2016 IL App (2d) 150309-U
No. 2-15-0309
Order filed June 21, 2016

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS, Plaintiff-Appellee, v. LaSCHUANDA R. POSTON, Defendant-Appellant.	))))))))))	Appeal from the Circuit Court of Boone County. Nos. 14-DT-294 14-TR-12517 Honorable Philip J. Nicolosi, Judge, Presiding.

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

ORDER

¶ 1 *Held*: The trial court properly denied defendant's petition to rescind her summary suspension, as her refusal to submit to testing by the particular arresting officer constituted a refusal to submit to testing, her ineffective-assistance claims lacked merit, the sheriff's alleged "hire-back" policy was not at issue, defendant was not prejudiced by the absence of a jail-intake video, defendant forfeited her objection to certain testimony, the arresting officer established his qualifications for evaluating whether motorists were under the influence, and the hearing was properly commenced within the statutory period, regardless of when it concluded.

¶ 2 *Pro se* defendant, LaSchuanda R. Poston, appeals the judgment of the circuit court of Boone County denying her petition to rescind the summary suspension of her driver's license, arguing that (1) she did not refuse to provide a urine sample, where she indicated that she would

provide the sample at a hospital or if the arresting officer were not involved; (2) she was denied the effective assistance of counsel; (3) the trial court abused its discretion in not allowing defense counsel to question the arresting officer about the alleged hire-back policies of the sheriff's department; (4) the absence of the jail-intake video was not properly addressed; (5) the arresting officer should not have been allowed to testify about what happened at the jail; (6) the arresting officer did not have sufficient qualifications to testify that defendant was under the influence of drugs; and (7) the hearing on her petition to rescind the summary suspension of her driver's license was not completed in a timely fashion. For the reasons that follow, we affirm.

¶ 3 I. BACKGROUND

¶ 4 On December 6, 2014, defendant was arrested for driving under the influence of drugs (DUI) (625 ILCS 5/11-501(a)(4) (West 2014)), and her driver's license was summarily suspended pursuant to section 11-501.1(d) of the Illinois Vehicle Code (Vehicle Code) (625 ILCS 5/11-501.1(d) (West 2014)) for refusing to submit to chemical testing. Defendant filed a petition to rescind the summary suspension, claiming, among other things, that she was not lawfully arrested for DUI, that the arresting officer did not have reasonable grounds to believe that she was driving or in actual physical control of a vehicle while under the influence of alcohol, drugs, or both, and that she did not refuse to submit to chemical testing.

¶ 5 A hearing on defendant's petition began on January 28, 2015. Defendant testified that, at the time of her arrest, she was employed by Quality TemPerm and attended school at Northern Illinois University. On Friday, December 5, 2014, she worked about 12 to 15 hours. She left work, which was located in Elgin, at about 10:30 or 11 p.m. and proceeded to drive home to Loves Park. She stopped at a gas station and a Wal-Mart. She did not consume alcohol or drugs at any time that week. At about 1:46 a.m. on December 6, she was pulled over by Boone County

sheriff's deputy Adam Stark. She submitted to field sobriety testing. She told Stark that she was out of shape and would have some problems doing the agility tests. At the hearing, she reviewed the video of the traffic stop, which was admitted into evidence as defendant's exhibit No. 1, and confirmed that it accurately showed how she performed on the tests. She testified that she did not step off of the line on the walk-and-turn test. Defendant agreed that a second officer was present and shined a light in her eyes. The second officer had agreed with Stark's assessment that defendant was under the influence of drugs. She reviewed the portion of the video that showed her sitting in the squad car while her vehicle was searched. She testified that she was not wearing her glasses and that she looked sleepy. Her pupils were not constricted. She viewed the booking photograph that was taken of her in a well-lit room at the police station and testified that her eyes were not glossy or bloodshot. The photograph was admitted into evidence as defendant's exhibit No. 2.

¶ 6 According to defendant, when Stark told her that he suspected that she was under the influence of drugs, she told him that she had never touched drugs in her life. She told him multiple times that she wanted to go to a hospital to provide a urine sample or have her blood drawn to prove it. Defendant testified that, when she was taken to the jail, she repeatedly asked the officers to take her to a hospital for a blood alcohol or drug test. They did not honor her request. According to defendant, she told the officers that she would be willing to submit a sample to anybody other than Stark. When defendant bonded out of jail, she took a cab to a clinic and had a urine test performed. She received the results about four or five days later.

