2016 IL App (1st) 134016-U

FIFTH DIVISION
MARCH 31, 2016

No. 1-13-4016

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County.
	)	
v.	)	No. 12 CR 8261
	)	
WLADYSLAW BIELA,	)	Honorable
	)	Larry G. Axelrood,
Defendant-Appellant.	)	Judge Presiding.

JUSTICE GORDON delivered the judgment of the court.
Presiding Justice Reyes and Justice Lampkin concurred in the judgment.

O R D E R

¶ 1 *Held*: Defendant's conviction for aggravated driving under the influence of alcohol affirmed over his contention that the trial court erred in denying his motion to quash arrest and suppress evidence; fines and fees order modified.

¶ 2 Following a bench trial, defendant Wladyslaw Biela was found guilty of aggravated driving under the influence of alcohol, then sentenced to four years' imprisonment. On appeal, he contends that the trial court erred in denying his motion to quash arrest and suppress evidence, and requests that his conviction be reversed because the fruits of the illegal seizure were vital to his conviction. He also contests the propriety of certain fines and fees assessed against him.

¶ 3 The record shows that defendant was charged with 14 counts of aggravated driving under the influence of alcohol in connection with an incident that took place on April 19, 2012, in Chicago, Illinois. Prior to trial, defendant filed a motion to quash his arrest and suppress evidence alleging that the officers lacked probable cause to arrest him.

¶ 4 At a hearing on defendant's motion, Chicago police sergeant Charles Halpern testified that on April 19, 2012, at approximately 7 p.m., he was attending a community forum at 2910 North Central Avenue when someone working at the event told him that a driver had collided with a parked car. Sergeant Halpern went outside and observed a "car against another car," but did not inspect the vehicles for damage. He observed defendant exiting the "offending" vehicle, which he identified as a red automobile. Sergeant Halpern testified that, prior to the hearing, he had not told anyone else involved in the investigation that he observed defendant in the vehicle and he could not recall if he told the responding officers who arrived on the scene that he observed defendant in the vehicle.

¶ 5 After defendant exited the vehicle, Sergeant Halpern observed him enter a nearby liquor store. Sergeant Halpern watched defendant through the store's windows as defendant purchased bottles of alcohol. Defendant exited the liquor store and Sergeant Halpern asked him to stop and asked for his identification, driver's license, and insurance. Defendant looked toward Sergeant Halpern, but did not respond and walked past him. Sergeant Halpern followed defendant down the street and asked him to stop several times. Defendant continued walking away from Sergeant Halpern at a fast pace and turned to look back at Sergeant Halpern each time he asked him to stop, but did not stop or say anything. Sergeant Halpern then observed defendant enter a gangway and crouch down behind a gate, by which time other officers arrived on the scene and arrested him.

¶ 6 The officers then returned with defendant to the scene of the incident and the witness, Anna Rodriguez, came outside to meet with the responding officers while Sergeant Halpern returned to the meeting. Sergeant Halpern further testified that when he first observed defendant exit the vehicle, he was still inside the building and observed defendant through the window. He also testified he was already on his way out of the building while defendant was exiting the vehicle.

¶ 7 On cross-examination, Sergeant Halpern testified that he did not recall if he observed the red vehicle move, but Rodriguez told him that it had moved and was involved in an accident. He described defendant's walking as "unsure, unsteady, [and] staggering," and stated that he radioed for backup while he was following defendant after he left the liquor store. He further testified that when he confronted defendant as defendant exited the liquor store, he was wearing his police uniform and identified himself as a police officer. Defendant responded with a "bewildered stare," but never said anything, and kept walking. Sergeant Halpern followed defendant because he did not want to take him into custody near the community meeting and wanted to wait for backup.

¶ 8 Sergeant Halpern further testified that defendant was not running away from him, but was walking quickly down the sidewalk in a "zigzag" rather than a straight line. While Sergeant Halpern was following defendant, he requested that defendant stop at least six times and each time defendant turned to look back at him, but did not stop. Sergeant Halpern further testified that he believed that defendant was impaired based on his experience as a police officer and defendant's "extremely, extremely unsteady" gait.

