2016 IL App (2d) 150378-U
No. 2-15-0378
Order filed May 16, 2016

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

ERIC D. PURYEAR,	)	Appeal from the Circuit Court
	)	of McHenry County.
Plaintiff-Appellant,	)	
	)	
v.	)	No. 13-LA-15
	)	
VILLAGE OF PRAIRIE GROVE,	)	Honorable
	)	Thomas A. Meyer,
Defendant-Appellee.	)	Judge, Presiding.

JUSTICE HUDSON delivered the judgment of the court.
Justices McLaren and Birkett concurred in the judgment.

ORDER

¶ 1 *Held*: (1) Trial court did not err in disallowing video of other traffic stops made by police officer as such evidence was not relevant to plaintiff's complaint that defendant willfully and intentionally failed to comply with the Freedom of Information Act or otherwise acted in bad faith in responding to plaintiff's first Freedom of Information Act request; (2) trial court did not err in refusing to allow plaintiff to provide lay opinion testimony as to the cause of a computer error message received by defendant as proposed testimony was not based on plaintiff's personal knowledge and plaintiff was not qualified as an expert; (3) even if plaintiff was qualified to render expert testimony, his opinions were not disclosed during discovery; (4) the trial court did not err in granting defendant's motion for a directed finding as plaintiff's evidence failed to establish that defendant willfully and intentionally failed to comply with the Freedom of Information Act or otherwise acted in bad faith in responding to plaintiff's first Freedom of Information request; and (5) the trial court did not err in denying plaintiff's motion to reconsider and for a new trial as plaintiff failed to establish newly discovered evidence, changes in the law, or errors in the application of existing law to the facts of the case.

¶ 2 Plaintiff, Eric D. Puryear, filed a complaint pursuant to the Freedom of Information Act (FOIA) (5 ILCS 140/1 *et seq.* (West 2012)) against defendant, Village of Prairie Grove. In his complaint, plaintiff alleged that defendant willfully and intentionally failed to comply with the FOIA, or otherwise acted in bad faith, when it did not produce a video pertaining to a traffic stop in which plaintiff was issued a citation for failing to wear a seatbelt. At the close of plaintiff's case-in-chief, defendant filed a motion for a directed finding, asserting that plaintiff failed to present any evidence that it acted willfully and intentionally or in bad faith. The circuit court of McHenry County granted defendant's motion. Following the denial of his motion to reconsider and for a new trial, plaintiff initiated the present appeal. On appeal, plaintiff raises four issues. First, plaintiff argues that the trial court erred in refusing to admit video of other traffic stops made by the same officer who cited plaintiff as such evidence was relevant to establish that defendant willfully and intentionally failed to comply with the FOIA or otherwise acted in bad faith in responding to his FOIA request. Second, plaintiff argues that the trial court erred in precluding him from testifying about a computer error message defendant received when it attempted to download video from the digital video recorder (DVR) in the officer's squad car. Third, plaintiff contends that the trial court erred in granting defendant's motion for a directed finding. Finally, plaintiff asserts that the trial court erred in denying his motion to reconsider and for a new trial. We affirm.

¶ 3 I. BACKGROUND

¶ 4 On October 21, 2012, plaintiff was issued a citation by Officer James Page of the Village of Prairie Grove police department for failure to wear his seat belt while riding as a passenger in

the front seat of a Ford F-150 pick-up truck.[1] The citation issued to plaintiff bore the number "P031-3014."

¶ 5 On October 22, 2012, plaintiff submitted a FOIA request to defendant (first FOIA request) seeking "[a]ny and all documents, records, reports, memoranda, notes, transcripts, video, audio, emails, instant messages, text messages, radio logs, computer files, digital data, electronic information, or other information obtainable pursuant to the [FOIA], relating to Citation No. P031-3014 or the traffic stop in which that Citation was issued." On October 26, 2012, defendant responded to the first FOIA request with a patrol log, a copy of the citation issued to plaintiff, Officer Page's handwritten note from the stop, and a picture of a bumper sticker which was on the vehicle in which plaintiff was riding. In its response, defendant also wrote "[a]t this time no video or audio is available due to a software and or [*sic*] hardware malfunction."

