2015 IL App (2d) 140461-U
No. 2-14-0461
Order filed September 29, 2015

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS, Plaintiff-Appellee, v. AMIT K. GARG, Defendant-Appellant.	))))))))))	Appeal from the Circuit Court of Du Page County. No. 11-DT-4777 Honorable Liam C. Brennan, Judge, Presiding.

JUSTICE ZENOFF delivered the judgment of the court.
Justices Hutchinson and Hudson concurred in the judgment.

ORDER

¶ 1 *Held*: The trial court did not err by failing to conduct an inquiry after defendant's counsel made a statement on the record that defendant waived his right to testify; defendant did not receive ineffective assistance of counsel; and no cumulative error analysis was necessary where there was no reversible error.

¶ 2 Following a bench trial, defendant, Amit Garg, was convicted of driving under the influence of alcohol (625 ILCS 5/11-501(a) (West 2012)) and improper lane usage (625 ILCS 5/11-709(a) (West 2012)). Defendant filed a posttrial motion alleging that he received ineffective assistance of counsel. The trial court denied the motion following an evidentiary hearing. We affirm.

¶ 3 I. BACKGROUND

¶ 4 Defendant was arrested on December 18, 2011, and charged with driving under the influence of alcohol, improper lane usage, and failure to use a signal when required.

¶ 5 At trial, Illinois State Police Trooper Lee was the only witness. Lee testified that he stopped defendant after defendant weaved outside his lane twice and then moved in front of another car without using a signal, causing the other car to "slam" on its brakes. Lee noticed that defendant's hands were shaking and that he was having difficulty lowering the window. Defendant initially lowered the rear passenger-side window. Once defendant lowered the driver's side window, Lee noticed that he had bloodshot, glassy eyes and smelled strongly of alcohol. Lee then ordered defendant out of the car, but defendant had difficulty locating the door handle as he attempted to exit.

¶ 6 Lee testified that he administered three field sobriety tests. The first was the horizontal gaze nystagmus (HGN) test, during which both of defendant's contacts fell out of his eyes. Lee then attempted to administer the walk-and-turn test, but defendant was unable to maintain his balance. Defendant then declined to complete the test because he complained of bright lights and blurry vision. Lee next administered the one-leg-stand test. Lee told defendant that he needed only to be able to see his feet, which defendant claimed he could do. Defendant swayed during the test and put his foot down four times. Lee then re-administered the walk-and-turn test. Defendant was unable to properly perform that test because he failed to connect heel-to-toe, looked ahead instead of at his feet, did not walk enough steps, and improperly turned around at the halfway point. Defendant also had difficulty following instructions during each of the field sobriety tests. Lee then arrested defendant and transported him to the police station, where defendant urinated on himself.

¶ 7 On cross-examination of Lee, defendant's counsel attempted to impeach Lee's testimony. Specifically, counsel questioned Lee regarding the discrepancy between the notation of the color of defendant's car on the citation report and the actual color of the car. Counsel further questioned Lee as to whether defendant actually caused another vehicle to "slam" on its brakes and whether defendant delayed pulling his car over. Counsel then challenged Lee's testimony about defendant's speech patterns, behavior, balance, and performance on the field sobriety tests. Counsel further asked questions intended to cast doubt on Lee's ability to concentrate and whether the field sobriety tests were administered properly. Lee stated that he had been awake for over 20 hours before testifying and agreed that fatigue can make it difficult to concentrate. Lee also testified that defendant told him that he had a cold, and Lee agreed that a cold could adversely affect an individual's ability to perform the field sobriety tests.

¶ 8 After the close of the State's case, defendant moved for a directed finding. The court denied defendant's motion. Defense counsel then stated: "Your Honor, I've had a conversation – discussion with the defendant. He understands that he alone has the right to choose whether he wishes to testify or not and that he is choosing not to testify and that's his own decision. And with that, your Honor, we rest." The court did not itself admonish defendant as to his right to testify or inquire as to the voluntariness of his waiver. Following closing arguments, the trial court found defendant guilty of driving under the influence of alcohol and improper lane usage.

