2015 IL App (1st) 142457-U

FIRST DIVISION
June 8, 2015

No. 1-14-2457

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS, Plaintiff-Appellant, v. RONNIE LENIOR, Defendant-Appellee.	))))))))))	Appeal from the Circuit Court of Cook County. No. 37-804-514 Honorable Deborah J. Gubin, Judge Presiding

PRESIDING JUSTICE DELORT delivered the judgment of the court.
Justices Cunningham and Harris concurred in the judgment.

ORDER

¶ 1 ***Held:*** The trial court properly denied the State's motion *in limine*, which sought to admit the results of chemical testing of blood drawn from the defendant by hospital personnel as evidence in his prosecution for driving under the influence of alcohol.

¶ 2 On December 15, 2012, defendant Ronnie Lenior crashed his car while driving in the northbound lanes of Interstate 57, just south of the Halsted Street exit in Chicago. An Illinois State Police trooper arrested and charged defendant with driving under the influence of alcohol under section 11-501(a)(2) of the Illinois Vehicle Code (625 ILCS 5/11-501(a)(2) (West 2012)),

failure to reduce speed to avoid an accident, and improper lane usage. The State additionally charged defendant with driving under the influence of alcohol under section 11-501(a)(1) of the Vehicle Code (625 ILCS 5/11-501(a)(1) (West 2012)). Defendant moved to quash his arrest and suppress evidence; the trial court granted that motion. The State then filed a motion *in limine* to admit evidence of the results from a blood draw taken from defendant during the course of his treatment in the hospital emergency room on the night of his accident. The court denied the State's motion *in limine*. We affirm the trial court's judgment.

¶ 3 BACKGROUND

¶ 4 Defendant contested his arrest and the charges filed against him. On June 21, 2013, he moved to quash arrest and suppress evidence, including a blood draw taken from him at the hospital emergency room on the night of the accident.

¶ 5 On July 20, 2013, the trial court heard evidence on defendant's motion. Illinois State Trooper C. Patrick testified that when he first arrived at the accident scene, defendant was sitting in the back of another trooper's squad car. Trooper Patrick did not witness the accident. He spoke with Illinois State Trooper Alan Knudson, who told him that defendant knocked down a light pole. Trooper Knudson smelled alcohol on defendant's breath. Trooper Knudson also did not witness the accident. Trooper Knudson told Trooper Patrick that no other vehicles were involved in the accident. Trooper Patrick observed damage to the rear of defendant's vehicle which he testified was consistent with hitting a light pole.

¶ 6 Trooper Patrick next asked defendant to take a series of field sobriety tests. Defendant did not request an ambulance, but did tell Trooper Patrick that he had sustained a head injury. Trooper Patrick stated that he knew the National Highway Traffic Administration advises against the administration of field sobriety tests to persons who sustain head or back injuries in an

accident. Trooper Patrick nevertheless administered the field sobriety tests after asking defendant if he would be able to complete the tests. As Trooper Patrick began conducting the field sobriety tests, defendant also reported that he had previously sustained a back injury unrelated to the accident.

¶ 7 Trooper Patrick first administered the horizontal gaze nystagmus test, the objective of which is to ascertain whether an individual has consumed alcohol. According to Trooper Patrick, the result of that test showed that defendant had consumed alcohol. He could also smell alcohol on defendant's breath and observed that defendant had bloodshot eyes. In addition, defendant slurred his speech. Trooper Patrick next administered the "walk-and-turn" test, during which he asked defendant to put his right heel to his left toe and take 9 steps in a straight line. Defendant was unable to place his heel in front of his toes and could not keep balance. After defendant completed that test, Trooper Patrick asked him to stand on one leg 6 inches off the ground for 30 seconds. Defendant swayed during this test and put his leg down before the 30-second time period expired. Defendant refused to take a portable breath test.

¶ 8 Defendant told Trooper Patrick that he had one drink that night. Defendant stated that he had been traveling northbound on Interstate 57 near Halsted when he was rear-ended by another vehicle, which caused him to lose control of his car. Defendant did not remember hitting a light pole.

