2019 IL App (5th) 160012-UB

NO. 5-16-0012

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Edwards County.
	)	
v.	)	No. 14-CF-31
	)	
ASHLEY ROOSEVELT,	)	Honorable
	)	David K. Frankland,
Defendant-Appellant.	)	Judge, presiding.

JUSTICE BARBERIS delivered the judgment of the court.
Justices Cates and Moore concurred in the judgment.

ORDER

¶ 1 *Held*: Trial counsel was not ineffective for failing to challenge the validity of a traffic stop where police officers possessed an objectively reasonable suspicion to initiate the stop; the circuit court did not err in denying a motion to suppress evidence where evidence demonstrated reasonable suspicion existed to prolong the traffic stop; and the prepping procedure did not unreasonably detain the defendant so as to constitute an unconstitutional seizure; the evidence was insufficient to support the defendant's conviction for possession of cannabis; defendant's conviction for unlawful possession of methamphetamine must be reduced from a Class 2 to a Class 3 felony.

¶ 2 On December 19, 2014, the defendant, Ashley Roosevelt, filed a motion to quash arrest, suppress evidence, and dismiss charges against her. After the defendant waived her right to a jury trial on June 2, 2015, her case moved to a stipulated bench trial where

she was convicted of unlawful possession of methamphetamine (count I) (720 ILCS 646/60(b)(2) (West 2014)), unlawful possession of a controlled substance (counts II and III) (720 ILCS 570/402(c) (West 2014)), and unlawful possession of cannabis (count IV) (720 ILCS 550/4(a) (West 2014)). The defendant was sentenced to concurrent sentences of 24 months of first-offender probation for counts I, II, and III; 30 days of court supervision for count IV; and 6 months in jail, stayed pending review.

¶ 3 On August 5, 2015, the defendant filed a posttrial motion to reconsider sentence and for a new trial. On August 6, 2015, the defendant filed an amended motion, which the circuit court denied. On September 25, 2015, the defendant filed a notice of appeal. On October 9, 2015, the court struck the defendant's notice of appeal under the mistaken belief that the defendant's posttrial motion was still pending. On October 15, 2015, the appellate court dismissed the defendant's appeal. On November 17, 2015, the circuit court, again, denied the defendant's amended motion to reconsider, and the defendant filed a second notice of appeal on December 15, 2015.

¶ 4 This court dismissed the defendant's appeal for lack of appellate jurisdiction following an untimely notice of appeal. See *People v. Roosevelt*, 2018 IL App (5th) 160012-U. Subsequently, the Illinois Supreme Court issued a supervisory order directing this court to vacate the order and allow the defendant's December 15, 2015, notice of appeal to stand as properly filed. *People v. Roosevelt*, No. 124121 (Ill. Oct. 30, 2018) (supervisory order).

¶ 5 On appeal, the defendant argues that (1) trial counsel was ineffective for failing to challenge the validity of the traffic stop; (2) the circuit court erred in denying her motion

to quash arrest, suppress evidence, and dismiss charges; (3) the evidence was insufficient to prove beyond a reasonable doubt that the defendant possessed cannabis; and (4) the defendant was entitled to a $30 credit for time spent in custody prior to sentencing. For the following reasons, we modify count I; affirm counts II and III; and reverse outright the finding of guilt and vacate the sentence on count IV.

¶ 6 I. Background

¶ 7 On October 25, 2014, the defendant was a backseat passenger in a vehicle that was stopped for a seatbelt violation. After a narcotics-detection dog alerted to the presence of drugs, a search of the vehicle uncovered a small amount of cannabis and cannabis paraphernalia. A subsequent search of the defendant's purse revealed a small amount of methamphetamine and two prescription pills. The defendant was arrested and charged by information with unlawful possession of methamphetamine (count I) (720 ILCS 646/60(b)(2) (West 2014)), unlawful possession of a controlled substance (counts II and III) (720 ILCS 570/402(c) (West 2014)), and unlawful possession of cannabis (count IV) (720 ILCS 550/4(a) (West 2014)).

¶ 8 On December 19, 2014, the defendant filed a motion to quash arrest, suppress evidence, and dismiss charges against her. The defendant argued that the officers lacked reasonable suspicion and probable cause to search the vehicle because the canine free-air sniff unduly prolonged the stop, and the set-up procedures constituted an unconstitutional search and seizure.