¶ 9 Following the trial, defendant fired his trial counsel, hired new counsel, and filed a posttrial "motion for acquittal or, in the alternative, a new trial." In his posttrial motion, defendant argued that the State did not prove him guilty beyond a reasonable doubt. Defendant also argued that his trial counsel provided ineffective assistance by (1) being unprepared for trial, as evidenced by his failure to cross-examine Lee sufficiently; (2) not adequately discussing the

case with defendant, thereby failing to present an adequate defense or otherwise "present evidence that the defendant felt was important;" (3) erroneously advising defendant not to testify; and (4) not presenting the correct defense or evidence. In his motion, defendant alleged that if he had testified, he would have explained that he could not see without his contact lenses, which affected his performance on the field sobriety tests.

¶ 10 The court held an evidentiary hearing on defendant's posttrial motion. Defendant testified that he spoke to trial counsel twice before trial and that he did not speak to counsel in the two months leading up to it. According to defendant, he and his father met with trial counsel in July when they discussed presenting expert testimony and evidence. Specifically, defendant claimed that he had told trial counsel that he had a sinus infection on the date of his arrest, and that his father, a physician, had prescribed medication for him. Defendant testified that he was "on" that medication at the time of his arrest. According to defendant, he and his father also told trial counsel that they were prepared to hire an expert or have the eye doctor testify. Defendant's father was also willing to testify as an expert about how a sinus infection would affect defendant's ability to perform the field sobriety tests. Defendant testified that trial counsel instructed defendant to get a letter from an eye doctor about his poor vision, which he did. But according to defendant, trial counsel failed to follow up with him or his father about the letter. Defendant testified that he e-mailed trial counsel about two weeks before trial asking to meet to discuss what evidence they would present at trial, but trial counsel failed to make the meeting that was scheduled for an hour before trial. Because trial counsel did not speak with defendant before trial, defendant was unable to tell him that his difficulty in finding the car's door handle and lowering the window was because it was only defendant's second time driving that car.

According to defendant, trial counsel spoke to him about testifying only for a few seconds in the middle of trial.

¶ 11 On cross-examination, defendant admitted that he knew that he had the right to testify at trial. He agreed that he could have told his counsel that he wished to testify, but he followed his attorney's advice not to testify.

¶ 12 Defendant's father, Dr. Narendra Garg, testified that defendant suffered from sinusitis and an upper respiratory infection when he was arrested. Dr. Garg had prescribed medication for the condition, which defendant was taking at the time of his arrest. Dr. Garg was willing to testify to this at trial, but trial counsel did not call him as a witness. Dr. Garg also testified that he wanted to hire an expert to testify to defendant's poor eyesight, but trial counsel rejected the suggestion. In all, trial counsel met with defendant and his father only two times before trial. The last meeting was more than two months before trial.

¶ 13 The State called defendant's trial counsel to testify. He admitted that he did not meet with defendant or Dr. Garg on the date of trial. As to the conversation between himself and defendant at trial, counsel testified that he told defendant that the risk of testifying "would probably not outweigh the potential down side[.]" He counseled against testifying but told defendant "that it was his call to make[.]" Counsel made sure that the record reflected that he counseled defendant as to his choices. Counsel also testified that their conversation at trial "certainly wasn't the first time that [he] had talked to [defendant] about his choice to testify."

¶ 14 On cross-examination, counsel testified that he met with defendant and his father at least six times. They often showed up at his office unannounced. Although they "[e]ndlessly wanted to speak with [him]," counsel accommodated them as much as possible. Counsel met with defendant in April 2013. They discussed trial procedure, strategies, witnesses, and expert

witnesses. At that meeting, Counsel "went through everything" with defendant, including possible experts and defendant's possible testimony. Counsel denied directing defendant to bring a letter from an eye doctor, but he acknowledged that he likely asked for documentation to support defendant's claims about his poor eyesight. Ultimately, counsel chose not to call the eye doctor because he believed that the fact that defendant wore corrective lenses spoke for itself. Finally, counsel testified that he chose not to present evidence that defendant was on medication when he was arrested because he had no medical records corroborating treatment. Further, counsel believed that evidence of negative effects of cold medication as a defense for an alcohol-related charge would be more prejudicial than probative.

¶ 15 The court denied the posttrial motion. As to the sufficiency of the evidence, the court found Lee's trial testimony to be credible, and, under the totality of the circumstances, sufficient to find defendant guilty of driving under the influence and improper lane usage. The court also found that trial counsel was not ineffective. The court noted that counsel "vigorously" cross-examined Lee. With respect to counsel's decisions not to call experts, the court found that decision was trial strategy. The court found counsel's testimony more credible than defendant's or Dr. Garg's as to the number of times they met to discuss trial strategy. The court stated that instead of its usual colloquy with a defendant, it relied on counsel's representation that he admonished defendant of his right to testify and that defendant chose not to testify.

