SIXTH DIVISION
March 7, 2014

No. 1-12-3365



IN THE APPELLATE COURT
OF ILLINOIS
FIRST JUDICIAL DISTRICT

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| PEOPLE OF THE STATE OF ILLINOIS,<br><br>Plaintiff-Appellant,<br><br>v.<br><br>ZACHARY THONN,<br><br>Defendant-Appellee. | )<br>)<br>)<br>)<br>)<br>)<br>)<br>)<br>) | Appeal from the Circuit Court of Cook County<br><br>No. YW 017273<br><br>Honorable John D. Tourtelot, Judge Presiding. |

JUSTICE REYES delivered the judgment of the court.
Justice Lampkin concurred in the judgment.
Justice Hall concurred in part and dissented in part.

**ORDER**

¶ 1 *Held*: The judgment of the trial court is reversed where defendant's arrest was supported by probable cause, the disclosure of defendant's blood alcohol content to law enforcement did not violate the physician-patient privilege, and the video recording should not have been suppressed as "fruit of the poisonous tree."

¶ 2 The People of the State of Illinois (the State) appeal the trial court's decision to grant defendant Zachary Thonn's motion to quash the arrest and suppress evidence. On appeal, the

State argues: (1) the arresting officer had probable cause to arrest Thonn for driving under the influence; (2) a video of the intersection was admissible as evidence acquired independent of Thonn's arrest; and (3) Thonn's blood alcohol results were not subject to the physician-patient privilege.[1] For the following reasons, we reverse the decision of the trial court and remand for further proceedings.

¶ 3 BACKGROUND

¶ 4 On July 7, 2012 Officer Sabina Lomeli (Officer Lomeli) arrested Zachary Thonn (Thonn) and charged him with driving under the influence of alcohol (DUI) (625 ILCS 5/11-501(a)(2) (West 2012)), and unsafe opening of vehicle doors (625 ILCS 5/11-1407 (West 2012)). On October 1, 2012, Thonn filed a motion to quash the arrest and suppress evidence. The parties subsequently argued the motion before the trial court on October 17, 2012. During the October 17 hearing, Officer Lomeli, the only witness presented by either party, testified to the following facts.

¶ 5 I. Testimony of Officer Lomeli

¶ 6 At approximately 6:55 p.m. on July 7, 2012, Officer Lomeli, a patrol officer for three years with the Hanover Park police department, received a call dispatching her to the intersection of Lake Street and Barrington Road in Hanover Park, Illinois. According to the dispatch, a man was lying on the ground in the area and severely bleeding as a result of a battery. Officer Lomeli responded to the call and arrived to find Thonn sitting on a bench in a nearby parking lot

[1] Thonn did not file a response brief on appeal and we therefore decide the case on the State's opening brief only.

bleeding from his face and the back of his head; he had a cut near his upper lip and a lump on the back of his head. In light of these injuries, Officer Lomeli believed Thonn had suffered trauma to his head and inquired as to what happened. Thonn responded that he could not remember, but thought it was "road rage." According to Officer Lomeli, Thonn could not recall anything else about how he sustained his injuries.

¶ 7 While interacting with Thonn, Officer Lomeli noticed him slurring his speech and perceived a strong odor of alcohol on his breath. She additionally found Thonn's eyes to be "bloodshot, watery, and glassy," and his eyelids to appear heavy and partially closed. Based on her personal and professional experience, Officer Lomeli concluded Thonn was under the influence of alcohol and did not believe these signs of intoxication to have otherwise resulted from his injuries.

¶ 8 Sitting next to Thonn on the bench was Anthony,[2] a friend of Thonn. Anthony informed Officer Lomeli the vehicle they arrived in belonged to Thonn. According to Anthony, he had fallen asleep in the front seat while Thonn was driving and awoke to discover Thonn lying injured in the street. Anthony then helped Thonn to his feet and escorted him to the nearby parking lot where he was now seated on a bench. Anthony stated that because he was sleeping he did not witness any of the altercation.

¶ 9 While Officer Lomeli spoke with Anthony, another friend of Thonn, Timothy,[3]

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[2] Anthony's full name does not appear in the record.

