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SIXTH DIVISION  
December 28, 2012

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IN THE APPELLATE COURT OF ILLINOIS  
FIRST JUDICIAL DISTRICT

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VILLAGE OF NORRIDGE, ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County.
	)	
v.	)	Nos. YT 151 170,
	)	YT 151 171
	)	
DANIEL GOMEZ,	)	The Honorable
	)	Bridget Hughes,
Defendant-Appellant.	)	Judge Presiding.

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PRESIDING JUSTICE LAMPKIN delivered the judgment of the court.  
Justices Hall and Robert E. Gordon concurred in the judgment.

**ORDER**

¶ 1     *HELD:* Defendant was properly convicted where there was probable cause for his arrest, the State proved defendant’s guilt beyond a reasonable doubt, and the trial court was not biased against defendant.

¶ 2     Defendant, Daniel Gomez, appeals his convictions of reckless driving and street racing pursuant to sections 11-503 and 11-506(a) of the Illinois Vehicle Code (Vehicle Code),

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respectively. 625 ILCS 5/11-503, 11-506(a) (West 2010). Defendant contends that the arresting officer lacked probable cause to arrest him where the officer relied on limited information, mostly gathered from an unreliable witness. Defendant additionally claims that the trial court based its finding of guilt on insufficient evidence, thereby ruling against defendant without proof beyond a reasonable doubt. Defendant further contends that he was denied his due process right to a fair trial because the trial court continuously exhibited bias against him throughout the trial and convicted him despite the lack of sufficient evidence. Based on the following, we affirm.

¶ 3

#### FACTS

¶ 4 According to the arrest report, on December 24, 2010, at approximately 2 a.m., defendant was ticketed and arrested for improper lane use and street racing. 625 ILCS 5/11-709(a), 5/11-506(a) (West 2010). The improper lane use charge was later amended to a reckless driving charge over defendant's objections. 625 ILCS 5/11-503 (West 2010). Prior to trial, defendant filed a motion to quash his arrest.

¶ 5 Corporal Vaughn Watts, of the Village of Norridge Police Department, testified to the following facts during the motion hearing. On December 24, 2010, Corporal Watts responded to a property damage vehicle accident at 4401 North Cumberland Avenue, in Norridge, Illinois. Upon arrival at the scene, Corporal Watts noticed a white Nissan situated north of a Red Lobster restaurant on Cumberland Avenue and a black Chrysler parked on Cumberland Avenue, approximately 75 feet away from the white car. During an interview at the scene, defendant told Corporal Watts that the Nissan struck his Chrysler as they were both traveling north. Defendant further stated that he was not acquainted with the driver of the Nissan. Corporal Watts testified

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that, pursuant to his investigation, he learned that the front bumper of the Nissan swiped the driver's side door of defendant's Chrysler. Eventually, the Nissan jumped the curb and hit a CTA bus shelter before coming to a stop at a "parking stump" north of the Red Lobster restaurant. Corporal Watts testified that he interviewed the passengers traveling in both vehicles, but did not note the interviews in his report because the passengers were uncooperative.

Corporal Watts, however, was able to obtain relevant information from an independent witness, Bill Koutnik, who had been driving in the same direction as the two cars in question. According to Corporal Watts, Koutnik indicated that both cars were traveling at a high rate of speed and were racing each other, in a provoking manner, and seemed to be trying to get away from one another.

¶ 6 The trial court denied defendant's motion and found that the police officer had probable cause for the arrest. In so finding, the trial court stated:

"We're solely here as to the motion as to whether or not the officer had probable cause to arrest the defendant for an offense, at least, versus no offense. And in this case, clearly, the officer did. He arrived on the scene, saw a severe accident in which there was a lot of damage to two cars. One was off the road. He talked to an independent witness who observed the cars. And then all the physical evidence in terms of the condition of the vehicles would corroborate and substantiate the testimony and the information he received from the independent witness. So based upon that, I think the officer had probable cause to place the defendant under arrest."

