

2012 IL App (2d) 110210-U
No. 2-11-0210
Order filed January 17, 2012

NOTICE: This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

IN THE
APPELLATE COURT OF ILLINOIS
SECOND DISTRICT

THE PEOPLE OF THE STATE)	Appeal from the Circuit Court
OF ILLINOIS,)	of Du Page County.
)	
Plaintiff-Appellee,)	
)	
v.)	No. 09-CF-1248
)	
RAYMOND ANDERSON,)	Honorable
)	Blanche Hill Fawell,
Defendant-Appellant.)	Judge, Presiding.

JUSTICE BOWMAN delivered the judgment of the court.
Justices Burke and Schostok concurred in the judgment.

ORDER

Held: The trial court did not err in denying: defendant's motion to dismiss the indictment; his motion to reconsider the denial of his motion to suppress; and his motion for judgment notwithstanding the verdict.

¶ 1 Following a jury trial, defendant, Raymond Anderson, was convicted of aggravated driving under the influence of alcohol (DUI) (625 ILCS 5/11-501(a)(2), (d)(2)(C) (West 2008)). Defendant was sentenced to three years' imprisonment and two years' mandatory supervised release. On appeal, defendant argues that the trial court erred: (1) in denying his motion to dismiss the

indictment; (2) in denying his motion to reconsider the denial of his motion to suppress evidence; and (3) in denying his motion for judgment notwithstanding the verdict (*n.o.v.*). We affirm.

¶ 2

I. BACKGROUND

¶ 3 Defendant was charged by indictment with aggravated DUI on May 21, 2009. The charge alleged that on April 4, 2009, defendant drove or was in actual physical control of a motor vehicle while under the influence of alcohol, and he had previously committed three or more DUI violations.

¶ 4 On September 8, 2009, defendant filed a motion to quash arrest and suppress evidence. He alleged that the arresting officer lacked reasonable suspicion to initially detain him and lacked probable cause to arrest him. A hearing on the motion to suppress took place on January 11, 2010. Officer Michael Krueger testified as follows. At about 1:45 a.m. on April 4, 2009, he was dispatched to Thornton's Gas Station to investigate a call. He observed a white Lincoln parked across two or three parking spaces. Defendant was lying across the front seat of the car with his pants down, and he appeared to be sleeping. Krueger knocked on the driver's side window to wake up defendant. He asked defendant to step out of the car and explain what he was doing there. Defendant said that he was tired and had stopped to sleep. Krueger suspected that defendant had been drinking because: he smelled of alcohol; his speech was slurred; he was leaning on the vehicle when he was standing outside; and his eyes were bloodshot, glassy, and a little droopy. Also, when Krueger asked defendant for identification, defendant passed his license a couple of times when looking through his wallet and then dropped it on the ground. When defendant went to pick it up, he almost fell, and he had to grab the car door for support.

¶ 5 Krueger told defendant of his suspicion and that he did not think defendant was fit to drive home. Krueger offered to call a cab. Defendant said that he could not afford a cab and was driving his friend's car, and he asked to sleep in the car. Krueger said that it would take defendant quite a

while to sober up, and he should not drive the car. Krueger told defendant that it would be fine if he parked the car and slept in it for a few hours. When Krueger asked defendant about the car keys, defendant took them out of his pocket to show the officer. Krueger then left.

¶ 6 At about 3:35 a.m. the same morning, Krueger observed the same car on the road. The weather was clear and dry. The car was weaving back and forth over the divided white marker lines for eastbound traffic. Defendant turned on his left signal indicator, but then he proceeded straight through the intersection without turning off the signal. Krueger did not know of any violation from this action. Defendant traveled another block and then made a U-turn through an opening in the median. Krueger did not know if there was any sign prohibiting such a turn there. Krueger continued to follow defendant for about one-quarter mile, until defendant signaled and made a right turn. Krueger activated his emergency lights to effect a traffic stop. Defendant pulled over, struck the curb, and continued a little bit before stopping.

¶ 7 Krueger approached the driver's side window. He asked defendant for his identification again, telling him that he had just seen him earlier and warned him not to drive. Krueger asked defendant to step out of the vehicle. Defendant handed Krueger his identification and did not respond to the comment about being told not to drive. When defendant got out, he leaned against the vehicle. They then moved to a location between the two cars. Defendant swayed back and forth while walking and then leaned on the car's trunk. Defendant still had a strong odor of alcohol on his breath, his eyes were still bloodshot, and he still had some slurred speech. Krueger asked defendant to perform field sobriety tests. Defendant declined, saying that he had been through this before and his attorney told him to never take any tests. Krueger placed him under arrest for driving under the influence of alcohol, based on Krueger's personal observations and defendant's manner of driving.

