2017 IL App (3d) 160321-U

Order filed June 7, 2017

IN THE

APPELLATE COURT OF ILLINOIS

THIRD DISTRICT

2017

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the Circuit Court of the 13th Judicial Circuit, Grundy County, Illinois,
Plaintiff-Appellee,	)	
v.	)	Appeal No. 3-16-0321 Circuit No. 14-DT-66
CHAD HANSEN,	)	Honorable Sheldon R. Sobol,
Defendant-Appellant.	)	Judge, Presiding.

PRESIDING JUSTICE HOLDRIDGE delivered the judgment of the court.
Justices O'Brien and Wright concurred in the judgment.

ORDER

¶ 1 *Held*: The trial evidence was sufficient to prove the defendant guilty beyond a reasonable doubt of driving while under the influence of alcohol. The admission of domestic abuse evidence was not plain error and defense counsel was not ineffective for failing to object to this evidence.

¶ 2 The defendant, Chad Hansen, appeals his conviction for driving while under the influence of alcohol (DUI). The defendant argues that the evidence was insufficient to prove him guilty beyond a reasonable doubt. The defendant also contends that (1) plain error occurred where

improper other-crimes evidence of domestic abuse was introduced at trial, and (2) trial counsel was ineffective for failing to object to the introduction of this evidence.

¶ 3 FACTS

¶ 4 The defendant was charged with DUI (625 ILCS 5/11-501(a)(2) (West 2014)). A jury trial was held. During opening statements, defense counsel stated that the evidence would show that the defendant struck a fire hydrant with his vehicle because he was distracted due to fighting with his wife, not because he was intoxicated.

¶ 5 The State called Rhonda Lawford, a 911 dispatcher, as its first witness. On the night of the incident, Lawford received a 911 call from a woman, later identified as Melissa Hansen, at approximately 12:02 a.m. A recording of the 911 call was played for the jury.

¶ 6 On the recording of the 911 call, Melissa sounded very upset. She yelled and sobbed uncontrollably throughout the call. She stated that her husband, the defendant, became angry and drove into a fire hydrant on purpose in an attempt to kill her. Melissa stated that she was currently at her home sitting in the vehicle, which was parked in the driveway. The defendant had gone into the house. Melissa said the defendant was drinking. She could not open the door to get out of the vehicle because it was damaged when the defendant hit the fire hydrant. Melissa stated that she had told the defendant that she was going to call 911 because she was scared. Melissa stated that she needed to end the call because she needed to call her friend. She then said she saw a police officer.

¶ 7 Thomas Onsen testified that he was sitting on his porch on the evening of the incident. He heard tires squeal, brakes lock up, and an impact. Then, a “smaller white type of vehicle” drove past Onsen’s house. The vehicle “had sparks flying out from behind it.” The vehicle failed to stop at a stop sign. The speed limit on Onsen’s street was 25 miles per hour, but Onsen

believed the vehicle was traveling at a speed of 40 to 50 miles per hour. “Within a minute or so” of seeing the white vehicle, Onsen saw a squad car. Onsen did not know exactly how much time had passed, and stated that it could have been longer than a minute. Onsen stopped the squad car and told the police officer what he saw. The officer wrote down Onsen’s statement, which took approximately five minutes. Then the police officer drove away in the direction the white vehicle had driven. Onsen did not know the exact time this occurred. Onsen went back into his house shortly after talking to the officer, and he noticed it was “shortly after midnight”.

¶ 8 Officer Michael Imhof testified that at approximately 12:02 a.m. on the night of the incident, he was advised of a 911 call indicating “there was a possible domestic in progress where a female stated that her husband was trying to kill her.” As Imhof was driving to the residence where the incident had occurred, he saw a man standing in the street waving for him to stop. The man told Imhof that he was sitting on his porch when he heard brakes squeal and the sound of “a loud impact.” The man then saw a “white sporty car” that was “throwing sparks” drive down the street at a high rate of speed. The vehicle was heavily damaged on the front passenger area. There were parts flying off the vehicle. Imhof advised the man that he was “in route” to a call but would return. Imhof did not take a report from the man at that time.

¶ 9 Imhof arrived at the residence “[w]ithin minutes” of receiving the 911 dispatch call. Imhof observed a white Infiniti Q50 parked in the driveway. There was extensive damage to the passenger side of the vehicle. Melissa was sitting in the vehicle. She was talking on her cell phone and crying. The officer tried to open the passenger door, but it would not open due to the damage. The officer then opened the driver’s side door, and asked Melissa to crawl out the driver’s side. As Melissa crawled out of the vehicle, Imhof noticed an open can of beer sitting in the center console. The can was half full and was cold to the touch. Imhof did not know if the

can was open while the defendant was in the vehicle, and he did not try to obtain fingerprints from the beer can. Imhof then observed a cooler in the back seat, which contained three opened beer cans and one unopened beer can.