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¶ 7 Following the motion hearing, defendant waived his right to a jury trial and the trial court proceeded to a bench trial. The parties stipulated to the testimony of Corporal Watts from the hearing on defendant's motion to quash arrest. At trial, Koutnik testified that on December 24, 2010, at around 1:30 a.m., he was driving north on Cumberland Avenue in the left-hand lane, at the speed of 35 miles per hour. At that section of Cumberland, there were two lanes going north and two lanes going south. According to Koutnik, he noticed two cars come up quickly behind him and drive past him in the right lane at a high rate of speed, while he continued driving at 35 miles per hour in the left lane. Koutnik observed the two cars for approximately two blocks while the two cars appeared to be attempting to pass each other. Then, Koutnik observed the two cars "sideswipe[ ] each other two, maybe three times." After the last hit, the white car jumped the curb and crashed and the black car pulled over to the curb and stopped. Upon arriving at the scene, Koutnik pulled over to make sure no one was injured. Koutnik remained on the scene to speak to responding police officers.

¶ 8 Defendant called Oswaldo Castillo to testify to the following facts. On the night of December 24, 2010, Castillo was the only passenger in a black Chrysler driven by defendant. Castillo was unsure whether defendant was traveling at the speed limit, but he stated that defendant was driving cautiously and that other cars were passing them. Castillo further testified that he had been drinking that night, but that he did not smell alcohol on defendant. According to Castillo's testimony, a person driving a white Nissan was driving erratically in front of defendant's car and repeatedly slammed on the brakes, almost to a complete stop. Defendant attempted to create distance, but the driver of the white Nissan continued to drive erratically so

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defendant moved into the left lane. Castillo stated that the driver of the white Nissan then swerved into defendant's car from the right lane, swiping the passenger's side of defendant's car. According to Castillo, the driver of the white Nissan then drove into the left lane while defendant moved into the right lane. Castillo testified that the driver of the white Nissan again swerved into defendant's car, this time moving from the right lane into the left lane thereby hitting the driver's side of defendant's car. Castillo additionally testified that defendant never lost control of the car, and was pulling over and slowing down when they were hit a third time, at which point, the driver of the white Nissan lost control of the car. In response, defendant pulled over, parked, and called 911. Castillo testified that defendant never turned off onto any side street to get away from the white car.

¶ 9 The trial court ultimately found defendant guilty of street racing and reckless driving. In so finding, the trial court stated:

“I do agree with the State in terms of that the witness was incredible, just based upon his demeanor and his recollection and the manner in which he testified. He kept wanting to explain answers. I didn't think his testimony was credible. I think it was inconsistent with \*\*\* the first witness, the State's witness, who was independent, who was just a motorist on the road.

I also think the defendant's witness was inconsistent with what the officer said because the officer's testimony was stipulated to for purposes of the trial. What he testified under oath at the motion was that the witnesses were uncooperative and wouldn't give him information. And I think that if this witness

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who testified for the defense was truthful today and he made those statements to the officer, the officer would have recorded that and had that information.

And the officer's testimony was that they were – when he interviewed them, their answers were a refusal to speak about what occurred. It makes no sense. So I believe the officer, and I believe the State's witness, and I don't believe the defendant's witness.

I am also considering the physical evidence, the photographs of the vehicle, and the manner in which the accident occurred. Based upon that, there's going to be a finding of guilty.”

¶ 10 A sentencing hearing was conducted, during which the trial court heard arguments in aggravation and mitigation. Evidence of defendant's prior history of reckless driving was heard in aggravation and defendant was sentenced to 30 days in the Cook County Department of Corrections. The trial court did not grant defendant credit for the time he served when he was arrested because he did not spend the night incarcerated. Defendant filed a timely notice of appeal without filing any post-trial motions. This appeal follows.

¶ 11 DECISION

¶ 12 I. Probable Cause

¶ 13 Defendant claims that the arresting officer lacked the requisite probable cause to arrest him and, therefore, the trial court erroneously denied his motion to quash arrest. Specifically, defendant argues that probable cause was lacking because: (1) the totality of the circumstances did not warrant a finding of a crime by a reasonable person; (2) the State's witness, Koutnik,

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provided unreliable and insufficient testimony; and (3) defendant's own statements that he was attempting to escape a reckless driver rebut the criminal charges.