¶ 6 On October 30, 2012, plaintiff submitted a second FOIA request to defendant (second FOIA request) seeking documents relating to or evidencing the malfunction referred to in defendant's response to the first FOIA request. On October 31, 2012, plaintiff submitted a third FOIA request to defendant (third FOIA request) seeking "[a]ny and all video and audio from any and all police vehicles driven by Officer James Page for the 10 days prior to and the 10 days following October 21, 2012." The third FOIA request also sought "[a]ny and all video and audio

[1] Following a jury trial, plaintiff was found guilty of failing to wear his seatbelt. This court affirmed defendant's conviction. See *Village of Prairie Grove v. Puryear*, 2014 IL App (2d) 140286-U. Plaintiff's petition for leave to appeal was subsequently denied by our supreme court. See *Village of Prairie Grove v. Puryear*, 31 N.E. 3d 772 (2015).

from the police car driven by Officer James Page at the time of the October 21 citation (P031-3014) for the 10 days before and the 10 days after October 21, 2012."

¶ 7 On November 7, 2012, defendant responded to the second FOIA request with the following: emails dated October 2, 23, and 25, 2012; an estimate from Central Service Center of Decatur, Illinois, dated October 16, 2012, to "[r]epair Shadow 800 or Responder 1000," to "reformat DVR," and to "reinstall drives;" and a copy of defendant's written policy regarding squad car recording equipment. The email dated October 2, 2012, was an exchange between Ron Lyons, defendant's director of public safety, and Laura Jonasen, defendant's records clerk and FOIA officer. In the October 2 email, Jonasen wrote as follows:

> "Ron—Rodney with Decatur Electronics will be out on Thurs Oct 4 @ 10:00am. . . . . .this Thursday! I told him what you mentioned. . . .so he'll go through each camera and access [*sic*] the problems[.] Check DVR system etc. . . .His cost is $60.00 an hour! Is this ok?"

Lyons responded, "Yes. No good if they don't work." The email dated October 23, 2012, was from Lyons to "Jackie" at Central Service Center. The email contained a picture of a computer error message Lyons received when he tried to download video "[f]rom the 800 unit in the Expedition." The error message was headed "USB Device Not Recognized" and stated, "[o]ne of the USB devices attached to this computer has malfunctioned, and Windows does not recognize it." The error message instructed the user to click on the message for further assistance in solving the problem. Lyons asked Jackie to "forward this to the technician that did the work" as Lyons had "subpoenas for in car video." The email dated October 25, 2012, was

from Lyons to Jonasen, in which Lyons asked Jonasen to contact Central Service Center and have the repairman call him on his cell phone.[2]

¶ 8 On November 7, 2012, defendant also responded to the third FOIA request with five digital video discs (DVDs) containing video from the squad cars driven by Officer Page for the time period from October 11, 2012, through October 31, 2012. One of the five DVDs contained a video of the October 21, 2012, traffic stop of plaintiff by Officer Page.

¶ 9 On January 6, 2013, plaintiff filed a FOIA complaint against defendant in the circuit court of McHenry County asking for a declaration that defendant intentionally, willfully, and in bad faith failed to comply with the FOIA by not producing the October 21, 2012, video in response to the first FOIA request. Plaintiff requested that defendant be assessed a civil penalty. Attached to the complaint were the three FOIA requests and defendant's responses to the first and second FOIA requests.

¶ 10 On March 19, 2013, defendant filed a motion for judgment on the pleadings. In its motion, defendant argued that the matter was moot because the requested video was turned over prior to the lawsuit being filed. Defendant also argued that plaintiff's own complaint ruled out willfulness or bad faith in that the attachments to the complaint showed that the production of the video was delayed because there was an equipment malfunction. On May 21, 2013, the trial court granted defendant's motion for judgment on the pleadings "as to the production of documents," but granted plaintiff leave to amend his complaint "as to an independent action for willfulness" under section 11(j) of the FOIA (5 ILCS 140/11(j) (West 2012)). On May 24, 2013,

[2] A fourth email from Lyons dated October 31, 2012, was also included in defendant's response to the second FOIA request. The October 31, 2012, email forwarded the October 2, 2012, email to an unspecified individual at the Prairie Grove police department.

plaintiff filed an amended complaint which was substantially similar to the original complaint, but alleged that defendant fabricated a software or hardware malfunction to avoid producing video of plaintiff's traffic stop. Specifically, plaintiff alleged that defendant twice failed to comply with the FOIA in that it "willfully and intentionally acted in bad faith by (1) dishonestly denying the existence of the video and later by (2) fabricating an excuse for the video's claimed unavailability."