¶ 9 The State presented a videotape of the field sobriety tests Trooper Patrick conducted upon defendant which had been recorded from the squad car dashboard camera. After viewing the video, the trial court also questioned Trooper Patrick. He told the court that he was aware of defendant's head injury when he first arrived at the scene. Trooper Patrick observed that

defendant had "a little bit of blood on his head." Defendant had not been placed in handcuffs as he sat in the back of Trooper Knudson's squad car.

¶ 10 After hearing additional argument, the trial court provided an oral ruling granting defendant's motion. The court relied on the videotape in its decision and ruled as follows:

> "The officer also testified well, I smelled alcohol, he didn't say heavy, just odor of alcohol. It doesn't mean too much in and of itself because the law is, you have a right to drive as long as it doesn't impair your driving. He also said the defendant had bloodshot eyes ***. He then said that the defendant had slurred speech. I heard the speech [and] it wasn't slurred. It's mumbled, it is definitely not, does not annunciate well, but I could really say that about half of the attorneys who appear in front of me, it doesn't make them under the influence.
>
> And what bothers me more than anything else is the fact that I can't help wondering if this individual defendant had a different physical appearance that his explanation would have been accepted by police that he had been hit from behind. There is no evidence to suggest otherwise, that the defendant's statement of what happened didn't occur. The testimony -- or he spun around and then the rear of his car hit the light pole doesn't make sense.
>
> It goes to credibility. And because there is an issue of credibility of the officer, I don't know if it was reasonable for him to believe that the defendant was under the influence by what I saw on the tape. And for that reason I am going to grant the motion to quash arrest and suppress evidence."

¶ 11 Following this ruling, the State called Trooper Knudson, who testified that on December 15, 2012, at about 9 p.m., he was driving northbound on Interstate 57 when he encountered a

traffic accident involving one vehicle that had hit a light pole. Trooper Knudson did not witness the accident when it occurred. The light pole lay across two lanes of traffic on the interstate and a passenger car sat partially sideways in the far right lane. No other vehicles stopped at the scene had any damage. Defendant stood on the roadway shoulder area near his car. Defendant told Trooper Knudson that another vehicle struck his as he was driving northbound on the interstate.

¶ 12 Trooper Knudson spoke with other individuals at the scene, but no one else witnessed the accident. He stated that the rear of defendant's car had a large impact mark that appeared to be consistent with striking a light pole. Trooper Knudson told Trooper Patrick that defendant's car had travelled up a grass embankment, struck the light pole, and then travelled back down onto the interstate, where it came to rest in a lane of traffic.

¶ 13 Trooper Knudson also observed the smell of alcohol on defendant's breath. Trooper Knudson asked defendant if he needed an ambulance, which defendant declined. Defendant slurred his speech. Trooper Knudson did not recall whether defendant was bleeding from his head. He placed defendant in the back of his squad car and took him to the Halsted Street off ramp for further investigation. Trooper Knudson did not provide defendant with a *Miranda* warning.

¶ 14 Following Trooper Knudson's testimony and additional argument, the trial court made another oral ruling. The court found that placing defendant into Trooper Knudson's squad car was not a seizure as contemplated by the Fourth Amendment of the United States Constitution. The court then addressed whether the Illinois State troopers had probable cause to arrest defendant for driving under the influence. Based on the videotape and Trooper Patrick's testimony, the court found no probable cause to arrest defendant. The court found the field sobriety tests carried no weight. According to the court, defendant "did not do that badly" and

that he completed the tests "with a head injury after having been in a car accident." The court stated, "all we have is an odor of alcohol," which "in and of itself is not sufficient." The court granted defendant's motion to quash arrest and suppress evidence, which meant that "any evidence after the arrest at the scene is inadmissible" at trial. The court also stated that if defendant was taken to the hospital while in police custody, any evidence gathered pertaining to his treatment would not be admitted. The State did not challenge the court's ruling.

