking lot and walked into the Blue Store. They were in there for a few minutes. They exited the Blue Store and they were walking back to which [*sic*] they came, towards Woodbury to the southeast, and they both reacted to what would—you would assume to be the gunshots coming from the same area."

¶ 13 The following exchange then occurred:

> "[DEFENSE COUNSEL]: So [defendant] was never in a pickup truck, silver or otherwise in the video, correct?
>
> [DAVIS]: You cannot see him come from the pickup truck, no.
>
> Q. Okay. Was the alleged shooting victim in the Blue Store at any time with [defendant]?
>
> A. Yes.
>
> Q. Was there any interaction between the two?
>
> A. None."

¶ 14 On cross-examination by the State, the following exchange occurred:

> "[PROSECUTOR]: [Taylor] told you specifically that after being shot, he made it to Hazel Street before falling off his bike?
>
> [DAVIS]: Yes.
>
> Q. [Taylor] also said that he observed the person who shot him to be with two or three subjects run [*sic*] to a truck?
>
> A. Yes.
>
> Q. Then he said that truck then fled to Woodbury eastbound, got on Hazel, then turned south on Hazel?
>
> A. Yes.
>
> Q. So he told you that shot, person who shot him, two or three subjects, ran to a truck?
>
> A. Yes.
>
> * * *
>
> Q. And when you reviewed the surveillance video on February 14th, did you see a truck?
>
> A. Yes.
>
> * * *
>
> Q. Also, the truck that you saw in the video, it went the same direction that Donald Taylor told you the truck went on Woodbury?
>
> A. It was last seen traveling east on Woodbury before it left the view of the camera.

Q. Okay. So that was a truck on Woodbury just like Donald Taylor told you that a truck was on Woodbury?

A. Yes. Donald Taylor said the truck was behind Auto Zone, which is right off Woodbury.

* * *

Q. So after you reviewed the surveillance, did you give that information to other officers?

A. Yes. I mean, it was discussed within CID [(Criminal Investigations Division)], investigation.

Q. Was one of those officers that was discussed Detective Chelsey Miller?

A. Yes."

¶ 15 2. *Danielle Lewallen*

¶ 16 Danielle Lewallen testified that she was employed as a police officer with the Danville Police Department. On February 9, 2020, she was on patrol when she saw a "silver Dodge Ram pickup truck sitting in the driveway at 732 East South Street [in Danville] which matched the description of a vehicle that was involved in a shooting the night prior." Lewallen stated that she took photographs of the truck with her phone. One of the photos Lewallen took was admitted into evidence as defendant's exhibit B.

¶ 17 Lewallen explained that she had received a department-wide e-mail sent by "Officer Schroeder" that "advised the information about the shooting that occurred [on February 8] near the Blue Store involving a silver truck." She had received a second department-wide e-mail sent by "Sergeant Snyder" containing "still images of the pickup truck from the video surveillance *** at the Blue Store of the possible suspect vehicle." One of the photographs attached to Snyder's e-mail was admitted into evidence as defendant's exhibit C.

¶ 18 Defense counsel asked Lewallen whether, "based upon the picture we have marked as [defendant's] Exhibit C, you could tell that was exactly the same vehicle that you took a picture of in the driveway [at 732 East South Street]?" Lewallen responded, "Based upon multiple photos that were sent to me in an email, I could tell it was very, very similar to the vehicle that was involved in the shooting the day before."

¶ 19 Lewallen acknowledged that the surveillance photos attached to Snyder's e-mail did not allow her to see (1) the license plate number of the truck, (2) any writing on the back of the truck, or (3) details indicating the year the truck was made, but she testified that there were "other distinguishing factors on the photo that matched the pickup truck that [she] identified the next day." She identified those "factors" as (1) "the rust on the wheel well of the vehicle on the passenger side," (2) "the toolbox in the back of the bed of the truck," and (3) "an item on the front of the pickup truck which is consistent with a brush guard that was in the vehicle that I located on the 9th."

¶ 20 Returning to the events of February 9, 2020, Lewallen testified that, upon seeing the truck parked in the driveway at 732 East South Street, she spoke with two people who were present at the residence, Robert Phillips and Jesse Shereen, "to further investigate and inquire as to who was in possession of the vehicle the day before."

¶ 21 Lewallen testified that Phillips told her that he was the owner of the silver truck and, on the night of February 8, 2020, he had loaned his truck to someone he knew as "Cocaine Patton."

Phillips showed Lewallen the Facebook page of "Cocaine Patton" to further identify him. Lewallen stated that Shereen told her the truck was returned to the house around midnight "and that it was returned by the same subject."

¶ 22 Lewallen testified that Phillips gave her permission to search the truck and she "did not locate any items of evidentiary value." The following exchange then ensued:

> "[DEFENSE COUNSEL]: So based on your investigation in this matter, you could find no involvement of this truck in the February 8th, [2020,] shooting near the Blue Store, correct?
>
> [LEWALLEN]: That is incorrect. It matches the description.
>
> Q. Other than the description, there was no physical evidence in the truck?
>
> A. No, sir."

¶ 23 On cross-examination, the State showed Lewallen People's exhibit G3, which consisted of color copies of five photos that were attached to Snyder's e-mail. While holding up the photos that comprised exhibit G3, Lewallen stated the following:

> "I know what I saw in these photos. I saw a single cab, silver pickup truck with what appeared to be an item attached to the front of the vehicle, and also rust on the wheel well of both sides.
>
> These photos show the passenger and the driver's side of the vehicle that I found on the 9th, I also observed the same markings. You can see the rust markings that are above the wheel wells of this vehicle. The toolbox that is in the back, can I see that it is specifically a toolbox? It is very similar in size as the toolbox that was located in the vehicle that I located on the 9th."

¶ 24 The prosecutor asked, "And based on those pictures, you believe that that truck matched the description of photos that was [*sic*] sent to you by Officer Snyder on February the 8th?" Lewallen answered, "Absolutely."