¶ 11 On July 1, 2013, defendant filed a motion to dismiss pursuant to sections 2-615 and 2-619 of the Code of Civil Procedure (Code) (725 ILCS 5/2-615, 2-619 (West 2012)). With respect to its motion to dismiss pursuant to section 2-615 of the Code, defendant raised multiple theories, including mootness. As for the motion to dismiss pursuant to section 2-619 of the Code, defendant argued that Lyons' testimony during a hearing held on a motion to dismiss plaintiff's seatbelt citation and the judge's finding in that case that there was an equipment malfunction around October 21, 2012, affirmatively established a malfunction and ruled out willfulness and bad faith. On August 21, 2013, the trial court denied defendant's motion to dismiss. On December 6, 2013, plaintiff filed a motion for leave to file a second amended complaint. The trial court granted plaintiff's motion.[3]

[3] The only difference between the second amended complaint and the first amended complaint is that the former contained an extra paragraph in the "Factual Background" section. Defendant filed an answer to the second amended complaint on January 16, 2014. However, prior to trial, defendant's attorney informed the court that the second amended complaint was attached as an exhibit to the motion for leave to file the second amended complaint but that the second amended complaint was never actually filed. At that time, plaintiff asked for leave to file the second amended complaint, and defendant responded that it had no objection. The trial court

¶ 12 In his disclosure pursuant to Illinois Supreme Court Rule 222 (eff. Jan. 1, 2011), plaintiff disclosed five potential lay witnesses: (1) plaintiff (an attorney with Puryear Law); (2) Ashley Hintzman (an employee of Puryear Law); (3) Jonasen; (4) Lyons; and (5) Officer Page. Plaintiff did not list any expert witnesses. The disclosure further provided that plaintiff's proposed testimony would involve "Puryear Law's efforts to obtain information from [defendant], [defendant's] responses to that information and the failure to answer truthfully requests for the video relating to [plaintiff's] traffic stop." In its Rule 222 disclosure, defendant listed three potential lay witnesses: (1) Lyons; (2) Jonasen; and (3) Jackie Stanfill (an employee of Central Service Center). Defendant did not list any expert witnesses. On August 18, 2014, defendant filed a motion to exclude witnesses and testimony not previously disclosed in discovery. On August 27, 2014, the trial court granted the motion "insofar as both parties agree they will not be presenting expert testimony or witnesses."

¶ 13 On November 13, 2014, the matter proceeded to a bench trial. For his case-in-chief, plaintiff presented only his testimony. During direct examination, plaintiff testified that on October 21, 2012, he was issued a citation for failing to wear a seatbelt as a passenger in a motor vehicle. The following morning, he went to work at his law office and directed his associate to submit a FOIA request for documents related to the stop. Plaintiff identified the first FOIA request, which specifically requested video of his traffic stop, and defendant's response, which stated that the video was unavailable at the time due to a hardware or software malfunction.

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then stated, "the complaint that was attached to the motion of December 6, 2013, will be filed." Nevertheless, a file-stamped copy of the second amended complaint has not been included in the record.

Plaintiff testified that defendant did not request more time to fully respond to the first FOIA request.

¶ 14 Plaintiff then identified the second FOIA request, asking for evidence of the malfunction, and defendant's response thereto. Defendant's response included various emails, a repair estimate from Central Service Center, and defendant's policy regarding squad car video and audio equipment. Plaintiff pointed out that the date of one of the emails referencing a malfunction (October 2, 2012) and the date of the Central Service Center estimate (October 16, 2012) preceded the date of his traffic stop (October 21, 2012) and his first FOIA request (October 22, 2012).

¶ 15 Plaintiff also read the October 23, 2012, email containing the computer error message. Plaintiff then testified that he has a bachelor's degree in computer science, that he likes computers "quite a bit," and that he has used the Windows XP operating system. Plaintiff testified that he knew that the error message was a Windows XP message that he had seen many times. Plaintiff's attorney then asked him, "And do you have any way of knowing what might cause that pop-up message to appear?" At that point, defendant objected. Defendant argued that plaintiff was disclosed only as an occurrence witness, but was attempting to render expert testimony about which he was not qualified. Plaintiff's attorney responded that plaintiff has a bachelor's degree in computer science, he has experience using the computer operating system at issue, and he has testified "that he does know what would cause this particular error message to appear." The trial court sustained the objection, finding that plaintiff would not be "rendering an opinion *** as a witness to something that happened," but rather would be "interpreting documents that have been *** presented to him in order to render an opinion as to their meaning."