¶ 15 On October 16, 2013, the State moved *in limine* to allow the results of chemical testing conducted by Metro South Hospital in the prosecution of defendant for driving under the influence. While at the police station, defendant complained of head pain and was taken to the hospital, where a nurse drew his blood. The result of the testing showed defendant had a blood alcohol content of .16, which is twice the legal limit. The State argued that the result of the blood draw is admissible because it was neither the fruit of the poisonous tree nor the product of state action. The State asserted that the admissibility of a blood draw from a defendant receiving medical treatment is governed by section 11-501.4 of the Vehicle Code (625 ILCS 5/11-501.4 (West 2012)) and that the State complied with the statute. The State contended the blood draw results were admissible under section 11-501.4 because: (1) the chemical tests performed 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 on defendant were completed by the laboratory routinely used by the hospital; and (3) the results of the chemical tests upon defendant's blood were admissible regardless of the time the records were prepared.

¶ 16 The trial court held an evidentiary hearing on the State's motion *in limine* on July 1, 2014. The State again called Trooper Patrick to testify about the events that occurred on the night of the accident following defendant's arrest. Trooper Patrick transported defendant to the

Calumet Park police station. There, at about 10:17 p.m., Trooper Patrick read defendant the "Warnings to Motorists," wrote some citations, and began a 20-minute observation period. According to Trooper Patrick, defendant kept repeating that his head hurt. When Trooper Patrick offered an ambulance, defendant simply repeated that his head hurt. Defendant did not request an ambulance. Trooper Patrick called the Calumet Park Fire Department to request an ambulance at about 10:25 p.m., but he did not tell the paramedics to transport defendant to the hospital. The paramedics arrived within 10 minutes. Trooper Patrick told the paramedics that defendant had been involved in an accident, that he was under arrest, and that he complained of head pain.

¶ 17 An ambulance transported defendant to the hospital at about 11:00 p.m. and Trooper Patrick followed because defendant was still under arrest. According to Trooper Patrick, defendant arrived at the hospital at about 11:30 p.m. Trooper Patrick did not order a "DUI kit," and did not tell the nurse to draw defendant's blood. Trooper Patrick informed the nurse that defendant was under arrest. He did not recall whether he told the nurse the reason for defendant's detention. Defendant's blood was drawn within approximately 40 minutes of his arrival at the hospital. Trooper Patrick did not recall when he released defendant from custody, but an I-bond shows defendant's release from custody occurred at 11:46 p.m.

¶ 18 Michelle Miller, a Calumet Park Fire Department paramedic, testified that at 10:54 p.m. on December 15, 2012, she travelled to the Calumet Park police station to treat a man in detention complaining of head pain following an accident. Miller found defendant sitting on a wooden bench in the lockup and examined him at 11:00 p.m. After checking defendant's vital signs, she determined that he needed to be transported to the hospital. She did not see any cuts or bleeding on defendant's head. She found no obvious injury or swelling to defendant's head.

Miller also determined that defendant was "[a]lert and oriented times three," which meant that he could sign a form stating that he refused to be taken to the hospital. Defendant told Miller that he did not want to go to the hospital. Miller began to fill out a report stating that defendant refused to be transported to the hospital and explained the report to defendant. He refused to sign the report. At that point, defendant stated, "take me to the hospital." Miller then transported defendant to the hospital and transferred him to the nursing staff.

¶ 19 Vicki Schreiber, a registered nurse, testified that she treated defendant at the hospital on December 15, 2012. When asked what would be the reasons for drawing a person's blood to determine blood alcohol level, Schreiber stated that if a patient has a head injury, back pain, or neck pain, a blood test is ordered to ensure any medication given to the patient would not affect level of consciousness or vital signs. Alcohol intoxication is a medical diagnosis. A Dr. Michael Baleno ordered Schreiber to draw defendant's blood. According to Schreiber, defendant's blood was drawn in the regular course of emergency treatment. One of the tests to be administered on the drawn blood was to determine blood alcohol concentration. She sent defendant's blood vial to an in-house hospital laboratory for testing. No Illinois State Police trooper ordered her to draw defendant's blood and she did not perform a DUI kit. Defendant's medical records showed he was in police custody during treatment. Schreiber did not recall whether she spoke to the paramedics who brought defendant to the hospital or to any of the state troopers. Schreiber had no independent recollection of treating defendant and relied on his medical records for her testimony. Following treatment, the hospital discharged defendant to himself, which meant he was medically cleared to leave the hospital on his own accord.

