

No. 1-12-1945

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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 of |
| Plaintiff-Appellee, |) | Cook County. |
| |) | |
| v. |) | No. 10 C 220137 |
| |) | |
| DAVID HARRIS, |) | The Honorable |
| |) | Garritt E. Howard |
| Defendant-Appellant. |) | Judge Presiding. |

JUSTICE LAVIN delivered the judgment of the court.
Presiding Justice Pucinski and Justice Mason concurred in the judgment.

ORDER

¶ 1 *Held:* Defendant was properly convicted of aggravated driving under the influence of alcohol where defendant's blood was tested at the direction of medical personnel, the test results were properly admitted into evidence and those results, as well as other evidence presented by the State, were sufficient to sustain defendant's conviction.

¶ 2 Following a jury trial, defendant David Harris was found guilty of aggravated driving under the influence of alcohol (ADUI), as well as driving with a suspended license. On appeal, defendant challenges the trial court's denial of his motion to suppress blood test results, the admission of those results into evidence, and the sufficiency of the evidence. We affirm.

¶ 3 I. BACKGROUND

¶ 4 A. Pre-Trial Proceedings

¶ 5 Defendant was charged with two counts of ADUI. One count was based on driving under the influence of alcohol (625 ILCS 5/11-501(A)(2) (West 2010)), while the other was based on driving with an alcohol concentration over .08 (625 ILCS 5/11-501(A)(1) (West 2010)). The State sought the imposition of a Class 4 sentence for those counts because defendant's driver's license was suspended at the time. Defendant was also apparently charged with driving with a suspended license.

¶ 6 In the proceedings below, defense counsel's theory was that defendant's behavior could be attributed to injuries sustained in a motor vehicle collision, rather than intoxication. Counsel also suggested, however, that medical personnel drew defendant's blood as a result of police subterfuge, not because defendant actually needed medical treatment. Thus, defense counsel tried to show both that defendant was injured to the point of falsely appearing intoxicated, and that his injuries did not warrant medical attention. To that end, defendant moved to suppress his blood test results. Prior to the hearing on that motion, defense counsel clarified that defendant was not contesting whether the police initially had probable cause to arrest him.

¶ 7 At that hearing, Officer Michael Williams testified that in the early morning hours of March 6, 2010, he was in his squad car when he saw defendant drive past. Defendant appeared to be driving within the speed limit but had sparks emanating from his front right tire. After

Officer Williams followed defendant for a quarter of a mile, defendant stopped his car and Officer Williams activated his lights. As Officer Williams exited his vehicle, defendant began to do the same and was ordered to get back in his car. Defendant was eventually arrested. During this encounter, Officer Jeremy Walton came to assist Officer Williams.

¶ 8 In the processing room at the police station, defendant was handcuffed to a bench. Although defendant had been wearing a coat when arrested, he was only wearing a long-sleeve shirt and trousers at the police station. Officer Williams, who had been wearing a vest, a long-sleeve shirt and a t-shirt, believed that the room appeared to be kept at a normal room temperature. Despite Officer Williams' belief, defendant said he was cold and made multiple requests for a blanket or coat. Officer Williams gave him neither. Between 10 and 20 minutes later, defendant began shaking uncontrollably in increasing severity. Officer Williams believed defendant's shaking was more extreme than cold shivers and notified Sergeant Powell out of concern for defendant's welfare. In turn, the sergeant notified dispatch and emergency medical technicians (EMTs) were called.

¶ 9 Officer Williams did not know at that time whether the EMTs would take defendant to the hospital, although he acknowledged that blood draws did occur when arrestees were taken there. In addition, Officer Williams did not request that the hospital draw defendant's blood. Moreover, although defendant had refused to submit to a breath alcohol test while at the police station, Officer Williams did not recall defendant refusing medical attention or refusing to be taken to the hospital. To Officer Williams' knowledge, defendant did not struggle with the EMTs, but Officer Williams did not accompany them to the hospital. The next day, defendant was returned to the police station. Defendant did not mention before his return that he was in a car accident prior to his initial encounter with the police.