¶ 16 Plaintiff then identified the third FOIA request, which asked for video from any squad car driven by Officer Page 10 days before and 10 days after October 21, 2012, and defendant's response thereto, which included five DVDs. When plaintiff reviewed the DVDs, he discovered that one of them contained video of the traffic stop involving him and Officer Page. Plaintiff then attempted to describe the other traffic stops on the DVDs as being of Officer Page pulling over only Ford sport utility vehicles and pick-up trucks. Defendant objected on the ground of relevance, and the trial court sustained the objection. Ultimately, when plaintiff offered one of the videos into evidence, the trial court admitted it as relevant insofar as it was the response provided to the FOIA request.

¶ 17 On cross-examination, plaintiff confirmed that he received a response to his first FOIA request within five business days, although he believed it to be an incomplete response. Plaintiff also confirmed that he received responses to his second and third FOIA requests. Plaintiff noted that in response to the third FOIA request, defendant provided video of his October 21, 2012, traffic stop.

¶ 18 Following the conclusion of plaintiff's case-in-chief, defendant moved for a directed finding, arguing that plaintiff had failed to present any evidence of willfulness or bad faith. The trial court granted defendant's motion and entered a finding in defendant's favor. The court reasoned that the mere failure to produce documents in response to a FOIA request does not create a presumption of bad faith, willfulness, or intent and plaintiff did not otherwise establish that defendant willfully and intentionally failed to comply with the FOIA or that it otherwise acted in bad faith. On December 11, 2014, plaintiff filed a motion to reconsider and for a new trial. In his motion, plaintiff raised two issues. First, he argued that the trial court erred in not admitting the video of the other traffic stops performed by Officer Page on October 21, 2012,

because it was "relevant and probative of the defendant's bad faith." Second, plaintiff argued that the trial court erred in not allowing him to testify regarding the error message referenced in the October 23, 2012, email. Plaintiff asserted that "[t]he contents of the video, coupled with the Defendant's fabricated claim that the video [of the traffic stop involving plaintiff] was unavailable due to a computer malfunction, tends to show that the Defendant's denial of [his] request for the video was in bad faith and an intentional violation of the [FOIA]." On April 1, 2015, the trial court denied plaintiff's motion to reconsider. On April 10, 2015, plaintiff filed a notice of appeal.

¶ 19 II. ANALYSIS

¶ 20 On appeal, plaintiff raises four issues. First, plaintiff argues that the trial court erred when it rejected his request to admit video of the other traffic stops conducted by Officer Page on October 21, 2012. Second, plaintiff contends that the trial court erred in failing to allow him to provide lay witness opinion testimony regarding the computer error message referenced in the October 23, 2012, email. Third, plaintiff asserts that that the trial court erred in granting defendant's motion for a directed finding. Finally, plaintiff argues that the trial court erred in denying his motion to reconsider and for a new trial. We address each contention in turn.

¶ 21 A. Officer Page's Other Traffic Stops

¶ 22 Plaintiff first argues that the trial court erred when it refused to admit video of the other traffic stops conducted by Officer Page on October 21, 2012, the day Officer Page issued a citation to plaintiff. According to plaintiff, such evidence tended to show defendant's bad faith in responding to the first FOIA request. Defendant responds that evidence of Officer Page's other traffic stops on October 21, 2012, was irrelevant to plaintiff's claim that it willfully and

intentionally failed to initially produce the video of plaintiff's traffic stop or that it otherwise acted in bad faith in responding to plaintiff's first FOIA request.

¶ 23 At the outset, the parties disagree as to the standard of review applicable to this issue. Plaintiff acknowledges that, as a general rule, evidentiary rulings are reviewed for an abuse of discretion. See *People v. Wheeler*, 226 Ill. 2d 92, 132 (2007) ("This court has recognized that evidentiary rulings are within the sound discretion of the trial court and will not be disturbed absent a clear abuse of discretion."); *People v. Nixon*, 2016 IL App (2d) 130514, ¶ 36 (same); *Cress v. Recreation Services, Inc.*, 341 Ill. App. 3d 149, 179 (2003) (same). However, citing *People v. Williams*, 188 Ill. 2d 365, 368-69 (1999), plaintiff suggests that a *de novo* standard of review applies here because "the trial court's exercise of discretion has been frustrated by an erroneous rule of law." Defendant responds that the appropriate standard of review is abuse of discretion. According to defendant, the trial court did not make an erroneous ruling of law, but rather "considered and applied the specific facts of this case and determined that Officer Page's other traffic stops on the day in question were not relevant to the issue in this case—whether [it] willfully or in bad faith failed to provide the Plaintiff with the October 21, 2012, video."