¶ 20 During the State's argument on its motion, the trial court asked the assistant state's attorney "about the fact that the defendant never would have been at the police station for the

time frame he was and then taken to the hospital by the EMTs but for the illegal arrest." The State responded that defendant's treatment at the hospital stemmed from a private contract separate from the illegal police conduct. The court continued that "but for the arrest he could have been home and taken care of his own head injury. Or he could have at that point in time decided to go to the hospital. But he wouldn't have been taken to the hospital but for the fact that he was in police custody." The court requested that the State address the fact that defendant would not have been transported to the hospital but for the illegal arrest. The State reiterated that the blood alcohol content was totally separate from the illegal arrest. The State argued that defendant was taken to the hospital at his request.

¶ 21 As the State continued its argument, the trial court found that defendant was taken to the hospital because he did not sign the refusal of treatment form. Paramedics transported defendant as an agent of the state according to protocol for his refusal to sign the form. The court concluded defendant never requested to go to the hospital.

¶ 22 In a written opinion issued on July 10, 2014, the trial court found the blood draw was inadmissible. The court listed the bases of its rulings as follows:

> "1. There was no probable cause to arrest the Defendant at 9:00 pm. And the State has not challenged this ruling.
>
> 2. When Defendant was at the police station at 10:15 pm and complaining his head hurt it was a continuation of an illegal arrest.
>
> 3. When the EMT's were called to the police station at 10:56 pm it was a continuation of an illegal arrest.
>
> 4. When the EMT's arrived at the police station Defendant was alert and oriented as to time, place and person.

5. The EMT's made no notation of odor of alcohol or any indication Defendant had consumed alcohol.

6. When Defendant was transported to Metro South Hospital it was a continuation of an illegal arrest.

7. The apparent reason Defendant was transported was not due to a need for medical treatment but due to a refusal to sign a waiver of treatment so transportation to the hospital was part of the protocol.

8. When Defendant was treated at Metro South Hospital it was a continuation of an illegal arrest.

9. There is no evidence Defendant wanted to go to the hospital.

10. At the hospital there is no indication of the odor of alcohol or any indication Defendant had consumed alcohol.

11. The Trooper spoke to the hospital staff at the hospital. The medical records indicate the defendant was in custody. I find it completely incredible the hospital staff was not informed as to why Defendant was in custody.

12. There is no evidence Defendant consented to having his blood drawn.

13. There is no credible evidence the blood draw was necessary for treatment.

14. When Defendant's blood was drawn he was in custody due to an illegal arrest.

15. Defendant would never have been at Metro South Hospital on December 15, 2012 but for the illegal arrest.

16. There is no evidence Defendant would have ever needed any medical treatment at any hospital on December 15, 2012."

¶ 23 The trial court, citing *Wong Sung v. U.S.*, 371 U.S. 471 (1963), found that the taking of defendant to the hospital was an extension of the illegal arrest and that any evidence gathered following the arrest was fruit of the poisonous tree. The court concluded the blood draw was not sufficiently distinguishable to be purged from the primary taint of the illegal arrest. The court denied the State's motion *in limine*. This appeal followed.

¶ 24 ANALYSIS

¶ 25 Before reaching the merits of this appeal, we note that on this court's own April 2, 2015 motion, we found defendant failed to file a brief within the time prescribed by Illinois Supreme Court Rule 343(a) (Ill. S. Ct. R. 343(a) (eff. July 1, 2008)). "Although defendant has not filed a brief, where the record is simple and issues may be disposed of easily, we may decide the merits of the appeal solely on appellant's brief." *People v. Wagner*, 152 Ill. App. 3d 34, 35 (1987) (citing *First Capitol Mortgage Corp. v. Talandis Construction Corp.*, 63 Ill. 2d 128, 131-33 (1976)). We choose to decide the merits here.