¶ 9 On February 3, 2015, the following evidence was adduced at the hearing on the defendant's motion. Sean Sager, Edwards County deputy sheriff and certified canine

officer, testified to the following. On October 25, 2014, shortly after 11 p.m., Sager and Grayville Police Sergeant Jess Burley were parked at M&S Tire Shop, which was located across the street from Huck's Convenient Food Store (Huck's) on Court Street in Grayville, Illinois. The parking lot of M&S Tire Shop was "lit by a street light at the corner of the crossroads," and Court Street was "fairly well lit with street lights." The front of Sager's patrol SUV faced M&S Tire Shop while the front of Burley's patrol vehicle, parked next to Sager, faced Huck's. While looking through his rear-view mirror, Sager observed a vehicle, driven by Amber Walkenbach (Walkenbach), exit the Huck's parking lot on Court Street. Sager's patrol SUV was "maybe a lane, lane and half distance" away from Walkenbach's vehicle when he observed her "leaning forward" without a "seatbelt protruding over her left shoulder." After both officers agreed that a seatbelt violation had occurred, Sager pulled over Walkenbach's vehicle approximately one to two blocks away from Huck's.

¶ 10 As Sager approached the vehicle, he noticed that Walkenbach was wearing a seatbelt and was accompanied by three adult passengers and an infant. The defendant was seated in the back seat between the infant and another passenger. After obtaining Walkenbach's driver's license and proof of insurance, Sager returned to his patrol SUV while Burley maintained constant observation through the rear passenger side window of Walkenbach's vehicle. At that time, Burley observed Walkenbach use her left hand to "hid[e] something or pass *** something back" between her seat and the driver's side door. Although Sager initially intended to give a verbal warning, he conducted a canine free-air sniff after Burley informed him of Walkenbach's "furtive movement." After

Sager instructed all passengers to remain in the vehicle, he instructed Walkenbach to perform a prepping procedure, which included turning the ignition key to the "on" position, opening the vents, turning the ventilation fan to the highest setting, and rolling up the windows. After Sager retrieved the narcotic-detection dog from his patrol SUV, he placed the dog on a lead around the vehicle. As the dog walked to the rear seam of the front driver's door, it alerted to the presence of narcotics. According to Sager, "no more than five minutes" had passed from the time he pulled over Walkenbach's vehicle to the time he conducted the canine free-air sniff.

¶ 11 After all passengers, except the infant child, exited the vehicle, Burley's search of the vehicle uncovered cannabis, cannabis paraphernalia, and a glucose canister containing cannabis. A search of the defendant's purse revealed two prescription pills and a small bag of methamphetamine hidden inside of a black glucose strip canister. Following the search, all passengers were placed under arrest.

¶ 12 Burley testified to the following details. On October 25, 2014, shortly after 11 p.m., Burley observed Walkenbach driving without a seatbelt. After Sager and Burley confirmed the seatbelt violation, they conducted the traffic stop. While Sager was in his patrol SUV checking Walkenbach's driver's license and proof of insurance, Burley stood near the rear passenger side of Walkenbach's vehicle "in a cover position" to maintain constant surveillance. Roughly four or five minutes following the traffic stop, Burley observed Walkenbach make a "furtive movement by reaching back to the rear of the vehicle behind her seat." Burley could not to see the specific contents in Walkenbach's hand. After Walkenbach performed the prepping procedure and Sager's narcotics-

detection dog alerted to the presence of drugs, Burley searched the vehicle and uncovered various contraband items.

¶ 13 Walkenbach testified to the following details. After Sager pulled over her vehicle, he approached the vehicle, demanded her driver's license, and informed her that she was stopped for a seatbelt violation. According to Walkenbach, she always wore her seatbelt, especially since "there was [*sic*] two cops sitting across the street." After Sager returned from his patrol SUV, he instructed "[e]verybody [to] stay in the vehicle, roll the windows up, put the vehicle in the on position, and turn the vents on high" before he walked the dog around the vehicle. As the dog approached Walkenbach's door, it jumped up and scratched at her window. After all passengers exited the vehicle, Burley performed the search. On cross-examination, Walkenbach testified that she was over 100 yards away from the officers' vehicles when she exited Huck's parking lot. In fact, her vehicle was "the whole distance of Huck's parking lot, [Court Street], and half the distance of M&S parking lot" from the officers' vehicles.