¶ 24 In *Williams*, the trial court ignored a "quite-settled rule" in Illinois regarding the consequences of a guilty plea and applied the law of another state. *Williams*, 188 Ill. 2d at 373-74. Given these circumstances, the supreme court found that the trial court failed to "exercise its discretion within the bounds of the law," and therefore *de novo* review of the trial court's decision was appropriate. *Williams*, 188 Ill. 2d at 369. In a subsequent case, the supreme court clarified that *Williams* held that "reviewing courts should defer to [a] trial court's evidentiary rulings even if they involve legal issues unless [the] 'trial court's exercise of discretion has been frustrated by an erroneous rule of law.' " *People v. Taylor*, 2011 IL 110067, ¶ 27 (quoting

Williams, 188 Ill. 2d at 369); see also *People v. Voit*, 355 Ill. App. 3d 1015, 1023 (2004) (holding that so long as the trial court exercises its discretion within the bounds of the law, a reviewing court will not disturb the court's evidentiary ruling absent an abuse of discretion). Unlike *Williams*, the trial court in this case did not ignore Illinois precedent and apply the law of another jurisdiction. Indeed, while plaintiff clearly disagrees with the trial court's evidentiary ruling, he does not identify why the trial court's decision involves "an erroneous rule of law." As we see it, the issue presented is simply whether the trial court's application of the law to the facts of this case was erroneous. We therefore review this issue for an abuse of discretion. See *People v. Caffey*, 205 Ill. 2d 52, 89-90 (2001) (refusing to apply *de novo* standard in reviewing trial court's evidentiary ruling and applying the abuse of discretion standard where the trial court based its evidentiary ruling on the specific circumstances of the case and not on a broadly applicable rule). An abuse of discretion occurs only where no reasonable person would take the view adopted by the trial court. *In re Marriage of Tutor*, 2011 IL App (2d) 100187, ¶ 10.

¶ 25 The controlling principles concerning the admissibility of evidence are well established. All relevant evidence is admissible unless otherwise provided by law. Ill. R. Evid. 402 (eff. Jan. 1, 2011); see also *People v. Cruz*, 162 Ill. 2d 314, 348 (1994); *Parks v. Brinkman*, 2014 IL App (2d) 130633, ¶ 70. Evidence is relevant if it has any tendency to make the existence of any fact that is of consequence to the determination of the action more or less probable than it would be without the evidence. Ill. R. Evid. 401 (eff. Jan. 1, 2011); see also *People v. Harvey*, 211 Ill. 2d 368, 392 (2004). Moreover, a court may exclude evidence as irrelevant where it is too remote, uncertain, or speculative. *People v. Ursery*, 364 Ill. App. 3d 680, 686 (2006). To establish the relevance of a piece of evidence, its proponent must: (1) identify the fact that it is seeking to prove with the evidence; (2) explain how that fact is of consequence; and (3) show how the

evidence tends to make the existence of this fact more or less probable than it would be without the evidence. *People v. Gregory*, 2016 IL App (2d) 140294, ¶ 21.

¶ 26 Here, plaintiff alleged that defendant willfully and intentionally failed to comply with the FOIA, or otherwise acted in bad faith, in responding to his first FOIA request. According to plaintiff, video of the other traffic stops conducted by Officer Page on October 21, 2012, shows that Officer Page engaged in pretextual stops. Plaintiff reasons that Officer Page's conduct therefore provided defendant a motive to fabricate the equipment malfunction, *i.e.*, to conceal Officer Page's "inappropriate actions." Plaintiff then concludes that the content of the video was relevant as it "made Defendant's bad faith more probable, when considering the negative contents of the video, the Defendant's initial denial of the request, and the subsequent disclosure of the alleged unobtainable video." We disagree and find that the trial court acted within its discretion in excluding video of the other traffic stops conducted by Officer Page on October 21, 2012.