¶ 10 The State introduced photographs of the white Infiniti. The photographs showed that the vehicle had extensive damage on the front passenger side and that some red paint had transferred onto the vehicle.

¶ 11 Officer Fred Ehrman arrived on the scene. Melissa told the officers that the defendant had been driving the vehicle. Melissa said the defendant tried to kill her. When Melissa and the defendant arrived home, the defendant parked the vehicle and ran into the house.

¶ 12 Imhof and Ehrman walked into the garage and knocked on the door to the house. They identified themselves several times and asked for the defendant but received no answer. They walked into the house and located the defendant sitting on the back porch. The defendant "was on his phone and he was texting." Imhof saw the defendant drinking from a bottle of rum. Imhof and Ehrman asked the defendant what was going on, and the defendant ignored them.

¶ 13 Eventually, Ehrman said to the defendant, " 'Chad, what's going on? We were called on a 911 saying that there's a possible—someone was going to get killed or hurt. What's going on here?' " The defendant then told the officers that he had been at Gippers bar. The defendant and his wife started fighting at the bar and left. As they were driving home, the defendant hit a fire hydrant. The defendant left the scene and drove home. Imhof could smell an odor of an alcoholic beverage on the defendant. The defendant's eyes were glassy and his speech was slow. The defendant was not very cooperative. The defendant asked the officers why they were there and why they were bothering him.

¶ 14 The officers told the defendant to go to the front of the house. As the defendant stood up, he swayed and grabbed the table for balance. The defendant walked very slowly, and he almost fell at one point. The defendant stepped out into the garage. The officers asked the defendant for his driver's license, and he gave it to them. They asked the defendant for his proof of insurance, and he just stared at them. Melissa handed the officers the proof of insurance. The defendant then "hurriedly walked" back through the house to the back porch and took two more drinks of rum. An officer seized the rum bottle. The rum bottle was about three quarters full at that time.

¶ 15 The officers asked the defendant to perform field sobriety tests, but the defendant refused. He told the officers that he would not pass the tests. The officers then placed the defendant under arrest. The officers took the defendant to the police station. At the station, Imhof wrote the defendant a citation for DUI. The defendant refused to take a breathalyzer test and vomited on the floor of the booking area. Imhof opined that based upon his training, experience, and observations of the defendant on the night of the incident, the defendant was under the influence of alcohol.

¶ 16 Imhof acknowledged he did not see the defendant drinking before he arrived at the defendant's residence. Imhof did not know how many alcoholic beverages the defendant had prior to entering his vehicle and driving home from the bar. Imhof did not know if the defendant stumbled while walking prior to driving home. Imhof did not go to Gippers bar to ask anyone if they had seen the defendant that evening. Imhof said that Gippers bar was outside his jurisdiction.

¶ 17 Officer Fred Ehrman testified that on the evening of the incident, he responded to a 911 call in which a woman in a vehicle had "been involved in what [the officers] thought was a domestic with the driver." When Ehrman arrived at the residence, he observed a white Infiniti in

the driveway that was heavily damaged. Melissa was in the passenger's seat talking on her cell phone. Imhof arrived at approximately the same time as Ehrman. Melissa told the officers she had been in an accident with the defendant. Melissa and the defendant had an argument, and they went off the road and hit a fire hydrant. They continued driving to their house. Melissa said that the defendant was inside the house.

¶ 18 The officers located the defendant on the back deck drinking an alcoholic beverage. The defendant said that he and his wife had been at Gippers bar. They had an argument, and he hit a fire hydrant on the drive home. The defendant smelled of an alcoholic beverage and his speech was slightly slurred. Eventually, the officers placed the defendant under arrest for DUI. Ehrman opined that the defendant was under the influence of alcohol at that time. Ehrman admitted that he did not know the defendant's blood alcohol level at the time the defendant was driving.

¶ 19 Ehrman went to the scene of the accident. Ehrman observed debris left by the defendant's vehicle. The State introduced several photographs of the scene, which showed some debris near the fire hydrant.

¶ 20 The State rested. The defendant moved for a directed finding, and the trial court denied the defendant's motion.