¶ 10 Officer Walton similarly testified that defendant did not say he had been in a hit-and-run accident. At the police station, defendant, who had removed his coat, said he was cold and made several requests for a blanket. He was told he could not have one until he had been processed, however. Defendant also started to shake or shiver and made gurgling noises. When the EMTs arrived, defendant's handcuff was removed and his shaking intensified. Officer Walton added that defendant's shaking "was a little extreme" and he almost hit his head. After defendant began spitting, he grasped onto an EMT and said, "Help me." After the EMTs looked at defendant, they put him in an ambulance and Officer Walton accompanied them to the hospital. When defendant became combative in the ambulance, Velcro restraints were used. Defendant was also spitting and shaking. At no time did defendant say medical treatment was unnecessary.

¶ 11 At the hospital, Officer Walton stayed outside defendant's room to make sure he did not escape. As a result, Officer Walton did not observe everything that happened in the room and did not know whether defendant was restrained while being treated. In addition, Officer Walton could not understand anything defendant was saying. Officer Walton did observe, however, that defendant was generally sleeping. Officer Walton further testified he did not know when defendant arrived at the hospital that his blood would be drawn. As far as Officer Walton knew, defendant's blood was drawn as part of the hospital's treatment and evaluation of defendant. Neither Officer Walton nor anyone else from the police department asked the hospital to draw defendant's blood or coerced defendant to submit to a blood draw. Similarly, Officer Walton did not request that defendant remain restrained while at the hospital.

¶ 12 Defendant testified that on the day in question, his vehicle was hit from behind and struck the median, causing him to hit his head on the steering wheel. Defendant was looking for a gas station but was unable to find one because it was dark out and he was not familiar with the area.

A police officer then stopped defendant and asked him for his driver's license and insurance. During their brief conversation, defendant relayed the aforementioned details of the alleged collision. When defendant was arrested and taken to the police station, he was wearing a winter coat, shirt, pants and boots. The police made defendant remove his coat, however, and handcuffed him to a bench. Both the weather and the police station were cold. As a result, defendant repeatedly requested a blanket but the police did not give him one. Defendant could not stop shivering and the police called the EMTs, notwithstanding that defendant had told the police he did not need medical help and only needed a blanket.

¶ 13 When the EMTs arrived, they took defendant's temperature and put him on a stretcher, despite defendant repeating that he did not need medical treatment. Defendant was not spitting or gurgling, and did not tell the EMTs that he had hit his head. In addition, defendant did not grab onto anyone in the ambulance but the EMTs restrained him. Defendant repeatedly told the EMTs that he did not need any medical help, had not asked for it, and that medical treatment was being given against his will. At the hospital, defendant again indicated that he did not need medical treatment. Notwithstanding his protests, a mask was placed over his face and he lost consciousness. He awoke just as emergency room personnel were trying to draw his blood. Over defendant's objection, personnel restrained him and took his blood. Defendant further testified that an officer traveled with him to the hospital but defendant did not see the officer there. At no time did defendant consent to medical treatment.

¶ 14 The trial court denied defendant's motion, finding as follows:

"You know, sometimes issues on cases like this are close. This is not even close at all - - not a close call at all. First of all, on the credibility issue, the defendant's

testimony regarding repeatedly telling people that he did not need medical treatment, I did not find that testimony to be credible at all.

To the contrary, I found Police Officer Walton very credible. He specifically remembers the defendant grabbing out for anybody who was near to him, uttering the words, help me, help me. He was a person that was in obvious need of medical attention. That's why the ambulance was called. The ambulance wasn't called to get blood from the defendant. The ambulance was called because he was in obvious need of medical attention. There's no state action by the police officers here involved, no conspiracy or anything like that going on here to get the defendant's blood.

He was taken to the hospital. He was properly processed. There was no involuntary taking of the defendant's blood. All proper procedures were followed."

The trial court subsequently denied defendant's motion *in limine* to exclude evidence of the blood draw, a motion which is not included in our record on appeal.

¶ 15

B. Jury Trial

¶ 16 At trial, Officer Williams added to his prior testimony that when he first saw defendant's car shortly after 4 a.m. on the morning in question, steam was coming from the engine compartment and there appeared to be damage to the car's front right quarter panel. Fluid was also leaking from the vehicle. In addition, Officer Williams' surveillance camera was automatically activated when he turned on the emergency lights. The surveillance video, which is not included in our record on appeal, was published for the jury. Officer Williams further testified that when defendant first attempted to exit his vehicle and was ordered to get back in, defendant complied and was not swaying or having difficulty balancing. Defendant failed to provide a driver's license or an insurance card, however. Instead, he provided a state

identification card, a bond card and a credit card. His eyes were glassy and bloodshot, his speech was slurred, and his breath smelled like alcohol. Furthermore, Officer Williams saw an open beer bottle on the floor.