¶ 27 According to plaintiff, the video depicts Officer Page engaging in pretextual stops as it shows him "consecutively stopping Ford S.U.V. trucks, with nobody other than [him] receiving a traffic citation." Although plaintiff implies that the video shows Officer Page pulling over only Ford pick-up trucks, defendant focuses on only a small portion of the video. In actuality, the video shows 16 traffic stops conducted by Officer Page on October 21, 2012, between approximately 2 p.m. and 6 p.m. A majority of the stops (10) involved passenger cars. Six of the stops involved pick-up trucks or truck-like vehicles, including the final five traffic stops. Plaintiff does not explain how the fact that the last five traffic stops conducted by Officer Page on October 21, 2012, involved pick-up trucks rendered the stops pretextual so as to provide defendant with a reason to fabricate the equipment malfunction. The manufacturers of the

vehicles involved in the last five traffic stops are not clear from the video, although three of the trucks (including the one in which plaintiff was a passenger) appear to have Ford insignia. Even if all of the trucks involved in the final five traffic stops are Fords, they also have significant dissimilarities. For instance, all of the trucks are different colors. Additionally, one of the trucks has a topper covering its bed. Another truck has an attached trailer carrying landscaping equipment. In light of this evidence, we fail to see how the mere fact that Officer Page consecutively pulled over five pick-up trucks makes it any more likely that defendant acted in bad faith by fabricating the equipment malfunction in an effort to conceal Officer Page's alleged "inappropriate actions." Quite simply, the video of Officer Page's other traffic stops is not probative as to whether defendant willfully and intentionally violated the FOIA or otherwise acted in bad faith in responding to the first FOIA request. Thus, we cannot say that no reasonable person would take the view adopted by the trial court.

¶ 28 B. Error Message

¶ 29 Next, plaintiff argues that the trial court erred in failing to allow him to provide testimony about the computer error message referenced in defendant's October 23, 2012, email. According to plaintiff, his testimony regarding the error message was permissible under Illinois Rule of Evidence 701 (eff. Jan. 1, 2011), as he had experience using the computer operating system in question, he personally observed the same error message referenced in the email, and he knew from common experience that the error message appeared when a universal serial bus (USB) device was not properly connected to a USB port. Defendant responds that an expert opinion was required regarding the cause of the error message as such information is "beyond the ken" of the average layperson.

¶ 30 Illinois Rule of Evidence 701 (eff. Jan. 1, 2011) provides as follows:

> "If the witness is not testifying as an expert, the witness' testimony in the form of opinions or inferences is limited to those opinions or inferences which are (a) rationally based on the perception of the witness, and (b) helpful to a clear understanding of the witness' testimony or the determination of a fact in issue, and (c) not based on scientific, technical, or other specialized knowledge within the scope of Rule 702."

Because Illinois Rule of Evidence 701 is modeled after its federal counterpart (Fed. R. Evid. 701), we may look to federal law and state decisions interpreting similar rules for guidance. See *People v. Thompson*, 2016 IL 118667, ¶ 40. The decision to admit lay opinion testimony rests within the sound discretion of the trial court, and its decision will not be disturbed on appeal absent an abuse of that discretion. See *Thompson*, 2016 IL 118667, ¶ 49.[4]

¶ 31 Here, the trial court disallowed plaintiff's testimony regarding the error message, concluding that plaintiff would not be "rendering an opinion *** as a witness to something that happened," but rather would be "interpreting documents that have been *** presented to him in order to render an opinion as to their meaning." We find the trial court acted within its discretion in excluding plaintiff's testimony. As noted above, Rule 701 requires that opinion testimony from a lay witness be (1) rationally based on the perception of the witness, (2) helpful to a clear understanding of the witness's testimony or the determination of a fact in issue, and (3) not based

[4] Citing *Williams*, 188 Ill. 2d 365, plaintiff again suggests that a *de novo* standard of review applies here because "the trial court's exercise of discretion has been frustrated by an erroneous rule of law." We reject this position for the same reasons we found that *de novo* review of the first issue plaintiff raised was inappropriate, *i.e.*, the trial court did not ignore settled Illinois law and plaintiff does not identify how the trial court's decision was based on "an erroneous rule of law."