¶ 26 The State argues that the trial court erred when it denied its motion *in limine* because defendant's blood draw was admissible by statute, was not the product of state action, and was not the fruit of the poisonous tree. The State asserts the blood draw was sufficiently attenuated from defendant's quashed arrest.

¶ 27 Standard of Review

¶ 28 Generally, evidentiary rulings and the denial of a motion *in limine* are reviewed for an abuse of discretion. *People v. Hanson*, 238 Ill. 2d 74, 96 (2010); *People v. Morgan*, 197 Ill. 2d 404, 455 (2001). An abuse of discretion will be found only where the trial court's decision is "arbitrary, fanciful or unreasonable," or where no reasonable man would take the trial court's view. *People v. Illgen*, 145 Ill. 2d 353, 364 (1991). However, a trial court must exercise its

discretion within the bounds of the law. The State argues the trial court improperly relied on a "but-for" test in concluding that the blood draw was the fruit of the poisonous tree. "Where a trial court's exercise of discretion has been frustrated by an erroneous rule of law, appellate review is required to permit the exercise of discretion consistent with the law." *People v. Williams*, 188 Ill. 2d 365, 369 (1999). In this case, we review *de novo* whether the trial court used the appropriate legal standard to determine the admissibility of the blood draw. *Id*. (quoting *In re Lawrence M*., 172 Ill. 2d 523, 526 (1996)) (" '[W]here the question presented is one of law, a reviewing court determines it independently of the trial court's judgment.' ").

¶ 29 Applicability of Section 11-501.4 of the Vehicle Code

¶ 30 The main thrust of the State's argument on appeal focuses on the trial court's refusal to consider the applicability of section 11-501.4 of the Vehicle Code to the facts of this case. The State argues it established each element of the statutory requirements under section 11-501.4 such that defendant's blood draw was admissible.

¶ 31 Although medical records cannot normally be admitted as a business record in criminal cases, Illinois courts have recognized through section 11-501.4 of the Vehicle Code that "[o]ur State legislature has determined that lab reports of hospital blood tests conducted in the regular course of providing emergency medical treatment are admissible in prosecutions for DUI under the business records exception to the hearsay rule." *People v. Henderson*, 336 Ill. App. 3d 915, 920-21 (2003). Section 11-501.4 sets forth the specific foundational requirements for the admission of blood alcohol test results:

> "(a) Notwithstanding any other provision of the law, the results of blood 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 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 *** when each of the following criteria are met:
>
> (1) the chemical tests performed upon an individual's blood 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 were performed by the laboratory routinely used by the hospital; and
>
> (3) results of chemical tests performed upon an individual's blood are admissible into evidence regardless of the time that the records were prepared." 625 ILCS 5/11-501.4 (West 2012).

¶ 32 The State argues that it met the foundational requirements in section 11-501.4, citing in support *People v. Olsen*, 388 Ill. App. 3d 704 (2009) and *People v. Radcliff*, 305 Ill. App. 3d 493 (1999). The fatal flaw of the State's argument is that it does not consider the effect of the illegal arrest on the application of section 11-501.4 and its reliance upon *Olsen* and *Radcliffe* is illustrative of that misstep.

¶ 33 In *Olsen*, the police officer found defendant sitting in the driver's seat of his car following a multiple-vehicle accident. The defendant's car had heavy front-end damage. The second car had heavy damage on the front passenger side. The defendant told the officer that he had been waiting in the middle of the intersection to make a left turn and did not see the other car approaching. The defendant's breath had a strong odor of alcohol and his eyes were red,

bloodshot, and somewhat glossy. The defendant had a cut on his forehead and he seemed somewhat confused. Due to the cut on the defendant's face, the responding officer did not ask him to take field sobriety tests. Instead, he called the paramedics, who transported the defendant to the hospital. The defendant in *Olsen* was not under arrest when he had his blood drawn at the hospital. *Olsen*, 388 Ill. App. 3d at 707-09.

