NOTICE
This Order was filed under Supreme Court Rule 23 and is not precedent except in the limited circumstances allowed under Rule 23(e)(1).

2021 IL App (4th) 190074-U

NO. 4-19-0074

FILED
March 25, 2021
Carla Bender
4th District Appellate
Court, IL

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS, Plaintiff-Appellee, v. WALTER SOKOLOWSKI, Defendant-Appellant.	)	Appeal from the Circuit Court of Livingston County No. 17DT15 Honorable Mark A. Fellheimer, Judge Presiding.

JUSTICE DeARMOND delivered the judgment of the court.
Presiding Justice Knecht and Justice Harris concurred in the judgment.

ORDER

¶ 1 *Held*: The appellate court affirmed, finding (1) the evidence was sufficient to prove defendant guilty beyond a reasonable doubt of driving under the influence; (2) the trial court's denial of defendant's motion *in limine* to bar the preliminary breath test results was not against the manifest weight of the evidence; and (3) defendant failed to make a substantial showing he was denied the effective assistance of counsel.

¶ 2 In February 2017, after demonstrating visible signs of intoxication and showing indicators of impairment on standard field sobriety tests, defendant, Walter Sokolowski, submitted to a preliminary breath test (PBT), which indicated he had a blood-alcohol content (BAC) of 0.087. Defendant was subsequently charged by traffic citation and complaint with driving under the influence of alcohol (DUI) (count I) (625 ILCS 5/11-501(a)(2) (West 2016)) and driving with a BAC of 0.08 or more (count II) (625 ILCS 5/11-501(a)(1) (West 2016)).

¶ 3 In October 2017, defendant filed a motion *in limine* to bar the PBT results, arguing the test results were unreliable. In December 2017, the trial court denied defendant's motion.

¶ 4 In March 2018, following a stipulated bench trial, the trial court found defendant guilty of both counts and sentenced him to 24 months' supervision.

¶ 5 Defendant appeals, arguing (1) the evidence was insufficient to prove him guilty of DUI beyond a reasonable doubt; (2) the trial court erred in refusing to suppress the PBT results; and (3) he was denied the effective assistance of his trial counsel. We affirm.

¶ 6 I. BACKGROUND

¶ 7 A. The State's Charges

¶ 8 In February 2017, defendant was charged by traffic citation and complaint with DUI (625 ILCS 5/11-501(a)(2) (West 2016)) and driving with a BAC of 0.08 or more (625 ILCS 5/11-501(a)(1) (West 2016)), after exhibiting signs of alcohol impairment, failing multiple field sobriety tests, and submitting to a PBT which indicated he had a BAC of 0.087.

¶ 9 B. Defendant's Pretrial Motions

¶ 10 On February 16, 2017, defendant filed a request for a hearing and petition to rescind the statutory summary suspension. The petition alleged, in part, the arresting officer had no reasonable grounds to believe defendant was under the influence of alcohol, drugs, or any combination thereof. Defendant also asserted the results of his breath-alcohol test were unreliable and "that such requested tests to which [defendant] submitted were administered improperly."

¶ 11 In October 2017, defendant filed a motion *in limine* to bar the PBT results, alleging the arresting officer failed to administer the test in accordance with approved procedures

by “failing to make any check of the mouth of the defendant.” The motion alleged the results of the PBT were unreliable as “defendant had gauze packing in his mouth to absorb and attempt to stem blood flow from the socket affected by a tooth extraction performed several hours prior” and defendant had been rinsing his mouth periodically with Listerine-brand mouthwash to prevent infection.

¶ 12 C. Evidentiary Hearings

¶ 13 In March 2017, October 2017, November 2017, and December 2017, the trial court conducted hearings on defendant’s petition to rescind the statutory suspension and motion *in limine*. Defendant called multiple witnesses who testified as to the facts and circumstances surrounding the events. The State did not present any evidence. The evidence relevant to the issues on appeal follows.