¶ 8 The State argued that based on the indicia of defendant's intoxication and the traffic violations, Krueger had a basis to stop defendant and arrest him for DUI. Defense counsel's only argument was that it "took [just] 13 minutes to complete the hearing from start to ruling." The trial court denied defendant's motion to suppress, finding that the officer had a basis to stop defendant and probable cause to arrest him.

¶ 9 Defendant's jury trial began on December 15, 2010. The trial court granted defendant's motion to bar the State from arguing that he could be found guilty based solely on the encounter at the gas station. It also granted defendant's motion to redact his statement to Krueger indicating that he had previously been arrested for DUI.

¶ 10 Officer Krueger again testified about what transpired on April 4, 2009, largely consistent with his testimony from the hearing on the motion to suppress. We summarize only relevant additional details. When defendant got out of the car, he was still in his underwear, and Krueger had to instruct him to pull his pants up. Defendant was also wearing just one shoe. Krueger asked defendant why his pants were down, and defendant replied, "You know why." Krueger did not ask for further explanation. When Krueger asked for identification, defendant pulled out a wad of papers from his pocket and passed his driver's license twice before retrieving it. When he went to hand it to Krueger, it dropped out of his hand and fell to the ground. Defendant almost fell forward when he went to pick it up. Krueger asked defendant why he was parked there, and defendant said that he was tired and just wanted to sleep. Defendant denied that he had been drinking, declined to take field sobriety tests, and said that he wanted to leave.

¶ 11 At this point in Krueger's testimony, defense counsel asked for a sidebar. Counsel stated that the statements about defendant wanting to leave and refusing field sobriety tests during the first encounter with Krueger were never disclosed to him. The prosecutor stated that she was also not

previously aware of those statements. Defense counsel moved for a mistrial. Upon questioning by the trial court, Krueger stated that the statements were not mentioned in his reports, and he had not previously informed the State of them. The trial court found that the State had not intentionally failed to disclose the information, and it offered a mistrial. Defense counsel argued that the mistrial should be with prejudice, resulting in the dismissal of the charges. The trial court disagreed, stating that it would allow a retrial. The defense then chose to proceed with the current trial.

¶ 12 Krueger continued testifying, describing the remainder of the encounter at the gas station, his observations of the car on the road later that morning, and the traffic stop. Krueger testified that when he saw the car the second time, it was traveling 10 miles under the speed limit. Krueger also testified that once he activates his emergency lights, the squad car's video equipment starts keeping a record from 20 to 30 seconds prior to activation; the car's camera is always on, but not always permanently recording. Krueger could have manually started the recording before activating his emergency lights, but he did not choose to do so. The videorecording was played for the jury. Krueger testified that when defendant was taken to the police station, he declined to take a Breathalyzer test.

¶ 13 On cross-examination, Krueger admitted that he did not write in his police reports that defendant had declined to perform field sobriety tests at the gas station, nor had he told prosecutors about that fact. Before Krueger left the gas station, he instructed defendant to park the car correctly. Krueger testified that he knew what a driver's license looked like, and defendant passed up the driver's license twice at the gas station and dropped it. Krueger included these facts in his report because they were significant. However, Krueger did not write in the report that defendant was swaying, even though that fact was also significant.

¶ 14 Krueger denied that defendant fumbled with his driver's license during the traffic stop as opposed to the earlier encounter, but he was impeached with his grand jury testimony to the contrary. When asked by defense counsel "Are you sure it wasn't a state ID? That's why he passed it up twice?," Krueger replied, "It was a driver's license, sir." However, Krueger was also impeached regarding this testimony; his sworn report and defendant's bond form indicated that defendant did not have his driver's license with him. Krueger testified that he thought defendant had his driver's license, but he made a mistake, and it may have been a state ID. Krueger denied that all of his testimony was mistaken.

¶ 15 On re-direct examination, Krueger testified that he watched defendant re-park the car. Krueger did not want to get in the car because defendant had been inside with his pants down, and he did not know what defendant had been doing in there. Krueger testified that defendant had provided a picture ID, which he thought was a driver's license.

¶ 16 Defendant moved for a directed finding based on Krueger's credibility being severely impeached, and the trial court denied the motion.