[3] Timothy's full name does not appear in the record.

approached the parking lot bench. Timothy also advised Officer Lomeli that Thonn owned the automobile, which Thonn had been driving. He claimed to have fallen asleep in the backseat before Anthony eventually woke him up. Timothy also informed Officer Lomeli that he had slept through the altercation and awoke to discover Thonn already lying in the street. Timothy admitted that they had all been drinking and also stated that Thonn had consumed "quite a bit" of alcohol. According to Officer Lomeli, she could smell alcohol on the breath of both Anthony and Timothy while speaking to them.

¶ 10 Officer Lomeli did not inquire as to what type of alcohol Thonn consumed, when he consumed it, and how much he specifically ingested. Officer Lomeli also did not have Thonn perform a field sobriety test. Instead, Officer Lomeli concluded Thonn was under the influence based on the strong odor of alcohol on his breath, his slurred speech, the appearance of his eyes, his failure to remember what transpired, and his friends' admission that he had consumed "quite a bit" of alcohol. Accordingly, Officer Lomeli placed Thonn under arrest for DUI and let him know he would be transported to a hospital for treatment.

¶ 11 At the hospital, lab results revealed Thonn's blood alcohol level to be in excess of .08 percent. A nurse disclosed these results to Office Lomeli. Prior to this disclosure, Thonn had not signed a medical release of the lab results pursuant to the Health Insurance Portability and Accountability Act of 1996 (42 U.S.C. 1320d *et seq.* (2012)).

¶ 12 Following the arrest, Officer Lomeli obtained a video recording of the intersection as part of her investigation. Officer Lomeli admitted to being aware of this recording prior to Thonn's arrest; however, she did not acquire or view the video until after the arrest had been conducted.

¶ 13 II. Ruling of the Trial Court

¶ 14 The trial court granted Thonn's motion to quash the arrest. In its ruling and subsequent clarification of the ruling, the trial court determined Officer Lomeli did not have sufficient probable cause prior to the arrest to conclude Thonn had been driving the automobile under the influence of alcohol. The trial court reasoned Officer Lomeli "admitted that she had not seen [Thonn] operating a motor vehicle nor in actual physical control of the vehicle." The trial court also relied on the fact that no field tests were conducted and that Officer Lomeli "never observed [Thonn] walking." Furthermore, the trial court found the accounts related by Anthony and Timothy to have been "at best, suspect," and concluded what happened while they were asleep to have been "simply pure conjecture." Finally, the trial court made note of the trauma to Thonn's face and head, questioning Officer Lomeli's reliance on Thonn's behavior and appearance as a basis for determining his intoxication. In sum, the trial court concluded "[e]xtreme trauma, no evidence of impaired driving, no field tests, no admission by [Thonn], and no evidence as to how much and when he had consumed alcohol from any person makes for a great deal of speculation."

¶ 15 In addition, the trial court suppressed the lab results from the hospital, claiming the disclosure of the information without a release or subpoena violated Illinois's physician-patient privilege. The trial court relied on two cases, *Village of Arlington Heights v. Bartelt*, 211 Ill. App. 3d 747 (1991), and *People v. Ernst*, 311 Ill. App. 3d 672 (2000), in its decision to suppress the lab results. The trial court additionally found the video recording of the intersection inadmissable having been "allegedly reviewed by the police officer subsequent to the arrest."

The trial court declared "any statements made by [Thonn] subsequent to the arrest will be suppressed as well." Finally, the trial court granted Thonn's motion as to the one count of unsafe opening of vehicle doors, finding a lack of evidence to support the charge and noting the charge "was never addressed" during the hearing.[4]

¶ 16 ANALYSIS

¶ 17 We review the trial court's ruling on a motion to quash the arrest and suppress evidence, which presents mixed questions of fact and law. *In re Mario T.*, 376 Ill. App. 3d 468, 471-72 (2007). Accordingly, we apply a two-part standard of review. *People v. Hopkins*, 235 Ill. 2d 453, 471 (2009). First, we accord great deference to the trial court's factual findings and reverse those findings only if they are against the manifest weight of the evidence. *Id.* A trial court's decision is "against the manifest weight of the evidence when an opposite conclusion is apparent, or when the findings appear to be unreasonable, arbitrary or not based on the evidence." *People v. Urdiales*, 225 Ill. 2d 354, 432 (2007). This deferential review "is grounded in the reality that the circuit court is in a superior position to determine and weigh the credibility of the witnesses, observe the witnesses' demeanor, and resolve conflicts in their testimony." *People v. Pitman*, 211 Ill. 2d 502, 512 (2004) We review *de novo*, however, the court's ultimate determination of probable cause. *Hopkins*, 235 Ill. 2d at 471. "*De novo* consideration means we perform the same analysis that a trial judge would perform." *People v. Tolefree*, 2011 IL App (1st) 100689, ¶ 25.