¶ 9 Chicago police officer Casey Nolan testified that he and his partner, Officer Anthony Strazzante, responded to a radio call from Sergeant Halpern around 7 p.m. on April 19, 2012.

The call described an intoxicated driver who was in a traffic crash and was running away. When Officer Nolan first observed defendant, he was jogging away from Sergeant Halpern who was close behind him, but defendant was moving "[n]ot very fast." Officer Nolan then watched as defendant ran down a gangway and crouched down behind a fence where the officers took him into custody.

¶ 10 After defendant was arrested, the officers took him back to the scene of the incident and Officer Nolan inspected the vehicles, but did not observe any damage to them. The officers then transported defendant to the police station where they conducted a field sobriety test and a breathalyzer test. Officer Nolan further testified that he did not know if it was a criminal offense to walk away from a "non-damaged property collision," but that he considered running from police and resisting arrest a crime.

¶ 11 On cross-examination, Officer Nolan testified that when he arrested defendant, he observed that he had a strong odor of alcohol; bloodshot, glassy eyes; and had difficulty maintaining his balance. Officer Nolan asked defendant if he had consumed any alcohol and defendant responded that he had drunk two beers. Officer Nolan testified that based on his experience, he opined that defendant was under the influence of alcohol.

¶ 12 Officer Nolan further testified that when he returned defendant to the scene of the incident, Rodriguez identified him as the person who was driving the vehicle that hit the parked vehicle. Officer Nolan looked up defendant's driving record and discovered that his driver's license had been revoked. In response to a question from the trial court, Officer Nolan testified that he handcuffed defendant because he was involved in an accident and fled the scene.

¶ 13 Officer Strazzante testified that he responded to the radio call from Sergeant Halpern with Officer Nolan, and that he first observed defendant on the street running from Sergeant

Halpern. Officer Strazzante testified consistently regarding the series of events leading up to defendant's arrest, and testified that when he approached defendant, he observed that he was highly intoxicated and took him into custody. After defendant was arrested, Officer Strazzante inspected the vehicles involved in the incident and did not observe any damage.

¶ 14 In issuing its ruling, the trial court noted that the fact that Sergeant Halpern never mentioned that he observed defendant exiting the vehicle before testifying at the hearing was "*de minimis* [impeachment] at best." The court believed that Sergeant Halpern did not want to leave the community meeting, but he was compelled to investigate the incident after Rodriguez told him that she observed a vehicle collide with another vehicle. The court believed, however, that Sergeant Halpern wanted to return to the meeting as soon as possible, so when the other officers arrived to arrest defendant, he went back to the meeting. Therefore, the court did not believe it was impeaching that he did not speak with the officers or tell them whether or not he had observed defendant in the vehicle when they arrived on the scene.

¶ 15 The court found Sergeant Halpern credible and that he had "no bias." The court then recounted Sergeant Halpern's testimony and noted that Sergeant Halpern knew there was contact between two vehicles, that defendant did not take any steps to investigate, and that he went directly into a liquor store. The court also noted that defendant avoided Sergeant Halpern, even though he knew that he was a police officer. The court observed that when the other officers arrived, they observed defendant apparently fleeing from Sergeant Halpern, and they brought him back to the scene of the incident because they believed that he was driving a vehicle that struck another vehicle and did not stop to give his information to anybody. The court noted that "vehicles tap other vehicles all the time," but stated that usually the person exits the vehicle and inspects the vehicles, and the law requires that the drivers need to exchange insurance

information at a minimum. The court observed that defendant was clearly not interested in investigating the damage or exchanging insurance information.

¶ 16 The court also stated that "the law says a traffic violation, however minor, is a valid reason for an [o]fficer to interact with a citizen or stop him." The court noted when defendant started fleeing, Sergeant Halpern made the "only appropriate choice," and pursued defendant instead of investigating the extent of the damage to the vehicles. The court concluded that the exclusionary rule is to deter police misconduct, but in this case the court found no misconduct and, accordingly, denied defendant's motion to quash arrest and suppress evidence.