¶ 17 The defense called Michael Francq. Francq had known defendant professionally for about 12 to 13 years. On the night of April 3, 2009, he was working with defendant at defendant's office for three or four hours, beginning between 7 and 9 p.m. Francq's wife was also there. No one drank alcohol during that time, and defendant was not under the influence of alcohol. They all left around midnight. Defendant's car would not start, so Francq's wife loaned him her white Lincoln Town car. Francq did not know what defendant did after he left.

¶ 18 The jury found defendant guilty of DUI.

¶ 19 On January 14, 2011, defendant filed a posttrial motion to reconsider the denial of his motion to suppress, to dismiss the indictment, and for judgment *n.o.v.* On January 26, 2011, the trial court

denied the motion and sentenced defendant. Following the denial of his motion to reconsider the sentence, defendant timely appealed.

¶ 20

II. ANALYSIS

¶ 21

A. Motion to Dismiss Indictment

¶ 22 Defendant first argues that the trial court erred in refusing to dismiss the indictment, because Krueger committed perjury before the grand jury, thereby violating defendant's due process rights.

¶ 23 The grand jury's role is to determine whether probable cause exists that a person has committed a crime, which would warrant a trial. *People v. DiVincenzo*, 183 Ill. 2d 239, 254 (1998). Prosecutors advise the grand jury by informing them of the proposed charges and pertinent law. *Id.* Generally, a defendant may not challenge the validity of an indictment that a legally constituted grand jury returns, but a defendant may challenge an indictment procured through prosecutorial misconduct. *Id.* at 255. To obtain the dismissal of the indictment, a defendant must show that the prosecutorial misconduct affected the grand jury's deliberations and rose to the level of a deprivation of due process or a miscarriage of justice. *Id.* at 257. "The due process rights of a defendant may be violated if the prosecutor deliberately or intentionally misleads the grand jury, uses known perjured or false testimony, or presents other deceptive or inaccurate evidence." *Id.* A person commits perjury when, under oath or affirmation in a proceeding where such oath or affirmation is required, the person makes a false statement, material to the issue in question, which he does not believe to be true. 720 ILCS 5/32-2(a) (West 2008); *People v. Pawlaczyk*, 189 Ill. 2d 177, 193-94 (2000). The prosecutor's deception need not be intentional. *People v. Oliver*, 368 Ill. App. 3d 690, 696 (2006). The defendant must show that the denial of due process is "unequivocally clear" and resulted in prejudice that is "actual and substantial." *Id.* at 695. Prosecutorial misconduct resulting in a due process violation is actually and substantially prejudicial only if the grand jury would not

have otherwise indicted the defendant. *Id.* at 696-97. Where the facts about what occurred at a grand jury proceeding are undisputed, as in this case, we review *de novo* the question of whether the State prejudicially denied the defendant due process. *People v. Sampson*, 406 Ill. App. 3d 1054, 1057 (2011).

¶ 24 The testimony in question took place during the grand jury proceedings on May 21, 2009. Krueger testified as follows, in response to the prosecutor's leading questions. On the day in question, defendant was driving about 10 miles under the speed limit and was crossing lane markers. Defendant had an odor of alcohol on his breath; bloodshot, glassy eyes; and slurred speech. Krueger asked him for his driver's license, which defendant missed twice while fumbling through some paperwork. Once defendant found his license, he dropped it and almost fell in the process of picking it up. Defendant was leaning on the vehicle for support. Krueger asked defendant to perform field sobriety tests, and defendant refused, saying that he had been through this before. Krueger arrested defendant for DUI, and defendant refused a Breathalyzer test at the police station. Krueger reviewed defendant's abstract and was aware that defendant had three prior DUIs.

¶ 25 In denying defendant's motion to dismiss the indictment, the trial court stated that it found no due process violation, and Krueger's testimony was not misleading.

¶ 26 Defendant argues that dismissal of the indictment is proper based on Krueger's testimony that he possessed his driver's license on the night in question. Defendant argues that of the observations Krueger described in his grand jury testimony, the issue regarding his driver's license is most damaging because it concerns his inability to complete a very simple task. Defendant argues that such testimony was highly suspect because it is undisputed that he could not have possessed his driver's license that night, as it was being held by the Cook County circuit court. Defendant argues that Krueger's testimony cannot be dismissed as a mistake because the circumstances show that

