2022 IL App (4th) 210538-U

NO. 4-21-0538

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED
November 23, 2022
Carla Bender
4th District Appellate
Court, IL

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
Plaintiff-Appellee,	)	Circuit Court of
v.	)	Macon County
TERRANCE K. THOMAS,	)	No. 19CF1746
Defendant-Appellant.	)	
	)	Honorable
	)	Jeffrey S. Geisler,
	)	Judge Presiding.

JUSTICE DeARMOND delivered the judgment of the court.
Justices Cavanagh and Harris concurred in the judgment.

ORDER

¶ 1 *Held*: The appellate court affirmed, holding the State proved defendant guilty beyond a reasonable doubt, defendant's claims of improperly admitted evidence are unfounded, defendant did not receive ineffective assistance of counsel, and defendant received a fair trial.

¶ 2 In a July 2021 trial, a jury found defendant, Terrance K. Thomas, guilty of unlawful possession of methamphetamine with intent to deliver (720 ILCS 646/55(a)(1), (a)(2)(D) (West 2018)), a Class X felony. Defendant afterwards filed a posttrial motion, arguing the trial court erred in denying his directed-verdict motion because the State's evidence was insufficient to prove him guilty. In an August 2021 hearing, the trial court denied defendant's motion and sentenced him to 12 years in the Illinois Department of Corrections (DOC), followed by 18 months' mandatory supervised release (MSR).

¶ 3 On appeal, defendant challenges his conviction on four grounds: (1) the State failed to prove him guilty beyond a reasonable doubt; (2) the trial court erred in admitting

inadmissible hearsay evidence, namely cellphone records, testimony, and text messages; (3) trial counsel's various failures to object to inadmissible hearsay evidence or call certain witnesses, his failure to file a pretrial suppression motion, and his decision to stipulate to a laboratory report amounted to ineffective assistance; and (4) the cumulative prejudicial effect from the trial court's errors in admitting evidence rendered the trial unfair. We disagree and affirm the convictions.

¶ 4 I. BACKGROUND

¶ 5 In November 2019, by way of information, the State charged defendant with one count of unlawful possession of methamphetamine with intent to deliver (720 ILCS 646/55(a)(1), (a)(2)(D) (West 2018)), alleging on June 11, 2019, "defendant knowingly and unlawfully possessed with intent to deliver 100 grams or more but less than 400 grams of a substance containing methamphetamine, other than as authorized in the Methamphetamine Control and Community Protection Act." The State charged a second count but dismissed it before trial. The matter proceeded to a jury trial on July 13, 2019.

¶ 6 The State first called Tashia Cunningham, who testified she was arrested by the Macon County Sheriff's Office on June 11, 2019. As she sat in a stationhouse interrogation room, she offered "to mak[e] a phone call" and "obtain some pills from someone" as a way of "helping" police and potentially helping herself. She called a saved contact in her phone, identified only as "Streetz," and arranged to buy "three or four jars" of "[p]ills, Ex. [*sic*] pills." She explained that a jar would contain 100 pills. Cunningham told Streetz to meet her at her house for the transaction and she did not need to give him her address. Later, the two arranged the time for the exchange via text message. Cunningham testified she recognized the voice on the phone as the person she knew as "Streetz" because she had called him before to buy pills. She

had also met Streetz in person. In court, Cunningham identified defendant as the person she knew as "Streetz."

¶ 7 Cunningham testified to her lengthy criminal history, which included multiple driving and drug offenses. Although she noted she had received no promises from the State on her pending charges, Cunningham stated she hoped to receive some consideration or even benefit from arranging the drug buy with Streetz and then testifying at the trial.

¶ 8 Through her testimony, the State introduced photographs of Cunningham's phone. She identified the phone in the pictures as her phone and the Streetz contact (phone number 217-775-****) as the number she called to set up the drug buy on June 11, 2019. Cunningham further identified two pictures of her phone displaying her text exchanges with Streetz on June 11.