¶ 17 Officer Williams initially testified that defendant said he had been in an accident but did not indicate that he struck his head. Officer Williams subsequently testified, however, that when he asked defendant if he had been in an accident, defendant did not answer. While there was damage to the front right side of defendant's vehicle, there was no damage to the back of his vehicle. Defendant then said he needed an ambulance and Officer Williams responded, "An ambulance for what, drinking too much?" Because defendant had no apparent injuries and could not explain why he needed an ambulance, Officer Williams did not request one.

¶ 18 Officer Williams asked defendant to exit his vehicle but he did not comply or respond. After several more requests, defendant said no. Officer Williams informed defendant that he was being arrested for drunk driving and pulled him out of his vehicle. Officer Williams did not perform any field sobriety tests, however, which would have required defendant's cooperation. Once defendant was under arrest, there was no need for field sobriety tests. Officer Williams' alcohol influence report indicated that defendant refused to submit to field sobriety testing because defendant would not exit his vehicle, but Officer Williams acknowledged that he did not specifically ask defendant to submit to a test. When Officer Williams handcuffed defendant at the back of his car, the officer observed that defendant's crotch was wet, his zipper was down and he was a bit unsteady. In the squad car, defendant was slumped over and his glasses slid down his nose. Based on Officer Williams' training and experience, he believed defendant had been driving under the influence of alcohol (DUI).

¶ 19 At the police station, defendant was required to remove his coat due to policy. Hours after his arrest, his picture was taken. Officer Williams testified that the photograph, which is not included in our record on appeal, did not depict defendant's eyes as bloodshot and glassy. In addition, defendant refused to submit to a breathalyzer test and Officer Williams did not ask him to submit to a blood draw. Defendant spent much of his time there sleeping on a bench. After a while, defendant asked for a blanket because he was cold but Officer Williams refused to give him one due to policy. In addition, the room was not cold. Defendant eventually began shaking uncontrollably, "almost to the point of convulsing." When Officer Williams informed Sergeant Powell of the situation and suggested that EMTs examine defendant, she called the fire department. Upon the EMTs' arrival, Officer Williams explained what he had observed and the EMTs took over. At no point did defendant refuse medical treatment. Officer Williams did not request a blood draw, go to the hospital himself or speak to anyone at the hospital. Officer Walton accompanied defendant to the hospital, however, in compliance with standard protocol.

¶ 20 When defendant later returned to the police station the next day, defendant said he had been driving from Skokie to Oak Park when he encountered Officer Williams but defendant could not say what direction he was traveling in or what road he was on. Defendant further stated that he had consumed three beers between 9 p.m. and 9:30 p.m. the prior evening but his alcohol consumption did not affect his ability to drive. Moreover, defendant stated for the first time that he had struck his head on the steering wheel when his car was hit by a white Chevrolet.

¶ 21 Paramedic Adam Kolka testified that at about 6:38 a.m. on March 6, 2010, he and his partner received a dispatch to respond to the police department regarding an intoxicated person. Kolka did not remember being called there because that person was shaking uncontrollably. In addition, Kolka did not see defendant shaking uncontrollably. As Kolka approached defendant,

Kolka smelled alcohol coming from his breath. Defendant's eyes were also glassy and bloodshot, and his speech was slurred. When Kolka explained that he was there to assess defendant, he did not decline assistance, although upon inquiry, defendant said he had no injuries. Defendant flailed his arms as Kolka tried to take defendant's pulse and blood pressure. When Kolka asked for permission to take defendant's blood pressure, he would say no or ignore Kolka. Furthermore, defendant indicated, in the presence of Officer Williams and Officer Walton, that defendant had been involved in a vehicle accident but he did not say that he hit his head.