¶ 25 The prosecutor than showed Lewallen People's exhibit G1, which Lewallen identified as the photographs she took of the silver truck on February 9, 2020. Exhibit G1 consisted of two photos of the silver truck and one photo of computer database registration information for the truck, which was registered in Indiana. She identified in the first two photos the toolbox and the rust that she had previously observed in the photos e-mailed by Snyder on February 8, 2020.

¶ 26 Lewallen also testified that, when she spoke with Phillips, he told her that the person he lent his truck to was "the same person who was arrested in his yard a few days earlier." Lewallen learned from dispatch that person was defendant.

¶ 27 Lewallen testified that, when she left Phillips's house with the photographs she had taken of the truck and the Facebook photo of "Cocaine Patton," her investigation was not completed but was "ongoing." She testified that she "sent out an email to let [other officers] know what [she] had come up with" and that she completed a report about the information she had gathered on February 9, 2020.

¶ 28 3. *Jason Jeffries*

¶ 29 Jason Jeffries testified that he was employed as a sergeant with the Danville Police Department. On February 14, 2020, he was on patrol near the Family Dollar in Danville when he received calls of shots fired. He remembered that there were three calls for service but only

remembered the location of two of the calls. One call came from the 1200 block of Clarence Street, which was one block north of the Family Dollar, and the other came from Virginia Street, which was a block east of the Family Dollar. Jeffries testified that "[t]here was another shots fired call on Griffin I—on Cleveland Street that an officer responded to." The calls came in at 8:34 p.m.

¶ 30 Jeffries testified that he responded to the area and saw a silver truck "sitting at the Family Dollar." Jeffries parked his car and "communicated with other officers that the vehicle was in the vicinity." Jeffries stated that the silver truck was running and an individual was sitting in it. Eventually, somebody exited the Family Dollar and got into the passenger side. The truck then left the parking lot and headed westbound. At that point "a stop was initiated" at 8:48 p.m.

¶ 31 On cross-examination by the State, Jeffries testified that the silver truck in the Dollar General parking lot caught his attention because it "matched the description of a vehicle that was put out in an email and photos were put out that was involved in a shooting at the Blue Store near Hazel and Woodbury about seven or eight days prior to these shots fired calls on this night." Jeffries clarified that "[w]e were aware of a silver vehicle—silver pickup being involved that matched the description of the truck that I observed at the Family Dollar."

¶ 32 The following exchange then occurred:

> "Q. So now six days later, February 14th, Valentine's Day, you see this truck, this silver truck, in the *** Family Dollar. What about it was unique to you?
>
> A. It was a silver, single cab short bed, '90's model Dodge Ram pickup, had a toolbox in the back. It had body molded running boards on it and it had rust over the fenders, which were all in the photos of the vehicle that were sent out from the prior shooting.
>
> Q. So it had all the characteristics that had been identified in the shooting on February 8th?
>
> A. That's correct.
>
> Q. And you had seen pictures of that vehicle prior to February 14th?
>
> A. Correct.
>
> Q. And you've seen other silver trucks I assume; yes?
>
> Q. More than likely.
>
> A. But this truck, even though it was silver, was distinctive?
>
> Q. Yes."

¶ 33 The prosecutor then showed Jeffries People's exhibit G1, the color photos from the Blue Store surveillance video that were attached to Snyder's February 8 e-mail. Jeffries testified that he could not say for certain that the truck in exhibit G1 was the same truck that he saw at the Dollar General on February 14 but did state that it matched the description.

¶ 34 The prosecutor also showed Jeffries People's exhibit G3, the photos taken by Lewallen on February 9. Jeffries stated that the truck in exhibit G3 was similar to the one he saw at the Family Dollar on February 14.

¶ 35 Jeffries testified that, because he suspected that the silver truck he saw at the Family Dollar may also have been involved in the February 8 shooting, he wanted to conduct an investigative stop. Jeffries stated the following:

> "The thought process was that if this vehicle was possibly involved in a shooting that occurred six days prior, that it could also be involved in the recent shooting that just happened. As we didn't know who was in the vehicle at that time but it seemed pretty suspicious that the exact same vehicle or one that matched it almost exact was in the vicinity of another shots fired call."

¶ 36 Jeffries testified that he radioed Detective Chelsey Miller. At the State's request and without objection, the trial court admitted a recording of the radio call into evidence. On the call, Jeffries mentioned making an investigative stop. He explained that his intent was to "stop the vehicle and try to ask questions to identify who is inside to determine whether or not they were involved in the shots fired call."

¶ 37 Jeffries testified that he had dealt with defendant previously in his career and was aware that defendant had "gun charges" in the past. The prosecutor asked Jeffries if, on the radio call, Miller also stated "that she had seen [defendant] with the vehicle in question the night before at the YMCA?" Jeffries answered, "I believe so."

¶ 38 Jeffries testified that Miller initiated the stop and he arrived as her backup unit "as the [silver truck] was pulling to a stop." Jeffries stated that a white male was driving the truck and defendant was the passenger. Jeffries stated that he learned the driver was Robert Phillips and that Phillips consented to a search of the truck almost immediately after the stop. Jeffries later learned that Phillips told Miller that defendant had a gun and that Phillips was afraid.

¶ 39 On redirect examination by defendant, Jeffries testified that, at the time of the stop, he did not know who was in the truck. Jeffries stated, "We stopped it to try to identify who was in the [truck]." Jeffries acknowledged that, when he saw the truck at the Family Dollar, all he saw was a person sitting in the driver's seat and nobody sitting in the passenger seat. Jeffries agreed with defense counsel that sitting in the parking lot was not illegal. Jeffries also acknowledged that he did not see any equipment violations. Defense counsel asked Jeffries if he "had a hunch based on [his] conversation with Officer Miller and the description of the vehicle that this might have been a vehicle involved in a February 8th incident?" Jeffries answered, "We believed it was a suspect car from the February 8th incident and that it was suspicious that it was in the same area as a shots fired call."

¶ 40 4. *Chelsey Patten (a/k/a Miller)*

¶ 41 Chelsey Patten testified that she was employed as a detective with the Danville Police Department. On February 14, 2020, her last name was Miller. (We will refer to Patten as Miller hereinafter because that was her name at the time of the offense and the other witnesses referred to her as Miller in their testimony.)