¶ 9 On cross-examination, defense counsel questioned Cunningham further about her criminal history and confirmed she also had been convicted of forgery in 2019. Cunningham noted she was arrested on June 11, 2019, on heroin charges. She explained she made the offer to help police by setting up a drug buy within 10 or 15 minutes of arriving at the police station. Cunningham testified she did not know Streetz's real name on June 11 and only learned Streetz's name was Terrance Thomas when she received her subpoena to testify. Counsel inquired if police showed Cunningham any pictures on June 11 to identify Streetz. She said she was shown one photo, a picture of defendant, whom she identified as Streetz.

¶ 10 The State next called Detective Jonathan Roseman of the Macon County Sheriff's Office. He explained he worked in the street crimes unit affiliated with the Decatur Police Department. Roseman recounted arresting Cunningham on heroin charges on June 11, 2019. Roseman testified Cunningham "indicated that she wished to cooperate with law enforcement on

behalf of getting consideration on her pending charge," and she provided him the name "Streetz." Roseman noted he was familiar with that name and knew Streetz to be defendant. He testified he saw Streetz in the courtroom and pointed to defendant.

¶ 11 Roseman explained he used Cunningham to set up a drug transaction with defendant at the place she normally met defendant—her home. When the State asked Roseman if Cunningham provided him any helpful information about a vehicle defendant may drive to the transaction, defense counsel objected on hearsay grounds. The State argued it was not asking *what* information Cunningham provided but *if* she provided information. The trial court overruled the objection and allowed Roseman to answer. He stated Cunningham provided him information. Roseman testified he sent unmarked officers and detectives to "establish surveillance" at Cunningham's home. He informed law enforcement to look out for a red Chevy pick-up truck or a silver four-door sedan. He stated Detective Travis Wolfe was supposed to make initial contact with defendant when he arrived. When asked what happened when officers approached defendant, defense counsel again objected, arguing Roseman "wasn't present *** so this would be hearsay." The trial court overruled the objection. Roseman explained he did not go to Cunningham's home to intercept the drug buy or apprehend defendant, but he monitored the operation in real time via radio traffic and he later reviewed the in-car video.

¶ 12 Roseman testified he observed a silver four-door Pontiac Grand Prix. As officers approached the vehicle, it "took off and initiated a vehicle pursuit, and it ultimately was able to evade detective Wolfe and Hunt after discarding some suspected narcotics." Roseman testified the silver Grand Prix was registered to defendant. He noted a Decatur police officer later found and seized the vehicle, which had been abandoned. Roseman testified officers found four bags of pills, three that had been discarded from the silver Grand Prix and one remaining within the

vehicle, which later field tested to be methamphetamine. When presented with four exhibits, Roseman identified them as pictures of "the pills and the drug packaging that was associated with the bags that were discarded outside of the vehicle during the pursuit and there was one that was also inside of the vehicle after it was located." Roseman explained why he removed the pills from the packaging: (1) to preserve latent fingerprints on the bags, (2) to field test the substances, and (3) to "see the approximate number of pills that were present *** to make sure that the amount that we recovered was consistent with the amount that we had ordered so we didn't have any outstanding bags of narcotics."

¶ 13 The State then presented Roseman with three photographs. He identified them as photos of Cunningham's phone and the text messages between her and Streetz. He testified the photographs were fair and accurate representations of the phone. He explained he took the photos in order "to document the date and the timeline of when the transaction was set up as to when it actually occurred" and "to document the phone number that was being utilized by 'Streetz' and just to document that we had set up a narcotics transaction."