¶ 18 The State contends we should reverse the trial court because: (1) probable cause

[4] The State does not challenge the trial court's ruling as to this charge.

supported Thonn's arrest for driving under the influence; (2) Thonn's blood alcohol results were not subject to the physician-patient privilege; and (3) a video of the intersection was admissible as evidence acquired independent of Thonn's arrest. We address each of these arguments in turn.

¶ 19 I. Probable Cause to Arrest

¶ 20 The State argues the trial court erred in finding Officer Lomeli did not have probable cause to arrest Thonn for DUI. Probable cause depends upon the totality of the circumstances and "exists when the facts known to the officer at the time of the arrest are sufficient to lead a reasonably cautious person to believe that the arrestee has committed a crime." *People v. Wear*, 229 Ill. 2d 545, 563-64 (2008). "[W]hether probable cause exists is governed by commonsense considerations, and the calculation concerns the probability of criminal activity, rather than proof beyond a reasonable doubt." *People v. Montgomery*, 112 Ill. 2d 517, 525 (1986). "Indeed, probable cause does not even demand a showing that the belief that the suspect has committed a crime be more likely true than false." *Wear*, 229 Ill. 2d at 564 (citing *People v. Jones*, 215 Ill. 2d 261, 277 (2005)).

¶ 21 We agree with the State that Officer Lomeli had probable cause in this case to arrest Thonn for the crime of DUI. The crime of DUI requires proof of two elements: (1) "driv[ing] or be[ing] in actual physical control of any vehicle" and (2) being "under the influence of alcohol." 625 ILCS 5/11-501(a)(2) (West 2012). Under the totality of the circumstances, we find it reasonable for Officer Lomeli to have concluded Thonn likely committed the offense of DUI.

¶ 22 1. Physical Control of Vehicle

¶ 23 With respect to the first element of DUI, the trial court placed significant weight on the

fact that Officer Lomeli never actually observed Thonn driving the vehicle. Certainly in many instances, an officer will have no other means of determining whether a suspect was in control of the vehicle other than actually viewing the suspect driving. The existence of probable cause, however, does not necessarily require such facts; "a police officer may have probable cause to arrest a defendant for driving under the influence without actually observing the defendant driving." *People v. Fortney*, 297 Ill. App. 3d 79, 90 (1998); see also *People v. Wolsk*, 118 Ill. App. 3d 112, 118 (1983) ("It is well established that a police officer, arriving at the scene of an accident, can have probable cause to arrest a defendant for driving under the influence of an intoxicating substance despite never actually having seen him drive").[5] Indeed, "[a] police officer, in determining whether probable cause exists, may rely on information supplied by an ordinary citizen who is a witness or the victim of a crime without independent verification." *People v. Wolff*, 182 Ill. App. 3d 583, 586 (1989). In this case, the two passengers identified Thonn as the driver and owner of the vehicle. Further, Thonn admitted his injuries resulted from "road rage."[6]

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[5] The dissent contends because Officer Lomeli was called to the scene of a battery and not the scene of an "accident," this rule does not apply here. The dissent reasons *Fortney* relied on *Wolsk*, and because *Wolsk* uses the clause "arriving at the scene of an accident," the rule is only limited to such circumstances. We disagree. The court in *Wolsk* relied on *People v. Bafia*, which stands for the general notion that an officer may rely on circumstantial evidence to establish probable cause and, therefore, "circumstances observed after the act of driving offer reasonable grounds upon which to conclude a defendant was driving while intoxicated." *People v. Bafia*, 112 Ill. App. 3d 710, 717 (1983).