Krueger knew at the time of his testimony that defendant did not have his driver's license. Defendant notes that, according to the evidence presented at trial, after arresting defendant Krueger completed a sworn report that had the "no" box checked as to whether defendant's driver's license was surrendered. Krueger wrote on the "reason" line that it was "not on person." Defendant's bond slip also did not indicate that his driver's license was seized for the summary suspension. Defendant maintains that Krueger's repeated insistence during his trial testimony that defendant had his license, including when defense counsel initially gave him the opportunity to say that it was a state ID, shows that Krueger knew that defendant truly did not have it at the time of arrest, and Krueger lied about the fact during trial. Defendant also argues that Krueger's inconsistent testimony before the grand jury that defendant fumbled with his license during the second stop, as compared to his trial testimony that it was during the first encounter, shows confusion caused by lying about the driver's license. Defendant argues that the remaining observations made by Krueger (bloodshot, glassy eyes; slurred speech; and odor of alcohol) all have other reasonable explanations, and without the driver's license testimony, the grand jury would not have likely indicted him.

¶ 27 We conclude that Krueger's incorrect grand jury testimony regarding defendant's driver's license does not constitute grounds to invalidate the indictment. Although defendant argues that the circumstances show that Krueger committed perjury regarding the driver's licence, the circumstances can just as easily, or even more easily, be interpreted to show that Krueger was mistaken. Krueger's testimony was consistent in all the hearings that on the day in question, defendant fumbled to find his identification, dropped it, and then almost fell retrieving it. Contrary to defendant's argument, Krueger's strong insistence that the identification was a driver's license could indicate that he truly believed that it was. Further, although defendant posits that Krueger lied about the license to bolster his case against defendant, the nature of the identification would be a

strange thing to lie about when Krueger's own postarrest report, which was available to defendant through discovery, indicated that defendant did not have it on his person. When confronted with evidence that defendant did not have his driver's license that day, Krueger still testified that he thought the identification was a driver's license, but he must have been mistaken, and it may have been a state ID.

¶ 28 Moreover, defendant has failed to show that without the incorrect testimony regarding the nature of the card, the grand jury would not have indicted him. The State is not required to present enough evidence for the grand jury to determine guilt or innocence, as that is an issue to be decided at trial. *People v. Holmes*, 397 Ill. App. 3d 737, 744 (2010). The State is not even required to present evidence for each element of the offense as long as there is some evidence relative to the charge, and the indictment is valid on its face. *Id.* A court may dismiss an indictment that is procured solely through perjured or incompetent evidence, but it should not dismiss an indictment unless all of the testimony the indictment is based upon is incompetent. *People v. Hruza*, 312 Ill. App. 3d 319, 323 (2000).

¶ 29 Even discounting Krueger's testimony that defendant fumbled with a card, Krueger's remaining grand jury testimony was that defendant: was driving about 10 miles under the speed limit; was crossing lane markers; had an odor of alcohol on his breath; had bloodshot, glassy eyes; had slurred speech; was leaning on the vehicle for support; and refused field sobriety tests and a Breathalyzer test. We agree with the State that these are the types of well-recognized factors that have been used to find that an officer had probable cause to believe that a driver was intoxicated, or that there was sufficient evidence that a defendant was driving while intoxicated. See *People v. Wear*, 229 Ill. 2d 545, 565-66 (2008) (traffic violations, difficulty walking, odor of alcohol, disobeyed police commands to return to vehicle); *People v. Weathersby*, 383 Ill. App. 3d 226, 229-

30 (2008) (glassy eyes, thick-tongued, smell of alcohol, refusal to take Breathalyzer test, and admission to drinking some alcohol); *People v. Diaz*, 377 Ill. App. 3d 339, 345 (2007) (bloodshot eyes, mumbled speech, odor of alcohol, balance problems, refusal to submit to Breathalyzer test); *People v. Scott*, 249 Ill. App. 3d 597, 604 (1993) (staggering, swaying while standing, odor of alcohol, slurred speech, and bloodshot eyes). Accordingly, the disputed information would not likely have substantially influenced the grand jury's determination that there was probable cause that defendant had committed a DUI, because Krueger testified to many other factors indicating that defendant was intoxicated. Therefore, the trial court did not err in denying defendant's motion to dismiss the indictment.

¶ 30

B. Motion to Suppress

¶ 31 Defendant next argues that the trial court erred in denying his motion to reconsider the denial of his motion to suppress, because Krueger's trial testimony rendered his testimony from the hearing on the motion to suppress not credible.

