2014 IL App (2d) 140286-U
No. 2-14-0286
Order filed December 5, 2014

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

VILLAGE OF PRAIRIE GROVE,	)	Appeal from the Circuit Court
	)	of McHenry County.
Plaintiff-Appellee,	)	
	)	
v.	)	No. 12-OV-2957
	)	
ERIC D. PURYEAR,	)	Honorable
	)	Robert K. Beaderstadt,
Defendant-Appellant.	)	Judge, Presiding.

JUSTICE HUDSON delivered the judgment of the court.
Justices McLaren and Birkett concurred in the judgment.

ORDER

¶ 1 *Held*: (1) Trial court did not err in refusing to admit at hearing on motion to suppress or at defendant's trial evidence regarding other traffic stops made by police officer as such evidence was not relevant to traffic stop involving defendant; (2) trial court did not abuse its discretion in denying defendant's motion to suppress on the basis that the traffic stop was of an unreasonable duration where stop was prolonged because of defendant's conduct and there was no evidence to suppress; (3) trial court did not err in denying defendant's motion to dismiss on the basis that the audio component of the video recording of the traffic stop was missing; and (4) even if trial court erred in refusing to admit evidence that defendant had a habit of wearing his seatbelt, error was harmless in light of defendant's testimony regarding this habit.

¶ 2 Following a jury trial in the circuit court of McHenry County, defendant, Eric D. Puryear, was found guilty of failing to wear a seatbelt while riding as a front seat passenger in a motor

vehicle in violation of an ordinance of the Village of Prairie Grove (Village). Village of Prairie Grove Municipal Code § 15.01(A) (adopting and incorporating by reference provisions of the Illinois Vehicle Code (625 ILCS 5/1-100 *et seq*. (West 2012))); 625 ILCS 5/12-603.1 (West 2012) (requiring each driver and front seat passenger of a motor vehicle to wear a properly adjusted and fastened seat safety belt). The trial court sentenced defendant to a period of court supervision and ordered him to pay a fine and court costs. On appeal, defendant raises four issues. First, defendant argues that the trial court erred in excluding evidence of other traffic stops made on the same day defendant was cited by the same officer who stopped defendant. Second, defendant argues that the trial court erred in denying his motion to suppress based on the stop being unreasonable in duration. Third, defendant argues that the trial court erred in denying his motion to dismiss based on a discovery violation. Finally, defendant argues that the trial court erred in excluding habit evidence. For the reasons set forth below, we affirm.

¶ 3 I. BACKGROUND

¶ 4 On October 21, 2012, defendant was issued a citation by Officer James Page of the Village of Prairie Grove police department for failure to wear his seat belt while riding as a passenger in the front seat of a Ford F-150 pick-up truck. Prior to trial, defendant filed, *inter alia*, a combined motion to suppress physical evidence and a motion to dismiss (hereinafter referred to as the "motion to suppress"). Defendant challenged the stop and resulting citation for three principal reasons. First, he argued that the stop of the vehicle in which he was traveling was unsupported by reasonable suspicion. Second, he claimed that the duration of the stop was constitutionally unreasonable. Third, he contended that Officer Page unconstitutionally retaliated against him in violation of his first amendment rights by issuing the citation only upon defendant's request for his badge number. During a hearing on the motion to suppress,

defendant sought to introduce into evidence a video recording of other traffic stops made by Officer Page on October 21, 2012, both before and after the stop involving defendant. The trial court denied defendant's request to admit the evidence of the other traffic stops. Following a hearing, the trial court also denied the motion to suppress.

¶ 5 On February 25, 2013, defendant filed a supplemental motion to dismiss. The supplemental motion to dismiss was premised, in part, on defendant's claim that Officer Page engaged in a pattern of pretextual stops. Defendant also claimed that a video of the traffic stop captured by Officer Page's in-car recording system lacked audio. With respect to the latter claim, defendant alleged in the motion that Officer Page "failed, possibly intentionally, to activate his body [microphone] or otherwise ensure that the audio from the stop was recorded, in violation of Village rules (and permanently losing material evidence in this matter)." On May 24, 2013, the trial court held a hearing on the supplemental motion to dismiss. At the hearing, Officer Page testified that the video recorder in his squad car had malfunctioned shortly before October 21, 2012, and had been malfunctioning over a period of six to eight months. Officer Page also testified that he did not disable the audio, erase it from the video recording, or do anything to prevent the audio from downloading. Ronald Lyons, the Village's director of public safety, also testified that the video system in Officer Page's squad car had experienced "maintenance issues" prior to October 21, 2012, and had been out of service for six to eight months. Lyons identified an invoice dated October 16, 2012, from the business that repaired the system. The trial court denied the supplemental motion to dismiss, noting that the video equipment was malfunctioning and finding a lack of evidence that Officer Page violated department policy or otherwise acted in bad faith.

¶ 6 Prior to trial, defendant also filed a series of motions *in limine*. Relevant to this appeal are defendant's first and third motions *in limine*. Defendant's first motion *in limine* sought permission to introduce video evidence regarding traffic stops performed by Officer Page both before and after the stop of the vehicle in which defendant was riding. According to defendant, the video suggests that Officer Page was engaged in a series of pretextual stops. Defendant's third motion *in limine* sought permission to introduce evidence of defendant's "habit of wearing his seatbelt and of worrying about unsafe circumstances." Following a hearing, the trial court denied defendant's first motion *in limine*, but allowed an offer of proof regarding the video recording. The court also denied defendant's third motion *in limine*.