¶ 14 Roseman testified police made no arrests related to the attempted drug buy on June 11, 2019. He noted defendant called the department regarding his impounded vehicle and asked to retrieve items from the car. Roseman spoke with defendant both on the phone and in-person on June 19, 2019. Defendant said his phone number was 217-519-**** and had been for "a significant period of time." Defendant denied any involvement in a June 11 drug buy, saying he was in Chicago on that date and had his phone with him the whole time. After speaking with defendant, Roseman ran the two phone numbers associated with defendant through the jail phone system to determine if anyone in jail communicated with the numbers. Roseman testified he found one communication with 217-775-****—the same number Cunningham called to set up

the drug buy with Streetz. Roseman noted Adrian Barbee phoned the number and spoke with a male. During the conversation, the male indicated he had just had a baby. Roseman was not "100 percent certain if that was [defendant's] voice on the phone" because he had spoken with defendant only once.

¶ 15 Through Google searches, Roseman learned defendant's paramour gave birth on June 11, 2019, at Decatur Memorial Hospital (DMH). He said he then contacted hospital security to obtain the surveillance video. The parties stipulated People's Exhibit No. 7 was accurate surveillance footage from DMH on June 11, 2019, and the trial court accepted the stipulation. The State played the video and Roseman identified defendant arriving at DMH at 8:36 a.m. Roseman also identified defendant in three more frames from the DMH video—those timestamped 3:57 p.m., 3:58 p.m., and 4 p.m.

¶ 16 Roseman testified the next step in his investigation was requesting phone records from Sprint. He identified People's Exhibit No. 6 as Sprint phone records, including "a certification from Sprint stating that the records that we requested are the ones, essentially, that we got for the number that was provided to me by the defendant." Roseman testified Detective Daly analyzed the records.

¶ 17 On cross-examination, Roseman said he arrested Cunningham at approximately 4 p.m. and the buy bust occurred about two hours later. He noted Cunningham offered the name "Streetz" as a target and information on the number of pills she could buy, but he organized and executed the plan for the drug buy. Roseman testified he did not know of anyone else associated with the name "Streetz." Roseman acknowledged sometimes confidential informants like Cunningham lied to police. He further stated nobody could identify who was driving the silver

Grand Prix, nor could he discern if there was more than one person in the vehicle. Roseman testified he waited to arrest defendant until the pills were tested and the lab results came back.

¶ 18 On redirect examination, Roseman reiterated he knew of only one person who used the name "Streetz"—defendant. He recalled he showed Cunningham one photo of defendant, and she identified him as the man she called Streetz. He said Cunningham did not know Streetz's birth name.

¶ 19 Next, the State offered a stipulation, whereby the parties stipulated to the qualifications of Kristin Stiefvater, the forensic scientist with the Illinois State Police Department who tested the substances in the pills. The stipulation noted People's Exhibit Nos. 1, 2, 3, and 4 came to Stiefvater "in a sealed condition and that they are now in the same or substantially the same condition as when she began her examination and analysis." The parties stipulated Stiefvater would, with "a reasonable degree of scientific certainty," testify to the following:

> "People's Exhibit No. 1 is 3.7 grams of table fragments and powder containing methamphetamine and 5.4 grams, 10 tablets containing, methamphetamine. The remailing 37.3 grams of 84 tablets were not analyzed.
>
> People's Exhibit No. 2 is 4.8 grams of tablet fragments and powder containing methamphetamine. The remaining 36.8 of 91 tablets were not analyzed.
>
> People's Exhibit No. 3 is 0.2 grams of tablet fragments and powder and 44.9 grams of 100 tablets containing methamphetamine.

> People's Exhibit No. 4 is 1.3 grams of tablet fragments and powder and 45.5 grams of 97 tablets containing methamphetamine."

After the State and defense counsel each confirmed the stipulation, the trial court accepted it, entered it as People's Exhibit No. 10, and adjourned for the day.