¶ 21 The defendant called Kevin Batus as a witness. Batus testified that he was the defendant's friend. Batus saw the defendant at Gippers bar on the evening of the incident at approximately 9:30 to 10 p.m. Batus went to the bar with other people around 8 p.m. Batus did not know exactly when the defendant arrived and left, but stated that the defendant was at the bar for approximately 30 minutes. Batus and the defendant said hello to one another and hugged but "that was about it." Batus saw the defendant drink one beer. Batus did not recall if Melissa was drinking. The defendant did not appear to be under the influence of alcohol. Batus opined that

the defendant "seemed a little upset" but "was definitely not over the limit or anything like that." Batus was not sure why the defendant was upset, but he believed the defendant and Melissa were having a marital dispute.

¶ 22 Eric Depodesta, the defendant's friend, testified that he arrived at Gippers bar between 9:30 and 10 p.m. on the evening of the incident. Depodesta stayed at the bar until 11 or 11:30 p.m. Depodesta believed the defendant arrived at Gippers bar at approximately 10 to 10:30 p.m. The defendant stayed at Gippers bar for 45 minutes to 1 hour. Depodesta saw the defendant drink one beer. Melissa had a mixed drink. Depodesta had observed the defendant on prior occasions when the defendant was intoxicated. Depodesta opined that the defendant was not intoxicated on the evening of the incident, but he was upset. The defendant appeared to be irritated with Melissa. At approximately 11:30 p.m., the defendant went to look for Melissa. Depodesta did not see him again after that. The defendant did not appear to be under the influence of alcohol at that time.

¶ 23 Melissa Kramer (Kramer) testified that she was the Hansens' neighbor. Kramer had been friends with Melissa for approximately 6½ years. Kramer went to Gippers bar on the evening of the incident. She arrived after the Hansens. The defendant greeted Kramer, but Kramer did not otherwise talk to the defendant. The defendant did not appear to be intoxicated at that time. The defendant later approached Kramer and Melissa and told his wife that he was ready to leave. Melissa left with the defendant. The defendant did not appear to be under the influence of alcohol at that time. Kramer did not see the defendant and his wife argue at the bar. After the Hansens left the bar, Kramer received a call from Melissa. Melissa stated that she and the defendant had been in a car accident. Kramer then went to the Hansens' residence.

¶ 24 Later, in the early morning hours, a police officer knocked on Kramer's door. Kramer and her husband, Scott Kramer (Scott), came to the door. The officer did not ask Kramer any questions about the defendant. The officer asked where Melissa was. The officer explained that he had been unable to contact Melissa and wanted to inform her that the defendant had been released. Kramer told the officer that she had offered to let Melissa spend the night at her house, but Melissa declined and stayed home.

¶ 25 Kramer later read a police report that indicated that she told an officer that the defendant was intoxicated on the evening of the incident. The report stated that Kramer told Imhof that the defendant was intoxicated at Gippers bar at the end of the night. According to the report, Kramer said the defendant grabbed Melissa's neck and told her it was time to go home. The report said that Kramer told Imhof that the defendant was "ignorant and combative towards his wife." Kramer testified that she never said any of those things. Scott was with her when she spoke to the officer.

¶ 26 Melissa testified that on the day of the incident, she and the defendant went out to lunch and an outlet mall for her birthday. They returned home around 9:30 or 10 p.m. Melissa had made plans with her friends to go to Gippers bar that night at around 9 p.m. She and the defendant were late to meet them because they had stayed late at the outlet mall. Melissa drank wine and beer as she was getting ready to go to Gippers bar.

¶ 27 Melissa and the defendant arrived at Gippers bar at approximately 10:30 to 10:45 p.m. They stayed for approximately 30 minutes. Melissa drank "a couple small glasses of vodka Red Bull." When Melissa left the bar, she was intoxicated. Melissa stated that she and the defendant went their separate ways when they entered the bar. She later saw the defendant with a beer in his hand but "he wasn't drinking anything." Melissa and the defendant left the bar because the

defendant said Melissa was embarrassing herself. The defendant was tired and did not want to go to Gippers bar in the first place. Their children had a baseball game early the next morning, and the defendant just wanted to go home. The defendant was angry because Melissa "had drug him out all day shopping."