¶ 7 Defendant's trial commenced on September 30, 2013. Officer Page testified that in October 2012 he was employed by the Village as a patrol officer. At approximately 4:45 p.m. on October 21, 2012, Officer Page was driving a marked squad car eastbound on Route 176 near Smith Road when he observed a Ford F-150 pick-up truck traveling in the opposite direction. When Officer Page was about 100 feet from the truck, he noticed that the front seat passenger of the vehicle was not wearing a seatbelt. Officer Page testified that there was no difference in height between his position in the squad car and the passenger's position in the truck. Moreover, Officer Page testified that there were no obstructions between his vehicle and the truck and there was nothing obstructing the windshields of either vehicle.

¶ 8 Officer Page testified that he was able to see the passenger from the chest up. The passenger was sitting on an angle towards the driver and Officer Page could see the seatbelt behind the passenger with the buckle unfastened above the passenger's shoulder. As Officer Page made these observations, he continued to drive in an eastbound direction as the truck continued to move westbound. Officer Page was as close as 10 feet from the truck when he

observed the passenger without a safety belt. Officer Page briefly activated his rear emergency lights in order to safely make a U-turn. He did not activate the emergency lights again until he was behind the truck. Officer Page noted that although the rear window of the truck was "blacked out with a decal," he was able to see some "furtive movement" inside the vehicle.

¶ 9 Officer Page testified that the traffic stop occurred on Route 31, just north of Route 176. Officer Page exited his squad car, approached the passenger side of the truck, and made contact with the passenger, whom he identified as defendant. Officer Page informed the occupants of the truck that he had stopped the vehicle because defendant was not wearing a seatbelt. Defendant responded that he had been using his seatbelt, and Officer Page acknowledged that defendant was wearing a seatbelt when he approached the truck. Officer Page asked both defendant and the driver of the truck for identification. Officer Page then went to his squad car. When Officer Page returned to the truck, he gave back the identification and stated that he first observed defendant without a seatbelt, but because defendant was now wearing a seatbelt, he would give defendant a verbal warning. Officer Page explained that the reason for the warning was that "the most important thing" is to ensure a seatbelt is being worn.

¶ 10 As Officer Page turned to walk away, defendant summoned him back. Defendant asked for the officer's name and badge number and stated that he was going to file a complaint. Officer Page provided the requested information and again asked defendant for his identification. Officer Page then issued defendant a citation for failure to wear a seatbelt. Officer Page testified that he issued the citation because he wanted a record of the traffic stop and defendant's behavior. Officer Page explained, "If he's going to make a complaint against me, there needed to be a record, and I just wanted to make sure that was crystal clear." Officer Page believed that defendant was behaving inappropriately towards him and took that into consideration. Officer

Page also took into consideration a bumper sticker on the vehicle that stated, "tattooed motherf***er."

¶ 11 Officer Page testified that on the date in question, his squad car was equipped with a video recording device that typically activates when the squad lights turn on. Officer Page indicated that there is a 30-second delay on the video from real time. Officer Page identified a DVD marked as People's Exhibit B to be an accurate depiction of the events of October 21, 2012. Officer Page acknowledged that the DVD does not contain any audio. He explained that the recording device had been "off line" for about a year prior to the traffic stop involving defendant. Although the Village had the device repaired, the audio was not fixed. Officer Page testified that he typically carries a microphone with him to record audio. He did not remember if the microphone was with him during the traffic stop involving defendant, but noted that he did not do anything manually to either start or stop the audio from recording.

¶ 12 After the Village's direct examination of Officer Page, defense counsel requested a side bar. Following the side bar, the Village moved to admit the video of the traffic stop as People's Exhibit B. The trial court admitted the video into evidence, noting that both parties had stipulated to foundation and agreed that the video could be published to the jury.

¶ 13 On cross-examination, Officer Page admitted that there were times he could see through the back window of the truck. Specifically, Officer Page saw "flashes of movement" through the back window. When defense counsel asked Officer Page to point out the movement he saw on the video, Officer Page explained that just because it is not visible on the video does not mean that it did not happen. Officer Page explained that he sits in his squad car at a different vantage point than where the camera is positioned. The camera is about two feet to the right from where

he sits and is not at the top of the car. Nonetheless, Officer Page pointed out a sequence on the video where he saw movement in the vehicle.

¶ 14 Officer Page acknowledged that the video does not show his U-turn. Officer Page was able to see into the truck as he was traveling toward the truck, and he could see the seatbelt clasp above defendant, who was sitting at an angle and a little slouched. Defense counsel asked Officer Page to identify a truck depicted in several photographs. Officer Page could not identify the truck in the photograph, explaining that it did not depict the vehicle license plate and the distinctive decal on the back window and that he does not recall the truck in question to have body damage as depicted on the truck in the photographs.

¶ 15 Following Officer Page's testimony, the State rested. Defendant then moved for a directed verdict, which the trial court denied. Defendant's first witness was his wife, Nicole Puryear. Puryear testified that she has known defendant for almost 10 years and that she frequently rides with defendant in the car. She further testified that she was a passenger in the back seat of the truck stopped by Officer Page on October 21, 2012. Puryear testified that she did not see any police cars while traveling on Route 176 on the date and time in question and first noticed Officer Page's squad car when it was behind them. Puryear was seated directly behind defendant and saw defendant's seatbelt buckled. She did not observe anyone put on a seatbelt "at the last minute."

