

No. 1-10-3017

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IN THE  
APPELLATE COURT OF ILLINOIS  
FIRST JUDICIAL DISTRICT

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THE PEOPLE OF THE STATE OF ILLINOIS, ) Appeal from  
 ) the Circuit Court  
 Plaintiff-Appellee, ) of Cook County  
 )  
 v. ) No. 10 CR 3874  
 )  
 TERRENCE COLES, ) Honorable  
 ) Rickey Jones,  
 Respondent-Appellant. ) Judge Presiding.

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JUSTICE PALMER delivered the judgment of the court.  
Justices Howse and Taylor concurred in the judgment.

**ORDER**

¶ 1 **Held:** The judgment of the circuit court of Cook County was affirmed where defendant's motion to quash arrest and suppress evidence was properly denied, where defendant failed to establish that the State's alleged suppression of relevant evidence and failure to correct false testimony changed the result of his trial, and where defendant failed to establish that he was prejudiced by his attorney's allegedly deficient performance.

¶ 2 Following a jury trial, defendant Terrence Coles was convicted of possession of a controlled substance. The trial court sentenced him to six years' imprisonment. On appeal,

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defendant contends that: (1) the trial court erred in denying his motion to quash arrest and suppress evidence; (2) his trial counsel provided ineffective assistance by failing to properly investigate the facts of the case before filing the motion to suppress and by failing to renew that motion when certain facts came to light at trial; and (3) defendant was denied due process of law when the prosecution failed to correct false testimony given by a police officer at the hearing on defendant's motion to quash arrest and suppress evidence. For the reasons that follow, we affirm.

¶ 3 Defendant was arrested and charged by information with two counts of possession of a controlled substance. Prior to trial, defendant filed a motion to quash his arrest and suppress evidence. The motion alleged that defendant had been arrested "at or near 202 S. Sacramento" without the authority of a valid search or arrest warrant and without probable cause. The trial court held a hearing on defendant's motion, where the following evidence was presented.

¶ 4 Chicago police officer Richard Cazerres testified that at 11:15 a.m. on January 19, 2010, he and his partner, Officer Manuel Solis, were conducting surveillance in a known narcotics area. The officers were dressed in plain clothes and were in an unmarked squad car. Officer Cazerres' Chicago police star was prominently displayed and he was wearing a safety vest and a radio. He was also carrying a weapon on his hip.

¶ 5 Officer Cazerres testified that he and his partner were sitting in their squad car, which was parked behind a "known drug house" located at "202 South Sacramento," when they saw defendant standing on the rear porch of that house. Defendant was approximately 70 feet away from Officer Cazerres and they were on the same elevation. Officer Cazerres observed defendant engage in a hand-to-hand transaction at the rear of the residence in which he tendered an

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unknown amount of United States currency for an unknown amount of items. Officer Cazerres could not tell the color of the items or the denomination of the money but testified that there were "items exchanged" and that they were about the size of a nickle.

¶ 6 Officer Cazerres then observed defendant leave the backyard of the property and walk down an alley. Officer Cazerres and his partner broke surveillance and drove up behind defendant, who at this point was walking down the alley with another person. Officer Cazerres and his partner exited their vehicle and approached defendant to conduct a field interview. The officers identified themselves as Chicago police officers and then Officer Cazerres asked defendant some "general questions" including his name, where he lived and if he "had anything on him." The officers were standing approximately three feet away from defendant while this conversation took place. Officer Cazerres explained that defendant was free to leave at this point because he "just wanted to talk to" defendant and it was "just a field interview."

¶ 7 Officer Cazerres testified that defendant was cooperative in answering questions and that defendant responded, "I only have a crack pipe on me." Officer Cazerres asked defendant where the crack pipe was, defendant told him, and Cazerres reached in and recovered the pipe from defendant's coat pocket. Officer Cazerres then placed defendant into custody and performed a custodial search. The officer recovered four plastic baggies containing a white rock-like substance containing suspect crack cocaine and one plastic baggie containing suspect heroin. The baggies were found in between defendant's shirt and pants. Officer Cazerres was asked if "this happened at 202 Sacramento, is that right? In the alley?" The officer responded yes. Officer Cazerres testified that he did not have a search or arrest warrant for defendant.