¶ 28 The defendant was the designated driver that evening and was not intoxicated when they left the bar. Melissa followed the defendant out of the bar. She was crying and upset. The defendant and Melissa had a verbal altercation. Melissa yelled at the defendant and told him that he ruined her birthday. Melissa stated that she was intoxicated, emotional, and "a bit overdramatic." When they entered the vehicle, Melissa grabbed a beer from the cooler in the backseat. She stated that the cooler was "there from the night before." The defendant was upset that Melissa was drinking in the vehicle. Melissa remembered the vehicle hitting a fire hydrant. The defendant then drove home. Melissa sat in the vehicle and screamed and cried. The defendant exited the vehicle and went into the house. He returned 15 to 20 minutes later, and Melissa then called 911. Melissa did not remember everything she said to the 911 operator because she was "really, really drunk." Melissa knew that she was crying, hysterical, and upset. She stated that she was embarrassed about how she acted.

¶ 29 The defendant testified that on the day of the incident, he went out to lunch with his wife and took her shopping to celebrate her birthday. They left their house at approximately 11:30 to 11:45 a.m. The defendant and Melissa left the outlet mall at approximately 8:30 to 9 p.m. and arrived back home around 9:30 to 9:45 p.m. Melissa got ready, and then they went to Gippers bar. They were at home for approximately 45 minutes to 1 hour. Melissa was drinking alcoholic beverages while she was getting ready, but the defendant was not.

¶ 30 The defendant drove Melissa's Infiniti to Gippers bar because his truck was "in the shop." The defendant drove because Melissa had been drinking that day and had "a little bit to drink" while she was getting ready as well. The defendant and Melissa arrived at Gippers bar at approximately 10:30 to 10:45 p.m. Melissa talked to some of her friends, and the defendant went to a back table and talked to Batus, Depodesta, and another friend who lived out of town. Depodesta bought the defendant a beer, and the defendant drank about half of it. The defendant heard Melissa getting loud, and he set his beer down to go talk to her. Melissa was pointing at people, laughing, and behaving erratically. Melissa was drinking mixed drinks. The defendant also saw her "take a couple of shots." The defendant tried to calm Melissa down, but she said it was her birthday and she could act the way she wanted to.

¶ 31 The defendant and Melissa left the bar at approximately 11:15 to 11:20 p.m. Their house was seven or eight miles away, and the drive normally took about 10 minutes. The defendant was not under the influence of alcohol when he entered the vehicle to drive home. When they got into the vehicle, Melissa yelled at the defendant for ruining her birthday. The defendant then yelled at Melissa for becoming so intoxicated. Melissa reached back into the cooler in the backseat and opened a beer. The defendant yelled at her for doing that. The defendant did not drink any beer in the vehicle, but Melissa did. Before the defendant hit the fire hydrant, the defendant was arguing with Melissa and was very distracted. The defendant stated that another vehicle was coming, so he tried to speed up and turn at the intersection in front of the other vehicle. The defendant stated that he did not "turn far enough and glanced [*sic*] off the fire hydrant." The defendant exited the vehicle, looked to make sure the fire hydrant was not spraying, and then drove home. Melissa was screaming and crying. Melissa said she was going to call the police and tell them that the defendant tried to kill her. The defendant did not remember failing to stop at a

stop sign after hitting the fire hydrant, but admitted that he may have done a "rolling stop." The defendant stated that he was likely driving above the speed limit. The defendant did not notice sparks flying from the vehicle. The fire hydrant was less than half a mile from the defendant's residence.

¶ 32 When they arrived home, the defendant asked Melissa if she was all right and if she wanted to get out of the vehicle. Melissa told the defendant to get away from her, said that she was fine, and said she did not need the defendant's help. The defendant then went to the back deck and texted the police chief. The defendant did not call 911 because he did not want "a bunch of police there while [Melissa was] screaming that [he] tried to kill her." The police chief told the defendant it should be fine to just fill out a police report in the morning about the accident.

¶ 33 The defendant then started drinking from a bottle of rum to "calm [his] nerves." The defendant was very upset because he had just had a "gigantic fight" with Melissa and wrecked the vehicle. The bottle was full when the defendant began drinking. The defendant was not drinking in an attempt to cover up the fact that he was under the influence of alcohol while driving.

¶ 34 Police officers arrived at the defendant's house approximately 30 minutes after he and Melissa returned home. The defendant said that his eyes may have been red and bloodshot when the police arrived because he had been crying. The defendant initially told the officers that he did not want to talk to them, but they told him that he had to talk to them. The defendant then told them they had been at Gippers bar, he hit a fire hydrant, and he drove home. The defendant was feeling the effects of the rum when he talked to the officers.