¶ 16 According to Puryear, Officer Page asked defendant for his driver's license and stated that he had stopped the truck because defendant was not wearing a seatbelt. Officer Page asked if there was any reason why defendant was not wearing a safety restraint. Defendant responded that he had been wearing a seatbelt. Officer Page then went to his squad car. According to Puryear, when Officer Page returned to the truck, he remarked, "[Y]ou said you were wearing [a

seatbelt]. I didn't see it. I'll take your word for it. Have a good day." At that point, Officer Page started to walk away. Defendant then asked Officer Page for his name and badge number. Puryear testified that Officer Page came back to the vehicle and said, "give me your license back and I'll give you a ticket, and then you'll have my name and badge number." Puryear described Officer Page's attitude as "arrogant."

¶ 17 Defense counsel attempted to question Puryear whether she had developed any opinion as to defendant's "character for safety" and if there was "any reason that has developed over the course of [her] relationship [with defendant]" as to why she would be paying particular attention to defendant's seatbelt. The Village's objections to this line of questioning were sustained. Puryear testified that there were times that she failed to wear her seatbelt and defendant would bring the matter to her attention.

¶ 18 John Cackler testified that he is defendant's brother-in-law and was the driver of the truck stopped by Officer Page on October 21, 2012. Cackler noted that defendant was seated in the front passenger seat while Puryear and her daughter were in the back seat. Cackler testified that the seatbelt clasp does not normally hang above the shoulder area when it is not in use and that his front windshield and front driver- and passenger-side windows are not tinted. Cackler's truck has a warning that will let him know if the front passenger is not wearing his seatbelt. Cackler testified that at the time and on the date in question, defendant had his seatbelt on and Cackler did not hear any warning from his pick-up truck. According to Cackler, defendant was facing forward the entire time and did not turn in his seat. There were no quick movements inside the car, and no one put their seatbelt on at the last minute. Cackler's testimony regarding Officer Page's contact with defendant mirrored that of Puryear.

¶ 19 Defendant testified that he is an attorney licensed to practice law in both Iowa, where he resides, and Illinois. Defendant testified that when he was stopped by Officer Page on October 21, 2012, he, his wife, and his daughter were en route from his wife's father's house to the Lake in the Hills Airport to fly home to Iowa. They were riding in a pick-up truck driven by Cackler. Defendant was seated in the front passenger seat. Defendant further testified that he is a private pilot. He does not possess his instrument rating, meaning that he cannot fly when fog sets in, and defendant had been reminding his wife throughout the day that they needed to be on time.

¶ 20 Defendant testified that he was wearing a seatbelt while riding in the truck. Defendant further testified, "I always wear my seat belt. Not once in my life have I ever operated a car without my seat belt on, or ever been a passenger. I have not done it, not even once. In addition to that, obviously, if we are stopped by a police officer, that's going to delay us and it would take us longer. Again, I always wear my seat belt, but I'm certainly not going to do something to give an officer a cause to stop the car and detain us and make us late." Defendant testified that to reach the airport, the truck traveled westbound on Route 176. Defendant denied seeing a police vehicle on Route 176. However, he noted that the sun was in his field of vision as the truck was traveling westbound on Route 176.

¶ 21 Defendant testified that upon stopping the truck, Officer Page approached the passenger-side window and asked defendant why he was not wearing a seatbelt. Defendant responded that he had been wearing a seatbelt and that he always wears a seatbelt. Officer Page then asked defendant for identification. Defendant asked Officer Page if he was "legally required" to provide identification, and Officer Page answered in the affirmative. Officer Page then went to his squad car. Defendant testified that when Officer Page returned, he gave defendant his identification and stated that he would take defendant's "word" that he had been wearing a

seatbelt. As Officer Page walked away, defendant stuck his head outside the window and asked the officer for his name and badge number. According to defendant, Officer Page "turned kind of red" and responded, "I'll give you my name and badge number. I'll put it on the ticket." Officer Page then requested defendant's identification.

¶ 22 Defendant denied making any "furtive movements" prior to the stop when the squad car was following the truck. He explained that he has "a very significant concern about what police officers may do or may think when people move in cars." Defendant denied being rude to Officer Page and described Officer Page as "agitated."

¶ 23 After the defense rested, defendant renewed his motion for a directed verdict. The trial court denied the motion, and the parties presented closing arguments. Following deliberations, the jury returned a verdict of guilty. On October 28, 2013, defendant filed a motion for judgment notwithstanding the verdict, or, alternatively, a new trial. Defendant supplemented the motion on December 23, 2013. On March 10, 2014, the trial court denied defendant's posttrial motions, imposed a fine of $13 plus court costs, and sentenced defendant to 30 days of court supervision. On March 27, 2014, defendant filed a notice of appeal.

¶ 24 II. ANALYSIS

¶ 25 A. Video of Other Traffic Stops

¶ 26 On appeal, defendant first argues that the trial court erred in excluding video and testamentary evidence of several traffic stops Officer Page made immediately before and after he stopped the truck in which defendant was traveling.

¶ 27 The record establishes that during the hearing on defendant's motion to suppress, he sought to introduce into evidence a video recording of other traffic stops made by Officer Page on October 21, 2012, both before and after the traffic stop involving defendant. The Village

objected, arguing that evidence of other traffic stops was not relevant to the propriety of the traffic stop at issue. Defendant responded that the video was relevant to establish that, besides the truck in which defendant was a passenger, Officer Page pulled over four other pick-up trucks on October 21, 2012, one before and three after the traffic stop involving defendant. The trial court denied defendant's request to admit the evidence, explaining, "This is a seatbelt violation. That's as far as we're going here. If you want to file other causes of action, then it may be relevant in those cause [*sic*] of action. It's not relevant in a seatbelt violation."