[6] "Road rage," by definition, typically implies violence from one driver to another. See Merriam-Webster's Collegiate Dictionary 1077 (11th ed. 2004) (defining "road rage" as "a motorist's uncontrolled anger that is usually provoked by another motorist's irritating act and is expressed in aggressive or violent behavior"). Thus, Thonn's admission to being a victim of

¶ 24 The trial court found these facts insufficient to establish probable cause to arrest Thonn as the driver, discounting the accounts of Anthony and Timothy as "at best, suspect." Neither Anthony nor Timothy appeared before the court, thus the trial court did not base its characterization on the passengers' in-court demeanor. Rather, the trial court concluded that because Anthony and Timothy fell asleep in the car, it must have been "simply pure conjecture" for them to identify Thonn as the driver and it was therefore unreasonable for Officer Lomeli to have relied upon the passengers' account of who had been driving the automobile.

¶ 25 While we generally defer to the trial court's factual findings, we do not do so where such findings are against the manifest weight of the evidence. *Hopkins*, 235 Ill. 2d at 471. Here, we do not find the record supports the trial court's characterization of the identification as "conjecture." In this case, the passengers stated to Officer Lomeli what they had been doing prior to the incident, who had been driving, to whom the automobile belonged, and where they were each seated in the vehicle. As previously noted, an officer may rely on the out-of-court statements of witnesses to formulate probable cause "without independent verification." *Wolff*, 182 Ill. App. 3d at 586. While Anthony and Timothy both admitted to not witnessing the fight or the events inciting it because they had been asleep *at those times*, the record does not indicate Anthony and Timothy were asleep for the entirety of the drive or, more importantly, when they entered the vehicle. Simply because the passengers admitted to falling asleep at some point during the trip does not mean Officer Lomeli was unreasonable to have relied upon their

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"road rage" is consistent with the passengers' identification of Thonn as the driver.

statements. To the contrary, the record supports Officer Lomeli's determination that the passengers were in a sufficient position to judge whether Thonn had been driving.

¶ 26 In sum, Officer Lomeli interviewed three suspects, one of whom necessarily must have been driving. The two passengers identified Thonn as the driver and owner of the automobile and Thonn admitted to being a victim of "road rage."[7] Probable cause to arrest does not require an officer to definitively know a suspect has committed a crime, nor does it require an officer to believe the suspect more likely than not committed the offense. *Wear*, 229 Ill. 2d at 564. Probable cause merely requires the officer have enough facts to reasonably conclude that the suspect *may* have committed the offense. See *Montgomery*, 112 Ill. 2d at 525. Presented with the above information, we find Officer Lomeli had probable cause to believe Thonn was driving the automobile shortly before she arrived at the scene.

¶ 27 2. Under the Influence of Alcohol

¶ 28 With respect to the second element of DUI, the State argues Officer Lomeli had probable cause to arrest Thonn because she had enough information to conclude Thonn was likely under the influence of alcohol. During Officer Lomeli's interactions with Thonn, he exhibited numerous signs of intoxication, including slurred speech, glassy eyes, heavy eyelids, short-term memory loss, and the strong odor of alcohol on his breath. In addition, Timothy revealed Thonn

[7] The dissent asserts, "[t]he majority provides a definition of road rage and from the definition reasons that Mr. Thonn must have been driving *** ." We do not conclude, however, Thonn "must have been driving" given his statement regarding road rage. Rather, we find Officer Lomeli was reasonable in believing Thonn likely had been driving in light of that statement *and* the totality of the circumstances, which is all that probable cause requires. *Montgomery*, 112 Ill. 2d at 525.

had consumed "quite a bit" of alcohol prior to driving. Due to Thonn's injuries, Officer Lomeli was unable to perform a field examination at the scene.

¶ 29 Despite Officer Lomeli's account, the trial court found "[n]one of the witnesses *** have offered any evidence as to [Thonn's] impairment." We find this statement to be unsupported by the record. As noted, the testimony produced at the suppression hearing established that Thonn exhibited many signs of intoxication during his interactions with Officer Lomeli. While the trial court noted some of these signs could have also been explained by Thonn's injuries, we reiterate "whether probable cause exists is governed by commonsense considerations, and the calculation concerns the *probability* of criminal activity, rather than proof beyond a reasonable doubt." (Emphasis added.) *Montgomery*, 112 Ill. 2d at 525. Thus, despite Thonn's injuries, Officer Lomeli could still reasonably conclude his behavior and appearance likely resulted from intoxication, especially considering the strong odor of alcohol emanating from Thonn's breath and witness allegations that he had recently consumed "quite a bit" of alcohol.