¶ 14 The defendant testified to the following. The defendant was in the back seat of Walkenbach's vehicle at the time of the traffic stop and was the only one not wearing her seatbelt. After the narcotics-detection dog scratched at Walkenbach's window, the adult passengers were ordered to exit the vehicle, and she was ordered to leave her purse in the vehicle. The defendant did not give Burley permission to search her purse.

¶ 15 On February 3, 2015, the circuit court denied the defendant's motion to quash arrest, suppress evidence, and dismiss charges against her. In doing so, the court reasoned that (1) the traffic stop had not been completed before Sager conducted the canine free-air

sniff, (2) the canine free-air sniff did not unreasonably prolong the stop because the dog was on scene when Walkenbach was pulled over, and (3) the prepping procedure was constitutional pursuant to *People v. Bartelt*, 241 Ill. 2d 217 (2011).

¶ 16 At the pretrial hearing on June 2, 2015, the defendant waived her right to a jury trial. In exchange, the parties agreed to a stipulated bench trial. The parties also agreed that the State would request the circuit court at sentencing to impose first-offender probation with a limited jail sentence.

¶ 17 On June 5, 2015, the circuit court held a stipulated bench trial. The parties stipulated to evidence adduced at the February 3, 2015, hearing, and admitted a report from the Illinois State Police Forensic Lab, which confirmed that the methamphetamine in the defendant's purse weighed 0.2 grams. The defendant also renewed her arguments in support of her December 19, 2014, motion. Following trial, the defendant was found guilty on all four counts and sentenced to concurrent sentences of 24 months of first-offender probation; 30 days of court supervision; and 6 months in jail, stayed pending review. The defendant was also ordered to pay mandatory drug assessments and court costs.

¶ 18 On August 5, 2015, the defendant filed a posttrial motion to reconsider sentence and for a new trial. On August 6, 2015, the defendant filed an amended posttrial motion, which included the following two additional allegations: (1) "the set-up procedures employed by the officers prior to the canine's 'sniff' of the vehicle where [*sic*] not constitutionally permitted and where [*sic*] not reasonable" and (2) her detention, prior to

the canine free-air sniff and during the prepping procedure, violated the U.S. and Illinois Constitutions.

¶ 19 On August 28, 2015, the circuit court held a hearing on the defendant's August 6, 2015, amended posttrial motion. Following argument, the court denied the motion on the merits and admonished the defendant of the right to appeal.

¶ 20 On September 25, 2015, the defendant filed her initial notice of intent to appeal. On October 9, 2015, with the mistaken belief that the defendant's August 6, 2015, amended posttrial motion was pending, the circuit court struck the defendant's notice of appeal, pursuant to Illinois Supreme Court Rule 606(b) (eff. Dec. 11, 2014). This court subsequently dismissed the defendant's appeal on October 15, 2015.

¶ 21 On November 17, 2015, the circuit court held a second hearing on the defendant's August 6, 2015, amended posttrial motion. The court, once again, denied the defendant's motion and admonished her of the right to appeal. The defendant filed a notice of appeal on December 15, 2015.

¶ 22 This court then dismissed the defendant's appeal for lack of appellate jurisdiction for an untimely filed notice of appeal. See *People v. Roosevelt*, 2018 IL App (5th) 160012-U. The Illinois Supreme Court subsequently issued a supervisory order directing this court to vacate the September 18, 2018, order and allow the defendant's December 15, 2015, notice of appeal to stand as properly filed. *People v. Roosevelt*, No. 124121 (Ill. Oct. 30, 2018) (supervisory order). We now address the defendant's contentions in turn.

¶ 23 II. Analysis

¶ 24 On appeal, the defendant argues that (1) trial counsel was ineffective for failing to challenge the validity of the traffic stop; (2) the circuit court erred in denying the defendant's December 19, 2014, motion; (3) the evidence was insufficient to prove beyond a reasonable doubt that the defendant possessed cannabis; and (4) the defendant was entitled to a $30 credit for time spent in custody prior to sentencing. The State asserts that trial counsel was not ineffective, and the circuit court's denial of the defendant's motion was proper because the officers extended the duration of the traffic stop based on reasonable suspicion that the vehicle contained contraband. The State concedes, however, that the evidence was insufficient to prove beyond a reasonable doubt that the defendant possessed cannabis, and the defendant was entitled to credit for time spent in custody prior to sentencing.