¶ 7 Defense counsel attempted to hand defendant a document marked defendant's exhibit No. 3. The State objected, arguing that there was no "medical expert here as [*sic*] to testify as to who made this report, who took the lab example, when the lab was submitted and as to who was

monitoring that." The court agreed, but it allowed defendant to testify that she received the test results back. Defendant's exhibit No. 3 was not admitted into evidence.

¶ 8 On cross-examination, defendant testified that she was pulled over for improper lane usage. She agreed that the speed limit was 45 miles per hour but that she was driving 37 miles per hour. She did not trust Stark, and she did not want to provide a urine sample to him. She explained that Stark had made an inaccurate statement when he said that she was under the influence of drugs. She stated: "So if he's not truthful in that statement, he will not be truthful in anything else regarding me." Defendant agreed that there was a female officer present at the jail. She testified that she did not refuse to provide a urine sample to the female officer but conceded that she did not provide a urine sample to the female officer. She explained:

> "Because I was told that the arresting officer would also be there, too. He would handle it, and I told them no. If it was just the lady by herself, or even one of the other officers, then fine. But not him because I did not trust him, the arresting officer. They told me that he had to be present. So 'no' was my answer for that, if he had to be present and handling my specimen."

She thought that Stark might tamper with the specimen.

¶ 9 After the close of defendant's case, the State moved for a directed finding, contending that defendant failed to establish a *prima facie* case that the arrest was not lawful, that Stark did not have reasonable grounds to believe that defendant was driving the motor vehicle while under the influence, or that she did not refuse to provide a urine sample. The trial court denied the motion for a directed finding.

¶ 10 Defense counsel then made an oral motion to bar Stark from testifying about anything that had happened at the jail. According to defense counsel, he had subpoenaed the jail-intake

video and received a letter stating that there was no video due to a malfunction in the recording equipment. The matter was then continued to February 11, 2015, for status and clarification of whether there was a jail-intake video. Defense counsel acknowledged that there was no issue with the 30-day hearing requirement, because the hearing had started. See 625 ILCS 5/2-118.1(b) (West 2014).

¶ 11 The common-law record shows that, after the January 28 hearing, the parties were before the court on February 11, February 25, March 4, and March 25, 2015. The record does not contain transcripts from either of the February dates or the March 25 date. Nevertheless, the common-law record indicates that, on February 11, the matter was continued on the motion of defendant for status on the jail-intake video and that, on February 25, the matter was continued to March 4. On March 4, the matter was continued to March 25, over defendant's objection, due to witness unavailability. The common-law record further indicates that, on March 10, 2015, the March 25 date was stricken and changed to March 30 due to the unavailability of the trial judge.

¶ 12 At the outset of the continued hearing on March 30, 2015, the State informed the trial court that it had received a letter, dated February 11, 2015, from the Boone County jail indicating that the jail-intake video had been taped over as the jail maintained videos for only 20 to 30 days. Defense counsel informed the trial court that he did not receive the February 11 letter and that the letter was a "form" letter. Defense counsel noted the letter that he had received, dated January 7, 2015, which indicated that there was no jail-intake video due to equipment malfunctions. In any event, the State argued that Stark should not be barred from testifying about what happened during the jail-intake process, because defendant had been allowed to testify on the subject. The court questioned defense counsel about the relevance of the jail-intake video. The court acknowledged defendant's claims that the officers were not nice to her at the

jail and that they were condescending, but the court stated that it did not know how this would be relevant to the issue of defendant's refusal. The court stated that it would allow Stark to begin by testifying about what happened out on the road and that it would "reserve any ruling to see whether or not what happened at the station is even relevant. And then we'll go from there."

¶ 13 Thereafter, the State presented Stark's testimony. Stark testified that he had been an officer for seven years. In January 2014, he took a three-day course at the De Kalb police department and was trained in the "detection for drivers under the influence of narcotics, cannabis, dissociatives, methamphetamine, narcotics, and any other drugs that we would come in contact with." Prior to defendant's arrest, Stark had made about five arrests for driving under the influence of drugs.