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¶ 8 On cross-examination, Officer Cazeres testified that he had been a police officer for eight years and that he had worked in narcotics for about four years. The officer was asked if, during his time in narcotics, he had knowledge of narcotics arrests at the location where he observed defendant, 202 South Sacramento, whether those arrests produced narcotics, whether he had knowledge of search warrants and narcotics arrests at "202 Sacramento" and whether Officer Cazeres personally arrested individuals who had been observed at "202 Sacramento." Officer Cazeres answered yes to each of these questions. The officer was then asked if he set up surveillance at "202 Sacramento" based upon this information, and he responded yes. It was during this surveillance of a known narcotics location that Officer Cazeres observed defendant engage in a hand-to-hand transaction in which defendant tendered United States currency in exchange for a number of small items and he believed it was a narcotics transaction. Officer Cazeres then approached defendant for a field interview and did not place defendant under arrest until defendant told the officers that he was carrying a crack pipe.

¶ 9 On redirect examination, Officer Cazeres testified that he did not see where defendant put the items after the transaction but that he never lost sight of defendant.

¶ 10 At this point, the trial court conducted an examination of Officer Cazeres. Officer Cazeres testified that when he set up surveillance, defendant was already standing alone on the rear first-floor porch of a two flat building. Defendant was near a window of the first-floor apartment of the building. Someone inside the residence opened that window and extended his or her hand. Defendant tendered the money, the hand was withdrawn into the residence and then it reemerged through the window and passed items to defendant. The officer could not see what

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the items were that defendant took from the hand that emerged from the window. Defendant turned his back to Officer Cazerez so that the officer could see defendant but not what he was doing. Defendant then turned around, walked off the porch and left the property. Once defendant walked into the alley, the officers broke surveillance and drove up behind him. Defendant was in the alley with another person, who the officers did not know. The officers approached defendant and asked him questions. Officer Cazerer testified that it was illegal to have a crack pipe and that a person carrying one could be charged with possession of drug paraphernalia. The officer asked defendant where the pipe was, defendant said it was in his pocket and the officer recovered it. Defendant was then arrested and searched and the narcotics were found on his person.

¶ 11 Following arguments, the trial court denied defendant's motion to quash arrest and suppress evidence. The court found that based on all of the information known to the officers, there was a reasonable articulable suspicion to believe that defendant had engaged in a narcotics transaction. These circumstances included defendant engaging in a "walk up type" transaction through the window of a known narcotics location. The court also found that the police conducted an appropriate inquiry when they stopped defendant, including asking defendant if he had anything on him. When defendant admitted to having a crack pipe on him, which was illegal, the officer lawfully asked defendant where the pipe was. Defendant admitted the pipe was in his pocket, the officers recovered it and placed defendant under arrest. The officers then conducted a valid search incident to that arrest and found the narcotics.

¶ 12 The case then proceeded to a jury trial. At that trial, Officer Cazerer testified to

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substantially the same sequence of events as he did at the suppression hearing. Additionally, when asked by defense counsel if he and his partner went to "a building near 202 South Sacramento" to conduct surveillance, Officer Cazerres responded yes. When asked which building, Office Cazerres responded that it was "a building just south of 5th Avenue on the west side of the street of Sacramento." The officer identified people's exhibit 1 as a photograph of "the two-flat gray-stone that is known to sell narcotics" and identified people's exhibit 2 as a photograph of "the rear of the building where I conducted my surveillance." The officer then reiterated the testimony that he gave at the suppression hearing regarding having observed defendant standing on the rear of the porch of that building and engaging in a hand-to-hand transaction through a window with someone inside the building. Officer Cazerres also reiterated his prior testimony regarding the conversation he had with defendant in the alley and his recovery of the crack pipe and suspected narcotics from defendant.

¶ 13 On cross-examination, Officer Cazerres testified that he was approximately 70 feet away from defendant when he observed him on the rear porch. Defense counsel then asked, "this incident occurred \*\*\* allegedly on [the porch at] the back of a house at 202 South Sacramento, is that right?" Officer Cazerres responded, "no." Defense counsel then asked where the hand-to-hand transaction occurred, and Officer Cazerres responded, "122 South Sacramento." The officer acknowledged that he did not include 122 South Sacramento in his police report. Officer Cazerres testified that he observed defendant from Whipple street, where his squad car was parked, across a vacant lot and past a north-south alley. The officer acknowledged that the distance from which he observed defendant on the rear porch could have been more or less than

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70 feet because he did not measure the distance. He also acknowledged that he could not "make out" that defendant tendered money to the hand extended through the window, that he only had a "suspicion" as to what was occurring through that window and that he did not know if defendant owed someone money. Officer Cazerres also estimated that the window through which the transaction took place was approximately 12 to 15 inches from the back door and that the porch was between 2 and 4 feet off the ground. The officer acknowledged testifying at the suppression hearing that the porch was one foot off the ground and explained that his estimate changed because defense counsel was now showing him a picture of the rear porch. Officer Cazerres also acknowledged that he did not send the crack pipe he recovered from defendant to the laboratory for testing and that he and his partner did not stop the person defendant was walking with in the alley after the transaction. Officer Cazerres also testified that he put the narcotics recovered from defendant in his pocket, which he usually did, and that the State's photograph of the rear porch at 122 South Sacramento was taken from a distance of less than 70 feet.