¶ 28 Subsequently, defendant sought permission to introduce this evidence at trial via his first motion *in limine*. According to defendant, the video of the other traffic stops suggested that Officer Page was engaged in a series of pretextual stops. In denying defendant's request, the trial court remarked, "If there was probable cause as [the judge who ruled on the motion to suppress] has found, then the pretextual reason for pulling over [defendant] evaporates." Nevertheless, the court allowed an offer of proof regarding the video recording.

¶ 29 Defendant contends that the trial court erred by excluding evidence of other traffic stops at the hearing on his motion to suppress and in denying his first motion *in limine* which sought to introduce this same evidence at trial. Defendant asserts that the evidence in question would have shown that within a two-hour period, Officer Page conducted a total of five "nearly identical" traffic stops of similar vehicles (three Ford F-150 trucks, a Ford Ranger truck, and a fifth pick-up truck of an unidentified make), none of which had been involved in any observable traffic violation and none of which resulted in the issuance of any traffic citations. According to defendant, this evidence was relevant to show that Officer Page was pulling over vehicles for pretextual reasons, *i.e.*, he was searching for someone in a particular type of vehicle rather than because of the violation of any traffic law.

¶ 30 The admissibility of evidence rests in the sound discretion of the trial court, and the trial court's ruling regarding the admissibility of evidence will not be overturned on appeal absent a clear abuse of discretion. *People v. Illgen*, 145 Ill. 2d 353, 364 (1991); *People v. Gorney*, 107 Ill. 2d 53, 59 (1985). An abuse of discretion occurs only where the trial court's decision is arbitrary, fanciful, or unreasonable, or where no reasonable person would adopt the view of the trial court. *Illgen*, 145 Ill. 2d at 364.

¶ 31 Parenthetically, we note that defendant, citing *People v. Williams*, 188 Ill. 2d 365 (1999), argues that the *de novo* standard of review applies because the trial court's exercise of discretion was "frustrated by an erroneous rule of law." We disagree. The trial court did not make any erroneous ruling of law. It simply considered and applied the specific facts of this case and determined that Officer Page's other traffic stops on the day in question were not relevant to the issue of whether defendant was wearing his seatbelt. As such, abuse of discretion is the proper standard of review. See *People v. Caffey*, 205 Ill. 2d 52, 89-90 (2001) (applying the abuse of discretion standard where the trial court based its evidentiary ruling on the specific circumstances of the case and not on a broadly applicable rule).

¶ 32 The controlling principles concerning the admissibility of evidence are well established. The relevant inquiry is whether the proffered evidence fairly tends to prove or disprove the offense charged and whether that evidence is relevant in that it tends to make the question of guilt more or less probable. *People v. Wheeler*, 226 Ill. 2d 92, 132 (2007). "It is entirely within the discretion of the trial court to 'reject offered evidence on grounds of irrelevancy if it has little probative value due to its remoteness, uncertainty, or possibly unfair prejudicial nature.' " *Wheeler*, 226 Ill. 2d at 132 (quoting *People v. Harvey*, 211 Ill. 2d 368, 392 (2004)).

¶ 33 In the present case, we cannot say that the trial court abused its discretion in concluding that evidence of other traffic stops Officer Page made on October 21, 2012, had no bearing on whether defendant was wearing his seatbelt. It is not clear to us how Officer Page's other traffic stops on October 21, 2012, would assist the trier of fact in determining whether defendant was wearing his seatbelt. Stated differently, the fact that Officer Page may have pulled over five "nearly identical" vehicles on October 21, 2012, none of which resulted in the issuance of any traffic citations, does not make it any more or less probable that defendant failed to wear his seatbelt. As such this evidence is not relevant.

¶ 34 Defendant emphasizes that the video of the other traffic stops did not show any observable violation being committed. However, Officer Page testified at trial that the video system only begins recording once he activates his emergency lights. Presumably, this would only occur after the officer observes a violation being committed. Defendant also notes that the video in question shows the fourth and fifth traffic stops without interruption. According to defendant, the vehicle involved in the fifth traffic stop made no observable traffic violation. The fact that a traffic violation is not observable on the video recording, however, does not mean that it did not occur. Indeed, the fact that a violation involving the fifth traffic stop is not observable is easily explainable by Officer Page's testimony that he sits in his squad car at a different vantage point from where the camera is positioned.

¶ 35 Defendant also analogizes the relevancy of the video evidence to that of the circumstances surrounding a defendant's confession. He notes that in *Crane v. Kentucky*, 476 U.S. 683 (1986), the Supreme Court stated that evidence about the circumstances surrounding a defendant's confession is "often highly relevant to its reliability and credibility." In *Crane*, the case against the defendant rested almost entirely on the defendant's confession. The defendant

sought to introduce evidence of the circumstances surrounding his confession to show that the confession was not credible. The trial court excluded this evidence. Thereafter, a jury convicted the defendant. The Kentucky supreme court affirmed the conviction. On appeal, the United States Supreme Court concluded that the lower courts' rulings violated defendant's constitutional rights. *Crane*, 476 U.S. at 687. The Court explained that the Kentucky courts "erred in foreclosing [the defendant's] efforts to introduce testimony about the environment in which the police secured his confession" because "evidence about the manner in which a confession was obtained is often highly relevant to its reliability and credibility." *Crane*, 476 U.S. at 691. The Court further noted that the state had not "advanced any rational justification for the wholesale exclusion of this body of potentially exculpatory evidence." *Crane*, 476 U.S. at 691. We find defendant's reliance on *Crane* misplaced. Here, we are not dealing with a confession. Moreover, defendant seeks to introduce more than evidence of the circumstances surrounding *his* traffic stop. He seeks to introduce evidence regarding the circumstances surrounding *other* traffic stops. Thus, contrary to defendant's position, we do not find *Crane* analogous to the circumstances in this case.