¶ 14 Stark testified that, on December 6, 2014, at about 1:45 a.m., he observed a vehicle traveling at 25 to 30 miles per hour in a 45-mile-per-hour zone. After the vehicle passed him, he turned his vehicle and proceeded to follow behind it. After observing the vehicle cross over the center line in the roadway, he initiated a traffic stop. He made contact with the driver, whom he identified as defendant. When he approached the vehicle, the window was partially down and the radio was very loud. Defendant's head was down, and she was looking through multiple items. Stark was able to get her attention, but he could not recall how. During his testimony Stark was allowed to use (for purposes of refreshing his recollection) a copy of a written report that he had prepared. Stark testified that, when defendant rolled down her window, she stated: " 'Why are you always picking on me?' " Stark then told her that he stopped her because she had committed multiple lane violations. While speaking with her, Stark observed that she appeared to have droopy eyelids. He also noted that there appeared to be some sweat on her forehead, and she had sloppy hand movements. He testified that this could indicate drug use.

¶ 15 Stark testified that he asked defendant to exit her vehicle. He had her walk to the front of his squad car, and he told her that he was going to have her perform some tests. He had her stand in front of him and look at him. He held a flashlight above her head. When the light came in contact with her eyes, he noticed that "her eyes were pinpoint and fixed." He explained:

> "When light comes in contact with their eyes when it's dark out, your pupils are going to be dilated to contract [*sic*] as much light as possible for the darkness. When they come in contact with light, they should constrict but then come back out to normal size on [*sic*] the light. As soon as I brought the light up, they were already fixed and pinpoint and they didn't constrict to anything else. They stayed pinpoint, which, with the light, again, it should—they should constrict from the dilation and then go back to normal."

Based on his observations, Stark felt that he needed to do more tests.

¶ 16 Stark testified that he next had defendant perform the walk-and-turn test. He first asked defendant if she was on any medications that would hinder her ability to perform the test. She replied that she was not. She also confirmed that she did not have any head injuries. He instructed defendant on how to perform the test, and he also demonstrated the test for her. Stark observed signs of impairment when defendant performed the test. He testified that she stepped off the line, she missed heel-to-toe, she turned improperly, and she used her arms for balance. Stark next instructed defendant on how to perform the one-leg-stand test. According to Stark, he observed signs of impairment when defendant performed the test. She put her foot down, and she swayed. Stark testified that, when Deputy Burbach arrived, Stark checked defendant's eyes again and made the same observations that he had made the first time. Burbach also checked defendant's eyes with a penlight. Stark informed defendant that he thought that she was under

the influence of drugs. Defendant seemed agitated and she was argumentative. Stark handcuffed her and placed her in his squad car.

¶ 17 Stark testified that, as he was driving to the jail, he telephoned the dispatch center and asked whether a female officer was on duty to do a urine test. While at the jail, Stark asked defendant to provide a urine sample. She told him that she did not trust him with taking the sample. He told defendant that a female officer would be taking the sample. Defendant argued with him, and she told him that she would provide a urine sample at a hospital. He advised her that, either way, he would have to seal it and sign off on it. She again told him that she did not trust him. He asked her if she would be giving him or the female officer the sample, and she said that she would not. He considered her response as a refusal.

¶ 18 Stark testified that he cited defendant for improper lane usage and driving under the influence of drugs. Stark stated that, in his professional life, he had encountered at least a hundred people who were under the influence of drugs. His opinion that defendant was under the influence of drugs was based on his training and previous encounters with people who were under the influence of drugs.

¶ 19 On cross-examination, Stark testified more specifically as to his training regarding the detection of people who are under the influence of drugs. He testified that he had been given handouts and watched videos. He testified that he was taught about muscle tone, pupil size, nystagmus, and cool, clammy skin. He stated that the first time he checked defendant's eyes he held a flashlight above her head. When the light hit her eyes, they were pinpoint and fixed. The second time he checked her eyes, he used a penlight.

¶ 20 Stark was asked by defense counsel whether, at the time of the arrest, he was "working a higher-back[1] details or DUI details?" The State objected, and the objection was overruled. Stark responded that he could not recall but that he did not think so. Defense counsel then attempted to ask questions concerning whether Stark's department depended on grants from the state or federal government for DUI details and whether Stark had been laid off but then subsequently rehired after the department received grant money. The State's objections were sustained. The trial court stated:

> "First of all, I sustained the objection as being irrelevant. Secondly, I'm sustaining the objection because this witness testified he did not recall if they were even on a higher-back [*sic*] that day. So if he doesn't know, he's—how could he be prejudiced if he didn't know if he was on a higher-back [*sic*] then?"