¶ 14 As an initial matter, we note that defendant concedes that he waived review of this issue by failing to raise the matter in a post-trial motion. *People v. Enoch*, 122 Ill. 2d 176, 186 (1988) (the absence of both a trial objection and a post-trial motion constitutes a waiver of the issue on appeal). The plain error doctrine allows a reviewing court to consider unpreserved errors in two narrow instances:

“First, where the evidence in a case is so closely balanced that the jury's guilty verdict may have resulted from the error and not the evidence, a reviewing court may consider a forfeited error in order to preclude an argument that an innocent person was wrongly convicted. [Citation.] Second, where the error is so serious that defendant was denied a substantial right, and thus a fair trial, a reviewing court may consider a forfeited error in order to preserve the integrity of the judicial process. *People v. Herron*, 215 Ill. 2d 167, 178-79 (2005).

However, prior to invoking the plain error doctrine, we must determine whether an error was committed by the trial court. *People v. Piatkowski*, 225 Ill. 2d 551, 565 (2007). Where there is no error found, there can be no plain error. *People v. Bannister*, 232 Ill. 2d 52, 71 (2008).

¶ 15 Probable cause depends upon the totality of the circumstances at the time of arrest. *People v. Jackson*, 232 Ill. 2d 246, 275 (2009). A reviewing court examines whether the facts known to the officer at the time of the arrest were “sufficient to lead a reasonably cautious person to believe that the arrestee has committed a crime.” *Id.* at 274. “The circumstances need not

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reach the level of proof beyond a reasonable doubt, but rather just render it more probable that defendant committed the offense.” *People v. McClom*, 262 Ill. App. 3d 826, 833 (1994). A reviewing court gives deference to the trial court’s findings of historical fact, but adopts a *de novo* standard of review for the ultimate determination of probable cause. *People v. Wear*, 371 Ill. App. 3d 517, 529-30 (2007). “It is the function of the trial court to determine the credibility of witnesses and resolve any conflicts in their testimony and a reviewing court may not substitute its judgment as to the weight of disputed evidence or the credibility of the witnesses.” *McClom*, 262 Ill. App. 3d at 833. Due weight is given to any inferences drawn from the historical facts by the fact finder. *People v. Hackett*, 2012 IL 111781, ¶18. A trial court’s findings of fact will be reversed only if they are against the manifest weight of the evidence. *Jackson*, 232 Ill. 2d at 274.

¶ 16 In the present case, defendant was arrested for street racing and improper lane use. 625 ILCS 5/11-506(a), 11-709(a) (West 2010). The charges were later amended to street racing and reckless driving pursuant to sections 11-506(a) and 11-503 of the Vehicle Code, respectively. 625 ILCS 5/11-506(a), 11-503 (West 2010). The issue before us is whether there was probable cause to arrest defendant for street racing. Street racing is defined as:

"(1) The operation of 2 or more vehicles from a point side by side at accelerating speeds in a competitive attempt to outdistance each other; or

(2) the operation of one or more vehicles over a common selected course, each starting at the same point, for the purpose of comparing the relative speeds or power of acceleration of such vehicle within a certain distance or time limit; or



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- (3) the use of one or more vehicles in an attempt to outgain or outdistance another vehicle; or
- (4) the use of one or more vehicles to prevent another vehicle from passing; or
- (5) the use of one or more vehicles to arrive at a given destination ahead of another vehicle or vehicles; or
- (6) the use of one or more vehicles to test the physical stamina or endurance of drivers over long-distance driving routes." 625 ILCS 5/11-506 (West 2010).

¶ 17 Upon arrival at the scene, the arresting officer observed an accident in which there was damage to two cars. One of those cars was off the road after having crashed into a CTA bus station and eventually coming to a stop approximately three feet away from a structured building. The officer spoke to an independent witness, Koutnik, who provided information that was corroborated by the physical evidence. Koutnik, who had been driving in the same direction as the two cars in question, reported that both cars were traveling at a high rate of speed and had repeatedly sideswiped each other. Both drivers accused the other of driving provokingly while they were attempting to get away from each other. All the foregoing information was available to the arresting officer at the time of arrest. Considering the totality of the circumstances, we find that a reasonable person would believe that the offense of street racing had been committed and that defendant had committed the offense. See *McClom*, 262 Ill. App. 3d at 833. Therefore, defendant's arrest was supported by probable cause.