¶ 14 On redirect examination, Officer Cazerres testified that he and his partner stopped defendant in the alley at approximately 202 South Sacramento. This was the address where defendant actually committed the crime of possessing narcotics and the address that the officer put in his police report. He did not send the crack pipe for testing because it did not contain any crack cocaine.

¶ 15 Chicago police officer Manuel Solis corroborated the testimony of his partner, Officer Cazerres. He and his partner were conducting surveillance on the rear of a building on Sacramento that was known for high narcotics activity. He observed defendant stand on the rear

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porch of that building and tender an unknown amount of United States currency through a window to someone inside the residence and receive some unknown items in return. Officer Solis, who had been a police officer for 17 years and made numerous narcotics arrests, believed he witnessed a drug transaction. After defendant walked to the alley, Officer Solis and his partner drove up behind defendant, exited their vehicle and announced they were police officers. Officer Cazerres then asked defendant his name, address and if he "had anything on him." Defendant said he was carrying a crack pipe in his coat pocket, and Officer Cazerres retrieved the pipe and placed defendant into custody. He then conducted a search incident to that arrest and recovered five baggies, four of which contained suspect crack cocaine and one of which contained suspect heroin. After returning to the police station, Officer Solis inventoried those suspected narcotics.

¶ 16 In a sidebar conference outside the presence of the jury, defense counsel asked the court to declare a mistrial or to strike Officer Cazerres' testimony. Defense counsel pointed out that Officer Cazerres testified at trial that the hand-to-hand transaction occurred at 122 South Sacramento but that he previously testified at the suppression hearing that the address was 202 South Sacramento. Counsel asserted that he could not mount a defense because he had the wrong address and that defendant's due process rights had been violated because the State did not correct the mistake by filing a supplementary report. The trial court denied counsel's request. Defense counsel asked the court to reconsider its ruling, arguing that he needed to "look at the sight lines" and "distances" to prepare for the case. Counsel claimed that the defense was compromised because the State "moved the case a half block away" and counsel did not

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investigate 122 South Sacramento. Instead, counsel investigated 202 South Sacramento, which was the address mentioned in the police report and sworn to by the State as the address where the incident occurred. Counsel claimed that this was a discovery violation that warranted a mistrial or having Officer Cazeres' testimony stricken. The following discussion then took place:

"THE COURT: Counsel, did you send an investigator out to investigate that area?

MR. PITLUK [Defense counsel]: Yeah, and I went there too.

THE COURT: Oh, you did too. Did you take photographs of it?

MR. PITLUK: 202.

THE COURT: Did you take photos of that area?

MR. PITLUK: Judge, my investigator prepared photos which were of no help.

THE COURT: So you did have some photographs. You do have some photographs.

MR. PITLUK: I don't have photographs, Judge.

THE COURT: Did you take photographs of the area of 202?

MR. PITLUK: No, Judge, I did not."

The trial court denied defense counsel's request. In further argument, the State asserted that the crime of possession of a controlled substance occurred at 202 South Sacramento, to which the court responded that the State was playing with "semantics." The court also pointed out that the hand-to-hand transaction which led Officer Cazeres to suspect a drug transaction had occurred

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took place at an address other than 202 South Sacramento. The State responded that there was no evidence that the officers knew defendant was in possession of narcotics until they were at 202 South Sacramento. The court again denied defense counsel's request.

¶ 17 On cross-examination, Officer Solis acknowledged that he did not know how much money defendant handed through the window and that he did not know what the items were that defendant received in exchange. He and his partner did not return to the house to investigate after they brought defendant to the police station.

¶ 18 At the conclusion of Officer Solis' testimony, the court again brought up the issue of the address where the police observed defendant engage in a hand-to-hand transaction. The court noted that it was defendant's position that the "location where they suspected him to have been in a transaction is remotely relevant to the actuality of them stopping him and finding the dope on him at that spot." Defense counsel asserted that it "was not able to investigate the facts, the basis for what happened on this case when we got the wrong address." The following discussion then took place.

"THE COURT: I understand your point. I'll leave it at that, but essentially, now that I'm thinking about it more I'm starting to see the State's position more.

You know, I think the State made to [*sic*] much of an issue about them suspecting it being a drug transaction. When, in fact, there was nothing that happened that was criminal prior to that point.

They only suspected that it was some criminal activity. They didn't see any drugs. They just saw some transaction occur, and they describe what it was.