¶ 25 A. Ineffective Assistance of Counsel: Validity of Stop

¶ 26 The sixth amendment (U.S. Const., amend. VI) guarantees a defendant the right to effective assistance of counsel at all critical stages of a criminal proceeding. *People v. Beasley*, 2017 IL App (4th) 150291, ¶ 26. To succeed on a claim of ineffective assistance of counsel, a defendant must demonstrate that (1) counsel's performance was objectively unreasonable and (2) 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); *People v. Evans*, 369 Ill. App. 3d 366, 383 (2006). Because a defendant must satisfy both prongs of *Strickland*, we may reject a claim of

ineffective assistance without reaching the performance prong if defendant did not satisfy the prejudice prong. See *People v. Graham*, 206 Ill. 2d 465, 476 (2003).

¶ 27 "[W]here an ineffectiveness claim is based on counsel's failure to file a suppression motion, in order to establish prejudice under *Strickland*, the defendant must demonstrate that the unargued suppression motion is meritorious, and that a reasonable probability exists that the trial outcome would have been different had the evidence been suppressed." *People v. Henderson*, 2013 IL 114040, ¶ 15. An attorney's decision not to pursue a motion to suppress will not be grounds to find incompetent representation when the motion would have been futile. See *id.* ¶ 8. In fact, because a motion to suppress is a matter of trial strategy, trial counsel's decision is given great deference and is generally immune from claims of ineffective assistance. *People v. Martinez*, 348 Ill. App. 3d 521, 537 (2004). When a claim of ineffective assistance of counsel was not raised before the trial court, our review is *de novo*. *People v. Lofton*, 2015 IL App (2d) 130135, ¶ 24.

¶ 28 In arguing that defense counsel was ineffective for failing to challenge the stop at its inception, the defendant asserts that the officers' belief to initiate the traffic stop was objectively unreasonable. We disagree. Vehicle stops are subject to the fourth amendment's requirement of reasonableness and are analyzed under *Terry* principles (*Terry v. Ohio*, 392 U.S. 1 (1968)). The validity of a stop must be evaluated by considering the totality of the circumstances as a whole. *People v. Timmsen*, 2016 IL 118181, ¶ 9. In determining whether the seizure and search were " 'unreasonable,' " our inquiry is a dual one—"whether the officer's action was justified at its inception" and "whether it was reasonably related in scope to the circumstances which justified the

interference in the first place." *Terry*, 392 U.S. at 19-20. A "police officer's objectively reasonable mistake, whether of fact or law, may provide the reasonable suspicion necessary to justify a traffic stop." *People v. Theus*, 2016 IL App (4th) 160139, ¶ 27.

¶ 29 During the February 3, 2015, hearing, defense counsel asked several questions relating to the officers' observations and reasoning for initiating the traffic stop. In fact, defense counsel contradicted the officers' testimony with the testimonies of Walkenbach and the defendant. In particular, the defendant admitted that she was the only one not wearing a seatbelt, and Walkenbach testified that she secured her seatbelt upon entering the vehicle because she noticed two police vehicles across the street from Huck's. Despite this, defense counsel abandoned a challenge to the validity of the stop to, instead, argue the issues surrounding the prolonged length of the stop, prepping procedure, and search of the vehicle. As stated above, we must give great deference to defense counsel's trial strategy. *Martinez*, 348 Ill. App. 3d at 537.

¶ 30 Moreover, the defendant contends that defense counsel should have challenged the stop by asserting that it was too dark outside for the officers to observe a seatbelt violation from their patrol vehicles. We disagree. First, the record reflects that the officers were parked in M&S Tire Shop's parking lot, which was located across from Huck's and "lit by a street light at the corner of the crossroads." Next, Sager testified that his patrol SUV was "maybe a lane, lane and half distance" away from Walkenbach's vehicle when he observed her "leaning forward" without a "seatbelt protruding over her left shoulder." Lastly, Burley, who was facing Huck's in his patrol vehicle, also testified that he observed the violation.