¶ 22 Kolka testified that defendant was taken to the hospital because the police requested Kolka to, because of defendant's behavior and because Kolka was unable to obtain defendant's vital signs. In addition, Officer Walton accompanied Kolka and defendant in the ambulance. The police did not, however, instruct Kolka to tell the hospital to do any tests. Defendant became combative while being taken to the ambulance but Kolka did not recall defendant refusing to go to the hospital. Once defendant was seated in the ambulance, he began rolling to his side and flailing his arms. He was uncooperative. Because defendant apparently refused to stop flailing his arms, Kolka restrained him. An oxygen mask was also placed on defendant's face because he was thrashing about and spitting. While defendant did not say that the mask was unnecessary, he ripped it off. Moreover, the smell of alcohol continued to come from defendant's mouth, Kolka did not remember noticing that alcohol had been spilled on defendant's clothing. While in the ambulance, defendant said that his vehicle was struck from behind by a white pickup truck but Kolka observed nothing unusual with respect to defendant's head and neck. Kolka also acknowledged that not every head injury was visible and that a person with a

head injury could be lethargic and have slurred speech. Kolka did not remember defendant declining medical treatment during their encounter. They arrived at the hospital at 7:08 a.m.

¶ 23 Officer Walton added to his previous testimony that the EMTs, rather than the police, decided that defendant would be taken to the hospital. In addition, Officer Walton did not remember whether defendant told the police before the paramedics arrived that he struck his head and did not remember defendant telling the EMTs that he had been in an accident. Officer Walton further testified that defendant never refused to go in the ambulance, although he did become combative on the way to the hospital. While Officer Walton initially testified that defendant did not refuse medical treatment in the ambulance, Officer Walton subsequently acknowledged that defendant refused certain procedures that the EMT attempted to perform. Moreover, Officer Walton did not witness a mask being placed on defendant, was not present when defendant's blood was drawn and did not speak to any medical personnel, let alone request a blood draw.

¶ 24 Nurse Roselle Delacruz-Gutierrez (Delacruz) testified that when defendant was brought in to the emergency room at approximately 7:08 a.m., he said he had been in an accident and did not decline medical treatment. Delacruz did not place a mask on defendant. In addition, Delacruz spoke to the police. Although she did not initially remember what the police told her, she ultimately testified that she had been aware that defendant was arrested for DUI. Whether a patient was under arrest, however, would not affect the care they received. Delacruz further testified that the treating physician, Dr. David Beringer, authorized the use of restraints because defendant was a danger to himself and others. Specifically, he was thrashing and spitting.

¶ 25 Dr. Beringer also ordered a blood draw. In addition, Delacruz testified that police officers and paramedics do not order hospital personnel to perform tests and did not tell Dr.

Beringer what tests to order in this case, although the officer who accompanied defendant to the hospital was present for the blood draw. Delacruz further testified that the same hospital blood-draw procedures applied for patients brought in for general emergency room treatment and patients brought in for suspected DUI. Blood was also routinely drawn to check for infections, blood count and electrolytes. When Nurse Delacruz-Gutierrez told defendant she was going to take his blood, he did not refuse. While Delacruz initially testified that defendant was not required to be physically restrained in order to perform the blood draw, she subsequently acknowledged that she had entered into defendant's record that a public safety officer had to assist in restraining defendant during the blood draw.

¶ 26 Before drawing defendant's blood sometime after 7 a.m., Delacruz cleaned defendant's arm with iodine before inserting the needle, as she generally did for patients. Although iodine was not always used, applying alcohol before inserting the needle would merely contaminate the blood. The hospital no longer used alcohol for any blood draws. In addition, defendant's blood was drawn into a tube, which was subsequently marked with defendant's name, birth date and medical record number. The tube was then sent to the hospital's laboratory, but Delacruz did not physically take it there herself and had no personal knowledge regarding what subsequently happened to the tube. She received the test results at 7:58 a.m.

¶ 27 Delacruz then identified defendant's medical record, which was made and kept at the hospital in the ordinary course of business. She testified that this was defendant's complete medical record but also acknowledged that she was not the keeper of records, lacked personal knowledge regarding whether those records were complete and lacked personal knowledge that all the information therein was generated as a result of defendant's treatment. Delacruz also testified that while the hospital had a records department, information was entered into medical

records via a computer and were similarly stored in a computer system. Accordingly, other people could edit the document. Delacruz testified that defendant's medical record, which contained his name and birth date, stated that the component alcohol value of defendant's blood had been 257 milligrams per deciliter. The report further stated that the diagnosis was alcohol abuse.

¶ 28 Dr. Beringer also ordered a CAT scan, the results of which were negative, and there were no fractures or bleeding. In addition, defendant's record stated there was no evidence of definite trauma and his extra-ocular movements were intact. Delacruz did not see signs of physical injury but acknowledged that someone who struck his head could have internal bleeding, which could cause slurred speech and red eyes. Being highly intoxicated could also cause those symptoms, however.