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MS. SULLIVAN [Assistant State's Attorney]: It's really just going to show that they didn't stop the defendant out of a vacuum.

THE COURT: All right.

MS. SULLIVAN: They just didn't see some guy walking down the street and stop him for no reason.

THE COURT: That's the purpose for admitting their suspicion that it was drugs just so that you can explain to the jurors why they stopped him.

\* \* \*

MR. PITLUK [Defense counsel]: Judge, I'll just note that in order for us to prepare to see what the police officer had the opportunity to observe the verdict of their observations, wrong address, we couldn't do that, and furthermore, it was known that they had the wrong information based on the officer's testimony in the preliminary hearing - - I mean in the motion to quash."

¶ 19 The parties stipulated that if called as a witness, a chemist at the Illinois state police crime lab would testify that the four baggies contained a rock-like substance that tested positive for cocaine and that the total weight was less than .2 gram. The other baggie contained a substance that tested positive for heroin and weighed .1 gram.

¶ 20 The State then rested its case. Defendant called Officer Cazerres as a witness. Officer Cazerres testified that he initially observed defendant engage in the transaction at 122 South Sacramento. The officer acknowledged testifying at the suppression hearing that the address of that house was 202 South Sacramento. Defense counsel then asked Officer Cazerres the

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following questions:

"Q. Where were you when you made these observations of the alleged hand-to-hand transaction?

A. It's 122.

Q. So you gave the wrong information, or you were wrong on June 8th, when you testified, right?

A. Yes, sir.

Q. And did you file - - did you convey that to anyone? Did you correct that?

A. No, it was a lot of questions being asked about 202, just a mistake."

The Defense then rested. Following closing arguments, the jury found defendant guilty of two counts of possession of a controlled substance.

¶ 21 Defendant filed a motion for a new trial. Included in that motion was a claim that defendant was denied his due process rights by a "discovery violation." Defendant argued that the police testified to "a new address for the hand-to-hand transaction at the jury trial" and that finding this information out at trial "prevented [the defense] from preparing an investigation into this discrepancy and prevented [the defense] from bringing in photograph[s] of both addresses to challenge Officer Cazeres." Attached to the motion were two photographs which purported to show the backs of the houses located at 122 and 202 South Sacramento. The trial court found that there was "no error" and denied defendant's posttrial motion. This appeal followed.

¶ 22 Defendant first contends that the trial court erred in denying his motion to quash arrest

and suppress evidence. Defendant claims that he was arrested without probable cause when the police approached him in the alley, announced their office, did not tell him he was free to leave and stood within three feet of him while demanding that he answer questions, including the "accusatory" question of whether he "had anything on him." Defendant asserts that this was the equivalent of a custodial arrest because a reasonable person in defendant's shoes would not have felt free to leave or refuse to answer the officers' questions.

¶ 23 The State initially responds that defendant has forfeited this issue for review. To preserve an issue for review, a defendant must object at trial and raise the matter in a written posttrial motion. *People v. Enoch*, 122 Ill. 2d 176, 186 (1988). Here, defendant did not include the denial of the motion to quash arrest and suppress evidence in his posttrial motion. Thus, he forfeited the issue for review. *Enoch*, 122 Ill.2d at 186. Under the narrow and limited plain error exception to the general forfeiture rule, a reviewing court may consider forfeited errors where the evidence was closely balanced or where the error was so egregious that the defendant was deprived of a substantial right and thus a fair trial. *People v. Herron*, 215 Ill. 2d 167, 178 (2005). To obtain relief, the defendant must first show that there was a clear or obvious error. *People v. Hillier*, 237 Ill. 2d 539, 545 (2010). The burden of persuasion remains with the defendant, and the first step in plain error review is to determine whether any error occurred. *People v. Lewis*, 234 Ill. 2d 32, 43 (2009). For the reasons that follow, we find none here to excuse defendant's forfeiture of this issue.

¶ 24 In reviewing a trial court's decision on a motion to quash arrest and suppress evidence, we apply a two-part standard of review. *People v. Luedemann*, 222 Ill. 2d 530, 542 (2006). We

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accord great deference to the trial court's factual findings and credibility assessments and will reverse those findings only if they are against the manifest weight of the evidence. The trial court's legal ruling as to whether suppression is warranted is reviewed *de novo*. *Luedemann*, 222 Ill. 2d at 542.