¶ 36 Defendant argues that he could have used the video of Officer Page's other traffic stops to "undercut" Officer Page's testimony. However, the use of extrinsic evidence to impeach a witness concerning collateral matters is properly restricted to avoid confusion, undue consumption of time, and unfair prejudice. *People v. Colombo*, 118 Ill. App. 3d 882, 966 (1983). Evidence of Officer Page's other traffic stops on October 21, 2012, are collateral to the stop at issue, would confuse the jury, and would consume an inordinate amount of time relative to its probative value.

¶ 37 Defendant also argues that evidence of Officer Page's other traffic stops would have showed that Officer Page lacked probable cause to stop defendant and that the stop was a pretext for Officer Page's ulterior agenda to arbitrarily pull over pick-up trucks. Probable cause requires that the facts and circumstances within the knowledge of the police officer be sufficient to warrant a man of reasonable caution to believe that the law was violated. *People v. Free*, 94 Ill. 2d 378, 400 (1983). More than mere suspicion is required to meet this standard, but there is no requirement that the evidence be sufficient to convict. *People v. Murray*, 254 Ill. App. 3d 538, 549 (1993). Probable cause analysis is based on practical and common-sense considerations and requires an examination of the probabilities. *People v. Vasser*, 331 Ill. App. 3d 675, 682 (2002).

¶ 38 Even from a probable-cause standpoint, the other traffic stops are not relevant. If Officer Page observed defendant not wearing a seatbelt, to which he testified both at the hearing on the motion to suppress and at trial, that fact alone was probable cause enough for him to stop defendant. See *People v. Jones*, 215 Ill. 2d 261, 271 (2005) (holding that officer's observation of a violation of the Illinois Vehicle Code constitutes probable cause). Whether Officer Page had stopped five other pick-up trucks that day would not assist the trier of fact in determining whether Officer Page had probable cause to stop defendant.

¶ 39 Accordingly, the trial court did not abuse its discretion in excluding evidence of Officer Page's other traffic stops before and after the stop of defendant, both at trial and during the hearing on the motion to suppress.

¶ 40 B. Duration of Stop

¶ 41 Next, defendant argues that the traffic stop was of an unreasonable duration and therefore the trial court erred in denying his motion to suppress. When reviewing a ruling on a motion to suppress evidence, Illinois courts typically apply a two-part standard of review. *People v.*

Luedemann, 222 Ill. 2d 530, 542 (2006). A trial court's findings of historical fact are reviewed for clear error and will not be reversed unless they are against the manifest weight of the evidence. *Luedemann*, 222 Ill. 2d at 542. However, the trial court's ultimate legal ruling as to whether suppression is warranted is reviewed *de novo*. *Luedemann*, 222 Ill. 2d at 542.

¶ 42 Our federal and state constitutions protect individuals from unreasonable seizures. U.S. Const., amend IV; Ill. Const. 1970, art. I, § 6. An individual is seized when, by means of physical force or a show of authority, the person's freedom of movement is restrained. *People v. Cosby*, 231 Ill. 2d 262, 273 (2008) (citing *United States v. Mendenhall*, 446 U.S. 544, 553 (1980)). The detention by law enforcement agents of individuals during a traffic stop has been held to constitute a "seizure" of persons under the foregoing provisions of the federal and state constitutions. *Cosby*, 231 Ill. 2d at 273. Because traffic stops are analogous in duration to the investigative stops observed in *Terry v. Ohio*, 392 U.S. 1 (1968), our supreme court has applied a *Terry* analysis to judge the reasonableness of challenged traffic stops. See *Cosby*, 231 Ill. 2d at 274-75. A *Terry* analysis involves a dual inquiry: (1) whether the officer's action was justified at its inception; and (2) whether the action was reasonably related in scope to the circumstances that justified the interference in the first place. *Cosby*, 231 Ill. 2d at 275. With respect to the second prong of the *Terry* analysis, scope is measured solely in relation to the duration of the stop. *Cosby*, 231 Ill. 2d at 276.

¶ 43 Defendant initially challenges the traffic stop under the first prong of the *Terry* analysis. According to defendant, the entire traffic stop was an unreasonable seizure due to a lack of reasonable suspicion. We disagree. Officer Page testified at the hearing on the motion to suppress that he stopped the vehicle in which defendant was a passenger only after he observed defendant without a seatbelt. This is a clear violation of the Illinois Vehicle Code. See 625

ILCS 5/12-603.1 (West 2012) (requiring each driver and front seat passenger of a motor vehicle to wear "a properly adjusted and fastened seat safety belt"). Since the officer's stop of the vehicle in which defendant was traveling was supported by probable cause, it was "justified at its inception." See *Jones*, 215 Ill. 2d at 271.

¶ 44 Defendant goes on to argue that, even if the stop was initially reasonable, it later became unreasonable. According to defendant, when Officer Page first returned his identification and informed him that he would only be receiving a warning, the traffic stop should have ended, but was unreasonably prolonged when Officer Page asked him for his identification again and then issued him the citation at issue.