¶ 17 The case proceeded to a bench trial and, at trial, Rodriguez testified that she was attending a community meeting at approximately 7:10 p.m. at 2910 North Central Avenue on April 19, 2012, when she observed defendant attempting to parallel park his SUV. She observed that defendant was driving too fast and watched him back into the front of a parked vehicle, and then leave the scene without inspecting either vehicle for damage. She turned to Sergeant Halpern, who was sitting right next to her, and told him what happened and watched him outside while defendant was in the liquor store. Defendant exited the liquor store and Sergeant Halpern confirmed with Rodriguez that he was the person she observed driving the offending vehicle. Defendant then walked away and Rodriguez returned to the meeting. Several minutes later, another officer arrived with defendant in custody in the back of the police car and she confirmed that he was the person she observed driving the vehicle that caused the accident.

¶ 18 On cross-examination, Rodriguez testified that Sergeant Halpern was right next to her looking at defendant's vehicle when the accident occurred. She also testified that she heard a "bump" when the vehicles collided and that defendant was driving a gold SUV and the parked vehicle that he hit was a red vehicle.

¶ 19 Sergeant Halpern testified consistently with his testimony at the hearing on defendant's motion to quash arrest and suppress evidence with a few distinctions. Sergeant Halpern testified that he was looking out the window when defendant was attempting to park his vehicle and the collision occurred. He further testified that defendant's vehicle was contacting the parked vehicle and he observed the parked vehicle "move." On cross-examination, Sergeant Halpern testified that he did not recall whether he told Officers Nolan and Strazzante that he observed defendant in the vehicle, but he did recall telling them that he observed defendant exiting the vehicle. He also testified that he did not recall the color of defendant's vehicle, but acknowledged that he previously testified that defendant exited a red vehicle.

¶ 20 Officer Nolan testified consistently with his testimony at the hearing on defendant's motion and also stated that he transported defendant to the police station after Rodriguez identified him as the driver who caused the accident and the officers learned that his license had been revoked. At the police station, Officer Nolan conducted a field sobriety test to determine if defendant would exhibit signs of impairment from alcohol. After conducting three separate field sobriety test, Officer Nolan concluded that defendant exhibited numerous "clues" of impairment. He also conducted a breathalyzer test of defendant. On cross-examination, Officer Nolan testified that defendant was driving a gold SUV.

¶ 21 The State then introduced into evidence certified documents showing accuracy and calibration checks on the breathalyzer machine from April 1 and May 1 of 2012. The State also admitted a driving record for defendant that showed he had four prior convictions for driving under the influence of alcohol, and one prior conviction for aggravated driving under the influence of alcohol.

¶ 22 Following closing argument, the court initially observed that the certified documents for the breathalyzer machine were for a different machine than the one used in this case. Accordingly, the court found defendant not guilty of the counts that relied upon proof that his blood alcohol content was higher than .08. However, the court found defendant guilty of the remaining counts of aggravated driving under the influence of alcohol that did not require proof of defendant's blood alcohol content.

¶ 23 In issuing that ruling, the court stated that it found the witness Rodriguez and Sergeant Halpern credible and recounted their testimony, finding that there "was no legitimate significant impeachment." The court stated that their observations led to Officer Nolan arresting defendant and that the proof in this case was "overwhelming." The court again stated that neither Rodriguez nor Sergeant Halpern had been impeached and observed that "some of the things that were seized on and argued were maybe misstatements or interpretations rather than affirmative statements that were impeaching." The trial court subsequently denied defendant's motion for a new trial in which he contended, *inter alia*, that the trial court erred in denying his motion to quash arrest and suppress evidence because the officers lacked probable cause to arrest him. At a subsequent sentencing hearing, after considering the relevant factors in aggravation and mitigation, and defendant's statement in allocution, the court sentenced defendant to four years in the Illinois Department of Corrections.

¶ 24 In this appeal from that judgment, defendant contends that the trial court erred in denying his motion to quash arrest and suppress the evidence obtained after the illegal seizure. He maintains that the officers lacked probable cause to arrest him because none of them observed him engage in any illegal activity and his act of ignoring Sergeant Halpern's requests to stop and

produce his identification did not constitute fleeing because Sergeant Halpern had no probable cause to stop him.