¶ 16 At defendant's sentencing hearing, the trial court considered mitigating and aggravating factors, including defendant's previous DUI record. The court then sentenced defendant to two years probation and 180 days in the county jail. Defendant now timely appeals.

¶ 17 II. ANALYSIS

¶ 18 On appeal, defendant asserts that his constitutional right to testify was violated, he was denied effective assistance of counsel, and cumulative errors at trial require reversing his convictions and remanding for a new trial.

¶ 19 A. Constitutional Right to Testify

¶ 20 To determine whether an individual's constitutional rights were violated, the standard of review is *de novo*. *People v. Whiting*, 365 Ill. App. 3d 402, 406 (2006). Because the trial court held an evidentiary hearing on defendant's right to testify and other claims, we review the trial court's findings of fact to determine if they are against the manifest weight of the evidence. *Whiting*, 365 Ill. App. 3d at 406. A decision is against the manifest weight of the evidence when an opposite conclusion is apparent or when the trial court's findings appear to be unreasonable, arbitrary, or not based on the evidence. *Eychaner v. Gross*, 202 Ill. 2d 228, 252 (2002). The reviewing court will not substitute its judgment for that of the trier of fact. *Eychaner*, 202 Ill. 2d at 252.

¶ 21 Defendant first argues that the trial court erred by failing to obtain defendant's on-the-record waiver of his right to testify and accepting counsel's statement.

¶ 22 A criminal defendant has the right to testify in his own defense. *People v. Vaughn*, 354 Ill. App. 3d 917, 924-25 (2004) (citing *Harris v. New York*, 401 U.S. 222, 225 (1971)). The decision whether to testify ultimately belongs to the defendant, but it should be made with the advice of counsel. *People v. Smith*, 176 Ill. 2d 217, 235 (1997). "[T]he trial court is not required to advise a defendant of his right to testify, to inquire whether he knowingly and intelligently waived that right, or to set of record defendant's decision on this matter." *Smith*, 176 Ill. 2d at 235. Instead, it is within the trial court's discretion whether to inform a defendant represented by counsel of his right to testify. *People v. Brown*, 2013 IL App (2d) 110327, ¶ 22. "[W]hen a

defendant contends on appeal that he was precluded from testifying at trial, his conviction cannot be reversed on the basis that he was prevented from exercising that right unless he contemporaneously asserted his right to testify by informing the trial court that he wished to do so." *Smith*, 176 Ill. 2d at 234.

¶ 23 The trial court did not admonish defendant of his right to testify, nor was it required to do so. See *Smith*, 176 Ill. 3d at 234-35. Rather, it relied on defense counsel's statement that defendant understood his right and chose to waive it. Defendant did not inform the trial court or his counsel that he wished to testify. Hence, defendant waived his right to testify by failing to assert his desire to do so at trial. See *People v. Cleveland*, 2012 IL App (1st) 101631, ¶ 65 ("[I]t is incumbent upon the defendant to assert his right to testify such that his right can be vindicated during the course of the trial"); see also *People v. Knox*, 58 Ill. App. 3d 761, 767 (1978) (explaining that the constitutional right to testify is "subject to the limitation that the defendant make his objection known at trial, not as an afterthought").

¶ 24 Defendant relies on *People v. Whiting*, 365 Ill. App. 3d 402 (2006), for the proposition that his posttrial motion was a contemporaneous assertion of his right to testify. In *Whiting*, the defendant did not testify at her trial, and there was no discussion on the record as to whether she knowingly waived her right to do so. *Whiting*, 365 Ill. App. 3d at 405. After she was found guilty, she fired her trial counsel and filed a motion for a new trial based on ineffective assistance of counsel. *Whiting*, 365 Ill. App. 3d at 405. At the evidentiary hearing on the motion, the defendant was the only witness to testify. *Whiting*, 365 Ill. App. 3d at 405. The defendant's uncontroverted testimony was that she had wanted to testify, that she practiced her testimony before trial, and that she "continued to inform her counsel that she wanted to testify on her own behalf[,]" but her counsel insisted that she could not testify. *Whiting*, 365 Ill. App. 3d at 405.

