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2017 IL App (3d) 150177-U

Order filed October 31, 2017

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IN THE  
APPELLATE COURT OF ILLINOIS  
THIRD DISTRICT

2017

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the Circuit Court of the 10th Judicial Circuit, Peoria County, Illinois,
Plaintiff-Appellee,	)	
v.	)	Appeal No. 3-15-0177
ANTHONY C. MOORE,	)	Circuit No. 14-CF-159
Defendant-Appellant.	)	Honorable David A. Brown, Judge, Presiding.

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JUSTICE WRIGHT delivered the judgment of the court.  
Presiding Justice Holdridge and Justice Carter concurred in the judgment.

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**ORDER**

- ¶ 1 *Held:* Trial counsel was not ineffective for failing to file a second motion to suppress or for failing to fortify the original motion to suppress with alternative arguments because the motion, as filed, had a reasonable likelihood of success. Additionally, the circuit clerk lacked the authority to impose fines exceeding the agreed amount of \$1500 plus court costs delineated in the trial court's supplemental sentencing order that was approved by both parties.
- ¶ 2 Following his arrest for unlawful possession of a controlled substance, defendant moved to quash arrest and suppress evidence on the grounds that the officer lacked probable cause to effectuate a traffic stop upon defendant's vehicle. The trial court denied defendant's motion.

Following a stipulated bench trial, the trial court found defendant guilty of unlawful possession of a controlled substance. Afterward, the trial court adopted the parties' joint recommendation for a sentence of 24 months probation and a \$1500 fine plus court costs. Defendant appeals the trial court's ruling denying his motion to quash arrest and suppress evidence and further asserts that the circuit clerk improperly collected amounts in excess of those amounts the trial court ordered defendant to pay.

¶ 3

### FACTS

¶ 4

On March 25, 2014, the State charged Anthony C. Moore (defendant) by indictment with unlawful possession of a controlled substance, cocaine, in violation of section 570/402(c) of the Illinois Controlled Substances Act. 720 ILCS 570/402(c) (West 2014). Defendant posted \$300 as 10% of the original bond of \$3000.

¶ 5

On August 5, 2014, defendant filed a motion to quash arrest and suppress evidence alleging that the arresting officer lacked reasonable suspicion to conduct a traffic stop of defendant's vehicle on March 14, 2014.

¶ 6

The trial court conducted a hearing on defendant's motion on October 9, 2014. Officer Corey Miller testified that at 4:20 a.m. on March 14, 2014, Miller was patrolling in downtown Peoria near the night clubs when he noticed a lawfully parked, silver hatchback Mercedes. The Mercedes was the only vehicle on the street at that hour of the morning. Miller ran the plates and found that the vehicle belonged to defendant. Miller parked his squad car down the street with the intent of observing the vehicle. About 15 minutes later, Miller saw defendant walk toward the vehicle, enter the car, and pull away from the curb without first activating a turn signal.

¶ 7

According to the officer's testimony, after leaving the parking spot, the vehicle traveled approximately 165 feet to an intersection. At the intersection, the vehicle came to a stop and the

driver activated the right turn signal and turned right. At this point, Miller effectuated a traffic stop because the driver did not first signal his intention to turn right at least 100 feet prior to the intersection as mandated by section 5/11-804(b) of the Illinois Vehicle Code. 625 ILCS 5/11-804(b) (West 2014).

¶ 8 Defendant's version of events differed from the officer's testimony. Defendant agreed his vehicle was lawfully parked near Hoops Pizza in downtown Peoria, but disputed Miller's assertion that the parking spot was 165 feet from the intersection. According to defendant's testimony, his vehicle was parked in the parallel parking space that was closest to the intersection. Defendant provided photographs to the trial judge showing the last parking space was 25 feet from the intersection. Defendant testified that he did not use his left turn signal to signal his intention to leave the parking space because the parallel parking space turned into the right turn lane just beyond the point where defendant parked his vehicle. Consequently, defendant pulled directly forward into the turn lane and was not required to activate his left turn signal to pull out of the parking space. Defendant testified that the officer pulled his vehicle over approximately a block and a half after he stopped, signaled a right turn, and turned right at the intersection. During arguments, defendant asserted that it was impossible to signal his intention to turn right at least 100 feet before the intersection because he entered the roadway just 25 feet before the intersection.