¶ 35 The defendant refused to perform field sobriety tests or to blow into a breathalyzer. The defendant stated that he had been drinking at home and all it could do was incriminate him. The defendant stated that he vomited at the police station because he did not normally drink rum straight, and "hard liquor seem[ed] to make [him] throw up." The defendant was not intoxicated prior to drinking the rum.

¶ 36 The defense rested. The State recalled Officer Imhof as a rebuttal witness. Imhof testified that on the evening of the incident, Kramer came over to the Hansen residence after Imhof had put the defendant in the squad vehicle. Kramer wanted to see if Melissa was okay. Melissa told Imhof that she did not want the defendant to come back home because she was scared. Kramer told Melissa that she could spend the night at Kramer's house. Melissa and Kramer asked Imhof if he could let them know when the defendant was released.

¶ 37 After the defendant was released, Imhof attempted to call Melissa but she did not answer her phone. Imhof then drove to Kramer's house at approximately 2:30 to 3 a.m. Kramer came to the door and told Imhof that Melissa stayed at her own house. Imhof asked Kramer if she had any contact with the Hansens that evening. Kramer said she had been at Gippers bar with the Hansens and was drinking alcoholic beverages with them. Toward the end of the night, the defendant and Melissa started to argue. At one point, the defendant grabbed Melissa by the throat and said they needed to leave. The defendant and Melissa then left the bar. Kramer followed them out and observed them get into their vehicle and drive away. Kramer told Imhof that the defendant was intoxicated that evening and that he was "combative and insulting to her in the bar." Scott was not present during this conversation. Imhof never asked Kramer for a written statement.

¶ 38 Tom Best, the police chief, testified on rebuttal that the defendant was his friend. Best recalled receiving text messages from the defendant on the night of the incident. The defendant told Best that he and his wife were fighting and he struck an object with his vehicle. The defendant was not sure what it was. The defendant asked Best where he was, and Best told the defendant he was out of town. The defendant then said that he believed officers were on the way. Best told the defendant to comply with the officers and remain calm. Best also told the defendant not to go back out to the vehicle where his wife was sitting. Best vaguely remembered talking to the defendant about reporting the incident. Best exchanged text messages with the defendant that night for approximately five minutes.

¶ 39 The defendant then called Scott Kramer as a surrebuttal witness. Scott testified that he was married to Melissa Kramer and lived next door to the defendant. On the night of the incident, Scott recalled being woken up in the early morning hours by a police officer knocking at the door. Kramer answered the door. Scott was present during Kramer's conversation with the officer. The officer said that the defendant had been released and he was looking for Melissa. Kramer told the officer that Melissa was sleeping at her own house. The following exchange occurred between Scott and defense counsel:

"Q. Do you remember whether or not the subject of [the defendant] came up?

A. The subject of him?

Q. Yeah, just in general.

A. No.

Q. You don't remember or it didn't come up?

A. I don't remember.

* * *

[Q.] Was [the defendant] discussed by the officer and your wife in your front door?

[A.] I guess I remember him discussing that [the defendant] was being released and he wanted to tell Melissa.

Q. Is that the extent of the conversation?

A. That I remember, yes."

¶ 40 After Scott testified, the parties gave their closing arguments. During closing argument, defense counsel argued, in part, as follows:

"But why did [the defendant] leave the scene? Why did he go back to his house?

You heard Melissa on the recording. You heard her. She was irate. She was—she was obviously intoxicated. She was not acting as you would expect someone to act.

Hindsight is 20/20, but at that point [the defendant] made the decision he didn't want to—he didn't want to be at that location with his wife screaming and yelling.

Now you heard the 911 call. What's remarkable about the 911 call, you can't put much stock into it because she is obviously intoxicated, but what's remarkable about the 911 call is that she never said that he was drunk.

She was reporting that he had intentionally tried to kill her, so this drunk person, Melissa, never said that [the defendant] was intoxicated. That was not what she was saying to the police."

¶ 41 The jury found the defendant guilty of DUI. The defendant was sentenced to 24 months' probation and 240 hours of community service. The defendant was also sentenced to 90 days in the county jail, which was stayed pending the successful completion of probation.

¶ 42 ANALYSIS

¶ 43 I. Sufficiency of the Evidence

¶ 44 The defendant argues that the trial evidence was insufficient to prove him guilty beyond a reasonable doubt of DUI.