¶ 32 We review *de novo* a trial court's denial of a motion to reconsider if the denial is based on the application of existing law. *People v. Pollitt*, 2011 IL App (2d) 091247, ¶18. However, where the motion is based on new matters like additional facts or legal theories not previously presented, we apply an abuse of discretion standard. *Id.* Accordingly, the abuse of discretion standard applies here. See also *People v. Fulton*, 289 Ill. App. 3d 970, 973 (1997) (applying abuse-of-discretion-standard to trial court's decision to deny a motion to reconsider its denial of a motion to suppress). Regarding the underlying motion to suppress, our supreme court has held that when reviewing rulings on such motions, we should accord great deference to the trial court's factual findings and reverse those findings only if they are against the manifest weight of the evidence. *People v. Pitman*, 211 Ill. 2d 502, 512 (2004). However, we review *de novo* the ultimate ruling on the motion

to suppress. *Id.* A pretrial ruling on a motion to suppress is not final, and the trial court may change it at any time prior to final judgment. *People v. Brooks*, 187 Ill. 2d 91, 127 (1999).

¶ 33 Defendant argues that Krueger testified much differently about material facts during his trial testimony as compared to his prior testimony during the hearing on the motion to suppress. Defendant argues that Krueger added many new facts that were previously undisclosed to defendant, namely that: defendant had one shoe on at the gas station, and his pants were still down when he exited the car; Krueger asked defendant why his pants were down, and defendant said, “you know why”; defendant swayed while at the gas station; defendant asked to leave during the initial encounter; Krueger requested that defendant take field sobriety tests at the gas station, but defendant refused; and before leaving the gas station, Krueger ordered defendant to properly park his car. Defendant argues that the new facts that he asked to leave the gas station and refused field sobriety tests there are substantial and completely alter the nature of the first encounter, changing it from appearing that Krueger was giving defendant a break to appearing that Krueger was actively investigating a DUI. Defendant also argues that it does not make sense that if Krueger believed he was intoxicated, he still let him drive to repark his car, which was a fact also not contained in his police report and revealed for the first time during cross-examination at trial. Defendant argues that the multiple new facts, combined with the significant impeachment about his lack of a driver’s license, present a much different recollection than was previously heard at defendant’s motion to suppress and seriously call into question Krueger’s credibility.

¶ 34 In denying defendant’s motion to reconsider its ruling on the motion to suppress, the trial court stated that “there certainly were discrepancies in the officer’s testimony,” but they were not “enough” for it to reconsider the motion to suppress.

¶ 35 We conclude the trial court did not abuse its discretion in its ruling. Defendant did not argue at the hearing on the motion to suppress that Krueger lacked probable cause to arrest him for DUI, but rather referred only to the length of the hearing being 13 minutes. On appeal, defendant also does not dispute that, based on just the evidence presented at the hearing on the motion to suppress, Krueger had probable cause to arrest him. Regarding the additional facts revealed at trial that, at the gas station, defendant asked to leave and declined field sobriety tests, the trial court determined that defendant should have been alerted to these facts. The trial court gave defendant the option of a mistrial, but defendant chose to proceed. Most of the other additional facts further support a finding of probable cause, rather than detracting from it. Although defendant argues that it does not make sense that Krueger asked him to repark his car, Krueger provided an explanation through his testimony that defendant was originally parked across three parking spaces; Krueger did not want to repark the car himself because defendant had been in the front seat with his pants down; and Krueger watched defendant repark the car.

¶ 36 Defendant's main argument is that the additional facts and impeachment of Krueger rendered him incredible, warranting a reconsideration and grant of the motion to suppress. On motions to suppress, matters of credibility are for the trial court to decide because it has a firsthand encounter with the witnesses and is in the best position to observe their demeanor and make credibility judgments. *People v. Roa*, 398 Ill. App. 3d 158, 166 (2010). It is for the trier of fact to evaluate a witness's credibility in light of any inconsistencies. See *People v. Theis*, 2011 IL App (2d) 091080, ¶70. Here, the trial court recognized discrepancies in Krueger's testimony but stated that they were not "enough" to warrant reconsideration of the motion to suppress. This determination is not an abuse of discretion or otherwise against the manifest weight of the evidence. We have already determined that Krueger's incorrect testimony about the driver's license cannot be presumed to

constitute perjury. We further agree with the State that Krueger's failure to mention the additional facts at the suppression hearing could reasonably have been attributed to the manner of questioning or Krueger's amount of preparation, and it did not automatically render all of his testimony incredible. Significantly, Krueger's recitation of the central events remained largely consistent in all of his testimony, and the additional details did not contradict this testimony. Accordingly, the trial court did not abuse its discretion in denying defendant's motion to reconsider its ruling on the motion to suppress.