¶ 20 On the second day of trial, the State called John Carnes, of the Illinois State Police Crime Laboratory, a forensic scientist specializing in latent fingerprint examination. He recognized People's Exhibit Nos. 1, 2, 3, and 4 as the plastic bags he examined for this case. Carnes testified it is standard procedure for the suspected drugs to be separated from the packaging and the packaging to be analyzed separately. He explained the process by which he receives, handles, and examines exhibits. Carnes testified he examined the packaging police recovered from the June 11, 2019, buy bust and found no latent fingerprints on any of the four packages.

¶ 21 The State next called Detective Travis Wolfe, of the Macon County Sheriff's Office. He testified he was involved in Roseman's June 11, 2019, investigation and his role was to initiate a traffic stop on a vehicle Roseman believed to be occupied by defendant. Wolfe noted he was riding in a patrol vehicle, a Chevy Tahoe, equipped with a "front facing Panasonic camera that records everything basically through the dash," along with "another camera inside that records the front passenger area of the vehicle as well." Wolfe explained how the camera system was utilized and automatically uploaded to the Panasonic system. He recognized People's Exhibit No. 5 as a disc containing the dash-cam video from the vehicle he was riding in on June 11, 2019.

¶ 22 Wolfe testified he was looking for a silver Pontiac Grand Prix. He and Detective Hunt stopped a vehicle matching that description in the 1300 block of East Whitmer Street. Detective Hunt activated the lights and positioned the patrol vehicle in front of the Grand Prix while Wolfe exited the patrol vehicle and approached on foot. Wolfe testified the silver Grand Prix then fled in reverse. The State then moved to admit People's Exhibit No. 5, the disc, and publish it to the jury. With no objection from defense counsel, the trial court admitted Exhibit No. 5 and had it played for the jury.

¶ 23 Wolfe explained that as Hunt chased the silver Grand Prix, he followed in an unmarked police vehicle. Wolfe identified People's Slide No. 13 as a still photograph of the silver Grand Prix taken from the dash-cam video. He stated it was a fair and accurate copy of the video. Wolfe said his next step in the investigation was to search the area of East Whitmer Street and South Illinois Street because "Detective Hunt advised that he saw what he believed to be narcotics being tossed out of the [silver Grand Prix]." Wolfe testified he found three bags in that area, and he identified the location on the video. He recognized People's Exhibit Nos. 1, 2, and 3 as the bags he recovered from the scene and said they appeared in substantially the same condition as when he turned them over to Roseman. Wolfe testified he used his department-issued iPhone to make a video recording of where he found the bags.

¶ 24 As Wolfe investigated in the area of the buy bust, he received information that the silver Grand Prix had been found. He testified he then went to the vehicle's location and saw the Grand Prix had been abandoned. He searched the vehicle and found the following: one bag of suspected ecstasy tablets consistent with what he previously recovered on Illinois Street, documents containing the names "Terrance Thomas" and "Adrian Barbee," and a latex glove. Wolfe explained he used his iPhone to video record the inside of the vehicle.

¶ 25 On cross-examination, Wolfe stated he also found a pill bottle with the name "Anthony Thomas" on it inside the silver Grand Prix. He acknowledged he did not see who was driving the silver Grand Prix, nor could he see how many people were in the car. Wolfe reiterated he was not in the Chevy Tahoe pursuing the Grand Prix but was following in a different vehicle a few blocks behind the chase. He noted he did not see the bags tossed from the Grand Prix and, based on where they were found, he could not say if they were tossed from the driver's or passenger side of the vehicle.