¶ 30 In its ruling, the trial court further relied on the absence of a field test, although it noted one could not be administered "[d]ue to [Thonn's] obvious injuries." Field sobriety tests are not required to establish probable cause; in fact, this court has previously held an officer's cursory observations of the suspect at the scene sufficed to form probable cause where a field test could not be conducted. See, *e.g.*, *People v. Wingren*, 167 Ill. App. 3d 313, 322 (1988) (officer had probable cause to arrest defendant for DUI where the only evidence of her intoxication was that she emitted a "strong odor of alcohol ***, that her speech was slurred and that her eyes were red and glassy" and where a field examination was impractical to administer at the scene due to

inclement weather). Accordingly, under the totality of the circumstances, we find Officer Lomeli had sufficient facts to conclude Thonn was likely intoxicated and thus had probable cause to arrest Thonn for DUI.

¶ 31 II. Physician-Patient Privilege

¶ 32 The State argues the trial court erred in suppressing the hospital lab results revealing Thonn's blood alcohol level. As noted above, we typically apply a bifurcated standard of review when reviewing a trial court's ruling on a motion to suppress. *Hopkins*, 235 Ill. 2d at 471. In this instance, however, the primary question on appeal whether the nurse's disclosure of Thonn's blood alcohol level violated Illinois's physician-patient privilege is purely legal and thus reviewed *de novo*. See *People v. Ernst*, 311 Ill. App. 3d 672, 675 (2000).

¶ 33 Illinois defines the physician-patient privilege by statute, generally prohibiting hospital personnel from "disclos[ing] any information he or she may have acquired in attending any patient in a professional character, necessary to enable him or her professionally to serve the patient." 735 ILCS 5/8 802 (West 2012); see also *Lewis v. Illinois Central R.R. Co.*, 234 Ill. App. 3d 669, 679 (1992). In finding the nurse's disclosure in this case violated the physician-patient privilege, the trial court primarily relied on *Village of Arlington Heights v. Bartelt*, 211 Ill. App. 3d 747 (1991).

¶ 34 In *Bartelt*, paramedics transported the driver to a hospital for treatment of injuries sustained after the driver lost control of her vehicle and struck a tree. *Bartelt*, 211 Ill. App. 3d at 748. While the driver demonstrated "no sign[s] of intoxication or alcohol use," a nurse revealed to the officer that the driver's blood alcohol level was .20. *Id.* at 748-49. Nonetheless, the

officer believed he did not have probable cause to arrest the driver for DUI under the statute in place at the time. *Id.* at 748. The following day, however, the officer spoke to a colleague who advised him of an amendment to the DUI statute that potentially permitted use of the nurse's disclosure to formulate probable cause. *Id.* Relying on his colleague's assessment, the officer arrested the driver for DUI. *Id.*

¶ 35 The issue in *Bartelt*, therefore, was whether the statute permitted the officer to form probable cause based on the nurse's disclosure. *Id.* at 749. The court recognized the statute's exception to the physician-patient privilege, allowing the disclosure of blood alcohol results in prosecutions for DUI. *Id.* at 749-50. However, the court concluded the exception did not permit disclosure "for the purpose of establishing probable cause" and, moreover, would still only permit disclosure "pursuant to judicially authorized methods of discovery." *Id.* at 750. Accordingly, if *Bartelt* controlled here, the suppression would have been proper because the disclosure was not judicially authorized.

¶ 36 *Bartelt*, however, predates a relevant addition to the statute, namely the addition of section 11-501.4-1, which provides in relevant part:

> "(a) Notwithstanding any other provision of law, the results of blood or urine tests performed for the purpose of determining the content of alcohol * * * in an individual's blood or urine conducted upon persons receiving medical treatment in a hospital emergency room for injuries resulting from a motor vehicle accident may be reported to the Department of State Police or local law enforcement agencies. Such blood or urine tests 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.
>
> (b) The confidentiality provisions of law pertaining to medical records and medical treatment shall not be applicable with regard to tests performed upon an individual's blood or urine under the provisions of subsection (a) of this Section."

625 ILCS 5/11 501.4 1 (West 2012) (added by Pub. Act 89-517 (eff. Jan. 1, 1997)). *People v. Ernst*, decided after the amendment, addressed this change in the law.