¶ 25 The fourth amendment to the United States Constitution guarantees the "right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures." U.S. Const., amend. IV. "This provision applies to all seizures of the person, including seizures that involve only a brief detention short of traditional arrest." *People v. Thomas*, 198 Ill. 2d 103, 108 (2001). "Reasonableness under the fourth amendment generally requires a warrant supported by probable cause." *Id.*

¶ 26 In *Terry v. Ohio*, 392 U.S. 1 (1968), the United States Supreme Court provided an exception to the warrant and probable cause requirements which allows a police officer to briefly detain an individual in order to investigate possible criminal activity. *Terry*, 392 U.S. at 21-22. Specifically, under *Terry*, a police officer may briefly stop a person for temporary questioning if the officer has a reasonable suspicion, based on specific and articulable facts, that the person in question has committed, or is about to commit, a crime. *Terry*, 392 U.S. at 21.

¶ 27 The *Terry* standard has since been codified in the Illinois Code of Criminal Procedure of 1963, which states, in relevant part:

"Temporary Questioning without Arrest. A peace officer, after having identified himself as a peace officer, may stop any person in a public place for a reasonable period of time when the officer reasonably infers from the

circumstances that the person is committing, is about to commit or has committed an offense as defined in Section 102-15 of this Code, and may demand the name and address of the person and an explanation of his actions." 725 ILCS 5/107-14 (West 2010).

¶ 28 The Supreme Court has explained the meaning of "reasonable suspicion" within the context of a *Terry* stop:

"While 'reasonable suspicion' is a less demanding standard than probable cause and requires a showing considerably less than preponderance of the evidence, the Fourth Amendment requires at least a minimal level of objective justification for making the stop. [Citation.] The officer must be able to articulate more than an 'inchoate and unparticularized suspicion or "hunch" ' of criminal activity. [Citation.]" *Illinois v. Wardlow*, 528 U.S. 119, 123-24 (2000).

The underlying facts are viewed "from the perspective of a reasonable officer at the time that the situation confronted him or her." *Thomas*, 198 Ill. 2d at 110. Courts must "be mindful that the decision to make an investigatory stop is a practical one based on the totality of the circumstances." *In re S.V.*, 326 Ill. App. 3d 678, 683 (2001).

¶ 29 In this case, Officer Cazeris and his partner were conducting surveillance in a known narcotics area when they observed defendant standing on the rear porch of a building that was known for high narcotics activity. A person's presence in a high crime area is a relevant factor in determining whether, under the totality of the circumstances, the police had reasonable suspicion to justify a *Terry* stop. *Wardlow*, 528 U.S. at 124. It was in this context that Officer Cazeris

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observed defendant engage in a hand-to-hand transaction in which he passed money to someone who extended his or her hand through a window adjacent to the porch on which defendant was standing. In exchange, this person handed defendant an unknown number of items that were each the size of a nickel. After this transaction, defendant walked off the porch, left the property and proceeded down a nearby alley. Although defendant suggests that he simply could have been repaying money that he owed to someone, common sense dictates that this was not the case and that defendant had likely just purchased narcotics. See *Wardlow*, 528 U.S. at 125 ("the determination of reasonable suspicion must be based on commonsense judgments and inferences about human behavior"). Considering the totality of the circumstances, we conclude that Officer Cazerres had knowledge of sufficient facts to create a reasonable suspicion that defendant had just purchased drugs.

¶ 30 Accordingly, Officer Cazerres was constitutionally allowed to approach defendant in order to make reasonable inquiries. The scope of the investigatory stop must be reasonably related to the circumstances that justified the police interference and the investigation must last no longer than is necessary to effectuate the purpose of the stop. *People v. Ross*, 317 Ill. App. 3d 26, 30 (2000). In this case, Officer Cazerres reasonably suspected that defendant had just purchased narcotics, and we find that a brief stop to ask defendant his name, address and if he had any narcotics on him conforms to the permissible scope of an investigation following a *Terry* stop. Although defendant claims that a reasonable person under his circumstances would not have felt free to disregard the officer's questions and leave, "during the course of a legitimate investigatory stop, a person is no more free to leave than if he were placed under a full arrest." *Ross*, 317 Ill.

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App. 3d at 32. Whether an investigatory stop becomes an arrest depends on the length of detention and the scope of investigation following the initial stop. *Ross*, 317 Ill. App. 3d at 30.

We find nothing in the record to suggest that the police exceeded the bounds of a valid *Terry* stop when they approached him in the alley and asked him several simple questions.

¶ 31 Moreover, reasonable suspicion soon ripened into probable cause to arrest defendant. In order to make a valid, warrantless arrest, a police officer must have probable cause to arrest.

*People v. Love*, 199 Ill. 2d 269, 278 (2002). Probable cause requires that the facts and circumstances warrant a reasonable belief that an individual has committed a crime. *People v. Gherna*, 203 Ill.2d 165, 176 (2003). Defendant does not dispute that carrying a crack pipe in his pocket constituted illegal possession of drug paraphernalia. See 720 ILCS 660/3.5 (West 2010).