¶ 42 Miller testified that on February 14, 2020, at 8:34 p.m. she responded to Griffin and Cleveland Streets because the police had received "multiple calls of shots fired in various areas around the east end of town." Miller visually canvassed the area and did not see anything suspicious. Miller then had a radio conversation with Jeffries that she described as follows:

> "[Jeffries] advised me that a vehicle that was seen in the area of the shooting on [February 8] was parked at Family Dollar. He asked me if it was involved in that. I told him I really wasn't sure. And I believe that was pretty much the gist of it. I told him that I saw [defendant] in the vehicle the day prior, and that was it."

¶ 43 Miller drove northbound and saw the silver truck leaving Family Dollar, traveling westbound on East Main Street. Miller initiated a traffic stop. Miller testified that she did not see any traffic or equipment violations. Defense counsel asked her why she pulled the silver truck over and she stated the following:

> "Because the vehicle was seen in the area of a shooting on [February 8]. Officer Lewallen got out with the vehicle on [February 9]. The owner said he loaned the vehicle out. At that time it was still uncertain whether or not the vehicle was involved in the shooting on [February 8]. It was seen in the area. The victim said that shots fired came from a silver truck, older model. And then we had a new shots fired call surrounding that area. I believe we had calls come in from Seminary Street, Virginia Street, as well as—there's one more street in that area. So I initiated an investigative stop on the vehicle."

¶ 44 In response to further questions by defense counsel, Miller testified that none of the callers described the silver truck or any individuals inside of it. Miller added that, at the time of the stop, she did not know who was in the silver truck.

¶ 45 On cross-examination, Miller testified that she knew from Lewallen's report that the silver truck that was suspected to be involved in the February 8 shooting had Indiana license plates, a "brush guard," a toolbox, and rust on the side. Miller stated that she "observed all of that" on the truck she stopped on February 14. Miller conducted the stop rather than Jeffries because she was in a safer position, being directly behind the silver truck. Although she mentioned defendant by name in the radio conversation, she did not know that defendant was in the truck when she pulled it over. The prosecutor asked, "The suspicion was the vehicle?" Miller answered, "Correct." The prosecutor then asked, "But [defendant's] involvement with the vehicle made the vehicle more suspicious?" Miller answered, "Correct." Miller further stated that, at the time of the stop, she was aware that Phillips had told Lewallen that he had loaned the truck to defendant. Miller was familiar with defendant and knew that he had prior gun charges.

¶ 46 The following exchange then occurred:

> "PROSECUTOR: How did that [(knowledge of defendant's prior gun charges)] add to the suspicion of the vehicle?
>
> MILLER: He was in the area of the shooting on [February 8] in the truck. The owner of the truck tied him to the truck on that day. I saw him in the truck the day prior [to February 14]. And then we also have a shots fired in the area, another shots fired. I don't know who else was with him in the truck, but I knew he was in the area, or not—in the area of the shooting.
>
> Q. Where did you see him with the car the day before?
>
> A. The YMCA on North Vermilion [Street].
>
> Q. So you knew that this vehicle had been involved in a shooting, you knew—you knew for a fact that you had seen defendant in the vehicle prior to the vehicle prior to the 14th, correct?
>
> A. Yes.
>
> Q. Had you spoken with Detective Davis at all about his investigation into this [(the February 8 shooting)]?
>
> A. We watched the video from the Blue Store together on the 14th.

Q. So you saw the surveillance—the surveillance video from the Blue Store video prior to you pulling over the silver truck?

A. Yeah.

Q. And do you see a silver truck in that surveillance video?

A. I do.

Q. And what is the significance of that as far as suspicion?

A. Well, the significance is the victim said that the shots came from a silver truck that was in the area of the Blue Store around the time of the shooting."

¶ 47 Miller also testified that, when she approached the silver truck after stopping it, Phillips was in the driver's seat and defendant was in the passenger seat. Miller stated she was looking for "[a]ny evidence in regards to shots fired that night, also as well as shots fired on the 8th because the truck had not been completely ruled out as a suspect vehicle." Miller stated that Phillips immediately consented to a search of the vehicle, so she removed him from the truck and brought him back to her squad car. Miller stated that, once at her squad car, Phillips said to her, " 'Thank God this is over,' and that there was a gun in the truck." Miller placed Phillips in restraints and searched him, then placed him in her squad car.

¶ 48 Miller stated that she was aware of the February 8 shooting incident by "reading reports, reading emails, and speaking with officers."

¶ 49 5. *Steven Blaine*

¶ 50 Steven Blaine testified that he was an investigator for the Vermilion County Public Defender's Office. He stated that he used "Google Street" to calculate the distance between (1) the intersection of Cleveland and Griffin Streets and (2) 801 North Vermilion Street (the location of the Blue Store). Blaine testified that the distance between those two points was 2.4 miles. Blaine prepared a "graphic" showing the points and distance, which was admitted into evidence as defendant's exhibit A.

¶ 51 6. *The Trial Court's Ruling*

¶ 52 The trial court found that the traffic stop was supported by reasonable, articulable suspicion and denied defendant's motion to suppress. When ruling, the court made the following remarks:

"[W]hat occurred on the 8th is very material and relevant to what occurred on the 14th. On the 8th we definitely had a crime committed, we had a victim who was shot. On the 14th we had a crime committed by somebody because we had shots fired, multiple shots or several shots and multiple calls about those shots fired. Shots fired are illegal. Someone was engaging in an unlawful use of weapon, at least there was sufficient cause to believe that at the time.

***

The exhibits admitted show—we're not just talking about a 25-year-old truck. We have specific descriptions o[f] that truck and the pictures that went out in color that I saw from here were fairly impressive as far as the detail. It is proper for Officer Miller and *** Jeffries to conclude that there was a basis to make a *Terry* stop of this vehicle to investigate further. ***

***

I think they made an appropriate investigatory stop and I think they had adequate reasonable, articulable suspicion to investigate further."