¶ 14 1. *Trooper Caleb Jefferson*

¶ 15 At approximately 12:50 a.m. on February 7, 2017, Trooper Caleb Jefferson of the Illinois State Police testified he received a radio dispatch concerning a vehicle that had “crashed into the cable barriers along the southbound side” of the interstate. Jefferson described the road conditions as rainy and foggy but the temperature was above freezing. Upon arriving at the accident scene, Jefferson met with defendant “in the grassy area by the Corvette.” Jefferson observed “two beer cans” outside of the car and a bottle cap in the vehicle’s center console labelled “MGD.” Defendant told Jefferson his vehicle left the roadway after he was unable to see due to the fog. While speaking with defendant, Jefferson smelled “a moderate odor of alcoholic beverage coming from his breath,” and observed “[h]e had bloodshot, glassy eyes.” When Jefferson asked defendant if he had been drinking, defendant answered that he had one beer six hours prior.

¶ 16 Trooper Jefferson then administered a series of field sobriety tests on defendant. Jefferson first administered the horizontal gaze nystagmus (HGN) test, checking for involuntary jerking in the movement of defendant's eyes. Upon administering the HGN test, Jefferson noticed a lack of smooth pursuit in both of defendant's eyes. Jefferson also determined that defendant had distinct and sustained jerking of his eyes at maximum deviation and "prior to 45 degrees."

¶ 17 Jefferson next asked defendant to perform the walk-and-turn test. Defendant did not follow Jefferson's directions as instructed. While administering the walk-and-turn test, Jefferson testified he was looking to see whether defendant could keep his balance during the instruction phase, started too soon, stepped off the line, missed heel-to-toe, stopped walking, used his arms for balance, and made an improper turn. When performing the walk-and-turn test, defendant exhibited five "clues" that would indicate intoxication.

¶ 18 The final test was the one-leg stand. Jefferson explained that, when administering the one-leg stand test, an officer is looking to see "[w]hether the subject puts his foot down, uses his arms for balance, hops to keep his balance, or *** raises his arms more than six inches for balance." While performing the one-leg stand, Jefferson testified that defendant exhibited three of the four specific "clues" which would indicate intoxication.

¶ 19 Jefferson testified he was certified by the Illinois State Police to administer breath-alcohol tests using an RBT-IV test machine. Following the field sobriety testing, Jefferson asked defendant if he would be willing to submit to a PBT, which defendant initially refused. Jefferson subsequently placed defendant under arrest based on his opinion that defendant was under the influence of alcohol and seated defendant in the passenger seat of his patrol car. Jefferson read the "warning to motorist" aloud to defendant and waited 20 minutes. Jefferson

again asked defendant if he would submit to a PBT. Defendant responded in the affirmative. Jefferson did not inspect defendant's mouth prior to administering the PBT, however he did not observe defendant eat, drink, belch, or vomit during the 20-minute observation period. Defendant completed the PBT, which showed that his BAC was 0.087.

¶ 20 Defense counsel offered into evidence audio and video footage of the events taken from Trooper Jefferson's squad car dash camera, which the trial court later reviewed. The video footage is consistent with Jefferson's testimony.

¶ 21 2. *Ronald Henson*

¶ 22 Defendant called Ronald Henson as an expert witness in blood-alcohol testing. Regarding Henson's "background and experiences," both parties stipulated to portions of Henson's testimony at a separate hearing, wherein Henson testified he lectured on the subject multiple times each year. Henson had been a licensed breath-alcohol test operator since 1981. In 1986, Henson became an instructor at the University of Illinois Police Training Institute and was eventually "put in charge of the breath, blood and urine testing program, standardized field sobriety testing, and also drugs and narcotics training." In addition to receiving a master's degree in public administration, Henson received his Ph.D. in "Management Decision Sciences with Drug and Alcohol testing in the workplace."

¶ 23 Henson testified he was familiar with RBT-IV breath test machines and the factors which may affect the accuracy of the test results. Henson explained an RBT-IV machine "has absolutely zero capability to detect mouth alcohol," and defined mouth alcohol as "anything that develops or originates from the mouth versus originating either from the stomach or the gut or esophagus, or the deep lung region trying to get into the alveolar region."

¶ 24 Regarding the administration of defendant's breath test, Henson testified that Jefferson had done two things wrong. Specifically, Jefferson failed to inspect defendant's mouth prior to and after the 20-minute observation period. Defense counsel then posed the following hypothetical to Henson, asking what impact it would have on a PBT result if defendant had (1) gauze packing the site of a tooth extraction, (2) continued bleeding onto "two, perhaps three of these gauze pieces" at the time of the breath test, and (3) rinsed with Listerine periodically throughout the late afternoon and into the evening. Based on defense counsel's hypothetical, Henson opined the PBT results would not be reliable. Henson explained that, generally, waiting 20 minutes after rinsing with Listerine "will get the sample result that you would expect." However, "if you have got something in the mouth such as gauze, *** that is an absorbent material, *** 20 minutes is not enough. It is going to retain. And then it has also been exacerbated by any active bleeding that may or may not have been there as well." To get an accurate result, Henson explained that the gauze would need to be removed at least 20 minutes before taking the test.