Stark testified further on cross-examination that he could not recall whether he checked defendant for needle marks. He did not find any drug paraphernalia in her car.

¶ 21 On redirect examination, Stark testified that he did not believe that defendant was under the influence of alcohol, because he did not see any indicators of that. He explained that "pinpoint pupils" are "very, very small compared to normal size." According to Stark, pinpoint pupils "show[] that they could possibly be under an opiate, a drug that will constrict their pupils."

¶ 22 The trial court denied defendant's petition to rescind. First, the trial court found that defendant clearly refused testing. The court stated that "if a motorist is indicating that I'm going to do the test on my terms, that's a refusal." The court continued:

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[1] This was transcribed as "higher-back," but there is no dispute that the parties were saying "hire-back."

> "[I]t was brought up on testimony that she refused to do it and wouldn't do it, even when they talked about a female officer coming in. If Deputy Stark had anything to do with it, she wasn't going to do it. I don't know how much more clear that could be. And, again, whether it's being taken at the station or being taken at a hospital or whether it's a blood test or a urine test or a breath test, the defendant motorist does not have the right to dictate which tests are done. And the Deputy did testify that he was going to allow a female officer naturally to observe and take the urine sample. He may have sealed it at a later point. We didn't even get there, but he was clear that a female officer [*sic*] and had testified that he told her it would be a female officer, and she still wouldn't do it."

¶ 23 Regarding the two remaining issues, the trial court found that Stark had reasonable grounds to believe that defendant was under the influence of drugs and that defendant was lawfully placed under arrest. The court first found that Stark "absolutely had reasons to pull her over to investigate what's going on." The court noted Stark's testimony that it was 1:40 a.m., that defendant was driving 25 miles per hour in a 45-mile-per-hour zone, and that defendant was weaving. The court found that defendant was definitely creating a hazard for any motorists coming in the opposite direction or coming up behind her. The court rejected defendant's claim that the road was winding and that she was trying to keep her eyes on the officer behind her.

¶ 24 With respect to whether Stark had reason to believe that defendant was under the influence of drugs, the trial court noted Stark's training in the detection of drug use and his testimony that defendant's pupils were "pinpointed." The court noted Burbach's observation of defendant's pupils, which can be seen in the video, and his agreement with Stark's assessment. The court further noted that Stark's testimony was consistent with what the court saw on the video, whereas defendant's testimony was not supported by the video. The court noted that,

although defendant maintained that she was treated poorly by the police, the video did not show that. The court also noted defendant's poor performance on the field sobriety tests, which was shown on the video. The court noted the absence of evidence of any physical or medical issues that would have affected defendant's performance on the field sobriety tests, and it rejected defendant's argument that "being 49 years old is going to create problems with the field sobriety tests without anything more offered."

¶ 25 The trial court concluded: "The poor field sobriety test, very poor driving, the pupils. This is not a trial. This is just a [*sic*] whether or not the officer had reasonable grounds to believe that she was driving under the influence, and the Court is going to deny the defendant's petition on all three grounds."

¶ 26 Defendant timely appealed.

¶ 27 II. ANALYSIS

¶ 28 *Pro se* defendant raises a variety of arguments (some are not entirely clear) challenging the denial of her petition to rescind the summary suspension of her driving privileges. We will address them in the order that she sets them out in her brief.

¶ 29 We begin by noting the general legal principles relevant to this appeal. If a motorist's driving privileges are summarily suspended, the motorist may petition for rescission of that suspension. 625 ILCS 5/2-118.1 (West 2014). By statute, the grounds upon which the petition may be based are limited to whether (1) the motorist was lawfully arrested for DUI; (2) the arresting officer had reasonable grounds to believe that the motorist was under the influence of alcohol, drugs, or both; (3) the motorist refused to submit to chemical testing after being advised that such refusal would result in a statutory summary suspension of driving privileges; and (4) the motorist submitted to chemical testing and failed the test. See 625 ILCS 5/2-118.1(b) (West

2014). "A hearing on a petition to rescind a statutory summary suspension of driving privileges is a civil proceeding." *People v. Wiley*, 333 Ill. App. 3d 861, 863 (2002). The motorist bears the burden of proof and, if she establishes a *prima facie* case for rescission, the burden then shifts to the State to come forward with evidence justifying the suspension. *Id.*