¶ 31 Considering the totality of the circumstances as a whole, the officers' testimonies demonstrated that Walkenbach's vehicle was stopped based on their mutual observation that a seatbelt violation had occurred. Although it is undisputed that Walkenbach was wearing a seatbelt as Sager approached her vehicle, the record demonstrates that Walkenbach had ample opportunity to fasten her seatbelt in the one to two blocks she traveled before the officers pulled over her vehicle. Given the short distance between M&S Tire Shop and Huck's and the fact that Court Street was "fairly well lit with street lights," this court is not persuaded that the officers' belief was objectively unreasonable. Accordingly, we conclude that the defendant failed to demonstrate that the unargued suppression motion would have been meritorious, and that a reasonable probability exists that the trial outcome would have been different had the evidence been suppressed. As such, the defendant's claim is without merit.

¶ 32 B. Circuit Court's Denial of Motion to Suppress

¶ 33 Next, the defendant contends that the circuit court erred in denying the motion to suppress evidence because (1) the police lacked reasonable suspicion to prolong the traffic stop to perform a canine free-air sniff and (2) the prepping procedure constituted an unconstitutional search and seizure. Although both parties agree that this court is bound by our supreme court's decision in *Bartelt*, 241 Ill. 2d at 226 (ordering a prepping procedure (*i.e.*, windows up and vents turned on) prior to a canine sniff was not a search in violation of the fourth amendment), the defendant raises the issue "to preserve it in the event *Bartelt* is overruled." In response, the State argues that Walkenbach's furtive

movement during the stop was sufficient to warrant further detention. We agree with the State.

¶ 34 The fourth amendment (U.S. Const., amend. IV) and article I, section 6 of the Illinois Constitution (Ill. Const. 1970, art. I, § 6) protect an individual from unreasonable searches and seizures. *People v. O'Dell*, 392 Ill. App. 3d 979, 985 (2009). "A 'search' occurs when an expectation of privacy that society is prepared to consider reasonable is infringed." *United States v. Jacobsen*, 466 U.S. 109, 113 (1984). Generally, a canine sniff does not infringe on a defendant's privacy interests in that it only detects the presence of contraband. *Illinois v. Caballes*, 543 U.S. 405, 408 (2005). A "seizure" occurs when "the police conduct would have communicated to a reasonable person that the person was not free to decline the officers' requests or otherwise terminate the encounter." *Florida v. Bostick*, 501 U.S. 429, 439 (1991). "[T]he detention by police of individuals during a traffic stop [i]s a 'seizure' of 'persons' within the meaning of the fourth amendment." *People v. Cosby*, 231 Ill. 2d 262, 273 (2008); *People v. Bunch*, 207 Ill. 2d 7, 13 (2003). It is well established that, absent probable cause to arrest, a law enforcement officer " 'may stop and temporarily detain an individual for the purpose of a limited investigation if the officer is able to point to specific articulable facts which, taken together with reasonable inferences drawn from the officer's experience, reasonably would justify the investigatory intrusion.' " *O'Dell*, 392 Ill. App. 3d at 985 (quoting *People v. Frazier*, 248 Ill. App. 3d 6, 13 (1993)).

¶ 35 A routine traffic stop, which is a relatively brief encounter, is more akin to a *Terry* stop than a formal arrest. *Rodriguez v. United States*, 575 U.S. ___, ___, 135 S. Ct. 1609,

1614 (2015) (citing *Terry*, 392 U.S. 1). "Generally, a traffic stop ends when the paperwork of the driver *** has been returned *** and the purpose of the stop has been resolved." *People v. Leach*, 2011 IL App (4th) 100542, ¶ 12; *People v. Paddy*, 2017 IL App (2d) 160395, ¶ 34 (mission of the traffic stop was completed when officer finished written warning). Thus, a traffic stop "can become unlawful if it is prolonged beyond the time reasonably required to complete [the] mission" of the traffic stop. *Caballes*, 543 U.S. at 407. Because a routine traffic stop may not be used as a subterfuge to obtain other evidence based on an officer's suspicion (*People v. Koutsakis*, 272 Ill. App. 3d 159, 164 (1995)), "[m]ere hunches and unparticularized suspicions are not enough to justify a broadening of the stop into an investigatory detention." *People v. Ruffin*, 315 Ill. App. 3d 744, 748 (2000). We review the circuit court's ruling on a motion to suppress evidence under a two-part standard of review. *People v. Harris*, 228 Ill. 2d 222, 230 (2008). The circuit court's findings of fact are entitled to deference and will be reversed only if they are against the manifest weight of the evidence. *Id.* However, we review *de novo* the circuit court's ultimate ruling as to whether suppression was warranted. *Id.*