¶ 9 Following arguments, the court resolved the differences in the officer's and defendant's testimony about the location of the parking space by finding that defendant was parked more than 100 feet from the intersection. The trial court found that Officer Miller had probable cause to effectuate the stop after observing that defendant failed to signal at least 100 feet before the intersection. The trial court also noted that:

“I can’t find by a preponderance of the evidence that the facts are the way the defendant says they are, which is that he parked at the end. Even if he had parked in the last spot, I still think he could -- my interpretation is that I still think he’s obligated to, when leaving a parking space, use a turn signal in some fashion to indicate that he’s proceeding on. He’s either got to turn left into the traffic lane, or if he just wants to stay straight, he needs to turn his turn signal on.”

¶ 10 On January 16, 2015, the court conducted a stipulated bench trial. The parties stipulated to the prior testimony provided by both Miller and defendant during the October 9, 2014, hearing on the motion. Additionally, the parties stipulated that if Miller testified for purposes of the bench trial, he would testify that after he pulled defendant over he observed that defendant had a white powdery substance under his left pinky fingernail as defendant went to obtain his driver’s license. According to the stipulation, Miller was a trained narcotics officer with several years spent in the narcotics unit, and was aware that a common manner for consuming cocaine, specifically powder cocaine, involves placing the substance on a fingernail and snorting it. Miller field-tested the substance under defendant’s fingernail and the test came back positive for the presence of cocaine.

¶ 11 Eventually, another officer searched defendant’s vehicle and discovered a small bag with a white powdery substance under the floor mat of the driver’s side seat. This substance field-tested positive for cocaine. A subsequent test at the Morton Crime Lab indicated that the bag contained less than one-tenth of a gram of cocaine. The stipulation did not address whether the search of the vehicle at the scene was or was not a consensual search.

¶ 12 Based on the stipulated evidence, the trial court found defendant guilty of unlawful possession of a controlled substance. The trial court also reiterated the prior finding that probable

cause existed for the initial traffic stop. On March 12, 2015, defendant filed a motion to reconsider the trial court's denial of the motion to suppress. The trial court denied defendant's motion to reconsider. On the same day, defendant waived his opportunity to present evidence in mitigation and the trial court adopted the parties' joint recommendation for a sentence of 24 months probation and a \$1500 fine plus court costs.

¶ 13 On March 12, 2015, the trial court signed a written order showing a total due for fines, together with all court costs in the amount of \$1971. The written order is titled "Felony And Misdemeanor Supplemental Sentencing Order" (the supplemental sentencing order), and is signed by defendant and both attorneys. On the same date, the trial court signed a document certifying the conditions of probation that included a \$25 monthly probation service fee that is not reflected in the supplemental sentencing order signed on the same date. Defendant filed a timely notice of appeal on March 16, 2015.

¶ 14 After the notice of appeal was filed by defendant on March 16, 2015, the circuit clerk prepared a certified document on April 29, 2015. The certified document gave defendant credit for a cash payment of \$100 on April 10, 2015, and reflected fines and costs totaling \$4071. On June 18, 2015, the circuit clerk applied \$270 of the original bond posted by defendant. It appears that the circuit clerk retained 10% of the \$300 posted as authorized by statute. According to the clerical records, after June 18, 2015, defendant did not receive any credit to reduce the balance due of court ordered monies.

¶ 15 According to the circuit clerk's records in Peoria County case No. 14-CF-159, the State filed a petition alleging defendant's probation should be revoked on March 2, 2017. The face of the State's petition alleged that defendant had paid only \$100 since March 12, 2015, and owed a balance due of \$3701 on March 2, 2017. After the State filed this petition, defendant posted

\$2000 bond on March 8, 2017. On March 31, 2017, defendant made a cash payment of \$1929. Next, the circuit clerk applied \$1800 to defendant's remaining balance after retaining 10% of defendant's \$2000 bond. On April 17, 2017, the circuit clerk prepared a certified data entry sheet documenting the clerk collected \$4099 from defendant resulting in full payment.

¶ 16

#### ANALYSIS

¶ 17

Defendant contends trial counsel was ineffective for failing to file a motion to suppress evidence on the grounds that the incriminating nature of the white substance the officer noticed on defendant's fingernail was not immediately apparent and did not support probable cause to conduct any type of search based solely upon the plain view doctrine. In addition, defendant seeks a refund of the amounts retained by the circuit clerk in excess of the \$1500 in fines, as documented by the court in the court's signed order approved by both parties. We begin by addressing defendant's ineffective assistance of counsel argument.