¶ 30 When we examine a trial court's ruling on a defendant's petition to rescind, we employ a two-part standard of review. *City of Highland Park v. Kane*, 2013 IL App (2d) 120788, ¶ 11. First, we consider the trial court's factual findings, and, where applicable, the court's credibility determinations. *Id.* " '[W]e must accord great deference to the trial court's factual findings and credibility assessments and will reverse those findings only if they are against the manifest weight of the evidence.' " *Id.* (quoting *People v. Lurz*, 379 Ill. App. 3d 958, 965 (2008)). "Factual findings or credibility determinations are 'against the manifest weight of the evidence only if the opposite conclusion is clearly evident.' " *Id.* (quoting *People v. Tate*, 367 Ill. App. 3d 109, 113 (2006)). "Second, we review the trial court's ultimate legal ruling." *Id.* In doing so, "we are 'free to undertake [our] own assessment of the facts in relation to the issues and may draw [our] own conclusions when deciding what relief should be granted.' " *Id.* (quoting *People v. Hackett*, 2012 IL 111781, ¶ 18). "Accordingly, '[the] trial court's ultimate legal ruling as to whether [rescission] is warranted is subject to *de novo* review.' " *Id.* (quoting *Hackett*, 2012 IL 111781, ¶ 18).

¶ 31 A. Defendant's Refusal to Provide a Urine Sample

¶ 32 Defendant first argues that she did not refuse chemical testing. According to defendant, she "should have been allowed to take the urine test with another officer, any one of them other than the arresting officer and the sample should have been sealed by the collector as this is the standard procedure for drug tests." She contends that "[t]his is not a refusal as the defendant was

willing to provide a sample to any law enforcement officer at the jail instead of the arresting officer." We disagree.

¶ 33 Section 11-501.1(a) of the Vehicle Code (625 ILCS 5/11-501.1(a) (West 2014)) is the implied-consent statute upon which a summary suspension is based. *People v. Fonner*, 385 Ill. App. 3d 531, 541-42 (2008). Section 11-501.1(a) provides, in pertinent part, the following:

> "(a) Any person who drives or is in actual physical control of a motor vehicle upon the public highways of this State shall be deemed to have given consent, subject to the provisions of Section 11-501.2, to a chemical test or tests of blood, breath, or urine for the purpose of determining the content of alcohol, other drug or drugs, or intoxicating compound or compounds or any combination thereof in the person's blood if arrested, as evidenced by the issuance of a Uniform Traffic Ticket, for any offense as defined in Section 11-501 ***. If a law enforcement officer has probable cause to believe the person was under the influence of alcohol, other drug or drugs, intoxicating compound or compounds, or any combination thereof, the law enforcement officer shall request a chemical test or tests *which shall be administered at the direction of the arresting officer*. The law enforcement agency employing the officer shall designate which of the aforesaid tests shall be administered. ***" (Emphasis added.) 625 ILCS 5/11-501.1(a) (West 2014).

Section 11-501.1 thus makes clear that the "chemical test or tests *** shall be administered at the direction of the arresting officer." *Id.*

¶ 34 Nevertheless, defendant seems to suggest that section 11-501.2(a)(3) of the Vehicle Code (625 ILCS 5/11-501.2(a)(3) (West 2014)) supports her claim that she had the right to choose who administered the test. Section 11-501.2(a)(3) states, in pertinent part, the following:

> "Upon the trial of any civil or criminal action or proceeding arising out of an arrest for an offense as defined in Section 11-501 ***, evidence of the concentration of alcohol, other drug or drugs, or intoxicating compound or compounds, or any combination thereof in a person's blood or breath at the time alleged, as determined by analysis of the person's blood, urine, breath[,] or other bodily substance, shall be admissible. Where such test is made the following provisions shall apply:
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> * * *
>
> (3) The person tested may have a physician, or a qualified technician, chemist, registered nurse, or other qualified person of their own choosing administer a chemical test or tests in addition to any administered at the direction of a law enforcement officer. ***" *Id.*

To be sure, section 11-501.2(a)(3) provides that the motorist may choose to have someone other than the officer administer a test, but this is "*in addition to* any administered at the direction of a law enforcement officer." (Emphasis added.) *Id.*

¶ 35 Defendant also maintains that neither the Illinois Administrative Code (see 20 Ill. Adm. Code 1286.330) nor sections 11-501.1 and 11-501.2 of the Vehicle Code (see 625 ILCS 5/11-501.1, 11-501.2 (West 2014)), define the chain of custody for a urine test. That may be, but any argument concerning an improper chain of custody is speculative. We cannot determine if there would have been an issue with Stark sealing the kit and signing off on it where no urine sample was given. More importantly, defendant cannot raise this argument as a basis for supporting her refusal to submit to testing. See, *e.g.*, *Fonner*, 385 Ill. App. 3d at 544 (the defendant cannot raise a chemical test's potential noncompliance with section 11-501.2 of the Vehicle Code as a basis for supporting a refusal to submit to testing). Here, even if there would have been an issue

concerning Stark's involvement in the chain of custody of the urine sample, this does not excuse defendant's refusal to provide one.