¶ 45 Police conduct during an otherwise lawful seizure does not render the traffic stop unlawful "unless it either unreasonably prolongs the duration of the detention or independently triggers the fourth amendment." *People v. Baldwin*, 388 Ill. App. 3d 1028, 1033 (2009). Where a traffic stop is lawful at its inception and otherwise executed reasonably, the lawful nature of the traffic stop does not change unless there is additional conduct that violates an individual's constitutionally protected interests. *Baldwin*, 388 Ill. App. 3d at 1033 (citing *Illinois v. Caballes*, 543 U.S. 405, 407-08 (2005)). There is no bright-line rule for deciding if a traffic stop has been unreasonably prolonged, but the duration of the stop must be justified by the nature of the offense and the ordinary inquiries incident to the stop. *People v. McQuown*, 407 Ill. App. 3d 1138, 1144 (2011). On review, we consider the totality of the circumstances, the length of the stop, and whether the officer acted diligently. *Baldwin*, 388 Ill. App. 3d at 1034.

¶ 46 As noted above, defendant challenges the duration of the stop. In ruling on the motion to suppress, the trial court agreed that the duration of the stop was unreasonable, but denied defendant's motion to suppress on the basis that there was no evidence to suppress. Although we

are not persuaded by the trial court's finding that the duration of the traffic stop was unreasonable, we agree with the court's ultimate conclusion to deny the motion to suppress. Significantly, we note that as Officer Page was walking away from the truck, defendant reinitiated contact with Officer Page by requesting his name and badge number. Officer Page responded by again requesting defendant's identification and ultimately issuing a citation for failure to wear a seatbelt. In other words, although the traffic stop was prolonged, it was not because of any action taken by Officer Page. Rather, it was a result of defendant's own conduct. Thus, this is unlike cases in which the traffic stop was prolonged as a result of actions taken by a police officer. See, *e.g.*, *Baldwin*, 388 Ill. App. 3d at 1034-35 (finding duration of stop unreasonable where officer, after deciding not to issue ticket, prolonged the stop by questioning defendant and calling for a canine unit); *People v. Koutsakis*, 272 Ill. App. 3d 159, 163-64 (1995) (finding duration of stop unreasonable where officer, after writing warning ticket, detained the defendant for several minutes to wait for another officer to arrive with a canine unit). Under these circumstances, we find that the traffic stop was not unreasonably prolonged by Office Page.

¶ 47 We further note that even if we agreed that the duration of the stop was unreasonable, we would nevertheless affirm the court's ruling on defendant's motion to suppress for, as the trial court correctly noted, there was nothing to suppress. In this regard, we note that Officer Page stopped the vehicle in which he was traveling after he observed defendant without a seatbelt. After Officer Page briefly spoke to defendant, he requested defendant's identification, and went to his squad car. Officer Page returned shortly later and issued a verbal warning. As Officer Page was walking away from the vehicle, defendant requested his name and badge number. Officer Page then requested defendant's identification the second time and issued a citation for

failure to wear a seatbelt. Officer Page did not obtain any information he did not have during the first part of the encounter. Thus, this is unlike those cases in which contraband is suppressed after the police officer detains an individual for a length of time longer than necessary to issue a warning or citation and then, without articulable suspicion, proceeds to call for a drug-sniffing dog. See *Baldwin*, 388 Ill. App. 3d at 1035; *Koutsakis*, 272 Ill. App. 3d at 164. Nevertheless, defendant contends that the "identifying information" Officer Page obtained when he requested defendant's documentation the second time should have been suppressed. Yet, defendant cites no authority for this proposition. As such, this argument is forfeited. See Illinois Supreme Court Rule 341(h)(7) (eff. Feb. 6, 2013) (providing that arguments without citation to authority are forfeited); *People v. Olsson*, 2014 IL App (2d) 131217, ¶ 16.

¶ 48 C. Audio

¶ 49 Next, defendant argues that the trial court erred in denying his supplemental motion to dismiss because the Village failed to preserve an audio recording of the traffic stop in violation of a policy of its own police department requiring an officer to ensure that his or her body microphone is working. Village of Prairie Grove Police Department, General Order 41-03-08 (eff. Jan. 1, 2010). According to defendant, had Officer Page complied with the foregoing policy and worn a properly functioning body microphone, the audio would have revealed the Officer's "exact words" to him. The Village responds that because the evidence defendant seeks to discover never existed and there is no evidence that Officer Page did anything to turn off the audio or to erase the audio from the video recording, the trial court did not err in denying defendant's supplemental motion to dismiss.

¶ 50 The record establishes that in November 2012, defendant moved for pretrial discovery of various evidentiary items, including any video or audio recordings the State intended to use at

any hearing or trial. In response to defendant's request, the State noted that a video recording from Officer Page's squad car was previously tendered to defendant in October 2012 pursuant to a request made under the Freedom of Information Act (5 ILCS 140/1 *et seq*. (West 2012)). The video did not contain any audio. On February 25, 2013, defendant filed a supplemental motion to dismiss. In the motion, defendant alleged, *inter alia*, that Officer Page "failed, possibly intentionally, to activate his body mic [*sic*] or otherwise ensure that the audio from the stop was recorded, in violation of Village rules (and permanently losing material evidence in this matter)." Defendant asserted that if Officer Page's actions "stand without sanction ***, it would create a serious risk of deprivation of due process or a miscarriage of justice." As such, defendant requested that the court dismiss the case against him.