¶ 36 Having determined that a challenge to the validity of the stop would have been futile, we must determine, under the second prong of *Terry*, whether the officers' conduct impermissibly prolonged the duration of the detention or independently triggered the fourth amendment, thereby rendering the seizure unlawful. *Harris*, 228 Ill. 2d at 244. Here, contrary to the defendant's argument, the traffic stop had not been completed when "Sager decided to issue a verbal warning and exited his patrol car to issue the warning and return Ms. Walkenbach's documents ***." Although Sager *may* have returned

Walkenbach's documents, it is unclear from the record whether this actually occurred. Rather, Burley informed Sager of Walkenbach's furtive movement before Sager reached Walkenbach's vehicle. In view of this, the manifest weight of the evidence demonstrates, as the circuit court correctly determined, that "the purpose of the stop was close to being completed, it was not completed."

¶ 37 Additionally, a secondary purpose for the stop—to attend to the officers' reasonable suspicion of criminal wrongdoing—developed after Burley observed Walkenbach's furtive movement. Thus, even if the stop had been completed, the officers had reasonable suspicion to continue to detain the defendant in order to conduct a canine free-air sniff. First, the circuit court found, and the record demonstrates, that Burley's observation was not based on a mere hunch or unparticularized suspicion, but reasonable suspicion. In particular, Burley observed Walkenbach hiding something or passing something back when she reached her left hand between the door frame and the driver's seat and then back to the rear passenger area. Based on Burley's observation, Sager could have reasonably believed that Walkenbach had passed contraband to another passenger. Because detention is justified when an officer observes unusual conduct that leads him to reasonably believe, in light of his experience, that criminal activity may be afoot. *People v. Ertl*, 292 Ill. App. 3d 863, 868-69 (1997). We conclude that the investigatory intrusion to perform a canine free-air sniff was reasonably justified, given the officers' ability to point to specific articulable facts.

¶ 38 Next, Sager ordered all occupants to remain in the vehicle, including the defendant, while Walkenbach performed the prepping procedure. Thus, the limited

question before this court is whether the short time it took Walkenbach to start and complete the prepping procedure (*i.e.*, rolling up the windows, turning the ignition key to the "on" position, opening the vents, and turning the ventilation fan to the highest setting) impermissibly prolonged the duration of the defendant's detention beyond the time reasonably required to investigate the officers' reasonable suspicion of criminal wrongdoing. We believe it did not.

¶ 39 After Sager ordered Walkenbach to perform the prepping procedure, he walked back to his patrol SUV to release the dog from his vehicle and perform a lead around Walkenbach's car. The record indicates that Sager learned of Walkenbach's furtive movement within four or five minutes of the initial traffic stop and that "no more than five minutes" had passed from the time Sager pulled over Walkenbach's vehicle to the time he conducted the canine free-air sniff. Given that the dog was in Sager's patrol SUV, the prepping procedure would have taken, at most, several seconds to complete before Sager instructed all of the occupants to exit the vehicle. Under these circumstances, we cannot conclude that the defendant's detention during the prepping procedure exceeded, in length or scope, of the bounds of reasonableness to constitute an unconstitutional seizure.

¶ 40 C. State's Concessions

¶ 41 The defendant also argues, and the State concedes, that (1) the evidence was insufficient to prove beyond a reasonable doubt that the defendant possessed cannabis and (2) the defendant was entitled to a $30 credit for time spent in custody prior to sentencing. See 725 ILCS 5/110-14(a) (West 2014) (allowing $5 *per diem* credit against

fines for time spent in custody on a bailable offense). Accordingly, we accept the State's concessions. As such, we reverse outright count IV and vacate the accompanying sentencing order requiring 30 days of court supervision. Additionally, we direct the circuit court to apply a $30 credit towards the defendant's fines.