¶ 45 "When presented with a challenge to the sufficiency of the evidence, it is not the function of this court to retry the defendant." *People v. Collins*, 106 Ill. 2d 237, 261 (1985). Rather, " 'the relevant question is whether, after viewing the evidence in the light most favorable to the prosecution, *any* rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.' " (Emphasis in original.) *Id.* (quoting *Jackson v. Virginia*, 443 U.S. 307, 319 (1979)). "This means the reviewing court must allow all reasonable inferences from the record in favor of the prosecution." *People v. Cunningham*, 212 Ill. 2d 274, 280 (2004). "A criminal conviction will not be set aside unless the evidence is so improbable or unsatisfactory that it creates a reasonable doubt of the defendant's guilt." *Collins*, 106 Ill. 2d at 261.

¶ 46 A person commits the offense of DUI when he or she drives or is in actual physical control of a vehicle while under the influence of alcohol. 625 ILCS 5/11-501(a)(2) (West 2014). " 'A person is under the influence of alcohol when, as a result of drinking any amount of alcohol, his mental or physical faculties are so impaired as to reduce his ability to think and act with ordinary care.' " *People v. Gordon*, 378 Ill. App. 3d 626, 631 (2007) (quoting Illinois Pattern Jury Instructions, Criminal, No. 23.29 (4th ed. 2000)).

¶ 47 Here, when viewed in the light most favorable to the State, the evidence was sufficient to prove the defendant guilty of DUI. On the evening of the incident, the defendant had been at a bar with his wife. The defendant testified that he drank half of one beer at the bar. However, Imhof testified that Kramer told him the defendant was intoxicated at the bar before he drove home. Although Kramer testified that she did not say this to Imhof, it was the function of the jury to resolve this inconsistency. See *People v. Evans*, 209 Ill. 2d 194, 211 (2004) ("It is the function of the trier of fact to assess the credibility of the witnesses, to determine the appropriate weight of the testimony, and to resolve conflicts or inconsistencies in the evidence."). We reject the defendant's argument that Imhof's testimony regarding Kramer's statement about the defendant being intoxicated at Gippers bar was impeached by the testimony of Scott. Scott merely testified that he did not remember whether Imhof asked Kramer about the defendant beyond telling her that the defendant had been released from custody.

¶ 48 The evidence also showed that, while driving home, the defendant struck a fire hydrant with his vehicle, causing serious damage to the vehicle and causing parts of the vehicle to fall off. The defendant then left the scene of the accident and drove home. Onsen testified that he heard a crash and saw a vehicle matching the description of the defendant's vehicle speed by his house and fail to stop at a stop sign. The vehicle was emitting sparks. Onsen testified that approximately one minute passed between the time he saw the vehicle and the time he spoke with a police officer. When the officer stopped to speak with Onsen, he was already on the way to the Hansens' residence.

¶ 49 When the defendant arrived at his residence, he went inside the house and Melissa called 911 from the vehicle. The defendant testified that he started drinking when he arrived at the house. However, Melissa told the 911 operator that the defendant had been drinking. The jury

could have reasonably inferred that Melissa did not know that the defendant was drinking in the home at the time she called 911 and that she was referring to the defendant drinking prior to arriving at their residence.

¶ 50 It is undisputed that the defendant was intoxicated when the police arrived at his residence. The defendant claimed that he was intoxicated when the officers arrived because he drank a large amount of rum after he arrived at his residence. However, based on Melissa's statement on the 911 audio recording, the defendant's erratic driving, Kramer's statement to Imhof, and the short amount of time between the defendant arriving at home and the officers arriving at his residence, a rational jury could have found that the defendant was intoxicated prior to driving home.

¶ 51 We reject the defendant's reliance on *People v. Flores*, 41 Ill. App. 3d 96 (1976); *People v. Miller*, 23 Ill. App. 2d 352 (1959); and *People v. Wells*, 103 Ill. App. 2d 128 (1968). In those cases, the courts reversed the defendants' convictions for DUI. *Flores*, 41 Ill. App. 3d at 102; *Miller*, 23 Ill. App. 2d at 359; *Wells*, 103 Ill. App. 2d at 131. The *Flores*, *Miller*, and *Wells* courts found that although there was evidence that the defendants were intoxicated after operating their vehicles, there was insufficient evidence that the defendants were under the influence of alcohol at the time they operated their vehicles. *Flores*, 41 Ill. App. 3d at 101-02; *Miller*, 23 Ill. App. 2d at 358-59; *Wells*, 103 Ill. App. 2d at 131. Here, unlike in *Flores*, *Miller*, and *Wells*, there was sufficient evidence that the defendant was under the influence of alcohol prior to driving. Namely, Melissa's statements to the 911 operator and Kramer's statements to Imhof indicated that the defendant had been drinking before he drove home. Additionally, defendant testified that he drank half of a beer at the bar before driving home.