¶ 37 C. Motion for Judgment *N.O.V.*

¶ 38 Last, defendant argues that the trial court erred by denying his motion for judgment *n.o.v.*

¶ 39 The Code of Criminal Procedure of 1963 (725 ILCS 5/100-1 *et seq.* (West 2010)) does not expressly provide for a judgment *n.o.v.*, but the trial court may enter such a judgment because it is the same in substance as an order directing a verdict; they both provide the same relief and apply to the same challenge of the sufficiency of the evidence. *People v. Van Cleve*, 89 Ill. 2d 298, 302-03 (1982); see also 725 ILCS 5/115-4(k) (West 2010) (when the evidence is insufficient to support a guilty verdict at the close of the State's evidence or at the close of all of the evidence, the trial court may direct the jury to return a verdict of not guilty). A trial court that denied a motion for a directed verdict at the close of the evidence may enter a judgment of acquittal after a guilty verdict if the trial court concludes that its refusal to direct the verdict was improper. *Van Cleve*, 89 Ill. 2d at 303-04. A trial court should grant a directed verdict or judgment *n.o.v.* only where all the evidence, when viewed in the light most favorable to the nonmoving party, so overwhelmingly favors the moving party that no contrary verdict based on the evidence could ever stand. *Lazenby v. Mark's Construction, Inc.*, 236 Ill. 2d 83, 100 (2010). We review *de novo* the denial of a motion for a

directed verdict or the denial of a motion for judgment *n.o.v.* *Lawlor v. North American Corp. of Illinois*, 409 Ill. App. 3d 149, 161 (2011).

¶ 40 Defendant argues as follows. Although credibility questions are traditionally left to the trier of fact, it is contrary to due process and fundamental fairness to allow a conviction to be tainted by perjured testimony. Instead of addressing the perjured testimony regarding the driver's license, the State just argued that it should be ignored by arguing that it did not matter that Krueger could not recall whether defendant had his driver's license or state ID. The State also improperly capitalized on one of the new facts that Krueger testified to, that defendant refused to perform field sobriety tests during the first encounter, as an additional reason to find defendant guilty, which is contrary to due process. Defendant argues that the combination of perjury and impeachment rendered Krueger's testimony so incredible and unreliable that the only verdict should have been an acquittal.

¶ 41 We note that Krueger consistently testified at both the hearing on the motion to suppress and at trial that at the gas station: defendant's car was improperly parked; his pants were down; defendant smelled of alcohol; his speech was slurred; he was leaning on the vehicle for support; and his eyes were bloodshot and a little droopy. Krueger also consistently testified that when he later saw defendant's vehicle, defendant: weaved back and forth; used his turn signal but did not turn; made a U-turn; struck the curb before stopping; leaned against the vehicle when he exited; swayed; smelled strongly of alcohol; had slurred speech; had bloodshot eyes; refused to take field sobriety tests; and refused to take a Breathalyzer test. See also *People v. Garriott*, 253 Ill. App. 3d 1048, 1052 (1993) (refusal to perform Breathalyzer test is evidence of consciousness of guilt); *People v. Roberts*, 115 Ill. App. 3d 384, 387 (1983) (refusal to perform field sobriety tests is evidence of consciousness of guilt). A videorecording of the second encounter clearly shows the car striking the curb and defendant leaning on the car. Viewing the evidence in the light most favorable to the State,

the evidence does not so overwhelmingly favor defendant that no contrary verdict based on the evidence could ever stand.

¶ 42 As we have discussed, defendant was given the opportunity for a mistrial based on Krueger's testimony that defendant asked to leave the gas station and refused to take field sobriety tests there. Defendant chose not to proceed with a mistrial and extensively cross-examined Krueger about his failure to state in his police report that defendant refused to take field sobriety tests at the gas station. It was not improper for the State to also comment on this piece of evidence. Defendant was also able to extensively cross-examine Krueger about the nature of the piece of identification, and the defense argued in closing that Krueger's testimony was not believable based on additional facts and incorrect testimony that defendant had his driver's license. Thus, the issue of Krueger's credibility was highlighted at trial. As we have discussed, Krueger's incorrect testimony about the driver's license cannot be presumed to constitute perjury, and the additional details he provided at trial did not automatically make all of his testimony incredible. Accordingly, the trial court did not err in denying defendant's motion for judgment *n.o.v.*

¶ 43

III. CONCLUSION

¶ 44 For the reasons stated, we affirm the judgment of the Kane County circuit court.

¶ 45 Affirmed.