¶ 53 C. The Stipulated Bench Trial

¶ 54 In August 2021, the parties convened for defendant's trial. The trial court, prosecutor, and defense counsel retired to chambers, where they held a conference pursuant to Illinois Supreme Court Rule 402(d) (eff. July 1, 2012). Upon their return to the courtroom, defendant waived his right to a jury trial, and the parties proceeded by way of a stipulated bench trial on only count III (possession of a weapon by a felon with a prior forcible felony conviction). The trial court (1) placed defendant under oath, (2) admonished him regarding the charge and possible penalties, (3) inquired whether there was any plea offer "on the table" and, after learning there was no offer, (4) confirmed with defendant that he did not want to enter a blind plea. The following exchange then occurred:

"THE COURT: So you want to refuse that [(a blind plea)] and proceed to a stipulated bench trial?

[DEFENDANT]: Yeah.

THE COURT: Do you need any more time to discuss anything at all with your counsel ***?

[DEFENDANT]: So the only thing I got a question about the stipulated bench trial, that's the same sentencing range, 3 to 14 regardless?

THE COURT: Well, you step back to counsel table and discuss that with [defense counsel] for a moment. You have the right to do that."

¶ 55 After pausing to allow defendant time to confer with his attorney and his attorney to confer with the State, the following exchange occurred:

"[DEFENSE COUNSEL]: Your Honor, my client is ready to proceed.

THE COURT: Let the record show that [defendant has] had the time he's requested to speak with his attorney. And you're ready to go; is that correct?

[DEFENDANT]: Yes, sir.

THE COURT: You've asked all the questions you want to ask and gotten the answers—

[DEFENDANT]: Yes, sir.

THE COURT:—and so forth from your counsel?

So we're ready to proceed on the stipulated bench trial.

Do either—does either counsel have anything else to add about the admonitions concerning pleas, sentencing potential terms, time, any other pretrial matters?"

¶ 56 Both attorneys answered that they did not have any other matters to raise. The trial court then invited the State to make its opening statement, and the State declined. The court turned to the defense, and counsel stated the following:

"And, Your Honor, just to make a record, once again, we're entering into a stipulated bench trial. There is no plea here. We're not stipulating to the sufficiency of the evidence. We're stipulating to the fact that the State has evidence they will produce to this Court and the Court will make a decision on that regarding my client's guilt or

> innocence, and in this regard we're doing this for purposes of fast tracking our case to the appeal process because we believe there are grounds for appeal based on previous motions."

Defense counsel then waived opening statement.

¶ 57 The trial court invited the State to present its evidence, and the State replied that the parties would proceed "by way of reading in the three stipulations." The three stipulations were titled (1) "Occurrence Witnesses," (2) "DNA," and (3) "Prior Conviction." The State provided the trial court written copies of three stipulations and read the stipulations verbatim in defendant's presence in open court.

¶ 58 The written stipulations established the following facts.

¶ 59 1. *Robert Phillips*

¶ 60 Robert Phillips would testify that on February 14, 2020, he was driving a silver Dodge pickup truck with Indiana plates when he was stopped by Miller. Defendant was a passenger in his truck. Earlier that evening, defendant approached Phillips at his home and told Phillips to give him a ride. Phillips "inferred from various actions that the defendant had a gun on him," and Phillips had "previously seen the defendant in possession of a .380 pistol." Phillips did not possess a gun that day.

¶ 61 2. *Chelsey Patten (a/k/a Miller)*

¶ 62 Miller would testify that, on February 14, 2020, she responded to a call of shots fired and subsequently pulled over Phillips's silver Dodge pickup truck bearing Indiana plates. Phillips was the driver, and defendant was the passenger. Other officers of the Danville Police Department searched the truck and found, "immediately accessible to the defendant, a Ruger .380 pistol." Miller swabbed the grip and trigger of the gun for DNA evidence and sent those swabs to the Illinois State Police Forensic Crime Laboratory. Miller later collected DNA swabs from defendant and also sent them to the lab.

¶ 63 3. *Henry Schroeder*

¶ 64 Henry Schroeder would testify that he was a police officer with the Danville Police Department. On February 14, 2020, he searched the silver Dodge pickup and located, "behind the passenger's seat, a little toward the center of said pick-up truck, a Ruger .380 pistol."

¶ 65 4. *Sangeetha Srinivasan*

¶ 66 Sangeetha Srinivasan would testify that she is a forensic scientist employed by the Illinois State Police Forensic Crime Laboratory, specializing in the field of "forensic DNA." Srinivasan (1) performed DNA analysis on the swabs Miller collected from the gun and defendant and (2) concluded that DNA collected from the grip and trigger "were consistent with having originated from [defendant]."

¶ 67 5. *Prior Conviction*

¶ 68 Defendant was previously convicted of robbery, a forcible felony, in Vermilion County case No. 15-CF-471.

¶ 69 After reading the stipulations, the prosecutor stated, "Judge, those are the stipulations that the parties agreed to as far as evidence being entered into this case." The following exchange then occurred:

"THE COURT: It appears that both counsel, [the prosecutor and defense counsel], have signed off on each of the stipulations, correct?

[DEFENSE COUNSEL]: That's correct, Your Honor.

[PROSECUTOR]: Yes, sir.

THE COURT: And [defense counsel], you based on the foregoing have no objection to these being admitted into—read stipulations being admitted into evidence?

[DEFENSE COUNSEL]: No objection, Your Honor.

THE COURT: Do you want to admit those at this time?

[PROSECUTOR]: Yes, sir, please.

* * *

THE COURT: Show the exhibits being admitted.

[PROSECUTOR]: *** Judge, with that, the People rest.

THE COURT: Defense.

[DEFENSE COUNSEL]: Defense rests.

* * *

THE COURT: Okay. Argument.

[PROSECUTOR]: Judge, I'll waive opening and reserve rebuttal.

[DEFENSE COUNSEL]: And, Your Honor, in regards to what we're doing here today, all has been stipulated to so we won't proceed with any argument at this time.

THE COURT: Okay. And therefore there's no rebuttal and you're ready for my ruling."

¶ 70 The trial court found defendant guilty of count III, possession of a weapon by a felon.