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¶ 18 Defendant challenges the trial court's finding of probable cause by raising doubt as to the credibility of the independent witness. Particularly, defendant questions the witness' ability to accurately observe the events that allegedly took place at a high rate of speed and for only two blocks. However, the trial court retains the right to determine the credibility of witnesses and weigh disputed evidence. See *McClom*, 262 Ill. App. 3d at 833. Furthermore, we find that defendant has failed to sufficiently demonstrate that the trial court's findings were against the manifest weight of the evidence. See *Jackson*, 232 Ill. 2d at 274.

¶ 19 Defendant also argues that the statements that he made to the arresting officer on the night of the accident rebut probable cause for his arrest. However, defendant fails to cite to any authority that supports his contention that his statements should be given more weight or credibility than that of an independent witness. Rather, numerous cases, some even cited by defendant, hold that it is the function of the trial court to determine the credibility of the witnesses, resolve any conflicts in the testimony, and weigh the disputed evidence. See *McClom*, 262 Ill. App. 3d at 833; *People v. Vail*, 23 Ill. App. 3d 80, 82 (1974); *People v. Wear*, 229 Ill. 2d 545, 562 (2008). Moreover, the court in *People v. Alvarez*, 2012 IL App (1st) 092119, ¶52, held that a conviction will not be reversed simply because the evidence is contradictory or because the defendant claimed that a witness was not credible. In the present case, the trial court weighed the conflicting testimony and found the independent witness to be more credible. Thus, we find defendant's arguments to be without merit.

¶ 20 In sum, the arresting officer had sufficient probable cause to arrest defendant and therefore, the court did not err in denying defendant's motion to quash arrest. Accordingly, we need not conduct a plain error analysis.

¶ 21

## II. Reasonable Doubt

¶ 22 We next address defendant's contentions that the State failed to prove defendant guilty of street racing and reckless driving beyond a reasonable doubt. In particular, defendant argues that: (1) the court improperly based his conviction on a single witness' testimony; (2) the witness provided insufficient evidence; (3) defendant adequately rebutted the statutory violations with his witness' testimony; and (4) the State failed to prove the essential elements of the crimes for which he was charged. We address each contention in turn.

¶ 23 A trial court's determination will be reversed on appeal only if the reviewing court finds, after viewing the evidence in the light most favorable to the prosecution, that no rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. *People v. Cunningham*, 212 Ill. 2d 274, 278 (2004). Reasonable doubt of the defendant's guilt is created where the evidence is unreasonable, improbable, or unsatisfactory. *People v. Wesley*, 382 Ill. App. 3d 588, 590 (2008). It is not the function of the reviewing court to second-guess the trier of fact's evaluation of the weight of the evidence or the credibility of the witnesses. *People v. Siguenza-Brito*, 235 Ill. App. 2d 213, 225 (2009). Rather, the trier of fact assesses the credibility of the witnesses, determines the appropriate weight of the testimony, and resolves conflicts or inconsistencies in the evidence. *People v. Evans*, 209 Ill. 2d 194, 212 (2004). A defendant's conviction will not be reversed simply because the evidence is contradictory or because the defendant claims that a witness is not credible. *Alvarez*, 2012 IL App (1st) 092119, ¶52.

¶ 24 Defendant argues that the trial court erred by relying heavily on a sole witness with a questionable ability to observe the events in short succession and at a high rate of speed, while

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disregarding defendant's statement that he was merely attempting to get away from the other driver. It has long been established that the testimony of a single witness is sufficient to support a conviction if it is clear and convincing. *People v. Cook*, 41 Ill. App. 3d 946, 951 (1976). Moreover, even where there are conflicts in the testimony, it is the responsibility of the trier of fact to resolve the conflicts, and convictions should not be set aside unless the evidence is so unreasonable or improbable as to raise a reasonable doubt of defendant's guilt. *People v. Campbell*, 146 Ill. 2d 363, 375 (1992). The trial court found Koutnik's testimony to be credible. That testimony was sufficient to support defendant's convictions, especially where it was corroborated by other evidence.

