

matter proceeded to a bench trial.

At the trial, Kyle Howerton testified that he had just left his girlfriend's house shortly before midnight on December 26, 2007, and was driving north on Market Street in Marion when a truck turned in front of him, making a wide right turn and overcorrecting over the curb before proceeding in the northbound lane of Market Street. The truck turned east on Main Street and Howerton followed at a distance. The truck crossed the center line several times and varied its speed erratically.

Howerton called 9-1-1. At this point, defendant's counsel objected that the tape should not be played until the State introduced the other party to the call. Defense counsel was overruled. The State then played audiotapes of two 9-1-1 calls by Howerton.

Howerton testified that as he followed the truck onto Norman Road, he saw it disregard a stop sign, weave across lanes, and go down an embankment and flip into a creek. Three months before the accident, Howerton had been hired as a police officer for the City of St. Louis, but he testified that no special training came into play for his actions or observations that evening. Howerton stopped at the scene of the accident, called 9-1-1, and went to check on the occupant of the truck. Howerton identified defendant as the occupant. Defendant told Howerton he was not injured, but he asked what had happened. Howerton stated that defendant smelled of alcoholic beverage, swayed while standing, and slurred his speech. Howerton gave his contact information to a deputy who arrived at the scene, and then Howerton left.

Deputy John Fleming of the Williamson County sheriff's department testified that on the night of the accident he was in the sheriff's office radio room when he was informed by the dispatcher of a possible drunken driver. The license plate numbers were identified as belonging to defendant, at that time a sergeant for the sheriff's department and a direct supervisor of Fleming. A second call stated the car had been in an accident. Deputy Fleming

stated that he responded to the scene more for safety purposes than investigative purposes, because the desk sergeant had notified the state police for an investigation.

At the scene, Fleming saw a truck flipped in the creek and two men standing nearby. Fleming was greeted by Howerton. While Fleming was talking to Howerton, defendant walked up the embankment and talked to them. Fleming smelled a strong odor of alcoholic beverage and asked defendant to sit in his squad car. An ambulance arrived. Defendant stated he did not need to see any paramedics and the ambulance left.

Fleming walked down into the creekbed to make sure there was no one else involved in the accident, and as he was walking across the undercarriage of the flipped truck, he heard defendant holler down to him: "John, I'm having a bad fucking day. I don't want to talk to anybody. I am out of here." At that point, defendant had been standing 30 feet in front of the squad car on Norman Road. Fleming replied for defendant to "just hang on" and that he would be back in a minute to talk him. When Fleming went back to his car, defendant was nowhere to be seen.

On cross-examination, Fleming testified that he was at the scene to see if there were injuries and not for a DUI investigation. He testified that the standard protocol was to refer the matter to another agency, usually the Illinois State Police, when an officer is involved in an incident and that he did not execute forms for driving under the influence.

Defendant testified on his own behalf that he had forgotten to take medications on the day of the accident. He stated that he has become light-headed and even had abrupt blackouts when he has forgotten to take his medication. Defendant testified that he did not remember driving through a stop sign or being involved in an accident.

At the conclusion of the trial, the bench found defendant guilty. Defendant was fined and ordered to undergo substance abuse treatment. The court denied defendant's posttrial motion for a new trial.

Defendant filed a timely notice of appeal.

ANALYSIS

Defendant asserts a multiplicity of issues stemming from the issuance of the uniform traffic citation, the performance of his trial counsel, and the sufficiency of the evidence at the trial. Both the grounds for issuing the ticket and the finding of guilt are supported by the record.

The record contains strong evidence that defendant had been driving while under the influence of alcohol. Kyle Howerton testified that he saw defendant's truck make a wide turn and overcorrect itself in front of him. Howerton followed the truck and described dangerous driving that could have supported finding defendant guilty of numerous traffic violations and would certainly have established grounds for a traffic stop. Howerton saw the truck disregard a stop sign and weave across and then leave the road into an embankment, where the truck flipped. Howerton noticed that defendant swayed, slurred his speech, and smelled as though he had been drinking. Deputy Fleming arrived on the scene but testified that his department's protocol was to refer matters to other departments, such as the Illinois State Police, when one of their own is involved in an incident. Nonetheless, Fleming talked with Howerton and noticed a strong smell of alcoholic beverage on defendant. Defendant left the scene while Fleming was checking to make sure no one else was involved, or injured, in the accident and before any other department could arrive to investigate. This circumstantial evidence was more than sufficient to support a conviction for driving while under the influence of alcohol. See *People v. Hires*, 396 Ill. App. 3d 315, 318, 920 N.E.2d 1083, 1085 (2009).

