

IN THE COURT OF APPEALS OF IOWA

No. 3-012 / 11-1424
Filed February 13, 2013

STATE OF IOWA,
Plaintiff-Appellee,

vs.

JEFFREY ADAM SMITH,
Defendant-Appellant.

Appeal from the Iowa District Court for Scott County, Mary E. Howes,
Judge.

A defendant asserts that he received ineffective assistance of counsel
when his attorney elicited testimony that was the subject of a stipulation.

AFFIRMED.

Lori J. Kieffer-Garrison, Rock Island, Illinois, for appellant.

Thomas J. Miller, Attorney General, Benjamin M. Parrott, Assistant
Attorney General, Michael J. Walton, County Attorney, and Dion Trowers,
Assistant County Attorney, for appellee.

Considered by Vaitheswaran, P.J., and Tabor and Mullins, JJ.

VAITHESWARAN, P.J.

This appeal raises a single issue: whether a defendant's trial attorney was ineffective in eliciting testimony that was the subject of a stipulation.

I. Background Facts and Proceedings

The State charged Jeffery Smith with operating a motor vehicle while intoxicated, third offense, and driving under suspension while barred as a habitual offender. Smith stipulated that he was under the influence and was barred from driving, and the jury was informed of these stipulations. The only remaining question left for the jury to decide was whether Smith was driving.

The jury heard testimony from a woman who saw a man driving erratically on Davenport roads. The woman called 911, followed the vehicle to a bar, and witnessed the man get out of the driver's side of the vehicle. When police arrived at the scene, the woman pointed out the driver and said, "This is the man that got out of the vehicle."

The jury also heard Smith testify that he never drove that night. He explained that he was barred from driving in 2008 and the bar was not slated to expire until 2013.

The jury found Smith guilty on both counts, and the district court imposed sentence.

II. Ineffective-Assistance-of-Counsel Claim

On appeal, Smith contends his trial attorney was ineffective in eliciting testimony that he was barred from driving. He asserts the testimony could have led the jury to conclude that he had prior operating-while-intoxicated convictions, a fact that the jury was not otherwise privy to.

“Ordinarily, ineffective assistance of counsel claims are best resolved by postconviction proceedings to enable a complete record to be developed and afford trial counsel an opportunity to respond to the claim.” *State v. Truesdell*, 679 N.W.2d 611, 616 (Iowa 2004). In this case, the record is adequate to decide the issue.

Smith must show that counsel breached an essential duty and that prejudice resulted. *Strickland v. Washington*, 466 U.S. 668, 687 (1984). On our de novo review, we are convinced he cannot establish either prong. See *Truesdell*, 679 N.W.2d at 615 (setting forth the standard of review).

On the breach prong, Smith’s attorney articulated a strategic reason for eliciting the testimony that Smith was barred from driving. See *Strickland*, 466 U.S. at 690–91 (generally insulating strategic decisions from challenge). In closing argument, she stated, “Jeff has not been able to drive for so long that he already knows he’s not driving.” In other words, the challenged testimony allowed the jurors to find that Smith did not drive because he was not allowed to drive. Counsel’s strategy was a reasonable one, and we find no breach of an essential duty.

As for the prejudice prong, Smith’s status as a barred driver was properly in front of the jury because it was an element of one of the crimes with which he was charged. See Iowa Code §§ 321.555, .561 (defining the term “habitual offender” and defining the crime of driving while being barred as a habitual offender). The jury was informed of the stipulation on this element, and Smith’s testimony did nothing more than reaffirm the substance of the stipulation. For this reason, Smith cannot establish a reasonable probability that, but for

counsel's elicitation of the driving-while-barred testimony, the result of the proceeding would have been different. See *Strickland*, 466 U.S. at 687.

We affirm Smith's judgment and sentence for operating a motor vehicle while intoxicated, third offense, and driving under suspension while barred as a habitual offender.

AFFIRMED.