¶25 Turning to defendant's contention that he adequately rebutted the statutory violation with his witness' testimony, we find defendant's arguments without merit for the same reasons we noted above. The trial court found defendant's witness to be incredible and contradictory evidence does not warrant a reversal or a conviction. See *Alvarez*, 2012 IL App (1st) 092119, ¶¶51-52. Specifically, the trial court considered Castillo's demeanor, recollection, manner in which he testified, and his unwillingness to cooperate on the night of the accident. In regards to Castillo's uncooperative manner, we disagree with defendant's assertions that the trial court improperly considered Castillo's silence as a basis for defendant's conviction. Rather, review of the record reveals that the trial court relied on Castillo's silence to find him to be an incredible witness. Once again, we note that the reviewing court in *People v. Vail*, 23 Ill. App. 3d 80, 82 (1974), to which defendant frequently cites in his briefs, held that the trial court "had the right to determine which of the witnesses was worthy of belief." Therefore, we find that defendant's assertion that the trial court adopted a "possible supposition" of guilt standard is also unfounded.

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¶ 26 We next address defendant's assertion that the State failed to prove any essential element of street racing beyond a reasonable doubt.

¶ 27 Again, street racing is defined as:

"(1) The operation of 2 or more vehicles from a point side by side at accelerating speeds in a competitive attempt to outdistance each other; or  
(2) the operation of one or more vehicles over a common selected course, each starting at the same point, for the purpose of comparing the relative speeds or power of acceleration of such vehicle within a certain distance or time limit; or  
(3) the use of one or more vehicles in an attempt to outgain or outdistance another vehicle; or  
(4) the use of one or more vehicles to prevent another vehicle from passing; or  
(5) the use of one or more vehicles to arrive at a given destination ahead of another vehicle or vehicles; or  
(6) the use of one or more vehicles to test the physical stamina or endurance of drivers over long-distance driving routes." 625 ILCS 5/11-506 (West 2010).

¶ 28 Defendant was not found guilty under any particular subsection of the street racing statute. The lack of a specific subsection in the charges against defendant has led the parties to dispute which elements are essential and whether those elements have been proven beyond a reasonable doubt. As

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a reviewing court, we “may affirm the judgment of the trial court on any basis in the record, regardless of whether the trial court relied upon that basis or whether the trial court’s reasoning was correct.” *Alpha School Bus Co., Inc. v. Wagner*, 391 Ill. App. 3d 722, 734 (2009). Thus, we proceed with this issue by reviewing the record. The State presented the testimony of an independent witness who observed the two cars in question pass by his car at a high rate of speed, in a single-file line. Koutnik was able to judge the rate of speed based on his own speed of 35 miles per hour. See *People v. Ziegler*, 78 Ill. App. 3d 490, 498-99 (a lay witness may offer an opinion regarding “the rate of speed of a moving object if he is of ordinary intelligence and possessed an opportunity for observation.”). After passing the witness’ car, the two cars separated, each going into their own lane. Thereafter, the two cars sideswiped each other multiple times until one of the cars crashed. The witness’ testimony was corroborated by the physical damage to the cars. Defendant did not make an effort to disengage by turning off onto a side street or pulling over. Based on our review of the evidence, we find that the State has satisfied the elemental requirements of at least one, if not more, of the subsections of the speed racing statute.

¶ 29 Defendant next claims that the State failed to prove that defendant was driving with a willful or wanton disregard for the safety of persons or property. Illinois defines reckless driving as operating a vehicle “with a willful or wanton disregard for the safety of persons or property.” 625 ILCS 5/11-503(a)(1) (West 2010). Reckless driving is not the commission of a single traffic offense plus the required mental state. *People v. Paarlberg*, 243 Ill. App. 3d 731, 735 (1993). Instead, reckless driving cases fall into three general categories: (1) where the commission of multiple traffic offenses together demonstrate the driver’s willful or wanton disregard for the safety of persons and

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property; (2) where the driver's conscious disregard for the particular surroundings and circumstances rise to the level of willfulness or wantonness; and (3) where willful or wanton conduct is based, in part, upon the driver's intoxication or impaired state. *Id.* at 735-36. Actual damage to persons or property is not necessary to a finding of guilt for reckless driving. *People v. Tuell*, 97 Ill. App. 3d. 849, 852 (1981).