¶ 36 B. Ineffective Assistance of Counsel

¶ 37 Defendant next contends that she was denied the effective assistance of counsel in a variety of ways. Her arguments, although not entirely clear, are without merit.

¶ 38 To succeed on a claim of ineffective assistance of counsel, a defendant must show both (1) that counsel's performance was objectively unreasonable; and (2) that it is reasonably probable that, but for counsel's unprofessional errors, the result of the proceeding would have been different. *Strickland v. Washington*, 466 U.S. 668, 688, 694 (1984). "A reasonable probability is a probability sufficient to undermine confidence in the outcome." *Id*. at 694. "In demonstrating, under the first *Strickland* prong, that his counsel's performance was deficient, a defendant must overcome a strong presumption that, under the circumstances, counsel's conduct might be considered sound trial strategy." *People v. Houston*, 226 Ill. 2d 135, 144 (2007). If the reviewing court "concludes that [the] defendant did not suffer prejudice, [it] need not decide whether counsel's performance was constitutionally deficient." *People v. Harris*, 206 Ill. 2d 293, 304 (2002).

¶ 39 We first note that it is highly questionable whether *Strickland* applies at a rescission hearing. See *Koss v. Slater*, 116 Ill. 2d 389, 397 (1987) (no right to counsel at summary suspension hearing). We further note that defendant offers no discussion concerning how she was prejudiced by counsel's allegedly unprofessional errors. Since this is a required component of a claim under *Strickland*, by failing to argue any prejudice, defendant's claims of ineffective assistance of counsel fail. In any event, defendant has not established that counsel's performance was objectively unreasonable.

¶ 40 Defendant argues that defense counsel was ineffective for failing to object when the State posed the following question to her during cross-examination: "Corrections Officer Sergeant White had told you that these samples are sealed when they're taken, didn't he?" However, the record makes clear that defense counsel did object, and the objection was sustained. Accordingly, this argument fails.

¶ 41 Defendant next argues that defense counsel was ineffective for failing to challenge the State's objection to her testimony concerning what happened during the intake process at the jail. She claims that she was not allowed to "complete her half of the story." The portion of the record cited by defendant indicates that she was asked about how she was treated and that she responded: "When I first arrived they made me feel like I was a piece of meat. They were, like, oh, what do you have here? And it was a lady officer there. She was like, oh, what do you have here?" The State's subsequent objection was sustained. The court admonished defendant that she was "not allowed to answer the question about what another officer had stated to you." Later, when defendant began to testify that "[o]ne officer told me to go to the sink and wash my hands—," the State again objected. Thereafter, the court stated:

> "You know, part of the problem though is she's not able to identify the officer, so in that regard, I'm not sure how it wouldn't be hearsay.
>
> I get the picture, [defense counsel], that she's saying that there was only one nice officer there; the other ones were awful. And she offered to do a sample numerous times, according to her testimony. And they offered to let a female officer go with her to collect a sample, but her testimony is, however, that had to be in conjunction with Deputy Stark. And that's why she said no, and that's why she didn't provide a sample.

> So I don't know as far as some officer telling her to wash her hands, I don't know how that's even relevant. And it might be hearsay, so I'll sustain the objection."

Defendant has failed to demonstrate why this was error. In any event, the court made clear that it was aware of the point that defendant was attempting to make during the testimony.