¶ 71 D. The Posttrial Proceedings and Sentence

¶ 72 Later in August 2021, the parties convened to address defendant's right to testify. The trial court stated the following:

"The purpose for the Court calling this hearing is because at the bench trial, stipulated bench trial *** in this matter, the record does not reflect that the defendant was admonished about his right to testify or not testify. So, at this time I want to do that. If you would have the defendant come up to the podium please."

¶ 73 The trial court placed defendant under oath and the following exchange occurred:

"THE COURT: [Defendant], as you are aware, you have an absolute right to testify, you have an absolute right not to testify. These are your rights and your rights alone, no one can make you testify if you do not wish to testify, also no one can keep you from testifying if you want to testify. Without going into the substance of the conversations with your lawyer, I am assuming you have discussed with him the advantages and disadvantages of testifying in your own behalf, is this correct?

[DEFENDANT]: Yes.

THE COURT: Your lawyer has indicated to me that after discussions with you it's your personal and voluntary decision that you do not want to testify, is that correct?

[DEFENDANT]: No, that's not true. Uh, uh, I feel like if I were to testify that it could have changed the outcome of my, my verdict, you already found me guilty. With that being said, I feel I've been deprived of my rights to testify. Now, what I understand is that I'm not in agreements with nothing the State got going on or my [defense counsel], I'm not in agreements today. I understand why we here but I'm not, I'm not taking it, I'm not understanding that. I'm not—

THE COURT: So, so it's your, it's your statement—

[DEFENDANT]: I would have ta—I would have testified during my trial if I could of [*sic*], and I didn't do that.

THE COURT: Did your advise your lawyer that?

[DEFENDANT]: He know that, he sure do.

THE COURT: Okay. Go ahead and take a seat.

[DEFENDANT]: Appreciate it.

THE COURT: Um, at this time I want to have a conference with both attorneys in chambers."

¶ 74 Following a recess, the trial court stated that it was "going to adjourn the matter for today," noting that the matter was set for sentencing in September. (We note that the record does not reflect any discussion between the court and defense counsel about defendant's decision to testify or not testify.)

¶ 75 In September 2021, the trial court conducted a sentencing hearing, at which no further mention was made of defendant's right to testify. The court sentenced defendant to 10 years in prison.

¶ 76 This appeal followed.

¶ 77 II. ANALYSIS

¶ 78 Defendant appeals, arguing the trial court erred by (1) denying defendant's motion to suppress evidence because there was no reasonable suspicion to justify the traffic stop that led to the discovery of the firearm and (2) failing to conduct a *Krankel* inquiry after the defendant told the court that his right to testify in his own defense was violated.

¶ 79 We disagree with defendant's first argument but conclude the record is inadequate to review defendant's second argument. Accordingly, we affirm the trial court's judgment denying defendant's motion to suppress and remand for the limited purpose of conducting a preliminary *Krankel* inquiry.

¶ 80 A. The Trial Court's Denial of Defendant's Motion to Suppress Evidence

¶ 81 Defendant argues that the trial court erred by denying defendant's motion to suppress evidence because "neither Sergeant Jeffries nor Detective Miller possessed any knowledge of articulable facts connecting the silver truck parked outside of the Family Dollar to the reports of shots fired on February 14, 2020." Defendant further asserts that "the February 8 shooting could not form the basis of reasonable suspicion for the stop on February 14" because "the victim of the February 8 shooting indicated that the person who shot him ran to a silver truck"

but "he did not identify the truck stopped on February 14 as that silver truck."

¶ 82 1. *The Applicable Law and Standard of Review*

¶ 83 All persons enjoy the right to be free from unreasonable searches and seizures. U.S. Const., amend. IV; Ill. Const. 1970, art. I, § 6. " '[T]he touchstone of the fourth amendment is reasonableness, which is measured objectively by examining the totality of the circumstances surrounding a police officer's encounter with a citizen.' " *People v. Eyler*, 2019 IL App (4th) 170064, ¶ 25, 153 N.E.3d 1012 (quoting *People v. Lake*, 2015 IL App (4th) 130072, ¶ 28, 28 N.E.3d 1036).

¶ 84 " 'Police-citizen encounters are divided into three tiers: (1) arrests, which must be supported by probable cause; (2) brief investigative detentions, commonly referred to as "*Terry* stops," which must be supported by reasonable, articulable suspicion of criminal activity; and (3) consensual encounters, which involve no coercion or detention and thus do not implicate the fourth amendment.' " *Id.* ¶ 26 (quoting *Lake*, 2015 IL App (4th) 130072, ¶ 35). The stop of a vehicle is a "seizure" of the persons in the car and is subject to the reasonableness requirement of the fourth amendment. *People v. Patel*, 2020 IL App (4th) 190917, ¶ 15, 163 N.E.3d 1282. " '[T]he usual traffic stop is more analogous to a *Terry* [citation] investigative stop than to a formal arrest.' " *Id.*

¶ 85 In *Eyler*, 2019 IL App (4th) 170064, ¶ 28, this court summarized the law of *Terry* stops as follows:

> " 'In *Terry v. Ohio*, 392 U.S. 1 (1968), the Supreme Court provided an exception to the warrant and probable cause requirements [of the fourth amendment].' *People v. Walker*, 2013 IL App (4th) 120118, ¶ 33, 995 N.E.2d 351. 'Pursuant to *Terry*, a police officer may conduct a brief, investigatory stop of a person where the officer reasonably believes that the person has committed, or is about to commit, a crime.' *People v. Timmsen*, 2016 IL 118181, ¶ 9, 50 N.E.3d 1092. A *Terry* stop 'must be justified at its inception, and the police officer must be able to point to specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant that intrusion.' (Internal quotation marks omitted.) *People v. Colyar*, 2013 IL 111835, ¶ 40, 996 N.E.2d 575. *** 'The officer's conduct is judged by an objective standard, which analyzes whether the facts available to the officer at the moment of the stop justify the action taken.' *People v. Hill* 2019 IL App (4th) 180041, ¶ 17, 123 N.E.2d 1236."