¶ 34 In this case, defendant complained of a head injury at the scene of the accident and the responding police trooper observed blood on the defendant's head. Nevertheless, the trooper conducted field sobriety tests and arrested defendant after he failed those tests. Unlike *Olsen*, the trial court in this case found defendant's arrest was illegal and suppressed any evidence gathered following the arrest, which ruling the State did not challenge. *Olsen* is not applicable here because the blood draw in that case did not follow an illegal arrest.

¶ 35 The defendant in *Radcliffe* was seriously injured in a car accident. A paramedic found "a severely damaged white Camaro sitting at an angle on a driveway." *Radcliffe*, 305 Ill. App. 3d at 495. The car apparently had left the road, hit a concrete tile at the end of a driveway, and jumped a culvert. The defendant was found lying partly in and partly out of the front passenger door of the vehicle. She was conscious, but confused, disoriented, and in pain. She suffered severe facial injuries that involved excessive bleeding, including broken dentures and lacerations around her mouth. The defendant was transported directly from the scene of the accident to a hospital emergency room. There, nurses cut off the defendant's clothing and found drugs underneath her bra straps and in a fanny pack that had been strapped around her waist. The defendant contended that an illegal search and seizure took place after the illegal substances had been lawfully discovered and confiscated by medical personnel. *Id*. at 500. The *Radcliffe* court found that the defendant had no legitimate expectation of privacy in items that had already been

discovered by a private individual and turned over to the police and, therefore, no violation of the defendant's fourth amendment rights occurred. *Id*. at 504.

¶ 36 In this case, the State argues *Radcliffe* is applicable because defendant's blood draw was conducted by a private entity and not at the direction of law enforcement. Although that statement may be true, *Radcliffe* is not applicable here because, again, the defendant in that case was not under an illegal arrest at the time the drugs were found on her person. The State has not cited to a case, nor can we find one, that applies section 11-501.4 following an illegal arrest. The application of section 11-501.4 without consideration of the illegal arrest is premature under the factual circumstances of this case. Therefore, we turn to the issue of whether defendant's blood draw was an extension of the illegal arrest and, therefore, the fruit of the poisonous tree.

¶ 37 Application of the Fruit of the Poisonous Tree Doctrine

¶ 38 The State argues that the trial court improperly relied upon a "but-for" standard in reaching its conclusion that the blood draw was fruit of the poisonous tree. The State contends the but-for test in determining if evidence is fruit of the poisonous tree has been rejected by the United States Supreme Court. The State asserts defendant's blood draw was conducted independent of his illegal arrest, for purposes of medical treatment and not in furtherance of any law enforcement investigation.

¶ 39 Our supreme court has held that the "fruit of the poisonous tree" doctrine "is an outgrowth of the fourth amendment exclusionary rule." *People v. Henderson*, 2013 IL 114040, ¶ 33; see also *Alderman v. U.S.*, 394 U.S. 165, 171 (1969). "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." *Henderson*, 2013 IL 114040, ¶ 33. Thus, the fruit of the poisonous tree doctrine holds that where the police obtain

evidence through a violation of a person's constitutional rights, the State ordinarily may not use that evidence in their prosecution of that individual. *People v. McCauley*, 163 Ill. 2d 414, 448 (1994).

¶ 40 The test of whether evidence is fruit of the poisonous tree was best articulated in *Wong Sun*. There, the United States Supreme Court questioned "whether, granting establishment of the primary illegality, the evidence to which instant objection is made has been come at by exploitation of that illegality or instead by means sufficiently distinguishable to be purged of the primary taint." *Wong Sun*, 371 U.S. at 407. "In other words, a court must consider 'whether the chain of causation proceeding from the unlawful conduct has become so attenuated or has been interrupted by some intervening circumstance so as to remove the taint imposed upon that evidence by the original illegality.' " *Henderson*, 2013 IL 114040, ¶ 33 (quoting *United States v. Crews*, 445 463, 471 (1980)). Illinois courts consider three factors relevant to an attenuation analysis to determine whether evidence is fruit of the poisonous tree, including: (1) the temporal proximity of the illegal police conduct and the discovery of the evidence; (2) the presence of any intervening circumstances; and (3) the purpose and flagrancy of the official misconduct. *Henderson*, 2013 IL 114040, ¶ 33.