¶ 37 In *Ernst*, a driver suffered scalp and head injuries after his Chevrolet Camaro collided with a tree off the side of the road. *Ernst*, 311 Ill. App. 3d at 673. The responding officer smelled no alcohol and found the driver's speech to be "clear and coherent." *Id.* After an ambulance transported the driver to a hospital, testing revealed his blood alcohol level to be .254. *Id.* at 673-74. Upon receipt of this new information, the responding officer's lieutenant directed him to arrest the driver. *Id.* at 674. Nevertheless, the trial court quashed the arrest, finding "the physician-patient privilege did not permit *ex parte* disclosures of blood-alcohol test results by medical personnel to the police." *Id.* at 674-75. On appeal, this court reversed, noting "[s]ubsection (a) of section 11 501.4 1 plainly provides that the results of blood-alcohol tests conducted upon persons receiving medical treatment in a hospital emergency room for injuries resulting from a motor vehicle accident may be reported to local law enforcement agencies." *Id.* at 676. The court further added, "section 11 501.4 1 contains no limitation that blood-alcohol test results only be disclosed pursuant to judicially authorized methods of court discovery,"

finding "such a requirement would be contrary to the purpose of the statute as evidenced by its plain language." *Id.* at 677. In addition, the court found "blood-alcohol test results reported pursuant to the statute may be used in formulating probable cause to arrest." *Id.* at 678. The *Ernst* court acknowledged its ruling ran "contrary to that reached in *Bartelt*," but noted that the General Assembly's amendment of the statute indicated a legislative intent to change the law. See *id.* at 677-78.

¶ 38 Considering these legislative amendments, we find the blood alcohol results should not have been suppressed by the trial court. As delineated in *Ernst*, section 11-501.4-1 provides a relevant and applicable exception to the physician-patient privilege in this case: blood-alcohol results taken during the course of treatment in a hospital emergency room for injuries sustained in a motor vehicle accident[8] may be used to formulate probable cause or as evidence in a prosecution for DUI.

¶ 39 III. Video Recording

[8] We observe in this case Thonn was being treated for injuries as a result of a battery and not an automobile collision. We note, however, Thonn himself admitted his injuries resulted from "road rage." The Illinois Motor Vehicle Code does not define "injury" or "motor vehicle accident." See 625 ILCS 5/1-101 *et seq.* (West 2012). Merriam-Webster's defines "accident" as "an unfortunate event resulting esp[ecially] from carelessness or ignorance." Merriam-Webster's Collegiate Dictionary 7 (11th ed. 2004). Provided with this broad definition, we do not find the term "motor vehicle accident" necessarily involves only automobile collisions or similar mishaps. Thus, to the extent any ambiguity exists with regard to whether treatment for injuries resulting from "road rage" qualifies as a "motor vehicle accident," we look to the purpose of the statutory exception: to aid law enforcement in the investigation and prosecution of DUI offenses. See *Ernst*, 311 Ill. App. 3d at 677-78; see also *People v. Jung*, 192 Ill. 2d 1, 5 (2000). In so doing, we do not believe the legislature intended semantics to otherwise interfere with this underlying purpose.

¶ 40 In its ruling, the trial court suppressed a video recording of the intersection discovered after Thonn's arrest as part of Officer Lomeli's investigation. The trial court reasoned the video had been "allegedly reviewed by the police officer subsequent to the arrest." In clarifying its ruling, the trial court did not specify the legal doctrine it relied upon in excluding the video. Nonetheless, we presume the trial court relied on the fruit of the poisonous tree doctrine because the trial court expressed concern with Officer Lomeli acquiring the video after the arrest.

¶ 41 The fruit of the poisonous tree doctrine derives from the fourth amendment exclusionary rule. *People v. Winsett*, 153 Ill. 2d 335, 351 (1992). "Under this doctrine, the fourth amendment violation is deemed the 'poisonous tree,' and any evidence obtained by exploiting that violation is subject to suppression as the 'fruit' of that poisonous tree." *People v. Henderson*, 2013 IL 114040, ¶ 33. Therefore, for this doctrine to apply, there must exist some fourth amendment violation in the first instance. See *id.* As we have already determined, no such violation existed in this case, as the arrest was legal and supported by probable cause. Accordingly, the doctrine does not apply in this case.