The citation was properly issued. Trooper Nelson issued the citation but was not called as a witness by either side. Defendant asserts several separate issues stemming from the issuance of the ticket by an officer who did not provide any evidence in the record.

Defendant asserts that he was not properly charged, that there was no probable cause, and that defense counsel should have filed a pretrial motion to quash the arrest. These contentions lack merit.

Nothing in the record suggests that Trooper Nelson would have contributed to defendant's case. Trooper Nelson did not observe defendant on the night of the incident. Deputy Fleming testified that defendant walked away from the scene before Trooper Nelson arrived. Although Trooper Nelson might have bolstered the State's case, he was not an essential witness to the prosecution. Similarly, there is no indication that Trooper Nelson knew exculpatory information or would have contradicted the State's case. The decision of what witnesses to present is a matter of trial strategy that is generally immune from claims of ineffective assistance of counsel. *People v. Lacy*, 407 Ill. App. 3d 442, ___, 943 N.E.2d 303, 325 (2011); see *People v. Banks*, 237 Ill. 2d 154, 214, 934 N.E.2d 435, 468 (2010). Defense counsel's decision not to call Trooper Nelson laid well within the bounds of sound trial strategy.

The record indicates that there was probable cause to issue the citation. The fact that Trooper Nelson did not personally witness defendant on the night of the incident is irrelevant. Probable cause may be based on hearsay. *People v. Earley*, 212 Ill. App. 3d 457, 465, 570 N.E.2d 1235, 1240 (1991). Furthermore, the knowledge of one law enforcement officer, such as Deputy Fleming, may be imputed to others investigating a matter. *People v. Fonner*, 385 Ill. App. 3d 531, 540, 898 N.E.2d 646, 654 (2008). Nothing in the record suggests any chance of success from challenging probable cause or filing a motion to quash his arrest.

Indeed, in ruling on defendant's posttrial motion, the trial court found that the State had established probable cause:

"The uniform citation in this case was issued by a State Trooper after a complete investigation[] and a determination of probable cause by the trooper and the

Williamson County State's [Attorney]. The citation was properly issued."

On appeal, defendant argues that the record is devoid of any evidence of an investigation by the Illinois State Police. From this, defendant asserts that the court improperly considered matters outside the record. Defendant's argument ignores that the trial court issued its ruling after conducting a posttrial hearing that was not transcribed. There is no indication that in rendering the underlying judgment the trial court considered any improper comments regarding the investigation of the Illinois State Police

Defendant also contends that the trial court improperly admitted the 9-1-1 calls into evidence. Prior consistent statements are generally inadmissible as hearsay. *People v. Hudson*, 86 Ill. App. 3d 335, 339, 408 N.E.2d 325, 328 (1980). Defendant, however, does not point to any overlap with Howerton's testimony. Furthermore, the trial court would have been justified in admitting the conversations for matters outside the truth of the assertions. Howerton's calls were relevant to the manner in which the police responded and the timing of the events. See *People v. Williams*, 181 Ill. 2d 297, 313, 692 N.E.2d 1109, 1119 (1998). In any event, the bench is presumed to have disregarded incompetent evidence, and nothing in the pronouncements of the court suggests that the 9-1-1 calls played a role in its decision. See *People v. Stanley*, 397 Ill. App. 3d 598, 604, 921 N.E.2d 445, 450 (2009).

Despite his counsel's competent representation, defendant's guilt was proven beyond a reasonable doubt. Defendant points to instances where counselors have failed to competently represent defendants accused of driving under the influence. See *People v. Moore*, 279 Ill. App. 3d 152, 157, 663 N.E.2d 490, 495 (1996) (counsel failed to object to comments on defendant's silence after receiving his *Miranda* warnings (*Miranda v. Arizona*, 384 U.S. 436 (1966))); *People v. McMillin*, 352 Ill. App. 3d 336, 344, 816 N.E.2d 10, 17 (2004) (counsel failed to object to an improper closing argument and the admission of evidence of prior criminal history). In this case, the alleged defects in defense counsel's

representation were well within the bounds of trial strategy. Defendant's contentions regarding the issuance of the ticket are without merit. Moreover, the record supports a finding of guilt, and nothing indicates that the trial court based its decision on improper evidence.

Accordingly, the judgment of the circuit court of Williamson County is hereby affirmed.

Affirmed.