¶ 86 In *People v. Dunmire*, 2019 IL App (4th) 190316, ¶ 41, 160 N.E.3d 113, this court distinguished "reasonable, articulable suspicion" from probable cause and wrote the following:

> "A reasonable suspicion is considerably less than proof of wrongdoing by a preponderance of the evidence and 'obviously less' than that necessary for probable cause. *Navarette v. California*, 572 U.S. 393, 397 (2014). As such, police officers 'may make a lawful *Terry* stop without first determining whether the circumstances [they] observed would satisfy each element of a particular offense.' *People v. Little*, 2016 IL App (3d) 130683, ¶ 18, 50 N.E.3d 655. Even the higher standard of probable cause 'concerns the probability of criminal activity, rather than proof beyond a reasonable doubt.' *People v. Grant*, 2013 IL 112734, ¶ 11, 983 N.E.2d 1009. 'Indeed, probable cause does not even demand a showing that the belief that the suspect has committed a crime be more likely true than false.' *People v. Wear*, 229 Ill. 2d 545, 564, 893 N.E.2d

631, 643 (2008)[, *abrogated on other grounds by Lange v. California*, 594 U.S. ___, 141 S. Ct. 2011 (2021)]."

¶ 87 Nonetheless, "an officer's suspicion must amount to more than an inchoate and unparticularized suspicion or hunch of criminal activity." (Internal quotation marks omitted.) *Patel*, 2020 IL App (4th) 190917, ¶ 15.

¶ 88 When reviewing a ruling on a motion to suppress, a bifurcated standard of review applies. *Dunmire*, 2019 IL App (4th) 190316, ¶ 35. The trial court's findings of fact are entitled to great deference and will be reversed only if those findings are against the manifest weight of the evidence. *Id.* " 'A finding is against the manifest weight of the evidence where the opposite conclusion is clearly evident or if the finding itself is unreasonable, arbitrary, or not based on the evidence presented.' " *Id.* (quoting *People v. Peterson*, 2017 IL 120331, ¶ 39, 106 N.E.3d 944). The trial court's conclusions of law are reviewed *de novo*. *Id.*

¶ 89 2. *This Case*

¶ 90 We conclude that Miller's investigative stop of the silver truck on February 14, 2020, was supported by reasonable, articulable suspicion of criminal activity. On February 14, Miller and Jeffries responded to multiple calls of shots fired in the area of Cleveland and Griffin Streets in Danville. Miller drove around the area but did not see anything suspicious. Miller then drove northward when Jeffries advised her that he saw a silver truck at the Family Dollar that appeared to be the same truck that was involved in the February 8 shooting of Taylor at the Blue Store. Jeffries testified that one of the shots fired calls came from the 1200 block of Clarence Street, which was one block north of the Family Dollar. Another of the shots fired calls came from Virginia Street, which was one block east of Family Dollar.

¶ 91 Miller described in detail the physical characteristics she observed that led her to believe the silver truck she stopped on February 14 was the same truck (1) captured on video at the February 8 shooting and (2) observed by Lewallen on February 9. Miller testified that she was aware from Lewallen's report that the silver truck suspected to be involved with the Blue Store shooting had (1) Indiana license plates, (2) a toolbox in the back, (3) a brush guard, and (4) rust on the side. We note that the number and specificity of those identifying characteristics are similar to the identifying characteristics of the truck in *People v. Hansen*, 2012 IL App (4th) 110603, ¶ 43, 968 N.E.2d 164, which this court held to be "sufficiently detailed and quantitative to assure [the police officer] could be certain he was stopping the complained-of truck."

¶ 92 In *Hansen*, a 911 caller reported that a black GMC truck with a black dog in the back and a sticker in the rear window that read "All Types Landscaping" was "doing 'donuts' in the road" and heading eastbound on Route 16 toward Jerseyville, Illinois. *Id.* ¶¶ 6, 8. Shortly thereafter, a police officer observed a black GMC truck with a black dog in the back and a sticker in the rear window that read "All Types Landscaping" heading into Jerseyville on Route 16. *Id.* ¶ 9. The officer stopped the truck to investigate the reckless driving report and ultimately arrested the defendant for driving under the influence. *Id.* Because this court concluded that the traffic stop was justified, we reversed the trial court's order granting the defendant's petition to rescind the summary suspension. *Id.* ¶ 65. We similarly conclude in the present case that, because the silver truck at Family Dollar possessed all of the identifying characteristics described by Lewallen in her report, Miller reasonably believed the silver truck she stopped on February 14 was the same truck involved in the February 8 shooting.

¶ 93 Moreover, the State produced evidence that the silver truck was not just present for the February 8 shooting but was likely involved in the shooting. Davis testified that Taylor stated the person who shot him ran with two or three other people to a silver truck that had been parked behind AutoZone. The surveillance video, which Miller herself observed, showed the silver truck parked behind AutoZone drive eastbound on Woodbury, just as Taylor described. Lewallen matched the details viewable on the truck in the Blue Store surveillance stills (brush guard, toolbox, and rust locations) to the details viewable to her on February 9, 2020, at 732 East South Street. Lewallen was able to gather the additional detail that the truck had Indiana license plates. Given this context, we conclude that Miller had reasonable, articulable suspicion that the silver truck driving away from the Family Dollar, which was in the immediate area of at least one of the shots fired calls, was the same truck that was involved in the February 8 shooting.

¶ 94 Although the aforementioned factors by themselves establish reasonable suspicion for the traffic stop, the defendant's connection to the truck provides *additional* justification for the stop. Defendant was viewable on the Blue Store surveillance video as being *at least* present for the Blue Store shooting. Phillips and Shereen told Lewallen that defendant had borrowed the truck the night of February 8. Taylor mentioned the silver truck being parked behind the AutoZone, which was "off Woodbury." Defendant was captured on video walking to the Blue Store from Woodbury, then exiting and walking back toward Woodbury. Taylor told the police that the shooter ran with two or three other people toward the silver truck, which was seen on video traveling the same direction on Woodbury that Taylor described. Moreover, Miller saw defendant in the truck at the YMCA on February 13. Miller knew defendant to have prior gun charges. Although Miller did not know that defendant was in the truck when she stopped it, she was justified in stopping the truck to investigate whether he was indeed in the truck and involved in a further shooting incident.