¶ 26 The State next called David Dailey, a 25-year veteran of the Decatur Police Department. He explained he received special training for extracting and analyzing data from cell phones. He was certified through Pen-Link as a certified Cellebrite physical analyzer and a logical operator, which certifies him to conduct extractions on electronic devices like cell phones and iPads. Dailey noted he was qualified to analyze "Call Detail Records" (CDR) after receiving training in excess of 200 hours from agencies like Federal Bureau of Investigation (FBI) and the National Domestic Communications Assistance Center. Dailey estimated he had "analyzed over probably 1 million cellular records during [his] career." Dailey testified that when he requests cell phone records from providers like Sprint, he gets a CDR, which includes location data for the phone, *i.e.*, what cell site (and what side of said cell site) did the phone connect to in order to complete the transaction. Dailey stated he also received customer notes from the cellular providers. When asked about the two phone numbers associated with this case (217-775-**** and 217-519-****), Dailey testified he was asked to analyze the call records for those numbers. He noted Sprint was the provider for both numbers. Dailey recognized People's Exhibit No. 6 as the disc containing phone records from Sprint for the relevant numbers, which also included "a

certification from Sprint certifying the records." The State moved to admit Exhibit No. 6, which the trial court admitted without objection.

¶ 27 The State then showed Dailey Exhibit No. 6a, which he identified as a printout of the CDR from Sprint for 217-775-****—the number Cunningham had saved in her phone as "Streetz." The State showed Dailey Slide No. 16, which contained data associated with an incoming phone call occurring at 3:48 p.m. on June 11, 2019. Based on the "Network Element ID" and the cell site information, Dailey determined the phone was using the cell site on "Walnut Grove here in Decatur just south of Harrison Street by Newell's Autobody." Slide No. 16 showed the proximity between the cell site and Decatur Memorial Hospital. The State then showed Dailey Slide No. 17, which showed data associated with incoming calls to 217-775-**** from Cunningham's phone. One call occurred at 4:55 p.m. on June 11 and the second occurred at 5:40 p.m. on June 11. Dailey identified Slide No. 18 as a map showing the cell site used for the 4:55 p.m. phone call, "which [was] off of Hulett Drive down south off of Route 48" in Decatur. The map showed the proximity between the cell site and Cunningham's residence at 1338 East Whitmer Street. The State showed Dailey Slide No. 19, which he identified as a map showing the cell site utilized for the 5:40 p.m. phone call, which was "located at the Barnes Building at 250 North Water" in Decatur. This map also showed the distance between Cunningham's home and the cell site.

¶ 28 The State presented Dailey with People's exhibit No. 6(b), which he recognized as "a printout of the customer notes that Sprint provided us in reference to No. 217-775-****." Dailey explained customer "notes can show you any activity on the phone," like bill payment, putting cash on the phone, or changing phone numbers. Dailey noted that at 8:41 p.m. on June 11, 2019, there was a customer request to change the phone number for the account from 217-

775-**** to 217-519-****. Dailey identified People's Exhibit No. 6(c) as "a document printed out from the records I received from Sprint that basically is a subscriber information and account information sheet." He testified Exhibit No. 6(c) pertains to phone number 217-519-****. He explained the name associated with the account was "Boost Boost, which is common with prepaid phones." Dailey noted prepaid phones do not require a person to provide a legal name or address. The account for phone number 217-519-**** "was activated on June 11, 2019 at 8:41 pm." The State then asked if exhibit Nos. 6(c) and 6(b) showed "that the number was changed from the 775-**** to 519-****" and Dailey answered, "Correct." Dailey testified that his analysis confirmed neither phone number 217-775-**** nor 217-519-**** "utilized any cell site in close proximity to Chicago" on June 11, 2019.

¶ 29 On cross-examination, Dailey testified that a cell phone could be a mile away from the cell site it utilizes. He explained that CDRs did not provide global positioning system coordinates or pinpoint a phone's exact location. Dailey confirmed that the two phone calls he analyzed were outgoing calls from Cunningham's phone to 217-775-****, and he could not say definitively if the call was answered, if a conversation occurred, or if there was a voicemail.

¶ 30 Before resting its case, the State moved to admit several exhibits, including People's Exhibit No. 9, "a certified copy of registration for the 2002 Pontiac sedan," which listed defendant as the vehicle's single owner. The trial court admitted Exhibit No. 9 without objection from the defense. The trial court also admitted all of the State's exhibits without objection from the defense. The State withdrew People's Exhibit Nos. 12 and 15, police reports from Detective Roseman and Detective Wolfe. With that, the State rested.