¶ 18

It is well established that accused persons are guaranteed the assistance of competent counsel for their defense. U.S. Const., amends. VI, XIV; Ill. Const. 1970, art. I, § 8; *Strickland v. Washington*, 466 U.S. 668, 685-686 (1984). In order to establish ineffective assistance of counsel, defendant must show that counsel's performance fell below an objective standard of reasonableness, and that there is a reasonable probability that but for counsel's errors, the result of the proceeding would have been different. *Strickland*, 466 U.S. at 669. Courts evaluate any purported deficiencies in the competence of defense counsel by applying an objective standard of competence based on prevailing professional norms. *People v. Evans*, 186 Ill. 2d 83, 93 (1999). “[T]he decision whether to file a motion to quash arrest and suppress evidence does not represent *per se* incompetence. The decision is traditionally viewed as one of trial strategy, and counsel benefits from a strong presumption that his failure to challenge the validity of the accused's

arrest or to seek the exclusion of certain evidence was proper.” *People v. Little*, 322 Ill. App. 3d 607, 611 (2001). (Internal citations omitted.) “Matters of trial strategy are generally immune from claims of ineffective assistance of counsel.” *People v. Morris*, 2013 IL App (1st) 110413, ¶ 74.

¶ 19 A defendant may overcome the strong trial strategy presumption by showing “that counsel’s decision was ‘so irrational and unreasonable that no reasonably effective defense attorney, facing similar circumstances, would pursue such a strategy.’ ” *Id.* When determining the adequacy of defendant’s legal representation, appellate courts consider the totality of the circumstances. *People v. Valladares*, 2013 IL App (1st) 112010, ¶ 52. This court reviews the legal issue of whether counsel was ineffective *de novo*. *People v. Nowicki*, 385 Ill. App. 3d 53, 81 (2008).

¶ 20 In this case, defense counsel filed a motion to quash arrest and suppress evidence that challenged the propriety of the initial traffic stop and requested the suppression of all evidence obtained as a result of the unauthorized traffic stop. On appeal, defendant argues that a competent attorney would have filed a motion challenging the propriety of a plain view search based on the unique facts in this case.

¶ 21 The case law provides that “the right to effective assistance of counsel refers to ‘competent, not perfect representation.’ ” *Valladares*, 2013 IL App (1st) 112010, ¶ 52. We must evaluate counsel’s challenged conduct from counsel’s perspective at the time he filed and argued the motion to suppress so as “to eliminate the distorting effects of hindsight.” *People v. Steele*, 2014 IL App (1st) 121452, ¶ 38.

¶ 22 Defendant contends counsel was ineffective for presenting a motion to suppress that could have been better, when measured by the 20/20 vision of hindsight. After the trial court

found the traffic stop was lawful, defendant now contends a different approach to the motion to suppress may have yielded better results. We disagree. Here, defense counsel presented the trial court with photographic evidence supporting defendant's testimony that defendant was parked so close to the intersection that he did not change lanes and was not required to signal when leaving his parking spot. However, the trial court denied the motion to suppress after assessing the credibility issues regarding the location of defendant's parking spot in favor of the officer.

¶ 23 A challenge to the lawfulness of the plain view search, like the challenge to the basis for the traffic stop, was dependent upon whether the court believed the officer's testimony about the officer's observations. Based on this record, we conclude that defense counsel's decision to file the motion to suppress challenging the traffic stop rather than the plain view search involved a matter of trial strategy in its purest form. Consequently, we conclude that defense counsel in this case was not ineffective for choosing a trial strategy that had a reasonable likelihood of success due to the un rebuttable photographic evidence defense counsel presented to the court regarding the configuration of the parking spot in relation to the intersection.

¶ 24 Next, defendant argues the monetary amounts the circuit clerk applied to his balance of court ordered monies improperly exceeded the \$1500 fine the trial court verbally ordered defendant to pay based on the agreement of the parties. Defendant requests this court to enter an order compelling the return of any funds retained by the circuit clerk in excess of \$1500 for punitive fines.

¶ 25 The State argues the agreement between the parties called for defendant to pay a discretionary \$1500 lump sum fine, *plus* the itemized mandatory fines identified in the supplementary sentencing order. The State claims the circuit clerk's certified records properly documented fines and costs in excess of \$4000 as part of the agreed sentence.