¶ 30 In the case at present, we find that defendant's conduct demonstrated his conscious disregard for his surrounding and circumstances. See *Paarlberg*, 243 Ill. App. 3d at 735-36. We recognize that defendant maintained control over his vehicle and we note defendant's assertion that he was struck by the other vehicle, not vice versa. Nevertheless, defendant actively participated in the events that ultimately resulted in a serious accident. Rather than pulling over or turning into another street, defendant continued to drive alongside a vehicle that he alleges to have been driving provocatively, until after an accident occurred. Defendant disregarded the high likelihood that his continued engagement with an erratic driver would result in damage to persons or property. We, therefore, conclude that the trial court properly found defendant guilty of reckless driving.

¶ 31 In sum, after reviewing the evidence in the light most favorable to the State, we find that the State proved defendant's guilt beyond a reasonable doubt. The State presented testimony from an independent witness, Koutnik, who observed the two cars passing him at a high rate of speed relative to his speed of 35 miles per hour. Koutnik further observed the two cars attempting to pass each other and sideswipe each other multiple times. As Koutnik continued to observe the situation, the white Nissan jumped the curb and crashed. The trial court explained that it based its ruling, not only on the independent witness' testimony, but also on the arresting officer's testimony, the physical

evidence, the photographs of the vehicle, the manner in which the accident occurred, and the incredibility of defendant's witness. The evidence was not so unreasonable, improbable, or unsatisfactory to render a question as to defendant's guilt.

¶ 32

### III. Bias

¶ 33 Defendant finally contends that the trial court was biased against him due to his misstatements regarding his status as an active duty member of the armed forces while he was actually a Marine reservist. According to defendant, the trial court exhibited bias against him by: (1) convicting defendant with insufficient evidence; (2) disregarding defendant's witness; (3) not allowing defendant credit for the time he spent in custody; (4) allowing the State to change the improper lane use charge to reckless driving without hearing defendant's objections; and (5) applying a distorted standard of reckless driving. Our review of the record fails to reveal any statement or reference regarding the armed forces or the Marine Reserve. Nevertheless, we proceed to address each of defendant's claims in turn.

¶ 34 As an initial matter, we once again note that defendant forfeited review of his contention because he failed to raise his claims of bias with a contemporaneous objection or in a post-trial motion. See *Enoch*, 122 Ill. 2d at 186. As stated previously, we may review forfeited errors under two narrow circumstances. See *Herron*, 215 Ill. 2d at 175. However, we must first determine whether any error occurred. *Piatkowski*, 225 Ill. 2d at 565.

¶ 35 Illinois Supreme Court Rule 63 (C)(1)(a) (eff. April 1, 2003) requires a judge to recuse himself in a proceeding in which the judge's impartiality might reasonably be questioned. A judge is not required to recuse himself based on the mere appearance of impropriety. *People v. Buck*, 361



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Ill. App. 3d 923, 932 (2005). Rather, an inquiry must be made as to whether a reasonable person, aware of the facts and the law, would believe that the judge was impartial. *Id.* A trial judge is presumed to be impartial, and the burden of overcoming the presumption rests on the party making the charge of prejudice. *People v. Jackson*, 205 Ill. 2d 247, 276 (2001). Allegations of judicial bias or prejudice are reviewed by examining the context and the judge's specific reaction to the events taking place. *Id.* at 277. "In the absence of a showing of animosity, hostility, ill-will, or distrust towards the defendant, proof falls short of establishing actual prejudice which would prevent or interfere with a fair trial." *People v. Neumann*, 148 Ill. App. 3d 362, 370 (1986).

¶ 36 We first address defendant's allegation that the trial court did not have credible bases for convicting him. Defendant concedes that the trial court enumerated the factors that formed the basis of its ruling. Yet, defendant maintains that his convictions were based upon insufficient evidence and argues that the stated bases were "a cover for the court's bias." As we have already concluded, defendant was proven guilty of reckless driving and street racing beyond a reasonable doubt and therefore, we find defendant's contention that he was convicted based on the trial court's bias to be without merit.