on scientific, technical, or other specialized knowledge within the scope of Illinois Rule of Evidence 702 (eff. Jan. 1, 2011). In this case, plaintiff's proposed testimony would not have been rationally based on his perception. "An opinion is rationally based on a witness's perception if the opinion is 'one that a layperson could normally form from observed facts.' " *People v. Gharrett*, 2016 IL App (4th) 140315, ¶ 72 (quoting Michael H. Graham, Graham's Handbook of Illinois Evidence § 701.1, at 618 (10th ed.2010)); see also *U.S. v. Johnson*, 617 F.3d 286, 292 (4th Cir. 2010) (quoting *U.S. v. Perkins*, 470 F.3d 150, 155-56 (4th Cir. 2006) (noting that a key difference between lay opinion testimony and expert testimony under the Federal Rules of Evidence is that " 'lay opinion testimony *must* be based on personal knowledge.' " (Emphasis in original.)). Plaintiff's attorney represented that his client would testify as to "what would cause this particular error message to appear." Yet, as the trial court noted, plaintiff's proposed testimony as to the cause of the error message would not have been based on his personal knowledge. Notably, plaintiff was not present when Lyon attempted to download the video. As such, he was not privy to what actions taken by Lyons resulted in the appearance of the particular error message referenced in the October 23, 2012, email.

¶ 32 Thus, as the trial court noted, plaintiff would be "interpreting documents that have been *** presented to him in order to render an opinion as to their meaning." Illinois law requires an expert opinion if the subject matter is "beyond the ken" of the average trier of fact. *In re Estate of Sewart*, 236 Ill. App. 3d 1, 16 (1991). Evidence is "beyond the ken" of the average trier of fact when it involves knowledge or experience that a trier of fact generally lacks. *Kimble v. Earle M. Jorgenson Co.*, 358 Ill. App. 3d 400, 409 (2005). Here, plaintiff's proposed testimony concerned why defendant received the specific error message referenced in the October 23, 2012, email. However, as the trial court suggested, the cause of the error message was "beyond

the ken" of the average trier of fact as it required specialized knowledge or experience with computers and the appropriate operating system.

¶ 33 Even if we assume arguendo that plaintiff was qualified to render expert testimony regarding the cause of the error message, his opinion was properly excluded because neither he nor his opinions were disclosed during the course of discovery. Illinois Supreme Court Rule 213(f)(3) (eff. Jan. 1, 2007) provides as follows:

> "Upon written interrogatory, a party must furnish the identities and addresses of witnesses who will testify at trial and must provide the following information:
>
> * * *
>
> (3) *Controlled Expert Witnesses.* A "controlled expert witness" is a person giving expert testimony who is the party, the party's current employee, or the party's retained expert. For each controlled expert witness, the party must identify: (i) the subject matter on which the witness will testify; (ii) the conclusions and opinions of the witness and the bases therefor; (iii) the qualifications of the witness; and (iv) any reports prepared by the witness about the case."

As a general rule, an expert's direct testimony is properly limited to the scope of and consistent with the facts and opinions disclosed in discovery. Illinois Supreme Court Rule 213(g) (eff. Jan. 1, 2007); *Parker v. Illinois Masonic Warren Barr Pavilion*, 299 Ill. App. 3d 495, 501 (1998). Here, plaintiff acknowledges that the court entered an order requiring him to make any disclosures pursuant to Rule 213(f)(3) by July 18, 2014. Yet, plaintiff never made any such disclosures. Indeed, both parties agreed that no expert witnesses would be called. For all of the foregoing reasons, the trial court did not abuse its discretion in excluding plaintiff's proposed testimony regarding the cause of the error message referenced in the October 23, 2012, email.

¶ 34 C. Directed Finding

¶ 35 Next, plaintiff argues that the trial court erred in granting defendant's motion for a directed finding at the close of his evidence. Plaintiff argues that the trial court failed to consider the evidence and inferences from the evidence in the light most favorable to him. According to plaintiff, he presented sufficient evidence to meet his burden of establishing that defendant engaged in bad faith when it denied the first FOIA request. Plaintiff further posits that, to the extent he failed to present evidence of defendant's bad faith, it was due to the trial court's erroneous evidentiary rulings. Defendant responds that the trial court properly granted its motion for a directed finding at the close of plaintiff's case as plaintiff failed to present evidence of willfulness or bad faith.

¶ 36 Section 2-1110 of the Code (735 ILCS 5/2-1110 (West 2012)) governs motions for directed findings at bench trials. *Dwyer v. Love*, 346 Ill. App. 3d 734, 737 (2004). In ruling on a motion for a directed finding, the trial court must first determine, as a matter of law, whether the plaintiff has established a *prima facie* case by proffering at least some evidence on every element essential to the plaintiff's cause of action. *In re Foxfield Subdivision*, 396 Ill. App. 3d 989, 992 (2009). If the plaintiff fails to meet this burden, the trial court should grant the motion and enter judgment in the defendant's favor. *In re Foxfield Subdivision*, 396 Ill. App. 3d at 992. Because the question of whether the plaintiff has failed to present a *prima facie* case is a question of law, our review of the trial court's determination is *de novo*. *In re Foxfield Subdivision*, 396 Ill. App. 3d at 992.