¶ 25 In reviewing a ruling on a motion to quash arrest and suppress evidence, this court applies a two-part standard of review. *People v. Hopkins*, 235 Ill. 2d 453, 471 (2009). The trial court's factual findings are accorded great deference, and this court will reverse those findings only if they are against the manifest weight of the evidence; however, the court's ultimate ruling on a motion to suppress involving probable cause is reviewed *de novo*. *Hopkins*, 235 Ill. 2d at 471.

¶ 26 We initially observe that the parties disagree as to whether this court may consider the evidence presented at trial in reviewing the trial court's ruling on defendant's motion. Defendant contends that this court may consider the trial evidence because he filed a posttrial motion asking the court to reconsider its ruling on the motion to quash and suppress. The State asserts that this court cannot consider the trial testimony for purposes of reversing the trial court's ruling on defendant's motion.

¶ 27 In *People v. Brooks*, 187 Ill. 2d 91, 127 (1999), the supreme court stated that the reviewing court may consider trial evidence in *affirming* the trial court's denial of a motion to suppress, but may not do so when defendant asks the court to *overturn* that ruling. (Emphasis in original). The court reasoned that when "a reviewing court affirms a trial court's suppression ruling based on evidence that came out at trial, it is akin to a harmless error analysis." *Brooks*, 187 Ill. 2d at 127. That same reasoning does not apply, however, when defendant asks the reviewing court to rely upon trial evidence to reverse the trial court's decision. *Brooks*, 187 Ill. 2d at 127. Where, as here, defendant asks the reviewing court to rely on trial evidence to reverse the trial court's ruling on a motion to suppress, defendant must properly preserve the issue in the trial

court by asking the trial court to reconsider its ruling on the motion to suppress at the time the new evidence is introduced at trial. *People v. Davis*, 335 Ill. App. 3d 1, 12 (2002) (citing *Brooks*, 187 Ill. 2d at 127-28).

¶ 28 In this case, defendant failed to ask the trial court at any time during the trial to reconsider its ruling on the motion to quash arrest and suppress evidence based on new evidence that was introduced at trial. Accordingly, this court may not consider the trial evidence in reversing the trial court's ruling on defendant's motion; however, we may consider it for affirming the trial court's ruling. *Davis*, 335 Ill. App. 3d at 12-13.

¶ 29 The parties agree that defendant was seized when he was taken into custody by Officers Nolan and Strazzante in the gangway. Therefore, the issue before this court is whether the officers had probable cause to arrest defendant. Defendant contends that the officers lacked probable cause because none of them observed him commit a crime or had reason to suspect that he did so. The State responds that the collective observations of the officers were sufficient to establish probable cause to arrest defendant.

¶ 30 The fourth amendment to the United States Constitution guarantees the right of the people to be free from unreasonable searches and seizures. U.S. Const., amend. IV. An arrest executed without a warrant is valid only if supported by probable cause. *People v. Montgomery*, 112 Ill. 2d 517, 525 (1986). "Probable cause to arrest 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) (citing *People v. Love*, 199 Ill. 2d 269, 279 (2002)).

¶ 31 The existence of probable cause depends upon the totality of the circumstances at the time of the arrest (*People v. Jackson*, 232 Ill. 2d 246, 275 (2009)) and is governed by

commonsense considerations, rather than proof beyond a reasonable doubt (*Hopkins*, 235 Ill. 2d at 472). An arrest can occur when the known facts indicate that it is more probable than not that the suspected individual committed a crime. *People v. Sims*, 192 Ill. 2d 592, 615 (2000). "When officers are working in concert, probable cause can be established from all the information collectively received by the officers even if that information is not specifically known to the officer who makes the arrest." *People v. Bascom*, 286 Ill. App. 3d 124, 127 (1997) (citing *People v. Fenner*, 191 Ill. App. 3d 801, 806 (1989)). If probable cause is based on information the arresting officer received from a radio call, it must be demonstrated that the officer who made the radio call had probable cause to make an arrest. *People v. Lawson*, 298 Ill. App. 3d 997, 1001-02 (1998), and cases cited therein.