Further, the defendant did not personally make an objection at trial due to her belief that she could not speak directly with the court. *Whiting*, 365 Ill. App. 3d at 405. The trial court denied the motion, finding that the "decision not to have defendant testify was a strategic decision in which defendant concurred and that defendant had waived her right to testify." *Whiting*, 365 Ill. App. 3d at 405-06. The appellate court reversed, holding that the trial court's determination was against the manifest weight of the evidence. *Whiting*, 365 Ill. App. 3d at 408. The court explained: "all the facts contained in the record, including the uncontroverted testimony of defendant, clearly establish that there is no evidence to contradict defendant's claim that the failure to testify was not the result of strategy and that she did not knowingly and voluntarily waive her constitutional right to testify." *Whiting*, 365 Ill. App. 3d at 408. Thus, the defendant was prejudiced, because the evidence was "close" and a different result upon retrial was reasonably probable if the defendant testified. *Whiting*, 365 Ill. App. 3d at 409. The court also noted that, by raising the issue prior to sentencing, the defendant "acted in a timely fashion, prior to sentencing, in an attempt to exercise her constitutional right to testify on her own behalf." *Whiting*, 365 Ill. App. 3d at 408.

¶ 25 Defendant's reliance on *Whiting* is misplaced. Unlike *Whiting*, although defendant claimed that he did not believe that he could address the court directly, he never claimed that counsel actually told him that he could not testify. Nor does defendant claim that he told counsel that he wanted to testify. Instead, as defendant admits, he relied on counsel's advice not to testify because he believed counsel that the evidence was presented in a light favorable to him. Moreover, unlike *Whiting*, defendant's testimony at the evidentiary hearing was refuted by counsel, and the trial court reasonably found counsel's account of the events surrounding trial preparation and the trial to be more credible. According to counsel, the conversation at the close

of the State's case was not the first time he and defendant discussed his right to choose to testify or not, and counsel "absolutely" informed defendant about that. Furthermore, unlike in *Whiting*, where no on-the-record statements were made concerning the defendant's constitutional right, here, counsel asserted on the record that defendant had been advised of his right to choose to testify and that defendant was choosing to waive that right. Defendant did not inform the court that counsel's statement was inaccurate, and the trial court relied on counsel's representation in determining that there was no need to question defendant personally. Consequently, in ruling on the posttrial motion, the court reasonably found that defendant waived his right to testify by acquiescing to counsel's trial strategy. See *People v. Peden*, 377 Ill. App. 3d 463, 474 (2007) ("[T]he determination of whether the defendant will testify is an important part of trial strategy best left to the defendant and counsel without the intrusion of the trial court ***"); see also *People v. Shelton*, 252 Ill. App. 3d 193, 202 (1993) ("It is primarily the responsibility of defense counsel, not the trial judge, to advise a defendant as to whether or not he should testify and to explain the tactical advantages and disadvantages of each option.").

¶ 26 Defendant nevertheless relies on other, non-binding and readily distinguishable authority to support his contention that the trial court erred by failing to inquire into his waiver. In *Ward v. Sternes*, 334 F.3d 696 (7th Cir. 2003), the court held that a defendant with severe brain injuries did not knowingly and intelligently waive his right to testify when he responded "I guess, I don't know" to the trial court's inquiry into whether he agreed with his counsel's professional judgment that he not testify. *Ward*, 334 F.3d at 706. The trial court was aware that the defendant had "brain injuries that severely disrupted his ability to think, reason, take in verbal information, and understand and use language to express his understanding." *Ward*, 334 F.3d at 705-06. The defendant's counsel even admitted that he alone decided not to have the defendant

testify because he didn't believe the defendant could have an informed discussion about the decision. *Ward*, 334 F.3d at 699-700. The court explained that "there was an indication that [the defendant] was prevented by his own mental deficiencies from exercising his fundamental right to testify, which then necessitated further inquiry from the court." *Ward*, 334 F.3d at 706. Simply put, nothing in the present case resembles the facts in *Ward*.

¶ 27 Accordingly, we hold that the trial court did not err by failing to admonish defendant as to his right to testify or by failing to conduct an inquiry after defense counsel stated on the record that defendant waived his right to testify. See *Smith*, 176 Ill. 2d at 235.