¶ 29 Forensic scientist Jennifer Bash then testified that the hospital reported defendant's serum alcohol concentration to be 257 milligrams per deciliter, or .257 grams, which converted to a blood alcohol level of .217 grams per deciliter. Bash also testified that any error in the medical records would affect her conclusion. The parties then stipulated that on March 6, 2010, defendant's driver's license was suspended.

¶ 30 Following trial, the jury found defendant guilty of driving with a blood alcohol concentration of .08 or more, driving under the influence of alcohol, and driving with a suspended license. The trial court sentenced defendant to two years' felony probation.

¶ 31 **II. ANALYSIS**

¶ 32 **A. Motion to Suppress**

¶ 33 On appeal, defendant first asserts that the trial court erred in denying his motion to suppress evidence of his blood test results because the test was conducted against his will after

he refused medical treatment, in violation of his fourth amendment rights. In support of defendant's contention, he maintains that the police asked the EMTs to transport him to the hospital as a subterfuge to obtain blood alcohol results. Defendant essentially urges us to disregard the trial court's factual findings.

¶ 34 In reviewing the trial court's ruling on a motion to suppress, we will reverse the trial court's factual findings only if they are against the manifest weight of the evidence. *People v. Flores*, 2014 IL App (1st) 121786, ¶ 35. Specifically, such findings must be unreasonable, arbitrary or not based on the evidence, or an opposite conclusion must be apparent. *People v. Clayton*, 2014 IL App (1st) 130743, ¶ 22. In addition, the trial court's credibility determinations are entitled to great deference. *Id.* We review *de novo*, however, the ultimate resolution of the defendant's legal challenge to the denial of his motion. *Flores*, 2014 IL App (1st) 121786, ¶ 35. Furthermore, taking a blood sample under reasonable medical circumstances does not violate a defendant's fourth amendment right, notwithstanding his refusal to consent. *People v. Yant*, 210 Ill. App. 3d 961, 965 (1991). Similarly, the fourth amendment does not prohibit the admission of a defendant's blood test results absent indication that the physician ordered the blood test as a subterfuge procured by the police. *People v. Poncar*, 323 Ill. App. 3d 702, 707 (2001).

¶ 35 The trial court's determination that defendant's blood was drawn for medical purposes, as opposed to police subterfuge, finds ample support in the record. Officer Williams testified at trial that he did not grant defendant's request for an ambulance at the scene because defendant could not explain why he needed one and that defendant began shaking only after reaching the police station. Thus, the trial court was not required to find the officer's testimony was incredible based on the officer's initial decision not to call an ambulance. In addition, Officer Williams testified that defendant began shaking uncontrollably in increasing severity. Although

defendant suggests he was merely shivering from the cold because the police did not give him a blanket, the trial court was entitled to find that the police believed defendant's level of shaking surpassed mere shivers. As a result, the trial court properly determined that the police arranged for medical treatment out of concern for defendant's health and safety. Conversely, the trial court was not required to find that Officer Williams created a false medical problem in order to overcome the absence of field sobriety tests.

¶ 36 Moreover, Kolka's subsequent trial testimony that the EMTs were called to the police station regarding intoxication, as opposed to shaking, did not render Officer Williams' testimony inherently incredible, as those conditions are not mutually exclusive. We also note it goes without saying that an individual's suspected intoxication is relevant information to provide medical personnel for treatment purposes. Thus, providing such information to the EMTs did not require the trial court to impute improper motive to the police. Even if the police had not relayed defendant's intoxicated state to the EMTs, defendant's condition would very likely have suggested it, notwithstanding that Kolka did not see defendant shaking. Specifically, Kolka testified that defendant's breath smelled of alcohol, his speech was slurred and he was flailing his arms. Furthermore, the record does not support defendant's suggestion that Kolka opined medical treatment was unnecessary. Even assuming that the police asked the EMTs to take defendant to the hospital and knew that his blood would be tested for medical purposes, this does not compel the conclusion that a subterfuge occurred. To hold otherwise would encourage the police to avoid seeking medical treatment where there was any doubt of its necessity, rather than err on the side of caution, and would do a great disservice to arrestees.