¶ 31 Defense counsel then moved for a directed verdict, arguing the State's case was "entirely circumstantial" since it presented "no objective evidence whatsoever of possession or

intent to deliver [a] controlled substance" by defendant. Counsel labeled Cunningham's testimony as "highly suspect" and argued, "the State has failed to meet that burden." The trial court denied the motion, noting that a reasonable fact finder could find the elements of the crime present, even based on circumstantial evidence.

¶ 32 The trial court then inquired into defendant's decision not to testify, confirming defendant made that decision on his own. The defense then called one witness, Shannon Cofield, who testified she was defendant's mother. She said that in June 2019, defendant split his time between residing with her in Decatur or residing with his paramour. Cofield testified defendant was employed at Tate & Lyle PLC. She recalled defendant owned three vehicles in June 2019, a gray Grand Prix, a Cadillac sport utility vehicle, and a red Avalanche truck defendant drove as his primary vehicle. Cofield testified defendant allowed other people to drive his cars during June 2019. During that time, defendant left his vehicles' keys under the vehicles' floor mats. Cofield testified she was familiar with a man named Adrian Barbee, noting he was defendant's friend. She likewise stated she knew Anthony Thomas, who was her "younger son" and defendant's brother. Cofield testified both Barbee and Thomas had access to defendant's vehicles on June 11, 2019.

¶ 33 On cross-examination, Cofield testified she could not say definitively if either Barbee or Thomas drove defendant's silver Grand Prix on June 11, 2019. She said defendant drove several different vehicles in June 2019, including hers. Cofield acknowledged defendant had access to his silver Grand Prix in June 2019. After Cofield's testimony, the defense rested, and the parties presented closing arguments to the jury.

¶ 34 Following a brief deliberation, the jury found defendant guilty of possession of methamphetamine with intent to deliver. The trial court entered a judgment of guilty, ordered a

presentence investigation report, and set the matter for sentencing. In August 2021, defendant filed a posttrial motion, arguing the trial court erred in denying his motion for a directed verdict because there was insufficient evidence to prove him guilty beyond a reasonable doubt. The trial court denied the motion and sentenced defendant to 12 years in DOC followed by 18 months' MSR.

¶ 35 This appeal followed.

¶ 36 II. ANALYSIS

¶ 37 Defendant challenges his conviction on four grounds: (1) the State failed to prove him guilty beyond a reasonable doubt; (2) the trial court erred in admitting inadmissible evidence; (3) defense counsel rendered ineffective assistance; and (4) the errors by the trial court and defense counsel created a cumulative prejudicial effect that rendered the trial unfair.

¶ 38 A. Sufficiency of the Evidence

¶ 39 "The due process clause of the fourteenth amendment to the United States Constitution requires that a person may not be convicted in state court 'except upon proof beyond a reasonable doubt of every fact necessary to constitute the crime with which he is charged.' " *People v. Cunningham*, 212 Ill. 2d 274, 278, 818 N.E.2d 304, 307 (2004) (quoting *In re Winship*, 397 U.S. 358, 364 (1970)). When a defendant appeals his conviction, arguing the State failed to satisfy this burden of proof, a reviewing court will not retry the defendant but asks " 'whether, after 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.' " (Emphasis in original.) *Cunningham*, 212 Ill. 2d at 278 (quoting *Jackson v. Virginia*, 443 U.S. 307, 319 (1979)). But in applying this standard, we will neither reweigh evidence nor judge witness credibility; rather, we defer to the fact finder's credibility determinations. See *People v.*

Smith, 185 Ill. 2d 532, 542, 708 N.E.2d 365, 370 (1999). We will not set aside a criminal conviction based on insufficient proof "unless the evidence is so improbable or unsatisfactory that it creates a reasonable doubt of the defendant's guilt." *People v. Beverly*, 278 Ill. App. 3d 794, 798, 663 N.E.2d 1061, 1064 (1996).