¶ 41 In this case, the State correctly points out that Illinois has rejected a "but-for" test under which evidence would be deemed inadmissible simply because it would not have been discovered "but-for" the illegal actions of the police. *Henderson*, 2013 IL 114040, ¶ 34 (citing *Wong Sun*, 371 U.S. at 487-88). A review of the trial court's July 10, 2014 written order denying the State's motion *in limine*, however, shows the court did not make a blanket "but-for" ruling as the basis for its decision. The court listed a number of law enforcement actions that occurred following the illegal arrest, including calling paramedics to the police station even though

defendant did not request an ambulance. The treating paramedic and hospital personnel were aware that defendant was under arrest. We find no error in the trial court's ruling despite the inclusion of "but-for" language in the order denying the State's motion *in limine*.

¶ 42 Applying all three attenuation factors, we first note the record does not make clear whether defendant was still under arrest at the time his blood was drawn. The medical records show that defendant was under police custody at the hospital. An I-bond shows he was released from police custody at 11:46 p.m. The record does not show at what time defendant arrived at the hospital or when his blood was drawn and, therefore, we cannot determine whether defendant was under arrest at the time of his blood draw. The State has not provided this court with a sufficient record to make this determination. Any doubts which may arise from the incompleteness of the record will be resolved against the movant. *Foutch v. O'Bryant*, 99 Ill. 2d 389, 392 (1984). Accordingly, the record is silent with respect to temporal proximity, the first attenuation factor. See *People v. Johnson*, 237 Ill. 2d 81, 93-94 (2010) (the temporal proximity between the illegal arrest and the evidence in question "is often an ambiguous factor, the significance of which will depend on the circumstances of the case, including the conditions under which the time passes," and "[t]hus, without record evidence of those circumstances *** the temporal proximity analysis is not helpful.").

¶ 43 Under the second attenuation factor, we focus on the presence of any intervening circumstances between the illegal arrest and the blood draw. The State argues that Trooper Patrick did not take defendant to the hospital to seek evidence against him and, instead, defendant requested to be taken to the hospital for medical treatment. The record does not support this assertion. At the police station, while under arrest, defendant told a paramedic, "take me to the hospital" after he refused to sign a waiver of treatment form. This alleged

statement by defendant is not sufficiently distinguishable to be purged of the primary taint stemming from the illegal arrest. If, for example, defendant independently had told the arresting officer from the beginning, "my head hurts, I need to go to the hospital," that statement could qualify as an intervening circumstance that would sufficiently attenuate the illegal arrest from a medically necessary procedure culminating in a blood draw. That did not happen here.

¶ 44 Under the third attenuation factor, we consider the purpose and flagrancy of the official misconduct. In this case, Trooper Patrick performed field sobriety tests on defendant after he complained that his head hurt and Trooper Patrick observed blood on defendant's head. "[O]fficer conduct is 'flagrant' when it is carried out in such a manner as to cause surprise, fear, and confusion, or when it has a quality of purposeful or intentional misconduct." *Johnson*, 237 Ill. 2d at 94. Here, Trooper Patrick testified that he knew the National Highway Traffic Administration advises against the administration of field sobriety tests to persons who sustained head or back injuries as a result of an accident. He performed the field sobriety tests on defendant despite defendant's complaint of a head injury. Trooper Patrick's testimony persuades us that his actions had a quality of purposeful or intentional misconduct, which led to defendant's arrest.

¶ 45 Having considered all three attenuation factors, we conclude that defendant's blood draw was the fruit of the poisonous tree. Under the factual circumstances of this case, defendant's alleged statement, "take me to the hospital," was not sufficiently attenuated to interrupt the causal connection between the illegal arrest and the blood draw. We find the trial court did not abuse its discretion when it denied the State's motion *in limine*.

¶ 46 CONCLUSION

¶ 47 The judgment of the trial court is affirmed.

¶ 48 Affirmed.