¶ 42 Defendant next argues that counsel was ineffective for failing to request clarification when the following statement was made by the trial court: "And I've listened to testimony from the officers." According to defendant, when the statement was made, neither officer had testified. Defendant maintains that the court's statement indicates that it "relied on testimonies outside of the record." A review of the record makes clear that defendant is incorrect. The challenged comment was made when the court was addressing defendant's argument that the absence of the jail-intake video prejudiced defendant. The court inquired: "How does the jail conversation and activities come into play?" The court continued:

> "[L]et's say for argument's sake and the defendant has made allegations of wrongdoing pretty much from the start about how she felt the treatment was towards her. I think that's for on the one hand for the trier of fact to determine. And I've listened to testimony from the officers. And more importantly, I've made certain observations on my own from the video.
>
> Secondly, I'm not really sure how relevant that is. I mean, let's say for argument's sake they were not nice and they were rude and they were condescending and mean. I don't know how any of that comes into play with any of the case law I've ever seen about a refusal."

It is clear that the court was speaking hypothetically about the impact of the video. Given that context in which the statement was made, we find that defense counsel's failure to request clarification was not unreasonable.

¶ 43 Defendant next argues that counsel was ineffective for failing to lay the proper foundation for admission of defendant's urine test that was done by a private lab and for failing to call the "back-up officer" (presumably Burbach) to testify. Decisions as to what evidence to present, whether to call certain witnesses, and what theory of defense to pursue are matters of trial strategy. *Rogers*, 2015 IL App (2d) 130412, ¶ 71. " 'Matters of trial strategy are generally immune from claims of ineffective assistance of counsel.' " *Id*. (quoting *People v. Smith*, 195 Ill. 2d 179, 188 (2000)). Here, with respect to the test results, it could be that the results were positive and that defense counsel's strategy was to have defendant identify the results merely to show that she immediately sought a urine test after refusing to do one at the police station, which would have bolstered her claim that she was willing to have testing done and thus did not refuse. Counsel's failure to present testimony from Burbach could have similarly been trial strategy. Based on Burbach's appearance on the video of the arrest, it is likely that his testimony would have served only to bolster Stark's testimony about defendant's eyes. Accordingly, we find no deficient performance.

¶ 44 In sum, defendant's ineffective assistance claims fail, because she fails to establish that she was prejudiced by counsel's allegedly unreasonable representation. Aside from that, counsel's performance was not objectively unreasonable.

¶ 45 C. Propriety of the Trial Court's Ruling on the Admissibility of Testimony Concerning the Alleged Hire-Back Policy of the Boone County Sheriff's Department

¶ 46 Defendant next contends that the trial court abused its discretion by not allowing defense counsel to question Stark about the alleged hire-back policy of the Boone County sheriff's department, the department's alleged reliance on federal and state grants for DUI details, and any possible bias on the part of Stark. (We note that defendant cited an online newspaper article in support of this argument. The State moved to strike the article, and we granted the motion.)

¶ 47 It is within the trial court's discretion to determine whether evidence is relevant and admissible, and the trial court's decision on the issue will not be reversed absent an abuse of discretion. *People v. Morgan*, 197 Ill. 2d 404, 455 (2001). A trial court abuses its discretion where its decision is arbitrary, fanciful, or unreasonable, or where no reasonable person would take the trial court's view. *Id.*

¶ 48 We find no abuse of discretion. The record makes clear that Stark was asked by defense counsel whether, at the time of the arrest, he was "working a higher-back [*sic*] details or DUI details." The State's objection was overruled, and Stark responded that he could not recall but that he did not think so. Defense counsel then attempted to ask questions concerning whether Stark's department depended on grants from the state or federal governments for DUI details and whether Stark had been laid off but then subsequently rehired after the department received grant money. The State's objections were sustained. The trial court stated: "First of all, I sustained the objection as being irrelevant. Secondly, I'm sustaining the objection because this witness testified he did not recall if they were even on a higher-back [*sic*] that day. So if he doesn't know, he's—how could he be prejudiced if he didn't know if he was on a higher-back [*sic*] then?" We agree with the court's reasoning and thus find no abuse of discretion.

¶ 49 D. Absence of the Jail-Intake Video

¶ 50 Defendant's fourth and fifth arguments concern the absence of the jail-intake video. She argues that the trial court did not consider the absence of the video in making its ruling. She maintains that there was no credible explanation for its absence, that it was of great importance, and that it would have supported her testimony. She also argues that Stark was not supposed to testify about what happened at the jail; he was supposed to testify only about what happened on the road.