We find that defendant's admission to carrying a crack pipe, along with the other facts known to the police, provided probable cause to arrest defendant. Accordingly, the police were then allowed to retrieve the crack pipe from defendant's pocket and to search him for narcotics.

*People v. Bailey*, 159 Ill. 2d 498, 503 (1994) (a search incident to a lawful arrest is reasonable under the fourth amendment and allows police to search the person of an arrestee for weapons or evidence that the person may conceal or destroy). The police did so and recovered a crack pipe from defendant's pocket and a number of baggies containing what proved to be crack cocaine and heroin.

¶ 32 Defendant nevertheless claims that Officer Cazer's testimony that 202 South Sacramento was a place where he knew narcotics were sold cannot be used to uphold a finding of reasonable suspicion. Defendant points out that Officer Cazer later testified at trial that the actual address

where the transaction took place was 122 Sacramento, not 202 Sacramento, and therefore the officer's testimony on this point cannot be considered when deciding whether the court erred in denying the motion to quash arrest and suppress evidence. We disagree.

¶ 33 The trial court made a factual finding, based on Officer Cazer's testimony, that the house the police were watching was a "known dope location." Therefore, we will reverse this finding only if it is against the manifest weight of the evidence, which occurs only when the opposite conclusion is clearly evident. *People v. Tate*, 367 Ill. App. 3d 109, 113 (2006). Officer Cazer testified that the house they were watching was a place where they knew drugs were sold. Our review of Officer Cazer's testimony at trial makes it clear that the officer simply made a mistake as to the numerical address of that house. See *People v. Caballero*, 102 Ill. 2d 23, 36 (1984) (reviewing court may consider evidence presented at trial in order to uphold a trial court's ruling on a motion to quash). In other words, the house the officers were watching, whatever its address, was one at which they knew narcotics were sold. Accordingly, the trial court's finding was not against the manifest weight of the evidence and Officer Cazer's knowledge of past drug transactions at the house he was watching can be considered in finding that the police had reasonable suspicion to justify a *Terry* stop. In light of this conclusion, we need not consider defendant's claim that Officer Cazer's observation of a single hand-to-hand transaction, by itself, was insufficient to justify a *Terry* stop.

¶ 34 For these reasons, we find no error in the trial court's denial of defendant's motion to quash arrest and suppress evidence. Because we find no error, there can be no plain error and defendant has forfeited this issue for review.

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¶ 35 Defendant next contends that his right to due process of law was violated when the State failed to correct Officer Cazerres' "false testimony" as to the address where he observed defendant engage in a hand-to-hand transaction in order to obtain defendant's conviction and when the State failed to disclose favorable information to the defense in the form of the correct address.

Defendant claims that had the defense known the true address of the house the police were watching, it could have investigated that address and demonstrated that Officer Cazerres "could not have seen any hand-to-hand exchange at that location."

¶ 36 Defendant's argument is based on the issue of the address of the house under surveillance where police saw defendant engage in a hand-to-hand transaction. As defendant points out, Officer Cazerres testified at the suppression hearing that the address of that house was 202 Sacramento but testified at trial that the address was 122 Sacramento. Defendant also points out that at trial the State introduced photographs of the front and rear of 122 Sacramento and claims that this proves that the State knew before trial that Officer Cazerres had given false testimony at the suppression hearing.

¶ 37 It is well established that the State's knowing use of perjured testimony in order to obtain a criminal conviction constitutes a violation of due process of law. *People v. Simpson*, 204 Ill. 2d 536, 552 (2001). Where the State allows false testimony to go uncorrected, the same principles apply. *Simpson*, 204 Ill. 2d at 536. A conviction obtained through the knowing use of perjured testimony must be set aside if there is any reasonable likelihood that the false testimony could have affected the jury's verdict. *Simpson*, 204 Ill. 2d at 536.

¶ 38 In *Brady v. Maryland*, 373 U. S. 83, 87 (1963), the United States Supreme Court held

that "the suppression by the prosecution of evidence favorable to an accused upon request violates due process where the evidence is material either to guilt or to punishment, irrespective of the good faith or bad faith of the prosecution." Even in the absence of a specific request, the prosecution has a constitutional duty to turn over exculpatory evidence that would raise a reasonable doubt as to the defendant's guilt. *United States v. Agurs*, 427 U.S. 97, 112 (1976). To establish a violation of *Brady* and due process, the undisclosed evidence must be both favorable to the accused and material either to the defendant's guilt or punishment. *People v. Barrow*, 195 Ill. 2d 506, 534 (2001). Evidence is material if there is a reasonable probability that, had the evidence been disclosed to the defense, the result of the proceeding would have been different. *United States v. Bagley*, 473 U.S. 667, 682 (1985); *People v. Hickey*, 204 Ill. 2d 585 (2001). A reasonable probability is "a probability sufficient to undermine confidence in the outcome." *Bagley*, 473 U.S. at 682. Under this standard, the defendant must show that " 'the favorable evidence could reasonably be taken to put the whole case in such a different light as to undermine confidence in the verdict.' " *People v. Coleman*, 183 Ill.2d 366, 393 (1998) (quoting *Kyles v. Whitley*, 514 U.S. 419, 435 (1995)).