¶ 28 B. Ineffective Assistance of Counsel

¶ 29 Defendant next asserts that his counsel was ineffective due to counsel's failure (1) to adequately prepare for the case; (2) to prepare defendant to testify; (3) to meet with defendant more than twice; and (4) to properly perform at trial. Defendant also argues that counsel provided ineffective assistance by failing to call him to testify.

¶ 30 To establish ineffective assistance of counsel, the defendant must allege facts that (1) show that counsel's representation was objectively unreasonable and (2) counsel's deficiency prejudiced him such that he or she was deprived a fair trial. *Strickland v. Washington*, 466 U.S. 668, 687 (1984). To establish the first prong, a defendant must show that counsel's errors were so egregious that counsel was not functioning as the "counsel" guaranteed by the sixth amendment. *People v. Easley*, 192 Ill. 2d 307, 317 (2000). A decision that involves a matter of trial strategy will not support a claim of ineffective representation. *People v. Madej*, 106 Ill. 2d 201, 214 (1985). A defendant must overcome a strong presumption that counsel's conduct was sound trial strategy and fell within a wide range of reasonable professional assistance. *People v. Morris*, 2014 IL App (1st) 130512, ¶ 32. To establish prejudice, a defendant must demonstrate a

reasonable probability that, but for the defense counsel's deficient performance, the result of the trial would have been different. *Whiting*, 365 Ill. App. 3d at 408. Failure to satisfy either the deficiency prong or the prejudice prong precludes a finding of ineffective assistance of counsel. *People v. Enis*, 194 Ill. 2d 361, 377 (2000).

¶ 31 1. Trial Counsel's Preparation and Trial Performance

¶ 32 Defendant argues that he received ineffective assistance of counsel when defense counsel failed to adequately prepare for trial and when he committed mistakes at trial. Specifically, defendant claims that counsel did not adequately prepare for trial because he failed to (1) investigate the scene of the traffic stop; (2) file enough pretrial motions; and (3) properly consider calling two expert witnesses. He also claims that counsel's assistance was objectively deficient when he did not adequately impeach Lee's testimony or request a recess at the close of the State's case.

¶ 33 As a preliminary matter, this section of defendant's brief contains no citations to legal authority. Supreme Court Rule 341(h)(7) provides that an appellant's brief "shall contain the contentions of the appellant and the reasons therefor, with citation of the authorities and the pages of the record relied on." Ill. S.Ct. R. 341(h)(7) (eff. Feb. 6, 2013). Mere contentions without citation of authority do not merit consideration on appeal, and contentions supported by some argument but by no authority do not meet the requirements of Supreme Court Rule 341(h)(7). *Vilardo v. Barrington Community School District 220*, 406 Ill. App. 3d 713, 720 (2010). "A reviewing court is entitled to have the issues clearly defined with pertinent authority cited and is not simply a depository into which the appealing party may dump the burden of argument and research." *Vilardo*, 406 Ill. App. 3d at 720 (quoting *People v. Hood*, 210 Ill. App.

3d 743, 746 (1991)). Accordingly, we may treat defendant's argument as having been forfeited for failure to cite authority. *Vilardo,* 406 Ill. App. 3d at 720.

¶ 34 Forfeiture aside, however, we conclude that the trial court did not err in finding that counsel's assistance was not deficient. Decisions about which witnesses to call at trial and what evidence to present ultimately rest with trial counsel. *People v. West*, 187 Ill. 2d 418, 432 (1999). These decisions are matters of trial strategy which are generally immune from claims of ineffective assistance of counsel, because "the right to effective assistance of counsel refers to competent, not perfect representation." (Internal quotation marks omitted). *West*, 187 Ill. 2d at 432. Only when counsel's chosen trial strategy is so unsound that he or she entirely fails to conduct any meaningful adversarial testing will ineffective assistance of counsel be found. *West*, 187 Ill. 2d at 432-33.

¶ 35 Defendant claims that counsel's failure to visit the location of the traffic stop constituted objectively deficient performance, but the scene of the traffic stop was not disputed and the entirety of Lee's interaction with defendant was captured on video. Defendant does not offer any benefit that would have been derived from counsel's trip to the highway.

¶ 36 Defendant also claims that counsel's failure to file motions *in limine* constituted deficient performance. Yet counsel did file pretrial motions, including, a motion to quash arrest and suppress evidence. Defendant fails to suggest what, if any, evidence counsel should have sought to exclude with a motion *in limine*. "An attorney's decision to file or not to file a motion is regarded as a matter of trial strategy which must be given great deference." *People v. Bryant*, 128 Ill. 2d 448, 458 (1989).