¶ 51 At the hearing on the supplemental motion to dismiss, Officer Page testified that the video recorder in his squad car had malfunctioned shortly before October 21, 2012, and had been malfunctioning over a period of six to eight months. Officer Page also testified that he did not disable the audio, erase it from the video recording, or do anything to prevent audio from downloading. Ronald Lyons, the Village's director of public safety, also testified that the video system in Officer Page's squad car had experienced "maintenance issues" prior to October 21, 2012, and had been out of service for six to eight months. Lyons identified an invoice dated October 16, 2012, from the business that had repaired the video system. As noted above, the trial court denied the supplemental motion to dismiss, finding that the video equipment was malfunctioning and finding a lack of evidence that Officer Page violated department policy or otherwise acted in bad faith.

¶ 52 Defendant's supplemental motion to dismiss sought dismissal of the case against him based on an allegation that the Village failed to preserve certain evidence. As such, the motion

concerned a discovery matter, which we review for an abuse of discretion. *People v. Kladis*, 2011 IL 110920, ¶ 23.[1] The trial court abuses its discretion only where the court's decision is arbitrary, fanciful, or where no reasonable person would take the view adopted by the trial court. *People v. Strobel*, 2014 IL App (1st) 130300, ¶ 7.

¶ 53 Discovery in criminal cases is governed by Illinois Supreme Court Rules 411 through 417. Illinois Supreme Court Rule 411 (eff. Dec. 9, 2011) limits application of these rules to cases in which the defendant is charged with a felony. Nevertheless, our supreme court has held that defendants who are charged with misdemeanor offenses are entitled to the disclosure of certain information such as a list of witnesses, any confession of the defendant, evidence negating the defendant's guilt, and video recordings of traffic stops made by an in-squad camera. *Kladis*, 2011 IL 110920, ¶¶ 26-29; *People v. Schmidt*, 56 Ill. 2d 572, 574-75 (1974). Although the ordinance violation in this case is neither a felony nor a misdemeanor (see 625 ILCS 5/12-603.1(d) (West 2012) (classifying the failure to use a seatbelt as a petty offense)), we will assume, for purposes of this appeal, that the limited disclosure set forth in *Kladis* and *Schmidt* is available to defendant in this case.

¶ 54 The goals of discovery are to eliminate surprise and unfairness and to afford an opportunity to investigate. *People v. Petty*, 311 Ill. App. 3d 301, 303 (2000). Discovery sanctions are designed to further these goals and to compel compliance rather than to punish. *Petty*, 311 Ill. App. 3d at 303. Harsh sanctions may be warranted where the defendant is denied a full opportunity to prepare his defense and make tactical decisions with the aid of the

[1] Defendant argues that this issue presents a question of law subject to *de novo* review because it involves whether an officer's deviation from policy can be an example of bad faith. However, defendant cites no authority for this proposition.

information that was withheld. *Petty*, 311 Ill. App. 3d at 303. However, where the discovery material at issue never existed, sanctions are not warranted. *Strobel*, 2014 IL App (1st) 130300, ¶ 11.

¶ 55 Thus, in *Strobel*, 2014 IL App (1st) 130300, the defendant was detained for speeding. During the traffic stop, the police also observed indicia of intoxication. The police administered field sobriety tests, which the defendant failed. As a result, the defendant was arrested and charged with the misdemeanor offenses of driving under the influence of alcohol and speeding. In response to a discovery motion, the State tendered to the defendant a video of the traffic stop recorded by the police officers' in-car recording system. The video did not contain any audio because the officers forgot to activate the audio component of the recording system upon approaching the defendant. The defendant filed a motion *in limine* and for discovery sanctions, asserting that the absence of the audio resulted in the "destruction of evidence" and therefore constituted a discovery violation. The State responded that a discovery violation did not occur because there was never an audio recording in the State's possession or control to hand over to the defendant. The trial court agreed with the defendant and sanctioned the State by not allowing any testimony about the field sobriety tests and by not allowing the introduction of any video that showed the performance of those tests.

¶ 56 On appeal, the *Strobel* court reversed the discovery sanctions imposed by the trial court, explaining:

> "Here, when the police stopped [the] defendant they failed to activate the audio recording function on their squad car video camera. As a result, the State tendered to [the] defendant's attorney everything it possessed and controlled: the video of the traffic stop without an audio component. There is nothing in this record to support any inference or

> suggestion that the police or the prosecution intentionally or inadvertently destroyed any preexisting discoverable evidence. Therefore, the imposed exclusion sanction punished the prosecution for something that was outside its control and cannot reasonably be viewed as conduct that caused unfairness to the defendant or deprived him of an opportunity to prepare his defense.
>
> Defendant argues that it is possible that an audio portion of the video may have helped [his] defense. It is equally possible the unrecorded audio had 'the potential to banish any hope of exoneration.' *People v. Gentry*, 351 Ill. App. 3d 872, 878 (2004). We cannot resolve this question by pondering possibilities. We must consider only that which is certain: there never was an audio recording of the events leading to [the] defendant's field sobriety tests. Given the facts of this case, absent a showing that the State lost or destroyed the audio component of the video or the existence of some other factor to justify a discovery sanction, there was an abuse of discretion in barring testimony concerning the field sobriety tests and in prohibiting the introduction of any video that showed the performance of those tests due to the State's failure to produce any recording of any audio that presumably occurred at the time the video was created. For these reasons, we find no discovery violation that supports the imposition of the sanctions imposed or the exclusion of the evidence requested in [the] defendant's motion *in limine*." *Strobel*, 2014 IL App (1st) 130300, ¶¶ 11-12.