¶ 32 In this case, Sergeant Halpern was attending a community forum when he received information from witness Rodriguez that defendant was driving a vehicle that bumped into a parked vehicle while attempting to parallel park. Sergeant Halpern looked out the window and observed defendant exiting the offending vehicle and then enter a nearby liquor store without stopping to inspect either vehicle for damage. Sergeant Halpern observed that defendant's vehicle was touching the parked vehicle and waited for defendant outside of the liquor store. When defendant exited the liquor store, Sergeant Halpern attempted to speak with him, but defendant only responded with a "bewildered stare" and began walking quickly or jogging away. Sergeant Halpern observed that defendant was walking unsteadily, staggering, and walking in a "zigzag" manner rather than a straight line. Based on his experience as a police officer, he believed that defendant was intoxicated. He followed defendant and made a radio call describing a drunk driver who was involved in a traffic accident and fleeing the scene.

¶ 33 Officers Nolan and Strazzante, who received Sergeant Halpern's radio call, arrived on the scene and Officer Nolan testified that defendant was walking unsteadily and observed that he had a strong odor of alcohol, had bloodshot, glassy eyes, and had difficulty maintaining his balance. Officer Nolan asked defendant if he had consumed any alcohol and defendant responded that he had consumed two beers. Based on his experience, Officer Nolan opined that defendant was under the influence of alcohol. After arresting defendant, the officers transported him back to the scene of the incident where he was identified by the witness Rodriguez as the person driving the vehicle that hit the parked vehicle. Based on these events, the trial court determined that the circumstances known to the officers were such that a reasonably cautious person would believe that defendant fled the scene of an automobile accident, and thus the officers had probable cause to arrest him.

¶ 34 Nonetheless, defendant contends that the officers lacked probable cause to arrest him because none of them witnessed him commit a crime. In making this contention, defendant relies on section 11-404 of the Illinois Vehicle Code, which prohibits a driver who collides with another vehicle and causes damage from leaving the scene without notifying the record owner of the other vehicle or providing his identifying information in writing. 625 ILCS 5/11-404 (West 2012). He maintains that none of the officers checked either vehicle for damage before arresting him, and, as such, they could not have known if he violated section 11-404 because a violation of that section requires damage to the vehicle.

¶ 35 Although Sergeant Halpern did not inspect the vehicles for damage, probable cause does not require proof beyond a reasonable doubt. *People v. Arnold*, 349 Ill. App. 3d 668, 671-72 (2004). The degree of probability for establishing probable cause is less than that necessary for demonstrating that it is more likely than not that defendant committed a crime. *People v.*

Damian, 374 Ill. App. 3d 941, 947 (2007). Moreover, probable cause does not require that the officer's belief be correct or even more likely true than false. *Damian*, 374 Ill. App. 3d at 947 (citing *People v. Jones*, 215 Ill. 2d 261, 277 (2005)). Instead, probable cause exists if the totality of the circumstances known to the police at the time of arrest is sufficient such that a reasonably prudent person would believe that defendant committed a crime. *Arnold*, 349 Ill. App. 3d at 672 (citing *People v. Patterson*, 282 Ill. App. 3d 219, 227 (1996)).

¶ 36 Therefore, it is irrelevant, for purposes of establishing probable cause, that the collision did not cause damage to the parked vehicle. Moreover, Sergeant Halpern was not required to inspect the vehicles for damage and establish beyond a reasonable doubt that defendant had violated the Illinois Vehicle Code where he had information from Rodriguez that defendant had caused the collision, observed defendant exiting the offending vehicle, observed that the two vehicles were touching, and observed that defendant did not inspect either vehicle for damage or attempt to provide his information to the owner of the other vehicle, and instead entered a liquor store. Accordingly, based on the totality of the circumstances, we find that a reasonably prudent person would believe that defendant committed a crime, and, thus, the officers had probable cause to arrest him. *Wear*, 229 Ill. 2d at 563-64; *Arnold*, 349 Ill. App. 3d at 672.

¶ 37 In addition, as the State points out, Sergeant Halpern's observations in this case were also sufficient to establish probable cause for the offense of driving while under the influence of alcohol. 625 ILCS 5/11-501(a)(2) (West 2012); see also *People v. Diaz*, 377 Ill. App. 3d 339, 344-45 (2007). That section of the Illinois Vehicle Code provides that "A person shall not drive or be in actual physical control of any vehicle within this State while under the influence of alcohol." 625 ILCS 5/11-501(a)(2) (West 2012).