¶ 25 On cross-examination, Henson testified that there were no administrative regulations which required officers to check an individual's mouth before or after a PBT. Henson further testified that the applicable administrative regulations did not specify that mouthwash or gauze are considered foreign substances.

¶ 26 Upon examination by the trial court, Henson acknowledged that it was "hard to tell" how long the reliability of the PBT results would be affected by a tainted piece of gauze left in the mouth. Regarding defense counsel's hypothetical, Henson further acknowledged that he did not know how long the gauze had been left in defendant's mouth, or if the gauze had, in fact, been in defendant's mouth when he submitted his breath sample.

¶ 27 3. *Defendant*

¶ 28 Defendant testified that on February 6, 2017, he had a dental appointment in Bourbonnais, Illinois, to have "two crowns put in and [a] molar surgically removed." Defendant explained that he suffered from "dry mouth," and that he rinsed with "Heineken" prior to his appointment. Following his dental surgery, defendant was instructed to "bite down" on several pieces of gauze "to try to slow down the bleeding." Defendant testified he remained at his dental appointment until "four, or five," in the afternoon. Defendant further testified he periodically rinsed his mouth with Listerine and repacked the gauze while running errands throughout the evening. Between 7:30 and 8 p.m., defendant drove southbound towards home on Interstate 55.

¶ 29 Defendant described the conditions as "foggy" with the temperature "dropping fast." Due to "horrible" visibility, defendant missed his exit and was subsequently "hit by a squall of rain." Defendant testified that "by the time [he] reached [his] windshield wipers, [he] was into the cable." Defendant "lost the gauze in the car in the impact" but continued rinsing his mouth with Listerine until approximately 10-15 minutes before Trooper Jefferson arrived at the scene. Defendant testified he did not drink any alcoholic beverages throughout the day prior to the accident, stating, "No. Not—not—I really—I didn't. I kept saying that I did, but that was like the mouthwash thing." Defendant further denied drinking any of the mouthwash he had been rinsing with. According to defendant, he was bleeding at the time he submitted the breath sample and continued bleeding for "three more days." On cross-examination, defendant testified that he repacked his mouth with "[o]ne folded-over piece" of gauze following the accident.

¶ 30 Defense counsel argued suppression of the PBT results was warranted due to Jefferson's failure to inspect defendant's mouth before and after collecting defendant's breath sample. Defense counsel also referenced Henson's testimony that the PBT results were

unreliable due to the presence of a "Listerine-sopped gauze" in defendant's mouth. With respect to any blood in defendant's mouth, defense counsel argued it was "something to be avoided" but "given the facts, we wouldn't expect the blood to be significantly tainted with alcohol."

¶ 31 The State argued defendant's performance on the field sobriety tests supported the PBT results and noted that "nowhere in the administrative regulations is there any requirement that the defendant's mouth be checked." The State further argued defendant's testimony was inconsistent with his statements on the video footage taken from Jefferson's dash camera and referenced defendant's statement to Jefferson that "he had a couple beers at his brother-in-law's earlier after the tooth was pulled." The State argued it was unlikely that there was any gauze in defendant's mouth at the time he submitted to the PBT, noting defendant's on-camera statement regarding the gauze "having fallen out of his mouth," and that defendant did not know what happened to the gauze following the accident.

¶ 32 In denying defendant's petition to rescind the statutory suspension and motion *in limine*, the trial court found that there was sufficient probable cause to place defendant under arrest for DUI. In doing so, the court stated it had reviewed the squad car video footage, noting defendant left the starting position during the walk-and-turn test and that his feet were separated at the beginning. While performing the one-leg stand test, the court noted defendant put his foot down after counting to "1005 and 1006, and then ultimately [defendant] just says he has all kinds of balance problems at that point." The court recalled that Trooper Jefferson "observed an odor of alcohol," coming from defendant's breath and that defendant's eyes were "bloodshot and glassy." The court also noted Jefferson's testimony that defendant exhibited "all six clues" on the HGN test and "five out of eight clues" indicating impairment on the walk-and-turn test.