¶ 57 The facts in the present case are analogous to those in *Strobel* in that the audio component of the video at issue never existed. Both Officer Page and Lyons testified at the hearing on defendant's supplemental motion to dismiss that the recording system in Officer Page's squad car had malfunctioned prior to the traffic stop involving defendant and that it had

been malfunctioning over a course of six to eight months. Moreover, defendant does not point to any conduct by Officer Page such as turning off the audio or erasing the audio from the recording. The Village was not required to preserve and tender an audio recording which never existed. See *Strobel*, 2014 IL App (1st) 130300, ¶¶ 11-12. As such, we conclude that the trial court did not abuse its discretion in denying defendant's request to sanction the Village for its failure to produce the audio component.

¶ 58 The existence of the policy of the Village police department cited by defendant does not compel a different result. As defendant notes, that policy requires the officer, upon entering the vehicle at the start of his or her shift to ensure that the recording system's body microphone is working. Village of Prairie Grove Police Department, General Order 41-03-08 (eff. Jan. 1, 2010). However, the policy also requires the in-car recording equipment to be used "if operational." Village of Prairie Grove Police Department, General Order 41-03-08 (eff. Jan. 1, 2010). As the trial court noted, the recording equipment at issue was experiencing operational issues over a period of six to eight months which required repair as recently as several days prior to the traffic stop at issue.

¶ 59 Finally, we conclude that even if we were to find that the trial court erred in not dismissing on this basis, defendant does not indicate how he was prejudiced. According to defendant, had Officer Page complied with the Village policy and worn a properly functioning body microphone, the audio would have revealed Officer Page's "exact words to [him]." Defendant asserts that in the absence of the audio recording, the only evidence of the conversation that he had with Officer Page was via the testimony of the individuals present in the vehicle. He contends, however, that the presentation of such evidence presents "issues of credibility *** that would not exist with an audio recording." Nonetheless, defendant does not

identify any significant differences between the witnesses' testimony regarding the conversation between him and Officer Page that could be clarified by an audio recording. As such, we find no reversible error.

¶ 60 D. Habit Evidence

¶ 61 Finally, defendant argues that the trial court erred in denying his third motion *in limine* which sought to introduce evidence of his habit of wearing a seatbelt.[2] According to defendant, such evidence was relevant to whether he was wearing his seatbelt on October 21, 2012. The Village allows that habit evidence is permitted under Illinois Rule of Evidence 406 (eff. Jan. 1, 2011). Nevertheless, the Village contends, defendant did testify at trial regarding his habit of always wearing a seatbelt. As such, the Village concludes that reversal of defendant's conviction is not warranted on the basis that the trial court erroneously denied defendant's third motion *in limine*.

¶ 62 We agree with the Village that even if the trial court's ruling on defendant's third motion *in limine* was erroneous, reversal is not warranted. A party is not entitled to reversal based upon a trial court's evidentiary rulings unless the error substantially prejudiced the complaining party and affected the outcome of the case. *Lorenz v. Pledge*, 2014 IL App (3d) 130137, ¶ 60. The party seeking reversal bears the burden of establishing such prejudice. *Wilbourn v. Cavalenes*, 398 Ill. App. 3d 837, 848 (2010).

¶ 63 Here, defendant has failed to establish that the alleged error substantially prejudiced him or affected the outcome of the case. In this regard, we note that despite the trial court's ruling to

[2] Defendant's third motion *in limine* also sought permission to introduce evidence of his "habit" of "worrying about unsafe circumstances." Defendant does not reference this portion of the motion on appeal, and we do not address it here.

deny defendant's third motion *in limine*, defendant did, in fact, testify to his habit of always wearing his seatbelt. Specifically, defendant told the jury, "I always wear my seat belt. Not once in my life have I ever operated a car without a seat belt on, or ever been a passenger. I have not done it, not even once." Later in his testimony, defendant reiterated that he "always wear[s his] seatbelt." We also point out that, during closing argument, defense counsel emphasized the testimony that defendant "always wears his seat belt." In light of defendant's testimony regarding his habit of wearing a seatbelt and defense counsel's remarks during closing argument, any habit testimony from defendant's wife or brother-in-law would have been cumulative. See *People v. Ortiz*, 235 Ill. 2d 319, 335 (2009) (noting that evidence is cumulative when it adds nothing to what was already before the jury).

¶ 64 Nevertheless, defendant insists that there is a "significant difference" between an accused's statement of his own habit and testimony from other witnesses regarding the habits of the accused. According to defendant, the jury likely found "self-serving" his testimony that he always wears a seatbelt, but that such testimony would have been more convincing had it come from his wife or his brother-in-law. However, testimony from family members is generally viewed as biased and therefore given little weight. See *People v. Deloney*, 341 Ill. App. 3d 621, 635 (2003); *People v. Mullen*, 313 Ill. App. 3d 718, 729 (2000). That the jury would have given little weight to the testimony of defendant's wife and brother-in-law is evident in the case at hand. Notably, despite testimony from defendant's wife and brother-in-law corroborating defendant's testimony that he was wearing a seatbelt while seated in the truck, the jury found defendant guilty. Defendant presents no convincing argument that additional testimony from his wife or brother-in-law regarding his habit of always wearing a seatbelt would change this result.

¶ 65 In short, despite its ruling denying defendant's third motion *in limine*, the trial court allowed habit evidence through defendant's testimony and defense counsel presented the issue during closing argument. In light of defendant's testimony, any testimony from defendant's wife or brother-in-law regarding defendant's habit of wearing a seatbelt would have been cumulative. Thus, defendant has failed to establish that any alleged error by the trial court in denying his third motion *in limine* substantially prejudiced him or affected the outcome of the case.

¶ 66 III. CONCLUSION

¶ 67 For the reasons set forth above, we affirm the judgment of the circuit court of McHenry County.

¶ 68 Affirmed.