¶ 26 A brief review of the facts of record is in order at this juncture. In this case, the trial court verbally announced the fines would be \$1500 on March 12, 2015. The total amount of monies defendant was ordered to pay according to the supplemental sentencing order was in excess of \$1500, and totaled \$1971 with the addition of court costs. The total of \$1971 did not include \$600 for probation service fees, separately listed by the court in another document. With court-ordered probation fees of \$600, the grand total would have been \$2571, assuming defendant successfully completed the 24-month probationary period.

¶ 27 According to the clerical records in this case, defendant made two cash payments. The first payment of \$100 was received by the circuit clerk on April 10, 2015, and credited against the balance due. Defendant's second payment came nearly two years later, in 2017, and while this appeal was pending after the State filed a petition to revoke defendant's probation for nonpayment of \$3701. This second payment by defendant was in the amount of \$1929 and reduced his balance due on March 31, 2017. The clerical records show defendant made cash payments totaling \$2029.

¶ 28 On April 6, 2017, the State withdrew the pending petition alleging defendant violated his probation by failing to pay a balance due of \$3701. The next day, on April 7, 2017, the circuit clerk applied \$1800 of defendant's \$2000 bond to the unpaid balance due. Ten days later, on April 17, 2017, the circuit clerk prepared a certified document showing the court collected \$4099<sup>1</sup> from defendant, resulting in full payment of defendant's balance.

¶ 29 In this case, defendant does not dispute any court costs collected by the circuit clerk or dispute that he was required to separately pay \$600 for probation service fees. Further, defendant does not dispute that the circuit clerk was authorized to retain \$1500 for all fines. However,

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<sup>1</sup>The record reflects that the difference between the \$4071 and the \$4099 may be attributed to a \$28 difference in the sheriff's fees.

defendant disputes that the supplemental court order required him to pay more than a total of \$1500 for court-ordered fines. We agree.

¶ 30 In the interest of maintaining a uniform body of law, we note that in *People v. McCray*, this court held that the circuit court lacked jurisdiction to increase the total amount of monies due as part of the sentence announced by the court once the defendant filed his notice of appeal. *People v. McCray*, 2016 IL App (3d) 140554. Hence, in this case, the trial court's carefully prepared supplemental sentencing order caps the fines and costs at \$1971 and a separate document caps probation service fees at \$600 on the date of sentencing, March 12, 2015. The notice of appeal filed on March 16, 2015, deprived the court and the circuit clerk of any authority to increase the unpaid balance due above \$1971 plus \$600, as embodied in the written documents both sides approved. Further, as recently held by this court, the circuit clerk's data entries do not constitute a court order authorizing the circuit clerk to collect or retain funds in excess of the punitive amounts previously ordered by the trial court. See *People v. Warren*, 2017 IL App (3d) 150085, ¶ 21.

¶ 31 In this case, unlike many other situations, the trial court carefully provided judicial guidance to the circuit clerk's staff by entering a supplemental sentencing order listing all punitive amounts and court costs. This order limited the fines to be collected by the circuit clerk to those amounts recited in the agreed supplemental sentencing order. Once defendant filed his March 16, 2015, notice of appeal, any miscalculations regarding the fines to be collected by the circuit clerk could not be corrected by the circuit clerk.

¶ 32 Hence, we remand the matter to the circuit court to enter a modified supplemental sentencing order that brings the total of both mandatory and discretionary fines to the capped amount of \$1500 contemplated by the agreement. On remand, the modified supplemental

sentencing order should include only those itemized fines originally listed, plus an additional amount for the discretionary fine authorized by 730 ILCS 5/5-4.5-50(b), as necessary to bring the total of the punitive amounts to \$1500. We also direct the trial court to determine the best method of distributing the excess monies retained by the circuit clerk from both bonds posted, with due consideration for valid bond assignments, if any, that might exist. Defendant is not entitled to have either of his voluntary cash payments returned, since those amounts do not exceed the amount originally ordered by the court for fines, costs, and probation service fees imposed on the date of sentencing.

¶ 33

#### CONCLUSION

¶ 34

The judgment of the circuit court of Peoria County is affirmed in part, modified in part, and remanded with directions.

¶ 35

Affirmed in part, modified in part, and remanded with directions.