¶ 95 Defendant argues, however, that (1) the police could not tie the silver truck to any criminal activity on February 14 and (2) the February 8 shooting cannot serve as reasonable suspicion for the stop on February 14. In support of this argument, defendant cites *People v. Grotti*, 112 Ill. App. 3d 718, 720, 445 N.E.2d 946, 947 (1983), for the proposition that the observation of a car involved in "alleged criminality" two weeks earlier, without a description of the driver, does not justify an investigative stop. However, *Grotti* is factually distinguishable because, in the present case, the silver truck was not only suspected to be involved in the February 8 shooting but was also in the area of multiple shots fired calls on February 14. In *Grotti*, the alleged criminality was "hot rodding" through town. *Id.* at 719. If the officer in *Grotti* had received additional calls complaining of "hot rodding" immediately before observing the same vehicle in the general area and pulling it over, there is little doubt the *Grotti* result would have been different. Defendant cites no other authority to support his argument that the police could not consider the February 8 shooting in their reasonable suspicion calculus, and we reject his argument.

¶ 96 Because the State provided sufficient facts to demonstrate a reasonable, articulable suspicion that the silver truck Miller stopped while investigating multiple shots fired calls was also involved in a shooting seven days earlier, we conclude Miller's stop of the vehicle was justified. Accordingly, we need not address the State's alternative argument regarding the application of the attenuation doctrine.

¶ 97 B. The Trial Court's Alleged Failure to Conduct a *Krankel* Inquiry

¶ 98 Defendant also argues that the trial court erred by failing to conduct a *Krankel* inquiry after defendant told the court that his right to testify was violated. Defendant contends that his colloquy with the trial court when the court admonished him about his right to testify amounted to a "claim that [defense] counsel deprived him of his right to testify by not calling him to testify," which "trigger[ed] the court's duty to conduct a *Krankel* inquiry." Defendant asserts that this case should be remanded for a *Krankel* inquiry.

¶ 99 1. *The Applicable Law*

¶ 100 a. *Krankel* Inquiries

¶ 101 A *pro se* posttrial claim alleging ineffective assistance of counsel is governed by the common-law procedure developed by the Illinois Supreme Court's decision in *Krankel*, 102 Ill. 2d 181. *In re Johnathan T.*, 2022 IL 127222, ¶ 23, 193 N.E.3d 1240; *People v. Roddis*, 2020 IL 124352, ¶ 34, 161 N.E.3d 173. The " 'narrow purpose' " of the procedure outlined in *Krankel* is to " 'allow[ ] the trial court to decide whether to appoint independent counsel to argue a defendant's *pro se* posttrial ineffective assistance claims.' " *People v. Ayres*, 2017 IL 120071, ¶ 11, 88 N.E.3d 732 (quoting *People v. Patrick*, 2011 IL 111666, ¶ 39).

¶ 102 "Under the common-law procedure, a *pro se* defendant is not required to file a written motion but need only bring his or her claim to the trial court's attention." *Roddis*, 2020 IL 124352, ¶ 35. "[W]hen a defendant brings a clear claim asserting ineffective assistance of counsel, either orally or in writing, this is sufficient to trigger the circuit court's duty to conduct a preliminary *Krankel* inquiry." *Johnathan T.*, 2022 IL 127222, ¶ 47. If a defendant fails to present a clear claim of ineffective assistance of counsel, the trial court's duty to conduct a preliminary *Krankel* inquiry is not triggered. *People v. Taylor*, 237 Ill. 2d 68, 76-77, 927 N.E.2d 1172 (2010). The Illinois Supreme Court has held that a trial court is required to conduct a *Krankel* inquiry even if the defendant makes the bare allegation of " ' "ineffective assistance of counsel." ' " *Ayres*, 2017 IL 120071, ¶ 23.

¶ 103 Whether a defendant's statements are sufficient to trigger a *Krankel* inquiry is reviewed *de novo*. *Taylor*, 237 Ill. 2d at 75-76.

¶ 104 If a defendant has raised a clear claim of ineffective assistance of counsel, "the court should first examine the factual basis of the defendant's claim." *Roddis*, 2020 IL 124352, ¶ 35. "If the court determines that the claim lacks merit or pertains only to matters of trial strategy, then the court need not appoint new counsel ***." *Id.* "However, if the allegations show possible neglect of the case, new counsel should be appointed." *Id.*

¶ 105 "The operative concern for the reviewing court is whether the trial court conducted an adequate inquiry into the defendant's *pro se* allegations of ineffective assistance of counsel." *People v. Moore*, 207 Ill. 2d 68, 78, 797 N.E.2d 631, 638 (2003). "During this evaluation, some interchange between the trial court and trial counsel regarding the facts and circumstances surrounding the allegedly ineffective representation is permissible and usually necessary in assessing what further action, if any, is warranted on a defendant's claim." *Id.* "Trial counsel may simply answer questions and explain the facts and circumstances surrounding the defendant's allegations." *Id.* "A brief discussion between the trial court and the defendant may be sufficient." *Id.* "Also, the trial court can base its evaluation of the defendant's *pro se*

allegations of ineffective assistance on its knowledge of defense counsel's performance at trial and the insufficiency of the defendant's allegations on their face." *Id.* at 79.

¶ 106 Whether the trial court properly conducted a preliminary *Krankel* inquiry presents a legal question that we review *de novo*. *Roddis*, 2020 IL 124352, ¶ 33. The failure to conduct an adequate *Krankel* inquiry requires that the case be remanded. *People v. Rhodes*, 2019 IL App (4th) 160917, ¶ 14, 128 N.E.3d 1100.

¶ 107 b. Ineffective Assistance of Counsel

¶ 108 A defendant claiming ineffective assistance of counsel must demonstrate that (1) counsel's performance fell below an objective standard of reasonableness and (2) a reasonable probability exists that, but for the deficient performance, the outcome of the proceedings would have been different. *Strickland v. Washington*, 466 U.S. 668 (1984).