¶ 40 In order to prove defendant guilty beyond a reasonable doubt of unlawful possession of methamphetamine with intent to deliver, the State had to establish three elements: (1) the defendant had knowledge of the presence of methamphetamine, (2) the methamphetamine was in defendant's immediate control and possession, and (3) defendant intended to deliver the methamphetamine. *People v. Minnieweather*, 301 Ill. App. 3d 574, 578, 703 N.E.2d 912, 914 (1998); 720 ILCS 646/55(a)(1), (a)(2)(D) (West 2018). Defendant does not identify a specific element the State failed to prove; instead, he contends the State's evidence on the whole was insufficient to prove him guilty beyond a reasonable doubt—attacking witness credibility, questioning the reliability of other evidence, and challenging the circumstantial evidence. Rather than allowing defendant's cursory attacks on individual pieces of evidence to guide the analysis, we will address each element and the attendant evidence.

¶ 41 Knowledge can be difficult to prove and is "rarely proved directly." *People v. Roberts*, 263 Ill. App. 3d 348, 352, 636 N.E.2d 86, 90 (1994). Indeed, the knowledge and possession elements are often linked in unlawful-possession cases, meaning "when actual or constructive possession is established, generally the element of knowledge can be inferred from the surrounding circumstances", *à la* circumstantial evidence. *Roberts*, 263 Ill. App. 3d at 352; see also *Beverly*, 278 Ill. App. 3d at 798 (linking the knowledge and possession elements for possession of a controlled substance with intent to deliver); *People v. Wells*, 241 Ill. App. 3d 141, 146, 608 N.E.2d 578, 583 (1993) (coupling the knowledge and possession elements for

unlawful possessions of cannabis); *People v. Nettles*, 23 Ill. 2d 306, 308, 178 N.E.2d 361, 363 (1961) (same). "Possession may be either actual, requiring actual physical dominion, or constructive, from which possession may be inferred if the defendant had exclusive control over the premises where the controlled substance was found." *Roberts*, 263 Ill. App. 3d at 352-53. Constructive possession of a controlled substance may exist when a defendant had "intent and capability to maintain control and dominion" over it. (Internal quotation marks and citations omitted.) *People v. Pittman*, 216 Ill. App. 3d 598, 603, 575 N.E.2d 967, 970 (1991). All told, the knowledge and possession elements are fact-sensitive questions typically proved with circumstantial evidence and best left to fact finders, not reviewing courts. *Beverly*, 278 Ill. App. 3d at 798; see also *People v. Canizalez-Cardena*, 2012 IL App (4th) 110720, ¶ 14-15, 979 N.E.2d 1014.

¶ 42 Here, the State presented sufficient evidence to prove defendant had knowledge of the presence of methamphetamine and he constructively possessed it. Cunningham testified she phoned Streetz to buy three or four jars of drugs from him on June 11, 2019. Cunningham later identified defendant as Streetz and Roseman also testified he knew defendant to be Streetz. Cunningham said she recognized the voice on the phone as Streetz because she had dealt with him over the phone before. Further, she did not have to give him her address since he had delivered drugs to her residence before. Roseman and Wolfe testified the drug buy Cunningham and Roseman set up at Cunningham's residence had police approaching and encountering a silver Pontiac Grand Prix as it approached her residence. The vehicle fled and was later found abandoned. By way of the vehicle registration, the State proved defendant owned the gray 2002 Pontiac Grand Prix the police later impounded on June 11, 2019. Roseman testified defendant

called the department to inquire about his impounded vehicle, the 2002 Pontiac Grand Prix, in order to retrieve personal belongings from it.