¶ 42 D. Review and Modification of Count I

¶ 43 Lastly, we turn our attention to an obvious error in the record. In our September 18, 2018, order (*People v. Roosevelt*, 2018 IL App (5th) 160012-U, ¶ 4 n.1), we observed that the information stated that the defendant was in violation of section 60(b)(2) of the Methamphetamine Control and Community Protection Act (Act) for the unlawful possession of methamphetamine (count I). Under section 60(a) of the Act, it is unlawful to knowingly possess methamphetamine or a substance containing methamphetamine (720 ILCS 646/60(a) (West 2014)). The penalty provision under section 60(b)(1) of the Act provides that a person who "possesses less than 5 grams of methamphetamine *** is guilty of a Class 3 felony." *Id.* § 60(b)(1). In contrast, the penalty provision under section 60(b)(2) of the Act provides that a person who "possesses 5 or more grams but less than 15 grams of methamphetamine *** is guilty of a Class 2 felony." *Id.* § 60(b)(2).

¶ 44 Although the information referenced section 60(b)(2) of the Act, count I of the information stated that the defendant had committed "a class 3 felony" in that said defendant "knowingly possessed less than 5 grams of methamphetamine." Also, prior to trial, the circuit court admonished the defendant of the range of penalties for a Class 3 felony. At the stipulated bench trial on June 5, 2015, however, the court admitted a report from the Illinois State Police Forensic Lab, which confirmed that the discovered

methamphetamine in the defendant's purse weighed 0.2 gram. After the defendant was found guilty on all four counts, a presentence report and subsequent probation order reflected that the defendant had been found guilty of unlawful possession of methamphetamine (count I), a Class 2 felony.

¶ 45 In light of the above, we determined that section 60(b)(1) of the Act was the correct penalty provision. As such, the defendant's finding of guilt was incorrectly entered under section 60(b)(2) of the Act. Following the Illinois Supreme Court's supervisory order (*People v. Roosevelt*, No. 124121 (Ill. Oct. 30, 2018) (supervisory order)), we now have jurisdiction to consider this issue.

¶ 46 We recognize that neither party brought this error to the circuit court's attention or suggested that this court consider it on appeal. However, reviewing courts have historically invoked the power *sua sponte*. *People v. Guerrero*, 2018 IL App (2d) 160920, ¶ 63. In fact, "the responsibility of a reviewing court for a just result and for the maintenance of a sound and uniform body of precedent may sometimes override the considerations of waiver that stem from the adversary character of our system." *Hux v. Raben*, 38 Ill. 2d 223, 225 (1967). As such, given there are no missing elements for a conviction, the authority of this court to reduce the degree of the offense is clear. See *People v. Kurtz*, 37 Ill. 2d 103, 111 (1967).

¶ 47 Pursuant to our authority granted under Illinois Supreme Court Rule 615(b)(3) (eff. Jan. 1, 1967), we modify the finding of guilt and sentence on count I and reduce the degree of the offense to a Class 3 felony under section 60(b)(1) of the Act (720 ILCS 646/60(b)(1) (West 2014)). Because the defendant was sentenced to the minimum

sentence of 24 months of first-offender probation, remand for a new sentencing hearing is not required. Accordingly, the sentencing order on count I is modified to reflect a Class 3 felony under section 60(b)(1) of the Act.

¶ 48 III. Conclusion

¶ 49 Accordingly, we modify the finding of guilt and sentence on count I to a Class 3 felony pursuant to section 60(b)(1) of the Act. We cannot conclude that trial counsel was ineffective for failing to challenge the basis for the traffic stop in the motion to suppress evidence where evidence demonstrates the officers had an objectively reasonable belief that a seatbelt violation had occurred. We conclude that the circuit court did not err in denying the motion to suppress evidence where the officers had reasonable suspicion to prolong the stop, and the defendant's continued detention during the prepping procedure did not exceed in length and scope the bounds of reasonableness. Lastly, we accept the State's concessions that the evidence was insufficient to satisfy the State's burden of proof beyond a reasonable doubt, and order the circuit court to apply a $30 credit to the defendant's fines.

¶ 50 Modified in part and sentencing order modified in part (count I); affirmed in part (counts II and III); reversed in part and sentencing order vacated in part (count IV).