¶ 37 Section 11(j) of the FOIA (5 ILCS 140/11(j) (West 2012)), provides in relevant part:

> "If the court determines that a public body willfully and intentionally failed to comply with this Act, or otherwise acted in bad faith, the court shall also impose upon the

> public body a civil penalty of not less than $2,500 nor more than $5,000 for each occurrence."

Among the elements that a plaintiff must prove are that: (1) the public body failed to comply with the Act and (2) the failure was willful and intentional or otherwise in bad faith. 5 ILCS 140/11(j) (West 2012). In this case, plaintiff did not offer any evidence that defendant's failure to include video of his October 21, 2012, traffic stop by Officer Page with its response to the first FOIA request was willful and intentional or otherwise in bad faith.

¶ 38 The only witness in the plaintiff's case-in-chief was plaintiff himself. Plaintiff testified that the video was not included in defendant's response to the first FOIA request, but that defendant also responded that the video was unavailable because of a hardware or software malfunction. Plaintiff further testified that he submitted a second FOIA request on defendant for evidence of the malfunction and defendant responded with a repair estimate and several emails evidencing a malfunction shortly before and after the FOIA request. One of the emails contained a picture of an error message that Lyons received when he attempted to download video from a squad car DVR. Finally, plaintiff testified that he received the October 21, 2012, video in response to his third FOIA request when he asked for video from the 10 days before and 10 days after October 21, 2012.

¶ 39 The foregoing evidence shows that defendant responded to all three FOIA requests, although the video of Officer Page's traffic stop of plaintiff was not included in the response to the first FOIA request due to the equipment malfunction. None of plaintiff's evidence, however, shows willfulness or bad faith, only that full compliance with the first FOIA request was not performed due to an equipment malfunction. Although plaintiff claims that defendant fabricated the equipment malfunction, he presented no direct or circumstantial evidence that this was the

case. Further, plaintiff presented no evidence that defendant falsified the emails, repair estimate, or computer error message provided in response to the second FOIA request. Indeed, defendant ultimately provided the video to plaintiff on November 7, 2012, in response to the third FOIA request. While plaintiff attributes any failure to present evidence of defendant's bad faith to the trial court's "erroneous evidentiary rulings," we have rejected these arguments. Hence, we conclude that the trial court properly granted defendant's motion for a directed finding as plaintiff failed to present evidence that defendant willfully and intentionally failed to comply with his first FOIA request or otherwise acted in bad faith.

¶ 40 D. Motion to Reconsider

¶ 41 Finally, plaintiff contends that the trial court erred in denying his motion to reconsider and for a new trial. We disagree. The purpose of a motion to reconsider is to bring to the attention of the trial court: (1) newly discovered evidence not available at the time of the first hearing; (2) changes in the law; or (3) errors in the previous application of existing law to the facts at hand. *River Village I, LLC v. Central Insurance Cos.*, 396 Ill. App. 3d 480, 492 (2009). Both a motion to reconsider and a motion for a new trial are matters addressed to the trial court's discretion. *Maple v. Gustafson*, 151 Ill. 2d 445, 455 (addressing motion for a new trial); *JP Morgan Chase Bank v. Fankhauser*, 383 Ill. App. 3d 254, 259 (2008) (addressing motion to reconsider). As such, the decision to grant or deny a motion to reconsider and for a new trial will not be reversed absent an abuse of discretion. *Maple*, 151 Ill. 2d at 455; *JP Morgan Chase Bank*, 383 Ill. App. 3d at 259.

¶ 42 In his motion to reconsider and for a new trial, plaintiff argued that the trial court improperly excluded evidence of (1) Officer Page's other traffic stops on October 21, 2012, and (2) plaintiff's opinion testimony regarding the computer error message. As noted above,

however, Officer Page's other traffic stops were not relevant to whether defendant fabricated the equipment malfunction. Moreover, for the reasons explained previously, plaintiff's proposed opinion as to the cause of the error message referenced in the October 23, 2012, email was properly excluded. Accordingly, we conclude that the trial court did not abuse its discretion in denying plaintiff's motion to reconsider and for a new trial.

¶ 43 III. CONCLUSION

¶ 44 For the reasons set forth above, we affirm the judgment of the circuit court of McHenry County.

¶ 45 Affirmed.