¶ 51 First, we note that the trial court addressed the reasoning for the absence of the jail-intake video at the outset of the hearing on March 30, 2015. The record shows that, although there was some initial confusion over the reason for the absence of the video, the court determined that the video was unavailable due to an equipment malfunction. Thus, contrary to defendant's claim, the reason for the missing video had been addressed. Further, the trial court expressly considered whether defendant would be prejudiced by the absence of the video. The trial court questioned defense counsel about the relevance of the video. The court acknowledged defendant's claims that the officers were not nice to her at the jail and that they were condescending, but the court stated that it did not know how this would be relevant to the issue of defendant's refusal.

¶ 52 The court also considered defendant's oral motion concerning whether Stark should be permitted to testify about what happened at the jail. In so doing, the court stated that it would allow Stark to begin by testifying about what happened out on the road and that it would "reserve any ruling to see whether or not what happened at the station is even relevant. And then we'll go from there." When Stark later testified about defendant's refusal to take the urine test at the jail, defense counsel did not object. Nor did counsel seek a ruling on his oral motion. Because defendant did not object to Stark's testimony and never insisted on a ruling on her motion, we

find that the issue has been forfeited. See *People v. El*, 83 Ill. App. 3d 31, 36 (1980) ("When a trial court reserves ruling on the admissibility of evidence, the party detrimentally affected must insist on a subsequent ruling to preserve the issue for appeal.").

¶ 53 E. Stark's Qualifications

¶ 54 Defendant next argues that Stark "clearly did not have sufficient experience, training and skills necessary for DUI Drugs, narcotics." She essentially argues that Stark's testimony was insufficient to establish that she was under the influence of drugs. We disagree.

¶ 55 Stark testified that he had been an officer for seven years, that he had been trained in the detection of motorists under the influence of drugs, and that he had made five arrests of motorists under the influence of drugs prior to December 2014. He described the indicators that he looked for and the reasons why he believed that defendant was under the influence of narcotics. We have no basis upon which to conclude that Stark was not qualified to determine that defendant was driving under the influence of drugs.

¶ 56 The cases relied on by defendant to support her argument that Stark was not qualified to determine that she was under the influence of drugs are readily distinguishable. See *People v. Foltz*, 403 Ill. App. 3d 419, 425 (2010) (officer's testimony was insufficient to prove the defendant was under the influence of drugs where the officer had less than two years' experience as an officer, he had no specific training in drug recognition, and it was his first arrest for driving under the influence of drugs); *People v. Jacquith*, 129 Ill. App. 3d 107, 115 (1984) (officers' testimony was insufficient to prove the defendant was under the influence of drugs where neither officer testified that he had previous experience with narcotics users or that he had made any arrests for driving under the influence of drugs). Accordingly, we reject defendant's argument.

¶ 57 F. Timeliness of the Hearing

¶ 58 Last, defendant argues that the hearing on the petition was continued too many times and that the reasons for the continuances were never adequately addressed. We disagree.

¶ 59 The common-law record shows that, after the January 28 hearing, the parties were before the court on February 11, February 25, March 4, and March 25. The record does not contain transcripts from the February dates or the March 25 date. Nevertheless, the common-law record indicates that on February 11 the matter was continued on the motion of defendant for status on the jail-intake video and that on February 25 the matter was continued to March 4. On March 4, the matter was continued to March 25, over defendant's objection, due to witness unavailability. The common-law record indicates that on March 10 the March 25 date was stricken and changed to March 30 due to the unavailability of the trial judge. Thus, contrary to defendant's claim, it is clear that the reasons were addressed.

¶ 60 In any event, defendant's argument regarding the timeliness of the hearing is without merit. Section 2-118.1(b) of the Vehicle Code provides, in relevant part, as follows:

> "Within 90 days after the notice of statutory summary suspension or revocation served under Section 11-501.1, the person may make a written request for a judicial hearing ***. *** Within 30 days after receipt of the written request ***, the hearing shall be conducted by the circuit court having jurisdiction. This judicial hearing, request, or process shall not stay or delay the statutory summary suspension or revocation. The hearings shall proceed in the court in the same manner as in other civil proceedings." 625 ILCS 5/2-118.1(b) (West 2014).

Here, defendant filed her petition on January 2, 2015, and the hearing commenced on January 28, 2015, which was within the 30-day statutory period. There is no requirement that the matter be concluded within that 30-day period. See *People v. Cosenza*, 215 Ill. 2d 308, 316 (2005).

¶ 61 III. CONCLUSION

¶ 62 For the reasons stated, we affirm the judgment of the circuit court of Boone County denying defendant's petition to rescind the summary suspension of her driver's license.

¶ 63 Affirmed.