¶ 109 The decision to testify belongs to the defendant but should be made with the advice of counsel. *People v. McCleary*, 353 Ill. App. 3d 916, 922-23, 819 N.E.2d 330, 337 (2004). "Advice not to testify is a matter of trial strategy and does not constitute ineffective assistance of counsel unless evidence suggests counsel *refused* to allow the defendant to testify." (Emphasis added.) *Id.* at 923. "Matters of trial strategy are generally immune from claims of ineffective assistance of counsel" except "when counsel's chosen trial strategy is so unsound that counsel entirely fails to conduct any meaningful adversarial testing." (Internal quotation marks omitted.) *People v. Collier*, 2021 IL App (4th) 200132-U, ¶ 29.

¶ 110 2. *This Case*

¶ 111 The present appeal asks (1) whether the trial court's duty to conduct a preliminary *Krankel* inquiry was triggered and, if so, (2) whether the court conducted an adequate inquiry. The facts of this case inject unusual temporal and procedural considerations into these typically straightforward questions.

¶ 112 Days after defendant's stipulated bench trial was concluded and defendant was found guilty of the offense, the trial court conducted a hearing to admonish the defendant regarding his right to testify. That hearing was unusual and unnecessary because "the trial court is not required to advise a defendant of his right to testify, to inquire whether he knowingly and intelligently waived that right, or to set of record defendant's decision on this matter." *People v. Smith*, 176 Ill. 2d 217, 235, 680 N.E.2d 291, 303 (1997). That is to say, the court was under no obligation to admonish defendant in the first place. Although we continue to believe it is a sound practice to create a clear record *during trial* of a defendant's waiver of his right to testify (*People v. Frieberg*, 305 Ill. App. 3d 840, 852, 713 N.E.2d 210 (1999)), the court's decision in this case to attempt to do so *after* defendant's trial had already concluded served only to inject defendant's present claim of error into an otherwise sound conviction.

¶ 113 Nonetheless, the trial court, apparently in a good-faith attempt to cure what it perceived to be a possible error, convened the parties to create a record regarding events that had already occurred. The court's comments at the start of the hearing imply that the court had (1) discussed the defendant's right to testify with defendant's attorney and (2) expected, pursuant to that conversation, that defendant would agree he waived his right to testify. Proving the adage "no good deed goes unpunished," the following exchange occurred:

"THE COURT: Your lawyer has indicated to me that after discussions with you it's your personal and voluntary decision that you do not want to testify, is that correct?

[DEFENDANT]: No, that's not true. Uh, uh, I feel like if I were to testify that it could have changed the outcome of my, my verdict, you already found me guilty. With that being said, I feel I've been deprived of my rights to testify. Now, what I understand is that I'm not in agreements with nothing the State got going on or my [defense counsel]. I'm not in agreements today. I understand why we here but I'm not, I'm not taking it, I'm not understanding that. I'm not—

THE COURT: So, so it's your, it's your statement—

[DEFENDANT]: I would have ta—I would have testified during my trial if I could of [*sic*], and I didn't do that.

THE COURT: Did your advise your lawyer that?

[DEFENDANT]: He know that, he sure do."

¶ 114 The trial court, having received an answer it apparently did not expect, abruptly recessed to chambers with the attorneys, later returned to the bench without further comment, and adjourned the proceedings.

¶ 115 Because the trial court abruptly ended its colloquy with defendant, this court is left with confusing and incomplete information to fully assess whether defendant made a clear claim of ineffective assistance, requiring the court to conduct a *Krankel* inquiry. For instance, when defendant first stated he felt that, if he had testified it would have changed the outcome of his trial, one might conclude that defendant was not asserting a clear claim of ineffective assistance of counsel. However, his next two statements to the court present a muddier picture. Defendant further stated that (1) he would have testified if he could have and (2) his attorney knew he would have testified if he could have.

¶ 116 Unclear from this exchange is (1) what exactly defendant said to his attorney, (2) what his attorney said in response, and (3) at what point in the case, if any, did defendant tell his attorney he wanted to testify. These questions are material to our determination whether defendant was asserting a clear claim of ineffective assistance of counsel.

¶ 117 If defendant was merely advised by his attorney not to testify and defendant accepted that advice as trial strategy, ineffective assistance of counsel did not occur. But if defendant was advised by his attorney that he did not have the right to testify or his attorney prohibited defendant from testifying, his right to effective assistance may have been violated. If defendant merely expressed to his attorney *after* his trial concluded but before the trial court's inquiry that he wished he would have testified because it may have changed the outcome, he has expressed only a claim of "buyer's remorse."

¶ 118 Because the trial court abruptly ended its exchange with defendant without obtaining answers to these questions and then failed to memorialize its conversations with defendant's counsel on the record, we cannot definitively say whether the court's obligation to conduct a preliminary *Krankel* inquiry was triggered. We can easily say, however, that, having opened the door that it did, the court should have asked a few more questions to allow itself and a reviewing court to make a fair determination of that question.

¶ 119 Furthermore, we disagree with the State that the inquiry the court did conduct was adequate under *Krankel*. Although we acknowledge that a brief exchange between the court and a defendant may be sufficient to provide the court with the necessary facts upon which to base

its decision (*Moore*, 207 Ill. 2d at 78), for the reasons expressed (*supra* ¶¶ 117-18), the court's brief discussion with defendant left unanswered questions that are material to the analysis.

¶ 120 Moreover, "some interchange between the trial court and trial counsel regarding the facts and circumstances surrounding the allegedly ineffective representation is permissible and *usually necessary*." (Emphasis added.) *Moore*, 207 Ill. 2d at 78. In this case, the record tells us that some discussion between the court and counsel about the facts and circumstances surrounding the defendant's waiver of his right to testify did indeed occur both before and after the defendant's remarks to the court, but we are left to guess at what that discussion might be. We decline the State's invitation to infer (1) the contents of those discussions and (2) that those discussions satisfied the trial court that defendant's claim lacked merit.

¶ 121 Accordingly, based upon the unusual and unique facts of this case, we conclude a preliminary *Krankel* inquiry is necessary and remand for that limited purpose.

¶ 122 III. CONCLUSION

¶ 123 For the reasons stated, the cause is remanded for the trial court to inquire into defendant's *pro se* posttrial claims regarding his right to testify. The judgment of the trial court is otherwise affirmed.

¶ 124 Affirmed in part and remanded with directions.