¶ 37 The subsequent events at the hospital do not support defendant's contention either. Although Delacruz was made aware of defendant's suspected intoxication, his condition was

relevant to his treatment. In addition, Delacruz testified that whether defendant was under arrest had no bearing on his care. We also categorically reject defendant's suggestion that using iodine instead of alcohol to clean the needle site showed the blood draw occurred at the instruction of the police. Furthermore, no one, including defendant, witnessed the police order a blood draw and Delacruz testified that it was Dr. Beringer who ordered it. Any impeachment or conflicting testimony with respect to Officer Walton's interaction with Delacruz did not require the trial court to dismiss those witnesses' testimony in their entirety. Thus, a finder of fact could determine that Officer Walton truthfully testified that he did not tell hospital staff to draw defendant's blood, regardless of whether he was in the room during the blood draw or was otherwise impeached. Even assuming defendant's blood was drawn against his will, the evidence clearly supported the trial court's determination that the police did not order his blood to be drawn. *Cf. People v. Farris*, 2012 IL App (3d) 100199, ¶¶ 5, 13, 24 (blood alcohol results were suppressed where a police officer instructed the nurse to take a blood sample despite the defendant's refusal).

¶ 38 We further reject defendant's reliance on *People v. Boomer*, 325 Ill. App. 3d 206 (2001). In *Boomer*, the trial court granted the defendant's motion to quash his arrest and suppress evidence because the police lacked probable cause to arrest him. *Id.* at 207. An officer had been dispatched to the scene of an accident, where the defendant was found lying in a ditch with severe injury to his mouth. *Id.* at 207-08. When the defendant attempted to speak, the officer smelled alcohol emanating from the defendant. *Id.* at 208. At the hospital, the officer asked the defendant if he had been drinking and the defendant indicated that he had. *Id.* In addition, while being given motorist warnings, the defendant became unresponsive. *Id.* The officer then asked the attending medical personnel to draw defendant's blood. *Id.* When the officer returned

to the hospital the next day, he advised the defendant of his *Miranda* rights. The court found that the officer did not have probable cause to believe the defendant was under the influence of alcohol at the time of the arrest because the officer was merely presented with a severely injured person, notwithstanding that the officer also reported a strong odor of alcohol. *Id.* The reviewing court affirmed, distinguishing cases where there were additional indicia of intoxication, such as red, glassy or bloodshot eyes. *Id.* at 210. The reviewing court further noted that the defendant's subsequent acknowledgment that he had been drinking did not require a finding of probable cause because it merely confirmed what was already evident from the defendant's breath. *Id.* at 211.

¶ 39 In contrast, here, defendant did not seek suppression on the basis that probable cause was absent. On the contrary, defendant explicitly informed the trial court that he was not challenging probable cause. In addition, it is well settled that a defendant cannot challenge probable cause for the first time on appeal. *People v. Bates*, 218 Ill. App. 3d 288, 293 (1991). In any event, unlike *Boomer*, other indicia of intoxication were present at the scene, as Officer Williams testified that defendant's eyes were glassy and bloodshot, and his speech was slurred. Furthermore, the trial court clearly did not believe defendant reported at the scene that he had struck his head. See *People v. Latto*, 304 Ill. App. 3d 791, 800 (1999) (rejecting the defendant's contention that his physical condition was more attributable to head trauma than intoxication). More importantly, in contrast to *Boomer*, no evidence showed that the police requested the blood draw. Accordingly, the trial court properly denied defendant's motion to suppress.

¶ 40 B. Admissibility of the Evidence

¶ 41 Next, defendant asserts the trial court erred in denying his motion *in limine* to preclude the admission of his blood test results, a ruling we will not reverse absent an abuse of discretion.

People v. Rogers, 2014 IL App (4th) 121088, ¶ 20. Defendant's records were admitted under a statutory business records exception to the rule against hearsay. *People v. Hutchinson*, 2013 IL App (1st) 102332, ¶ 15. Specifically, section 11-501.4 of the Vehicle Code governs the admissibility of results from chemical blood tests conducted in the regular course of providing emergency medical treatment:

"(a) Notwithstanding any other provision of law, the results of blood or urine tests performed for the purpose of determining the content of alcohol, other drug or drugs, or intoxicating compound or compounds, or any combination thereof, of an individual's blood or urine conducted upon persons receiving medical treatment in a hospital emergency room are admissible in evidence as a business record exception to the hearsay rule only in prosecutions for any violation of Section 11-501 of this Code or a similar provision of a local ordinance, or in prosecutions for reckless homicide brought under the Criminal Code of 1961, when each of the following criteria are met:

(1) the chemical tests performed upon an individual's blood or urine were ordered in the regular course of providing emergency medical treatment and not at the request of law enforcement authorities;

(2) the chemical tests performed upon an individual's blood or urine were performed by the laboratory routinely used by the hospital; and

(3) results of chemical tests performed upon an individual's blood or urine are admissible into evidence regardless of the time that the records were prepared." 625 ILCS 5/11-501.4(a) (West 2010).