¶ 37 Defendant also claims that counsel's failure to call Dr. Garg or an eye doctor as expert witnesses constituted deficient performance. But again, "[g]uiding our review of defendant's

claims is the principle that decisions concerning whether to call certain witnesses on a defendant's behalf are matters of trial strategy, reserved to the discretion of trial counsel." *Enis*, 194 Ill. 2d at 378. The trial court specifically found that counsel's decision not to call Dr. Garg was reasonable trial strategy. We cannot say that the trial court's finding was against the manifest weight of the evidence. As the trial court explained, the decision to call defendant's father as a medical expert could have had a negative effect on defendant's chances of succeeding at trial. Dr. Garg, although a medical doctor, could have been impeached because of his bias, and the revelation that defendant had taken cold medications with alcohol could have harmed defendant's case. The trial court, after hearing the testimony of the witnesses, ultimately agreed with counsel.

¶ 38 Similarly, counsel's decision not to call an eye doctor as an expert constituted reasonable trial strategy. After his arrest, defendant visited an eye doctor to obtain a report about his poor vision for use in his defense. Defendant's eye doctor stated in that report that defendant suffered from nearsightedness and, in the doctor's opinion, skills such as driving, reading, writing, and computer work were impaired without vision correction. Although defendant's contacts fell out during his field sobriety tests, he needed only to be able to see his feet during the tests. The trial court explained that defendant may have been able to use an eye doctor's expert testimony to "discount the [d]efendant's statement to the trooper that he could actually see his feet." But as the trial court itself noted, that could have raised more questions about impairment. Even if counsel's decision not to call the eye doctor may have been incorrect in hindsight, "mistakes in trial strategy or tactics or in judgment do not of themselves render the representation incompetent." (Internal quotation marks omitted). *West*, 187 Ill. 2d at 432.

¶ 39 Next, defendant claims that counsel did not adequately impeach Lee. But the trial court itself found that "[defense counsel] vigorously attacked the reliability of the trooper[.]" Counsel attacked Lee's recollection of defendant's speech patterns, the timeliness of defendant's actions in pulling over, defendant's gait issues, and Lee's recollection of the evening versus the video evidence. Defendant argues that counsel's cross-examination of Lee was deficient because he did not properly note Lee's "mental exhaustion" and the fact that he put his head down on the witness stand. Yet the trial court noted that Lee was visibly tired, but nevertheless found his testimony to be credible. The trial court found that counsel vigorously defended the case, was well prepared, and was familiar with the facts of the case. Thus, we cannot say that the trial court's findings as to counsel's preparation and effectiveness were against the manifest weight of the evidence.

¶ 40 Defendant also claims that counsel's performance was deficient when he failed to call for a recess after the trial court denied the motion for a directed finding. Specifically, defendant claims that counsel should have a requested recess to speak with defendant or otherwise placed on the record an interaction between himself and Defendant. Defendant provides no authority for this contention. Thus, it is forfeited and does not merit consideration. *Vilardo*, 406 Ill. App. 3d at 720.

¶ 41 2. Defendant's Preparation

¶ 42 Defendant next claims that counsel performed deficiently by failing to meet with him enough and by failing to prepare him to testify. Defendant testified that he met with counsel only twice during the entire period of representation. Defendant further claimed that the only time he discussed the subject of whether he should testify with counsel was briefly during trial. Trial counsel, however, testified that he met with defendant at least six times. Counsel explained

that before the original May 2013 trial date, he thoroughly prepared defendant for trial by discussing evidence, proposed defense testimony, expert witnesses, and trial procedure. Counsel also testified that the conversation during trial was not the first time that he and defendant discussed his right to testify.