¶ 33 Turning next to the reliability of defendant's PBT results, the trial court stated that "there is no affirmative obligation or duty upon the officer to do a physical inspection of someone's mouth before obtaining the breath analysis" and found that the results of the PBT were not rendered invalid because there was no inspection of defendant's mouth. The court further stated that the pre-test observation period "exceeded 20 minutes by a long shot." The court noted defendant did not ingest anything and could be seen on camera for roughly an hour before submitting his breath sample. Furthermore, the court did not credit defendant's testimony that he had gauze in his mouth at the time of the PBT. From the video footage, the court determined that "there was no gauze in [defendant's] mouth because he doesn't even know what happened to it." The court noted defendant testified that "he had to bite down quite hard to keep the gauze in place, which flies head first into the fact that for about an hour, he is talking *** with no apparent problem as far as keeping *** the gauze in place."

¶ 34 In January 2018, defendant filed a motion to reconsider the denial of his motion *in limine* to bar the PBT results. The motion argued, in part, that the trial court "misapplied the burden of proof as to the issue of whether the breath test to which [defendant] submitted was reliable."

¶ 35 At a hearing in February 2018, the trial court denied defendant's motion to reconsider. Regarding the validity of the breath test results, the court explained:

> "Whether or not the gauze and Listerine would affect the validity of the test, certainly if there was evidence to support the factual finding that [defendant] had that in there in his mouth either within the 20-minute observation period or shortly before that or during the test, it certainly would cause the court concern to *** shift the burden to the State to then counter that evidence ***. But there is

> nothing to shift the burden to because, factually, the defendant has not established that anything was in his mouth at that time that would affect it."

The court further stated defendant failed to show "whether or not legally blood in someone's body would be a foreign matter to throw the accuracy or reliability of the test in jeopardy." With respect to whether any bleeding in defendant's mouth alone would affect the validity of the breath test results, the court noted it did not recall "any specific testimony or opinion from Dr. Henson that whether someone had an open cavity—tooth cavity, that was bleeding, that that would affect the test or contribute to the mouth alcohol."

¶ 36 D. Stipulated Bench Trial and Posttrial Motions

¶ 37 On March 14, 2018, defendant waived his right to a jury trial. That same day, the trial court conducted a stipulated bench trial, wherein both parties stipulated to the facts and evidence presented over the course of the evidentiary hearings on defendant's petition to rescind and motion *in limine*. The court subsequently found the State proved defendant guilty beyond a reasonable doubt of both counts and sentenced defendant to 24 months' supervision.

¶ 38 In July 2018, defendant filed a motion to vacate his sentence and withdraw his jury trial waiver. In support of the motion, defendant filed a supplemental affidavit asserting that, following his jury trial waiver, he "felt that [trial counsel] was not representing [him] any longer," and due to multiple medications and "memory problems," he was unable to understand the ramifications of waiving his right to a jury trial.

¶ 39 In January 2019, the trial court denied defendant's motion. In doing so, the court specifically commented on defense counsel's representation of defendant, stating, "he is one of, if not the most, thoroughly prepared lawyers that I have witnessed here," and further stated that

there were "multiple contested hearings on pre-trial matters" and that it was "fair to say that every aspect of the case was challenged by the defense."

¶ 40 This appeal followed.

¶ 41 II. ANALYSIS

¶ 42 A. Sufficiency of the Evidence

¶ 43 On appeal, defendant argues the evidence was insufficient to prove him guilty beyond a reasonable doubt of DUI. Specifically, defendant contends the State failed to prove impairment because defendant "suffered from medical issues which impacted his ability to perform the field sobriety tests," and the evidence showed the breath test results were unreliable.

¶ 44 "When reviewing a challenge to the sufficiency of the evidence in a criminal case, the relevant inquiry is whether, when viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. [Citations.]" (Internal quotation marks omitted.) *People v. Hinthorn*, 2019 IL App (4th) 160818, ¶ 89, 146 N.E.3d 122. "The trier of fact has the responsibility to determine the credibility of witnesses and the weight given to their testimony, to resolve conflicts in the evidence, and to draw reasonable inferences from that evidence." *Hinthorn*, 2019 IL App (4th) 160818, ¶ 89. When considering the sufficiency of the State's evidence, the reviewing court does not retry the defendant. *People v. Beauchamp*, 241 Ill. 2d 1, 8, 944 N.E.2d 319, 322 (2011). "A conviction will be reversed only where the evidence is so unreasonable, improbable, or unsatisfactory that it justifies a reasonable doubt of the defendant's guilt." *People v. Belknap*, 2014 IL 117094, ¶ 67, 23 N.E.3d 325.