¶ 42 Moreover, even assuming the arrest did violate the fourth amendment, nothing in the record supports the notion that the video was obtained through "exploiting" said arrest. Officer Lomeli's testimony established she knew of the video prior to making the arrest but simply did not (or, presumably, could not) obtain it at that time. Thus, Officer Lomeli's knowledge and acquisition of the video resulted separately of the arrest and the doctrine only "excludes evidence obtained from or as a consequence of lawless official acts, not evidence obtained from an 'independent source.' " *Costello v. United States*, 365 U.S. 265, 280 (1961) (quoting *Silverthorne*

*Lumber Co. v. United States*, 251 U.S. 385, 392 (1920)). Indeed, the video was relevant evidence of the alleged battery of which Thonn claimed to be a victim. Therefore, even if Officer Lomeli did not have probable cause to arrest Thonn for DUI, she could still lawfully view the video as part of her investigation into the battery. Accordingly, the trial court erred in suppressing the video recording of the intersection.

¶ 43 CONCLUSION

¶ 44 For the foregoing reasons, the judgment of the circuit court of Cook County is hereby reversed and remanded for further proceedings.

¶ 45 Reversed.

¶ 46 JUSTICE HALL, concurring in part and dissenting in part:

¶ 47 I respectfully disagree with the majority that Officer Lomeli had probable cause to arrest defendant Thonn for DUI and that the trial court erred in suppressing the results of Mr. Thonn's blood-alcohol test. My reasons are set forth below.

¶ 48 "[W]hile the ultimate question of probable cause is subject to *de novo* review, the trial court's findings of historical fact and the inferences drawn from those facts are entitled to deference." *People v. Boomer*, 325 Ill. App. 3d 206, 210-11 (2001). The trial court's findings of historical fact should be reviewed only for clear error. *Boomer*, 325 Ill. App. 3d at 209. In concluding that Officer Lomeli had probable cause to arrest Mr. Thonn for DUI, the majority construes improperly the facts and the inferences in favor of the State, rather than in Mr. Thonn's favor.

¶ 49 I find the reviewing court's analysis in *Boomer* instructive. The police officer was

dispatched to an accident scene where he found the defendant lying on his back in a ditch. A motorcycle was lying approximately 15 feet from the defendant. The defendant suffered a severe injury to his mouth. When he attempted to speak, the officer detected a strong odor of alcohol. While the defendant was being treated in the hospital emergency room, the officer asked if he had been drinking. The defendant nodded affirmatively but then became unresponsive. The officer issued the defendant tickets for improper lane usage and DUI. *Boomer*, 325 Ill. App. 3d 207-08.

¶ 50 The trial court found that officer did not have probable cause to arrest the defendant for DUI and granted the defendant's motion to quash arrest and suppress evidence. On appeal, the State argued that the officer had probable cause to arrest the defendant for DUI based on the following: the defendant had apparently skidded off the road, there was a strong odor of alcohol on his breath, and he indicated to the officer he had been drinking. *Boomer*, 325 Ill. App. 3d at 209.

¶ 51 In affirming the trial court's order, the reviewing court determined that there was no probable cause to arrest the defendant for DUI. The court explained as follows:

> "[A]ll that is known about defendant's accident is that he apparently lost control of his motorcycle *** there was no evidence that defendant was riding in an erratic manner. *** The trial court heard the arresting officer's testimony concerning the scene of defendant's accident and the officer's impressions from his observations. The trial court found that the circumstances of the accident did not indicate the involvement of alcohol. This finding is not manifestly erroneous.

> While defendant nodded affirmatively when the arresting officer inquired whether he had been drinking, this fact adds nothing to the probable cause determination that was not already evident from the smell of alcohol on the defendant's breath. Accordingly, the trial court did not err in concluding that probable cause was lacking." *Boomer*, 325 Ill. App. 3d at 210-11.

¶ 52 In *People v. Lurz*, the reviewing court agreed with the trial court that there was probable cause to arrest the defendant for DUI. Similar to the present case, the officer was not dispatched to an accident scene; he was responding to a report of a man walking or staggering along the road. The officer did not see the defendant driving. Unlike the present case, the defendant in *Lurz* admitted he had been drinking and admitted to driving his truck to the location where it ran out of gas. The defendant was in possession of the only set of keys to the truck. *Lurz*, 379 Ill. App. 3d 958, 965-66 (2008). Mr. Thonn did not admit to operating a motor vehicle, and the majority does not state that Mr. Thonn had the keys to a motor vehicle in his possession.