¶ 38 Here, Sergeant Halpern relied on information from Rodriguez, who witnessed the incident firsthand, that defendant was driving a vehicle that hit another vehicle. Sergeant Halpern observed defendant exit his vehicle, then enter a liquor store. Sergeant Halpern attempted to make contact with defendant, who responded with a "bewildered stare," and Sergeant Halpern observed that his gait was unsteady and staggering and that he was walking in a "zigzag" manner. Officer Nolan, who had information from Sergeant Halpern that defendant was driving while under the influence of alcohol, observed that defendant had a strong odor of alcohol and was unsteady on his feet. Officers Nolan and Strazzante, and Sergeant Halpern each testified that, based on their experience, they believed defendant was under the influence of alcohol. We therefore find that the officers had probable cause to arrest defendant because they believed he was under the influence of alcohol and Sergeant Halpern observed him in actual, physical control of a vehicle. 625 ILCS 5/11-501(a)(2) (West 2012); *Diaz*, 377 Ill. App. 3d at 344-45.

¶ 39 We also find defendant's reliance on *People v. Lee*, 214 Ill. 2d 476 (2005), *In re D.W.*, 341 Ill. App. 3d 517 (2003), and *People v. Ertl*, 292 Ill. App. 3d 863 (1997), misplaced. Defendant cites these cases in support of his contention that Rodriguez's tip that she observed defendant driving a vehicle that struck another vehicle was not sufficient to provide Sergeant Halpern with probable cause to arrest him. In each of those cases, however, the police officer relied solely on tips or information from the public and did not make any independent investigations or observations that were sufficient to establish probable cause for an arrest. *Lee*, 214 Ill. 2d at 488; *In re D.W.*, 341 Ill. App. 3d at 524; *Ertl*, 292 Ill. App. 3d at 873-74. By contrast, in this case, Sergeant Halpern not only relied on information from Rodriguez that defendant hit the parked vehicle but he also testified that he observed defendant getting out of the offending vehicle and observed him walking unsteadily and in a "zigzag" manner. Moreover,

Officer Nolan testified that defendant was having trouble standing and smelled of alcohol. Because we find that the officers had probable cause to arrest defendant based on the information provided to Sergeant Halpern from Rodriguez, and Sergeant Halpern's observations of defendant and his vehicle, we need not address defendant's contentions regarding his "flight" from Sergeant Halpern.

¶ 40 Defendant contends, however, that Sergeant Halpern's testimony at trial was so inconsistent and contradictory to his testimony at the suppression hearing as to cast doubt upon his credibility and render the trial court's finding of probable cause invalid. He points out that Sergeant Halpern gave varying accounts of when he first observed defendant and whether he observed him driving the vehicle or only exiting the vehicle. He also points out that Sergeant Halpern testified that defendant was driving a red vehicle, but the other witnesses testified that he was driving a gold SUV, and that Sergeant Halpern testified at trial that he observed the parked car "move," but neglected to mention that fact during his testimony at the hearing on defendant's motion.

¶ 41 As discussed, because defendant failed to ask the trial court to reconsider its ruling on the motion to suppress at the time new evidence was introduced at trial, he has waived his right to argue that this court should reverse the trial court's ruling based on the evidence presented at trial. *Davis*, 335 Ill. App. 3d at 12-13. In anticipation of this result, defendant argues that trial counsel was ineffective for failing to preserve this issue for appeal. "To successfully assert that counsel was ineffective for failing to file such a motion, the defendant must demonstrate that the motion would have been successful, thus affecting the outcome of the trial." *People v. Causey*, 341 Ill. App. 3d 759, 766 (2003) (citing *People v. DeLuna*, 334 Ill. App. 3d 1, 16 (2002)).

Accordingly, defendant must establish that the court would have reversed its previous decision and granted the motion to suppress in light of the trial testimony. *Causey*, 341 Ill. App. 3d at 767.