¶ 45 Here, defendant's arguments are nothing more than a request of this court to reweigh the evidence presented to the trial court, which we decline to do. Although defendant

suggests that "[his] performance on the field sobriety tests was reasonably cause[d] by his cowboy boots and knee problems" and that "[h]is bloodshot and glassy eyes were reasonably explained by his intense work schedule that week," the trial court was not obligated to accept these explanations over Trooper Jefferson's testimony. It was for the trial court, as the trier of fact, to determine the credibility of the witnesses, to weigh the evidence and draw reasonable inferences therefrom, and to resolve any conflicts in the evidence. See *Hinthorn*, 2019 IL App (4th) 160818, ¶ 89.

¶ 46 As outlined above, Jefferson testified that he observed "two beer cans" outside of defendant's vehicle when he arrived at the accident scene and discovered a bottle cap in the vehicle's center console labelled "MGD." Although defendant claimed that he had only been rinsing his mouth with Listerine, Jefferson smelled "a moderate odor of alcoholic beverage coming from his breath" and observed defendant had "bloodshot, glassy eyes." In addition, although defendant contended he had merely rinsed his mouth with Heineken early that morning, while in the squad car, defendant is seen and heard on video indicating how he had consumed "one or two" beers at his brother-in-law's house after the tooth extraction and hours before the accident.

¶ 47 Concerning the field sobriety tests, Jefferson testified that he noticed a lack of smooth pursuit in both of defendant's eyes while administering the HGN test. Jefferson also determined that defendant had distinct and sustained jerking of his eyes at maximum deviation, and "prior to 45 degrees." When performing the walk-and-turn test, defendant did not follow the directions as instructed, and Jefferson testified defendant exhibited five of the "clues" that would indicate intoxication. The next test was the one-leg stand. While performing the one-leg stand, Jefferson testified defendant exhibited three of four "clues" which would indicate intoxication,

and the trial court observed defendant's lack of balance and coordination on the squad car video footage, noting defendant put his foot down after counting to "1005 and 1006." Further, defendant initially refused to submit to the PBT, which may be considered as circumstantial evidence of defendant's consciousness of guilt. See *People v. Johnson*, 218 Ill. 2d 125, 140, 842 N.E.2d 714, 723 (2005).

¶ 48 With respect to the PBT results, Henson testified that an RBT-IV breath-test machine "has absolutely zero capability to detect mouth alcohol," and generally, waiting 20 minutes after rinsing with mouthwash "will get the sample result that you would expect." The trial court noted Jefferson observed defendant in excess of 20 minutes and during that time, defendant did not eat, drink, belch, or vomit. Although Jefferson did not physically inspect defendant's mouth, the court did not credit defendant's testimony that he had gauze in his mouth at the time of the PBT. The court found defendant was under constant surveillance in the squad car video for an hour or more before the test and was not seen ingesting anything. The court noted how despite defendant's testimony that "he had to bite down quite hard to keep the gauze in place," he never mentioned the gauze being in his mouth at any time during the hour he is observed on camera. However, the court observed defendant on camera talking "for about an hour, *** with no apparent problem as far as keeping *** the gauze in place." In fact, he commented to the Trooper that he had no idea where the gauze in his mouth had gone after the accident. Further the court specifically found that defendant failed to show "whether or not legally blood in someone's body would be a foreign matter to throw the accuracy or reliability of the test in jeopardy." The court also found although defendant claimed to have been rinsing with Listerine mouthwash and Henson testified to the effect of alcohol-based mouthwash on a breath

test, the video revealed not only that defendant did not do so for over the hour he was recorded but also that he made no mention to the Trooper of having done so.

¶ 49 Viewing the totality of the evidence in a light most favorable to the prosecution, we conclude that a rational trier of fact could have found defendant guilty of DUI beyond a reasonable doubt.