This statute provides the foundational requirements for admitting blood alcohol test results.

Hutchinson, 2013 IL App (1st) 102332, ¶ 18. In addition, section 11-501.4 eliminates the

timeliness requirement that generally applies to the business records exception. *Id.* Furthermore, to lay a foundation for a business record, it is not necessary for the maker or custodian of records to testify; rather, it is sufficient for anyone familiar with the business and its procedures to testify regarding the record. *Id.* ¶ 21. Compliance with foundational requirements provides the necessary *indicia* of reliability. *Id.* Moreover, the State is not required to provide evidence that the test procedures were appropriate or that the machinery was in working condition. *Id.* ¶ 38.

¶ 42 Where section 11-501.4 has been satisfied, no additional chain of custody evidence is required either. *People v. Lach*, 302 Ill. App. 3d 587, 594 (1998). The purpose of chain of custody evidence is to connect the defendant to the crime and thus, the chain of custody must be sufficiently complete so that it is improbable that the evidence has been tampered with, contaminated or changed. *Id.* The State is not required to exclude every possibility of tampering; rather, it need only demonstrate the probability that the evidence was not changed in any important respect. *Id.* Unless a defendant provides actual evidence of alteration, the State need only establish probability and any deficiencies merely speak to the weight, rather than the admissibility of the evidence. *Id.*; *People v. Dennis*, 2011 IL App (5th) 090346, ¶ 28. Because the purpose of complying with section 11-501.4 is to ensure the reliability and integrity of test results, compliance with the statute demonstrates that reasonably protective measures were taken to ensure that the defendant's unaltered blood was tested. *Lach*, 302 Ill. App. 3d at 594. Moreover, a business record is by definition in the custody of the business rather than the State. *People v. Henderson*, 336 Ill. App. 3d 915, 921 (2003). Thus, it would be absurd to require the State to prove chain of custody under section 11-501.4 for a blood sample that was continuously in the sole custody of the hospital. *Id.* at 922.

¶ 43 Here, Delacruz testified that Dr. Beringer, rather than the police, ordered her to draw defendant's blood. She also testified that blood was routinely drawn in providing emergency treatment, even if she did not specify that it was routinely tested for alcohol. At some point after 7 a.m., defendant's blood was drawn into a tube marked with his name, birth date and medical record number. Defendant's blood was then sent to the hospital's own lab. In addition, Delacruz received the results shortly thereafter at 7:58 a.m. Delacruz also identified defendant's medical record, which contained defendant's name and birth date, and testified that it was made and kept at the hospital in the ordinary course of business. See *Lach*, 302 Ill. App. 3d at 594 (finding that section 11-501.4 was satisfied where the nurse testified that tests were ordered in the regular course of providing emergency medical treatment, were performed by the lab routinely used, and a report was prepared by lab personnel). That record also provided defendant's blood alcohol level. Furthermore, Delacruz testified that defendant's complete medical records were stored on a computer and defendant provided no evidence of tampering with respect to the blood sample or the records. Accordingly, this testimony satisfied section 11-501.4(a) and nothing further was required for defendant's blood results to be admitted into evidence. Cf. *People v. Massie*, 305 Ill. App. 3d 550, 560-61 (1999) (where the State presented no medical witnesses, the reviewing court stated in *dicta* that section 11-501.4 was not satisfied).