¶ 39 We find defendant's claim to be unpersuasive. Initially, the record fails to support defendant's claims that the State knew of the error in Officer Cazer's testimony before trial and failed to correct it and that the State suppressed the correct address from defendant. Nothing that the State filed before the suppression hearing reveals an attempt to suppress evidence or a failure to comply with defendant's discovery requests. The State initially filed a complaint for preliminary examination alleging that defendant possessed a controlled substance at "202 S.

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Sacramento Blvd (Alley)." After defendant was charged with possession of a controlled substance, defendant filed a motion for discovery asking for the street address of the location of the occurrence. The State's response to this request included the police report filed in the case. The police report lists the location of the incident as 202 Sacramento. The incident narrative states that the arrest was made at "202 South Sacramento (Alley)" and that "while conducting a narcotics surveillance around the above area which is known for high narcotics activity," the police observed defendant "walk up to the rear of the location [where the police were] conducting said surveillance and observed [defendant] tender unknown amount of [United States currency] to a unknown person through a window and in return was given an unknown item." In light of this record, there is nothing to support the claim that the State must have known that Officer Cazerres gave the wrong address when he testified at the suppression hearing that he was conducting surveillance at 202 Sacramento.

¶ 40 Defendant claims that the State had to have known of the false testimony before trial because at trial the State introduced photographs of the front and rear of 122 Sacramento during its direct examination of Officer Cazerres. However, the actual photographs are not labeled with any address and when the State introduced them, Officer Cazerres identified the photos only as the "two-flat gray-stone that is known to sell narcotics" and the "rear of the building where I conducted my surveillance." When the officer was then asked by the State where he conducted surveillance, he testified that it was on a building south of 5th Avenue on the west side of Sacramento that was near 202 Sacramento. It was not until Officer Cazerres was being cross-examined by defense counsel and was asked if the transaction took place at 202 Sacramento that

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the officer testified that the hand-to-hand transaction took place at 122 Sacramento.

¶ 41 The record strongly indicates that Officer Cazerres was not aware of his mistake at the suppression hearing until it came out at this point of the trial and that the State was taken by surprise when the mistake was revealed. When defendant subsequently called Officer Cazerres as a witness, the officer acknowledged that he gave the wrong information at the suppression hearing. He then testified that he did not tell anyone or attempt to correct it because "there were a lot of questions being asked about 202" at the suppression hearing and he "just [made] a mistake."

¶ 42 More importantly, the record is insufficient for this court to find that there is a reasonable likelihood that the testimony of the false address affected the jury's verdict or that, had defendant known of the correct address, the result of his trial would have been different. We agree with defendant that the result of his trial would have likely been different had he succeeded on his motion to quash arrest and suppress evidence because, in that case, the narcotics recovered from defendant by the police would have been suppressed and not available at trial. The problem is that it is pure speculation for defendant to assert that had he known about the correct address, "he could have investigated that address and found information demonstrating that [Officer] Cazerres could not have seen any hand-to-hand exchange at that location" and thereby succeeded on his motion to quash arrest and suppress evidence. When a party fails to comply with a discovery rule or order, it is within the trial court's discretion to "order such party to permit the discovery of material and information not previously disclosed, grant a continuance, exclude such evidence, or enter such order as it deems just under the circumstances." *People v. Turner*, 367 Ill. App. 3d

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490, 499 (2006). In this case, when defense counsel learned of the mistake at trial, he could have asked for a continuance so that he could investigate "the lines of sight and distances" at the correct address. Counsel made a strategic decision not to do so and instead moved for a mistrial. Consequently, we do not have an adequate record to evaluate defendant's claim that he could have successfully challenged Officer Cazer's testimony at the suppression hearing had defendant known of the correct address. In the absence of an adequate record, defendant's claim is purely speculative and this type of speculation is insufficient to establish that the outcome of defendant's trial would have been different. See *People v. Pecoraro*, 175 Ill. 2d 294, 315 (1997) (noting that "pure speculation" is insufficient to establish a reasonable probability that the outcome of a defendant's trial would have been different).