¶ 42 Here, the record shows that in denying defendant's pretrial suppression motion, the trial court expressly considered defendant's attempted impeachment of Sergeant Halpern's testimony, weighed the credibility of the witnesses, and determined that it found Sergeant Halpern credible. Similarly, at the conclusion of the trial, the court again stated that it found Sergeant Halpern credible, regardless of any purported impeachment. Notably, many of the same inconsistencies that defendant brings to our attention on appeal were addressed by the trial court, which found any impeachment of Sergeant Halpern's testimony to be "*de minimis* at best" and insignificant.

¶ 43 Based on this record, we cannot conclude that even if defendant's counsel had moved during trial to renew the motion to quash arrest and suppress evidence, that the trial court would have reversed its previous ruling. Where defendant has not suffered prejudice as a result of counsel's actions, we need not consider whether counsel's performance was deficient. *Causey*, 341 Ill. App. 3d at 767 (citing *Strickland v. Washington*, 466 U.S. 668, 697 (1984)). We, therefore, find that the trial court did not err in denying defendant's motion to quash arrest and suppress evidence where the officers had probable cause to arrest him. *Wear*, 229 Ill. 2d at 563-64. Similarly, we find that defendant cannot establish ineffective assistance of counsel as a result of the failure to request reconsideration in light of the trial evidence because even if this court were to consider the trial evidence, the finding of probable cause would not change. We cannot conclude that the evidence obtained after defendant's arrest was the inadmissible fruit of an illegal seizure.

¶ 44 Defendant finally contends that the fines and fees order contains several errors and needs to be corrected. Defendant asserts, citing *People v. Arna*, 168 Ill. 2d 107, 113 (1995), that when a

fine imposed does not conform to a statutory requirement, the fine is void, which is an issue that "may be attacked at any time." In light of *People v. Castleberry*, 2015 IL 116916, ¶ 19, this rule no longer applies. On appeal, however, the reviewing court may modify the fines and fees order without remanding the case back to the circuit court. Ill. S. Ct. R. 615(b)(1) (eff. Aug. 27, 1999) ("[o]n appeal the reviewing court may *** modify the judgment or order from which the appeal is taken"); *People v. McCray*, 273 Ill. App. 3d 396, 403 (1995) ("[r]emandment is unnecessary since this court has the authority to directly order the clerk of the circuit court to make the necessary corrections"). This court reviews *de novo* the propriety of court-ordered fines and fees. *People v. Price*, 375 Ill. App. 3d 684, 697 (2007).

¶ 45 Defendant first contends, and the State concedes, that the $500 DUI offense fine should be vacated. Defendant must pay the DUI offense fine when the "alcohol concentration in his or her blood, breath, or urine was 0.16 or more." 625 ILCS 5/11-501(c)(4) (West 2012). Here, the trial court found defendant not guilty of the counts related to his blood alcohol content. Therefore, we vacate the $500 assessment.

¶ 46 Defendant next contends, and the State concedes, that the $5 court system fee should be vacated. Defendant must pay the court system fee only where he is convicted of a violation of the Illinois Vehicle Code. 55 ILCS 5/5-1101(a) (West 2012). Although defendant's conviction for driving under the influence of alcohol is a violation of Illinois Vehicle Code (625 ILCS 5/11-501(a)(2) (West 2012)), convictions under section 11-501 are exempted from this fee. 55 ILCS 5/5-1101(a) (West 2012). Accordingly, we find that the $5 fee was improperly assessed and we vacate it.

¶ 47 Defendant next argues that his presentence incarceration credit offsets various assessments. Defendant spent 99 days in presentence custody, for which he was entitled to a $5-

per-day presentence custody credit to offset his fines. 725 ILCS 5/110-14(a) (West 2012). Defendant contends, the State concedes, and we agree, that Defendant is entitled to use his presentence custody credit to offset the $50 Court System fee (*People v. Ackerman*, 2014 IL App (3d) 120585, ¶ 31) and the $15 State Police Operations fee (*People v. Milsap*, 2012 IL App (4th) 110668, ¶ 31) ("[d]espite it's statutory label, the State Police operations assistance fee is also a fine").

¶ 48 Accordingly, we order the clerk of the circuit court to modify defendant's fines and fees order in accordance with this order, reflecting a total assessment of $1,284, and affirm the judgment of the circuit court of Cook County in all other respects.

¶ 49 Affirmed; fines and fees order modified.