¶ 44 Contrary to defendant's suggestion, it was not necessary for Delacruz to have been with the vial at all times from the blood draw through testing, to have been familiar with the intricacies of how the blood was tested, or to have seen the vial of blood after the test. Cf. *People v. Ethridge*, 243 Ill. App. 3d 446, 464 (1993) (in rejecting the defendant's assertion that the State was required to produce the actual vial of blood in order to admit test results, the reviewing court found the only foundational question was whether it was defendant's blood that

was tested); see also *Henderson*, 336 Ill. App. 3d at 920 (finding that *Ethridge* did not require the State to prove the chain of custody for the defendant's blood sample). In addition, it was unnecessary for her to have actually made the record of defendant's blood test result. Similarly, she was not required to have been the custodian of records or to have defined every term found in defendant's records. Furthermore, she was not required to provide specifics regarding how files were created, stored and maintained within the computer. Defendant has cited no authority in support of the specific proposition that section 11-501.4 requires additional foundational evidence for blood test results stored in a computer. We find no abuse of discretion.

¶ 45 C. Sufficiency of the Evidence.

¶ 46 Finally, defendant asserts the evidence was insufficient to sustain his ADUI convictions. Defendant essentially contends the evidence was insufficient to demonstrate that while in control of a motor vehicle, he was under the influence of alcohol or his blood alcohol concentration was over .08. We must determine whether, after viewing the evidence in the light most favorable to the State, any rational trier of fact could have found the essential elements of the crime to have been proven beyond a reasonable doubt. *People v. Gilliam*, 2013 IL App (1st) 113104, ¶ 34. The jury's function is to assess the witnesses' credibility, resolve conflicting evidence and draw reasonable inferences from the evidence. *People v. Kidd*, 2014 IL App (1st) 112854, ¶ 27. A reviewing court cannot disturb such determinations made by the jury unless the evidence presented was so palpably contrary to the verdict, so unreasonable, or so improbable as to create a reasonable doubt of the defendant's guilt. *Id.*

¶ 47 Having reviewed the evidence in the light most favorable to the State, we conclude that the jury reasonably found that the State proved defendant's guilt beyond a reasonable doubt. Evidence showed that defendant was seen driving a damaged car. No evidence directly

corroborated his allegations that the back of his vehicle was struck or that he hit his head.

Officer Williams testified that defendant's eyes were bloodshot and glassy and that his breath smelled like alcohol. Defendant also refused the officer's request to exit the car. After being removed from the car, defendant was unsteady. Furthermore, while the jury had the benefit of viewing the surveillance video, defendant has failed to include that video on appeal. As a result, we must assume that the video similarly supports the jury's verdict. *People v. Mitchell*, 395 Ill. App. 3d 161, 165-66 (2009) (we resolve any doubts caused by an incomplete record against the defendant).

¶ 48 In the police car, defendant was slumped over and his glasses slid down his nose. In addition, he refused to submit to a breathalyzer test. See *People v. Morris*, 2014 IL App (1st) 130512, ¶ 20 (refusal to submit to testing shows a consciousness of guilt). When Kolka arrived at the station, defendant's eyes were still glassy and bloodshot, his breath smelled like alcohol and his speech was slurred. In addition, the jury was entitled, albeit not required, to infer that defendant's unusual behavior throughout his encounter with the other witnesses could be attributed to intoxication. Moreover, defendant's blood alcohol level was .217. Accordingly, ample evidence supported the jury's verdict.

¶ 49 Defendant effectively asks this court to set aside the jury's factual findings and credibility determinations. He suggests the record shows that his actions, including his slurred speech, bloodshot eyes, and disorientation, could have been attributed to the alleged accident and resulting injury. The jury reasonably found otherwise, particularly in light of testimony that the CAT scan results were negative. Defendant also fails to acknowledge that even if the jury believed his allegation that an accident occurred, the jury could nonetheless believe he was intoxicated while driving as well. In addition, defendant argues the evidence showed that he was

not violating any traffic laws when first observed, that he was never asked to perform field sobriety tests, and that the smell of alcohol could have come from the open bottle of beer found on the floor of his car. Again, none of these arguments required the jury to find in defendant's favor. Furthermore, the jury properly rejected defendant's suggestion at trial that blood test results were unreliable because the police were involved in the blood draw and Delacruz did not show that the blood tested belonged to defendant. Defendant has provided no basis for us to disregard the jury's findings.

¶ 50 Finally, we note that defendant's contention concerning the sufficiency of the evidence contains misplaced references to Officer Williams' reason for arresting defendant and references to probable cause. As stated, defendant cannot contest probable cause for the first time on appeal. Furthermore, defendant's references to plain error and harmless error principles have no bearing on whether the evidence was sufficient. Accordingly, we need not address those contentions further.

¶ 51 For the foregoing reasons, we affirm the trial court's judgment.

¶ 52 Affirmed.