¶ 37 Defendant attempts to bolster his point by arguing that the trial court exhibited favoritism by disregarding the testimony of defendant's witness, Castillo. The trial court found Castillo incredible based on his demeanor, recollection, the manner in which he testified, and his unwillingness to cooperate with the police on the night of the accident. As repeatedly noted above, it is the function of the trial court to weigh evidence or consider witness credibility and the trial court's findings of credibility are given great deference because "it saw and heard the witnesses." See *Alvarez*, 2012

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IL App (1st) 092119, ¶51. As a demonstration of “animosity, ill-will, or distrust,” defendant points to Judge Hughes’ comment, stating that she found Castillo’s testimony “100 percent inconsistent” with the testimony of the other witnesses. Review of the record reveals that, in fact, there were consistencies between Castillo’s testimony and that of the other witnesses. However, when the judge’s statement is viewed in context, it does not demonstrate a bias or prejudice. See *Jackson*, 205 Ill. 2d at 277. Rather, the record shows that the judge engaged in a discussion with defendant’s counsel regarding her statement and counsel was allowed to present his argument regarding the issue. Moreover, the judge’s comment was made during closing arguments and there is no evidence to suggest that the judge had formed an opinion prior to hearing the evidence. Cf. *People v. Scott*, 23 Ill. App. 2d 167 (1959) (ruling that the trial court displayed prejudice where the judge made conclusive statements prior to hearing the evidence). Additionally, the judge stated that Castillo’s recollection of the facts was just one of several factors taken into consideration when determining the witness’ credibility. Therefore, we find that defendant failed to demonstrate actual prejudice by the trial court.

¶ 38 Defendant additionally claims that the trial court exhibited bias against him by refusing to allow him credit for time he served in custody on the night of his arrest. A defendant is entitled to credit against his sentence for time spent in custody prior to sentencing. 730 ILCS 5/5-8-7(b) (West 2010). Here, the trial court asked whether defendant had spent the night in custody upon his arrest, and when he answered no, the trial court did not give him credit for that day because he was not incarcerated overnight. However, defendant should have been given proper credit of a full day for the time he was in custody, regardless of whether he spent the night or not. See *People v. Smith*, 258

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Ill. App. 3d 261, 267 (1994) (a defendant held in custody for any fraction of a day should be given credit against his sentence for that day). While we do not minimize the impact of having to remain in custody for longer than necessary, we, nevertheless, find the matter to be moot because defendant's sentence has already been served. See *Evans*, 209 Ill. 2d at 208 (“an issue can become moot if circumstances change during the pendency of an appeal that prevent the reviewing court from being able to render effectual relief”). Furthermore, the trial court's failure to give defendant proper credit for time served did not bear any weight on defendant's guilt and, therefore, did not affect the fairness of the trial. See *Neumann*, 148 Ill. App. 3d at 369 (“[a]llegedly erroneous findings and rulings by the trial court are insufficient reasons to believe the court had personal bias or prejudice for or against a defendant”). Accordingly, we find that defendant has failed to demonstrate prejudice based on the trial court's failure to provide credit against his sentence for his time spent in custody on the day of his arrest.

¶ 39 Finally, we address defendant's remaining contentions that the trial court exhibited bias against him. First, defendant claims that the trial court was biased where it refused to hear defendant's objections and allowed the State to amend the improper lane use charge to a reckless driving charge. However, defendant fails to provide any argument to suggest that the ruling of the judge was a demonstration of prejudice rather than a fair decision based on the merits. In other words, defendant fails to prove that the decision was based on “animosity, hostility, ill-will, or distrust towards the defendant.” See *Neumann*, 148 Ill. App. 3d at 370. Defendant also argues that the judge's distorted standard of reckless driving was an exhibition of her bias toward defendant.

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However, defendant fails to provide any citations or analysis, in violation of Illinois Supreme Court Rule 341(h)(7) (eff. July 1, 2008). Therefore, this argument is waived.

¶ 40

#### CONCLUSION

¶ 41 For the aforementioned reasons, we hold that defendant's conviction was proper where the arresting officer had probable cause to arrest and the State proved defendant's guilt beyond a reasonable doubt. In addition, we hold that the trial court did not violate defendant's due process rights to a fair trial where it did not exhibit bias.

¶ 42 Affirmed.