¶ 50 B. Motion *in Limine*

¶ 51 Defendant next argues the trial court erred in refusing to suppress the PBT results, contending, "the blood in [defendant's] mouth made the results unreliable," and defendant's testimony "established his mouth was bleeding when he took the test."

¶ 52 "The defendant bears the burden of proof at a hearing on a motion to suppress." *People v. Redding*, 2020 IL App (4th) 190252, ¶ 19, 158 N.E.3d 728. It is the responsibility of the defendant to make a *prima facie* case that the results of his breath test are not reliable. *People v. Ernsting*, 2018 IL App (5th) 160330, ¶ 30, 94 N.E.3d 1278. The supreme court has defined a *prima facie* case as one where the party bearing the burden of proof presents "enough evidence to allow the fact-trier to infer the fact at issue and rule in the party's favor." (Internal quotation marks omitted.) *People v. Relwani*, 2019 IL 123385, ¶ 18, 129 N.E.3d 1222. "To attack breath-test results, the defendant must show that (1) the breath test was not properly administered, (2) the results were not accurate and trustworthy, or (3) the regulations regarding such testing were violated." *People v. Cielak*, 2016 IL App (2d) 150944, ¶ 7, 68 N.E.3d 902. "Applying a two-part analysis when reviewing a trial court's ruling on a motion to suppress evidence, we review the trial court's factual findings under the manifest weight of the evidence standard and then apply the *de novo* standard of review to the court's ultimate legal ruling on whether the evidence should be suppressed." *Redding*, 2020 IL App (4th) 190252, ¶ 19. "[T]he trial court's

findings of fact are entitled to great deference, and we will reverse those findings only if they are against the manifest weight of the evidence." *People v. Heritsch*, 2017 IL App (2d) 151157, ¶ 8, 98 N.E.3d 420. "A finding is against the manifest weight of the evidence where the opposite conclusion is clearly evident or if the finding itself is unreasonable, arbitrary, or not based on the evidence presented." (Internal quotation marks omitted.) *People v. Peterson*, 2017 IL 120331, ¶ 39, 106 N.E.3d 944.

¶ 53 We are unpersuaded by defendant's contention that "the blood in [his] mouth, as well as his use of Listerine that day, rendered the breath test unreliable." Based on defense counsel's hypothetical, Henson explained that any absorbent material left in the mouth—such as gauze—combined with mouthwash and any active bleeding, "that may or may not have been there," would exacerbate the results. However, Henson acknowledged that it was "hard to tell" how long the tainted gauze would continue to affect the reliability of the breath test results. To get an accurate result, Henson testified the gauze would need to be removed at least 20 minutes before taking the test.

¶ 54 Here, Henson had no opinion as to whether defendant was, in fact, bleeding at the time of the PBT. Contrary to defendant's assertion on appeal that Henson's testimony "established active bleeding in the mouth would render breath results unreliable," the trial court specifically found that defendant failed to show "whether or not legally blood in someone's body would be a foreign matter to throw the accuracy or reliability of the test in jeopardy." The trial court pointed out there was no testimony from Henson that bleeding in the mouth alone would be sufficient to affect the validity of the breath test results. There is insufficient reason for this court to second guess the trial court's assessment of Henson's opinion or defendant's credibility concerning his testimony that he was bleeding and had "[o]ne folded-over piece" of gauze in his

mouth at the time of the breath test. See *Heritsch*, 2017 IL App (2d) 151157, ¶ 8. As we noted above, the trial court found defendant did not ingest or even rinse with anything during the pretest observation period, which "exceeded 20 minutes by a long shot." The court determined "there was no gauze in [defendant's] mouth because he doesn't even know what happened to it" and also noted defendant's testimony that "he had to bite down quite hard to keep the gauze in place, which [flew] headfirst into the fact that for about an hour, he is talking *** with no apparent problem as far as keeping *** the gauze in place."

¶ 55 Accordingly, we cannot conclude that the trial court's denial of defendant's motion *in limine* was against the manifest weight of the evidence.

¶ 56 C. Ineffective Assistance

¶ 57 Finally, defendant argues he was denied the effective assistance of his trial counsel, where counsel "misstated relevant evidence when making arguments for suppression, and failed to present sufficient evidence of the impact blood in [defendant's] mouth would have on the breath test or medical records to corroborate [defendant's] testimony."