¶ 43 The parties extensively debate whether various "Google map" photographs included in the appendix of defendant's brief demonstrate that the police could have observed defendant engage in a transaction at 122 Sacramento. However, we cannot consider these photographs because they are not part of the record on appeal. See *People v. Williams*, 2012 IL App (1st) 100126, ¶ 27 (inclusion of evidence in the appendix of brief was improper supplementation of record with information *dehors* the record). We also note that defendant attached to his posttrial motion two photographs which purported to show the rear views of 122 and 202 Sacramento. However, there is no evidence as to when these photographs were taken or if they were taken from the same vantage point as that of the officers when they observed defendant engage in the transaction. Consequently, these photographs do not permit us to find that defendant was prejudiced by Officer Cazer's mistaken testimony at the suppression hearing.

¶ 44 For similar reasons, we also reject defendant's claim that the State "affirmatively provided a misleading photograph" of the back porch of 122 Sacramento in order to bolster Officer Cazerres' credibility. The contention that the photograph is misleading is a mere conclusory allegation that is not supported by the trial record.

¶ 45 Defendant next contends that he received ineffective assistance of counsel. Defendant claims that counsel failed to properly investigate the facts of the case before proceeding on the motion to quash, failed to renew that motion when Officer Cazerres' false testimony came to light at trial and failed to include the denial of the motion as a claim of error in his posttrial motion.

¶ 46 To prevail on a claim of ineffective assistance of counsel, a defendant must establish that: (1) counsel's performance was so deficient that it fell below an objective standard of reasonableness; and (2) there is a reasonable probability that but for counsel's unprofessional errors, the result of the proceeding would have been different. *Strickland v. Washington*, 466 U.S. 668 (1984). A reasonable probability is a probability sufficient to undermine confidence in the outcome. *Strickland*, 466 U.S. at 694. Although defendant must satisfy both prongs of this test in order to prove ineffective assistance of counsel, "[i]f it is easier to dispose of an ineffective assistance claim on the ground that it lacks sufficient prejudice, then a court may proceed directly to the second prong and need not determine whether counsel's performance was deficient." *People v. Givens*, 237 Ill. 2d 311, 331 (2010).

¶ 47 The decision to file a motion to quash and suppress evidence is generally a matter of trial strategy that will not give rise to an ineffective assistance claim. *Id.* To establish that he was prejudiced by counsel's failure to file a motion to suppress evidence, a defendant must show that

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a reasonable probability exists that: (1) the motion would have been granted, and (2) the outcome of the trial would have been different if the evidence had been suppressed. *Id.* If a motion to suppress would have been futile, then counsel's failure to file that motion does not constitute ineffective assistance. *Id.*

¶ 48 Defendant's claim is directed solely at the issue of the address of the house under surveillance where police saw defendant engage in the transaction. Defendant argues that counsel should have investigated and discovered the correct address of the house before proceeding on the motion to quash arrest and suppress evidence and that counsel's failure to do so denied defendant the ability to impeach Officer Cazerres as to the address of the house and challenge his observations based upon "the lines of sight and distances" from where the police were situated to where they allegedly observed defendant engage in a transaction.

¶ 49 We need not consider whether defense counsel's performance was deficient because we find that defendant has failed to establish that he was prejudiced by counsel's alleged deficient performance. As set forth above, the record is insufficient to evaluate whether defendant's motion to quash arrest and suppress evidence would have been granted had he known the correct address of the house at which the police were conducting surveillance. The same deficiency in the record precludes us from finding that the result of the proceedings would have been different had counsel investigated and discovered the address where the hand-to-hand transaction took place before proceeding on the motion to quash arrest and suppress evidence or asked for a continuance to investigate the correct address and then, based upon the information obtained, asked the court for a new suppression hearing. We note that any such claim would involve

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matters outside of the record on direct appeal and therefore would be appropriately raised in a petition for relief under the Post-Conviction Hearing Act (the Act) (725 ILCS 5/122-1 *et seq.* (West 2010)). See *People v. Millsap*, 374 Ill. App. 3d 857, 863 (2007) (where a defendant's claim of ineffective assistance of counsel involves matters outside of the record on direct appeal, that claim can be addressed in a proceeding under the Act because a complete record can be made).

¶ 50 In light of this conclusion, as well as our finding above that defendant's motion to quash arrest and suppress evidence was properly denied, we find no merit to defendant's claim that counsel was ineffective for failing to include the denial of the motion to quash and suppress evidence in defendant's written posttrial motion.

¶ 51 For the reasons stated, the judgment of the circuit court of Cook County is affirmed.

¶ 52 Affirmed.