¶ 43 *People v. Valladares*, 2013 IL App (1st) 112010, is instructive. In *Valladares*, the defendant claimed that he received ineffective assistance of counsel when his counsel failed to meet with him before trial and prepare him to testify. *Valladares*, 2013 IL App (1st) 112010, ¶ 54. The defendant, who was incarcerated during the entirety of the representation, claimed that counsel never visited or had a single confidential conversation with him. *Valladares*, 2013 IL App (1st) 112010, ¶ 55. Instead, the defendant claimed that co-counsel visited twice, but never discussed whether the defendant would testify. *Valladares*, 2013 IL App (1st) 112010, ¶ 58. Defense counsel refuted the defendant's testimony, and according to defense counsel, he spoke with the defendant via telephone several times throughout the proceedings. *Valladares*, 2013 IL App (1st) 112010, ¶ 61. On appeal, the court found that there was sufficient communication between the defendant and his counsel to defeat an ineffective assistance of counsel claim. *Valladares*, 2013 IL App (1st) 112010, ¶ 64. The court initially noted that an ineffective assistance of counsel claim may exist where counsel has failed to communicate with the defendant, keep the defendant informed of developments in the case, and consult with the defendant on all major decisions. *Valladares*, 2013 IL App (1st) 112010, ¶ 59. The court, however, found that defense counsel "adequately understood the factual and legal issues in the case." *Valladares*, 2013 IL App (1st) 112010, ¶ 64. Although defense counsel admitted that he never visited the defendant in jail, the defendant failed to indicate what valuable insight counsel

would have gained from additional meetings or how additional communication would have altered the outcome of the case. *Valladares*, 2013 IL App (1st) 112010, ¶ 64.

¶ 44 Like *Valladares*, here, the trial court found that counsel vigorously defended the case, was well prepared, and was familiar with the facts. Moreover, as in *Valladares*, defendant fails to explain how additional communication or preparation would have altered the outcome of the case. The trial court acknowledged that counsel knew about defendant's defenses, including his illness, eye issues, dizziness, and lack of familiarity with the car. Counsel chose not to pursue this evidence or present expert testimony because he thought that it could be harmful to defendant's case.

¶ 45 3. Failure to Call Defendant to Testify

¶ 46 Defendant next argues that counsel provided ineffective assistance of counsel when he failed to call defendant to testify at trial.

¶ 47 As already explained, the decision whether to testify belongs to the defendant, although this decision should be made with the advice of counsel. *Morris*, 2014 IL App (1st) 130512, ¶ 47. "Advice not to testify is a matter of trial strategy and does not constitute ineffective assistance of counsel unless evidence suggests that counsel refused to allow the defendant to testify." *Morris*, 2014 IL App (1st) 130512, ¶ 47 (citing *DeRossett*, 262 Ill. App. 3d at 546); see also *Coleman*, 2011 IL App (1st) 091005, ¶ 29 ("As a general rule, advice not to testify is a matter of trial strategy that does not amount to ineffective assistance of counsel unless counsel refused to allow the defendant to testify"); see also *People v. Youngblood*, 389 Ill. App. 3d 209, 217 (2009) (stating that counsel's advice not to testify is trial strategy and does not result in ineffective assistance "unless evidence suggests that counsel refused to allow the defendant to testify").

¶ 48 Defendant again relies on *Whiting* for the proposition that he received ineffective assistance of counsel. But as discussed above, defendant's reliance on *Whiting* is misplaced. The trial court properly concluded that defendant acquiesced in counsel's trial strategy. See also *Knox*, 58 Ill. App. 3d at 767 ("counsel is free to urge his professional opinion on his client, and if the client acquiesces in his counsel's conduct in this regard he should be bound by such action.").

¶ 49 Because defendant failed to satisfy the first prong of the *Strickland* test, his claim for ineffective assistance of counsel fails. See *Enis*, 194 Ill. 2d at 377 ("The failure to satisfy either the deficiency prong or the prejudice prong of the *Strickland* test precludes a finding of ineffective assistance of counsel.").

¶ 50 C. Cumulative Errors

¶ 51 Defendant argues that the cumulative errors denied him a fair trial. Because we have rejected defendant's claims of error, we need not engage in a cumulative error analysis. See *People v. Perry*, 224 Ill. 2d 312, 356 (2007) ("Because we rejected every claim of error, cumulative-error analysis is not necessary").

¶ 52 III. CONCLUSION

¶ 53 For the reasons stated, we affirm defendant's conviction of driving under the influence of alcohol (625 ILCS 5/11-501(a) (West 2012)) and improper lane usage (625 ILCS 5/11-709(a) (West 2012)).

¶ 54 As part of our judgment, we grant the State's request that defendant be assessed $50 as costs for this appeal. 55 ILCS 5/4-2002(a) (West 2014); see also *People v. Nicholls*, 71 Ill. 2d 166, 179 (1978).

¶ 55 Affirmed.