¶ 58 A defendant's claim of ineffective assistance of counsel is analyzed under the two-pronged test set forth in *Strickland v. Washington*, 466 U.S. 668 (1984). *People v. Veach*, 2017 IL 120649, ¶ 29, 89 N.E.3d 366. To prevail, "a defendant must show both that counsel's performance was deficient and that the deficient performance prejudiced the defendant." *People v. Petrenko*, 237 Ill. 2d 490, 496, 931 N.E.2d 1198, 1203 (2010). To establish deficient performance, the defendant must show "counsel's performance 'fell below an objective standard of reasonableness.' " *People v. Valdez*, 2016 IL 119860, ¶ 14, 67 N.E.3d 233 (quoting *Strickland*, 466 U.S. at 688). Further, the defendant must overcome the strong presumption the challenged action or inaction could have been the product of sound trial strategy. *People v.*

Evans, 186 Ill. 2d 83, 93, 708 N.E.2d 1158, 1163 (1999). Prejudice is established when a reasonable probability exists that, but for counsel's unprofessional errors, the result of the proceeding would have been different. *People v. Evans*, 209 Ill. 2d 194, 219-20, 808 N.E.2d 939, 953 (2004) (citing *Strickland*, 466 U.S. at 694). "Satisfying the prejudice prong necessitates a showing of actual prejudice, not simply speculation that defendant may have been prejudiced." *People v. Patterson*, 2014 IL 115102, ¶ 81, 25 N.E.3d 526. A defendant must satisfy both prongs of the *Strickland* standard, and the failure to satisfy either prong precludes a finding of ineffective assistance of counsel. *People v. Clendenin*, 238 Ill. 2d 302, 317-18, 939 N.E.2d 310, 319 (2010). "We review a defendant's claim of ineffective assistance of counsel in a bifurcated fashion, deferring to the trial court's findings of fact unless they are contrary to the manifest weight of the evidence, but assessing *de novo* the ultimate legal question of whether counsel was ineffective." *People v. Manoharan*, 394 Ill. App. 3d 762, 769, 916 N.E.2d 134, 141 (2009).

¶ 59 In resolving issues related to counsel's performance, reviewing courts must consider the totality of counsel's conduct, not just an isolated incident. *People v. Hamilton*, 361 Ill. App. 3d 836, 847, 838 N.E.2d 160, 170 (2005).

¶ 60 Here, the trial court specifically commended defense counsel for his zealous representation on behalf of defendant, noting that "he is one of, if not the most, thoroughly prepared lawyers that I have witnessed here," and it was "fair to say that every aspect of the case was challenged by the defense." This determination is supported by the record, which shows counsel filed a motion *in limine* to bar the breath test results from being admitted into evidence, arguing they were unreliable. The record also shows that substantial argument was had on the motion, and counsel presented extensive expert testimony regarding the "Listerine-sopped

gauze" in defendant's mouth and what effect it would have on the reliability of the breath test results.

¶ 61 Moreover, we conclude that defense counsel's decision to focus "extensively on the impact of Listerine and gauze when asking questions while only mentioning blood in passing" was a matter of trial strategy. Defendant complains about counsel's failure to present "sufficient evidence of the impact of blood in [defendant's] mouth would have on the breath test or medical records to corroborate [defendant's] testimony." However, there is nothing in this record to support the assertion such evidence even exists. Defendant may have testified he had blood in his mouth, but as the court noted, the expert never opined that would affect the result. Counsel may have reasonably refrained from following up on Henson's responses to preclude the State from eliciting additional testimony which was of no help to defendant. Although Henson mentioned "active bleeding" several times when answering counsel's hypothetical, he never actually mentioned it, or the presence of blood in defendant's mouth, as a significant influence on the blood alcohol reading. He focused instead on the gauze and Listerine, so counsel did as well. Counsel very well might have thought it best to devote as little time as possible to this issue. That decision by counsel was a matter of trial strategy immune to a challenge on ineffective-assistance grounds. Additionally, defendant cannot claim counsel was ineffective for not presenting evidence which, based on this record, may not even exist.

¶ 62 Accordingly, defendant has failed to demonstrate that defense counsel's decision not to more rigorously question Henson regarding the impact any active bleeding would have on the reliability of the PBT results—a matter of trial strategy—constituted deficient performance.

¶ 63 III. CONCLUSION

¶ 64 For the foregoing reasons, we affirm the trial court's judgment.

¶ 65 Affirmed.