¶ 52 We reject the defendant's argument that the jury improperly disregarded the "uncontroverted testimony of four witnesses establish[ing] that [the defendant] was not under the influence of alcohol prior to driving and crashing his vehicle." See *Flores*, 41 Ill. App. 3d at 101 ("The positive testimony of a witness, uncontradicted and unimpeached either by other positive testimony or by circumstantial evidence, intrinsic or extrinsic, cannot be disregarded but must control the decision, unless it is inherently improbable."). We acknowledge that the defendant, Melissa, Kramer, Batus, and Depodesta testified that the defendant was not intoxicated when he left Gippers bar.

¶ 53 We reassert, however, that Kramer's testimony was contradicted by her statements to Imhof on the evening of the incident. Although Kramer denied telling Imhof that the defendant was intoxicated at Gippers bar, it was up to the jury to resolve this conflict in the testimony. See *Evans*, 209 Ill. 2d at 211-12. Additionally, though Melissa testified that the defendant was not intoxicated at Gippers bar, she told the 911 operator on the evening of the incident that he had been drinking. Batus testified that he only saw the defendant drink one beer, but he also stated that he barely spoke with the defendant at the bar beyond saying hello. Additionally, all four of these witnesses were the defendant's friends or family members. The jury may have seen these witnesses as biased and accorded little weight to their testimony. See *People v. Strickler*, 47 Ill. App. 3d 419, 423 (1977) ("A defendant's relationship to the witnesses who testified in his behalf is a proper subject for a jury to consider."); *People v. Hominick*, 177 Ill. App. 3d 18, 33 (1988) ("[T]he relationship of a witness to a party or interested person may be shown as bearing on the question of possible bias.").

¶ 54 II. Other-Crimes Evidence

¶ 55 The defendant next argues that evidence that he engaged in domestic abuse toward his wife was improperly introduced at trial. Specifically, the defendant argues that the following evidence was improper: (1) Melissa's statements on the 911 call that the defendant was trying to kill her; (2) Imhof and Ehrman's statements that they were responding to a possible domestic violence incident; (3) Imhof's testimony that Ehrman told the defendant they were responding to a 911 call saying "someone was going to get killed or hurt"; (4) Imhof's testimony that Kramer told him that the defendant grabbed Melissa by her neck at the bar; and (5) Imhof's testimony that Kramer offered to let Melissa stay at her house because Melissa was afraid of the defendant and did not want to sleep at home. The defendant argues that introduction of this evidence constituted plain error. Alternatively, the defendant argues that his trial counsel was ineffective for failing to object to this evidence. We address each argument in turn.

¶ 56 A. Plain Error

¶ 57 First, we address defendant's contention that plain error occurred when the domestic abuse evidence was introduced at trial.

> "[T]he plain-error doctrine allows a reviewing court to consider unpreserved error when (1) a clear or obvious error occurred and the evidence is so closely balanced that the error alone threatened to tip the scales of justice against the defendant or (2) a clear or obvious error occurred and the error is so serious that it affected the fairness of the defendant's trial and the integrity of the judicial process, regardless of the closeness of the evidence." *People v. Jones*, 2016 IL 119391, ¶ 10.

In applying the plain-error doctrine, we first consider whether a clear of obvious error occurred. *Id.*

¶ 58 "[E]vidence of other crimes is admissible if relevant for any purpose other than to show a defendant's propensity to commit crimes." *People v. Chapman*, 2012 IL 111896, ¶ 19. Even when other-crimes evidence is offered for a permissible purpose, it "will not be admitted if its prejudicial impact substantially outweighs its probative value." *Id*. The trial court's decision to admit other-crimes evidence "will not be disturbed absent a clear abuse of discretion." *Id.*

¶ 59 "[E]vidence of another crime is admissible if it is part of a continuing narrative of the event giving rise to the offense or, in other words, intertwined with the offense charged." *People v. Thompson*, 359 Ill. App. 3d 947, 951 (2005).

> "This court has recognized that evidence of other crimes may be admitted if it is part of the 'continuing narrative' of the charged crime. [Citation.] Such uncharged crimes do not constitute separate, distinct, and disconnected crimes. [Citation.] It is this latter type of crime with which the other-crimes doctrine is concerned." *People v. Pikes*, 2013 IL 115171, ¶ 20.