¶ 53 The majority relies on Mr. Thonn's mention of "road rage" as evidence that he was driving. The majority provides a definition of road rage and from the definition reasons that Mr. Thonn must have been driving and became involved in a dispute with another driver. Nothing in the majority's definition precludes a passenger from suffering injuries as the result of "road rage." Mr. Thonn never admitted to driving a motor vehicle. In light of his physical injuries, his brief reference to "road rage" does not permit the inference that he was driving or in physical control of a motor vehicle.

¶ 54 The majority also relies on Officer Lomeli's testimony of her conversation at the scene with Michael and Timothy to establish that Mr. Thonn was driving a motor vehicle. However, there was evidence that they had both consumed alcohol, and both claimed to have been asleep in the car. They did not provide any information from which it could be concluded that an accident occurred, and certainly not an accident involving alcohol. Compare *Boomer*, 325 Ill. App. 3d at 211 (the trial court's finding that the circumstances of the accident did not indicate the involvement of alcohol was not manifestly erroneous).

¶ 55 In *Lurz*, the trial court's finding of probable cause meant that the deferential standard favored the State. In the present case, the court's finding of no probable cause meant that the deferential standard favored Mr. Thonn. See *Boomer*, 325 Ill. App. 3d at 211 (distinguishing the State's cases on the basis that the deferential standard favored the State in the cases on which it relied). The majority's analysis did not give Mr. Thonn the benefit of the deferential standard to which he was entitled.

¶ 56 Based on the above, the trial court's factual findings were not manifestly erroneous. I conclude that there was no probable cause to arrest Mr. Thonn for DUI.

¶ 57 I further conclude that the trial court did not err in suppressing the blood-alcohol test results. Section 11-501.4-1 permits the results of blood-alcohol tests to be reported to law enforcement agencies where the tests were "conducted on persons receiving medical treatment in a hospital emergency room for injuries resulting from a motor vehicle accident." 625 ILCS 5/11-501.4-1 (West 2012). While the majority acknowledges that Mr. Thonn was treated for injuries

resulting from a battery, they point to Mr. Thonn's "admission" that his injuries resulted from "road rage," and the lack of a definition of "motor vehicle accident."

¶ 58 The majority improperly turns Mr. Thonn's brief mention of "road rage" into an admission that his injuries resulted from "road rage." Building on that error, the majority finds the term "motor vehicle accident" ambiguous because no definition is provided. Therefore, it looked to the purpose of the legislature in enacting the statute.

¶ 59 The best indicator of the legislative intent is the language in the statute. *Champaign Township v. County of Champaign*, 331 Ill. App. 3d 582, 586-87 (2002). The court gives the words in a statute their plain and ordinary meaning, and if the meaning is clear, the court does not resort to other aids of construction. *Champaign Township*, 331 Ill. App. 3d at 587. In construing statutes, the ordinary, and commonly accepted definitions of the words used therein are accepted as the correct definitions of those words, unless the statute gives special definitions to the contrary. *Champaign Township*, 331 Ill. App. 3d at 587 (court held that "coterminous" had a clear, singular meaning); see *Automatic Data Processing v. Department of Revenue*, 313 Ill. App. 3d 433, 444 (2000) (in the absence of a definition, the term " 'investment company' " would be accorded its ordinarily understood meaning). Thus, the lack of a definition does not render the words "motor vehicle accident" ambiguous.

¶ 60 In the absence of any evidence that a motor vehicle accident occurred, section 11-501.4-1 does not apply. Therefore, the trial court properly suppressed the results of Mr. Thonn's blood-alcohol test.

¶ 61 I conclude that there was no probable cause to arrest Mr. Thonn for DUI and that the results of his blood-alcohol test were properly suppressed. I agree that the suppression of the video evidence was improper for the reason stated by the majority in paragraph 42; the video resulted separately from the arrest and could be lawfully viewed as part of the investigation into the circumstances of the alleged battery inflicted on Mr. Thonn.

¶ 62 Accordingly, I respectfully dissent in part and concur in part.