



car off the pool owner's property. Officer Rose believed that Sherrod did not have a valid driver's license but that defendant was obviously in no shape to drive. Once the vehicle was moved off the property, Officer Rose instructed defendant and Sherrod not to drive for the rest of the evening.

¶ 5 A third call from the pool owner led to a dispatch that defendant and Sherrod were in a vehicle southbound on Water Tower Road. Officer Rose saw the vehicle weaving on the road and stopped it. Defendant was driving and refused to take field sobriety tests. Officer Rose arrested defendant for driving while under the influence of alcohol (625 ILCS 5/11-501(a)(2) (West 2008)).

¶ 6 At trial, defendant testified that he had drunk only two or three beers on the day of the incident, all well before the traffic stop.

¶ 7 After a jury trial, the court entered a judgment on a verdict of guilty.

¶ 8 Defendant appeals.

¶ 9 ANALYSIS

¶ 10 Defendant argues he received the ineffective assistance of counsel. To prevail on such a claim, defendant must show that his counsel was deficient and that this resulted in prejudice. *Strickland v. Washington*, 466 U.S. 668, 687 (1984). Defendant falls well short of showing his counsel was deficient, and the record strongly supports the finding of defendant's guilt.

¶ 11 Defendant asserts that his counsel improperly failed to investigate a key witness. He asserts that the testimony of Sherrod could have bolstered his defense. This argument fails on several grounds. First, defendant fails to inform the record of any indication that his counsel failed to contact Sherrod. This inference is wholly unsupported. *People v. Kluppelberg*, 257 Ill. App. 3d 516, 527, 628 N.E.2d 908, 917 (1993); *People v. Kelley*, 304 Ill. App. 3d 628, 635, 710 N.E.2d 163, 170 (1999). Furthermore, defendant fails to provide

any affidavit or other documentation indicating that Sherrod would have testified in a manner favorable to defendant. *People v. Enis*, 194 Ill. 2d 361, 380, 743 N.E.2d 1, 13 (2000). Moreover, the record suggests that the use of Sherrod as a witness would have been extremely damaging to defendant. A supplemental discovery disclosure filed by an assistant State's Attorney indicated that defendant had offered Sherrod money to claim that he, and not defendant, was driving the car at the time of the stop.

¶ 12 The second issue raised by defendant is whether defense counsel failed to properly object while defendant was being cross-examined about his refusal to submit to field sobriety tests. Defendant asserts that the cross-examination was inflammatory. Defendant does not contest that the inquiry was relevant. Defendant's refusal to submit to the tests was relevant circumstantial evidence of defendant's consciousness of guilt. *People v. Hires*, 396 Ill. App. 3d 315, 318, 920 N.E.2d 1083, 1085 (2009); *People v. Jones*, 214 Ill. 2d 187, 201, 824 N.E.2d 239, 247 (2005). Defendant argues that the testimony of Officer Rose established defendant's refusal and that the State's revisiting of the issue was for improper purposes. Defendant contends that the State implied the burden was on defendant and that the extensive cross-examination merely served to humiliate and badger him.

¶ 13 The State made no improper implication. The prosecutor's cross-examination of defendant and closing argument were directed towards the material question of consciousness of guilt. The State framed the examination in terms of consciousness of guilt by asking defendant why he did not take the tests if he believed he would have passed them. The singular reference to an "opportunity to prove" was in the context of a longer line of questioning where defendant answered, "Because I didn't want to" and "I don't know." In the context of the rest of the record, the prosecutor's comment did not imply that defendant bore a burden to display his own innocence. See *People v. Graves*, 2012 IL App (4th) 110536, ¶¶ 44-45, 965 N.E.2d 546, 559; *People v. Johnson*, 218 Ill. 2d 125, 140, 842 N.E.2d

714, 723 (2005). Indeed, in closing the State argued that it had the burden of proving defendant's guilt beyond a reasonable doubt, and the jury was so instructed. See *Johnson*, 218 Ill. 2d at 142, 842 N.E.2d at 724.

¶ 14 Nor did the cross-examination of defendant bear the taint of ridicule. Defendant points to the duration of cross-examination, but the extent of the examination appears to stem from an attempt to ascertain a clear answer to the question of why defendant decided not to take the field sobriety tests—a relevant question regarding potential consciousness of guilt.

¶ 15 In any event, the record does not support defendant's assertion that the evidence was closely balanced. As indicated by the testimony of Officer Rose, not only was defendant driving while intoxicated, he had been instructed not to drive before he even took the wheel.

¶ 16 Accordingly, the judgment of the circuit court of Marion County is hereby affirmed.

¶ 17 Affirmed.