¶ 60 We find that no clear or obvious error occurred when Melissa's, Kramer's, and the police officers' statements regarding possible acts of domestic abuse were admitted because they were part of the continuing narrative of what occurred on the evening of the incident. Melissa's statement to the 911 operator that the defendant tried to kill her and the officers' statements that they were investigating a possible domestic violence incident were necessary to show why the police came to the Hansen residence. Similarly, Kramer's statements to Imhof were properly introduced as impeachment evidence. Like Melissa's statements, Kramer's statements were part of the continuing narrative concerning " 'the circumstances attending the entire transaction.' " *Thompson*, 359 Ill. App. 3d at 951 (quoting *People v. Collette*, 217 Ill. App. 3d 465, 472 (1991)). These statements were necessary to give context to the officers' investigation of the incident, and

the trial court did not abuse its discretion in allowing the statements. Because we have found that no clear or obvious error occurred, we need not proceed to consider whether the first or second prong of plain-error analysis apply in this case.

¶ 61 B. Ineffective Assistance of Counsel

¶ 62 The defendant alternatively argues that he received ineffective assistance of counsel when his trial counsel failed to object to the admission of other-crimes evidence related to domestic violence. Claims of ineffective assistance of counsel are analyzed under the standard set forth in *Strickland v. Washington*, 466 U.S. 668 (1984), and adopted by the Illinois Supreme Court in *People v. Albanese*, 104 Ill. 2d 504 (1984). A defendant claiming ineffective assistance of counsel "must show both that counsel's performance was deficient and that the deficient performance prejudiced the defendant." *People v. Petrenko*, 237 Ill. 2d 490, 496 (2010) (citing *Strickland*, 466 U.S. at 687).

¶ 63 "To establish deficient performance, the defendant must overcome the strong presumption that counsel's action or inaction was the result of sound trial strategy." *People v. Perry*, 224 Ill. 2d 312, 341-42 (2007). That is, "the defendant must show that counsel's errors were so serious, and his performance so deficient, that he did not function as the 'counsel' guaranteed by the sixth amendment." *Id*. at 342.

¶ 64 On review, we defer to trial counsel on matters of trial strategy and make "every effort to evaluate counsel's performance from his perspective at the time, rather than through the lens of hindsight." *Id*. at 344. "[E]ven if defense counsel makes a mistake in trial strategy or tactics or an error in judgment, this will not render representation constitutionally defective." *Id*. at 355. Rather, "[o]nly if counsel's trial strategy is so unsound that he entirely fails to conduct meaningful adversarial testing of the State's case will ineffective assistance of counsel be

found." *Id*. at 355-56. "[D]ecisions regarding 'what matters to object to and when to object' are matters of trial strategy." *Id*. at 344 (quoting *People v. Pecoraro,* 175 Ill. 2d 294, 327 (1997)).

¶ 65 We find that trial counsel's decision not to object to references to a possible domestic violence incident between the defendant and his wife was a matter of trial strategy and did not rise to the level of constitutionally deficient performance. Defense counsel's theory of the case was that the defendant struck the fire hydrant not because he was intoxicated, but because he was distracted due to an argument with his wife. Defense counsel argued that Melissa was very intoxicated on the evening of the incident, which caused the defendant and Melissa to argue. During closing argument, defense counsel dismissed Melissa's statements on the 911 recording, contending "you can't put much stock into [the 911 call] because she is obviously intoxicated." Additionally, defense counsel called Melissa as a witness. Melissa explained that she was "really, really drunk" when she called 911. She stated that she was being "overdramatic" and was embarrassed about how she acted. Melissa's hysterical statements on the 911 call that the defendant was trying to kill her were consistent with defense counsel's theory that Melissa was loud and overemotional on the evening of the incident because she was intoxicated. Defense counsel used Melissa's behavior to explain why the defendant was angry before leaving the bar, why he was distracted while driving, why he left the scene of the accident and drove home, and why he failed to call the police.

¶ 66 Additionally, Kramer's alleged statements to Imhof were introduced only in the State's rebuttal evidence after Kramer testified that she did not speak to Imhof about the defendant. Defense counsel chose to have her testify that the defendant was not intoxicated at Gippers bar and to explain that she did not say the things Imhof claimed she did. Defense counsel hoped that the jury would accept Kramer's explanation and believe her testimony over Imhof's. Though

defense counsel's strategy was ultimately unsuccessful, a trial strategy that is unsuccessful does not constitute deficient performance. *Id*. at 355.

¶ 67 CONCLUSION

¶ 68 The judgment of the trial court of Grundy County is affirmed.

¶ 69 Affirmed.