¶ 43 Through testimony from Roseman and Wolfe, the State established three bags of methamphetamine pills were thrown from the car and one bag was found inside the car, in the console. By way of a stipulation regarding the forensic scientist, the testing, and her proposed testimony, the State showed the pills taken from the scene and the Grand Prix contained methamphetamine and amounted to more than 100 grams and less than 400 grams. Using cell phone records along with video surveillance footage from DMH, the State established defendant was in Decatur on June 11, 2019, contrary to his claim he was in Chicago that day. Together, this evidence allows for a rational fact finder to conclude beyond a reasonable doubt that defendant was Streetz, who knew and had dealt with Cunningham before. A rational fact finder could likewise conclude defendant was the person delivering the pills to Cunningham's residence and therefore knew about and possessed the methamphetamine thrown from or found within his vehicle. See *Cunningham*, 212 Ill. 2d at 278. Indeed, we have previously held, "[t]he discovery of drugs in a vehicle under defendant's control and in a place where he could have been, or should have been, aware of them gives rise to an inference of knowledge and possession which may be sufficient to sustain a conviction for unlawful possession." *Wells*, 241 Ill. App. 3d at 146; see also *Nettles*, 23 Ill. 2d at 308-09 (holding when narcotics are found on premises under a defendant's control, the fact finder may infer the defendant had the requisite knowledge and possession sufficient to sustain a conviction for unlawful possession of narcotics).

¶ 44 Like the knowledge and possession elements, the intent-to-deliver element is fact-sensitive and usually established with circumstantial evidence. *People v. Robinson*, 167 Ill. 2d 397, 407-08, 657 N.E.2d 1020, 1026 (1995); see also *Beverly*, 278 Ill. App. 3d at 799. "The

question of whether the evidence is sufficient to prove intent to deliver must be determined on a case-by-case basis. " *Robinson*, 167 Ill. 2d at 412-13. Nevertheless, we have found that in these cases there are "factors probative to an intent to deliver[,] includ[ing] (1) 'whether the quantity of controlled substance in defendant's possession is too large to be viewed as being for personal consumption'; (2) the purity of the drug; (3) possession of weapons, large amounts of cash, and cellular telephones; (4) presence of drug paraphernalia; and (5) 'the manner in which the substance is packaged.' " *People v. Anderson*, 2018 IL App (4th) 160037, ¶ 71, 102 N.E.3d 260 (quoting *Robinson*, 167 Ill. 2d at 408).

¶ 45 The State presented sufficient evidence for a rational fact finder to find defendant intended to deliver the methamphetamine in his vehicle. Besides the evidence showing Cunningham arranged a drug buy with defendant, she told defendant to meet her at her house, and defendant's vehicle arrived at her house on the agreed-upon time, there are other factors suggesting defendant intended to deliver the methamphetamine. Cunningham testified she requested a large quantity of drugs from defendant—three or four jars, 100 pills per jar, totaling 300 to 400 pills. Roseman likewise testified to the amount of drugs requested. Wolfe testified he found four bags of drugs after the silver Grand Prix fled police—three thrown from the car and one inside the car. It is also notable that the drugs were packaged in four separate bags of 100 pills in each bag. The quantity of drugs and their packaging indicate defendant's intent to deliver methamphetamine. See *Anderson*, 2018 IL App (4th) 160037, ¶ 71. All told, a rational fact finder could determine this evidence proved beyond a reasonable doubt that defendant intended to deliver the methamphetamine he possessed on June 11, 2019. See *Cunningham*, 212 Ill. 2d at 278.

¶ 46 To be sure, a rational fact finder could have found the State proved beyond a reasonable doubt all the essential elements of possession of between 100 and 400 grams of methamphetamine with intent to deliver. See *Cunningham*, 212 Ill. 2d at 278. Since the State's evidence was neither improbable nor unsatisfactory, it brooked no reasonable doubt as to defendant's guilt. *Beverly*, 278 Ill. App. 3d at 798. The State sufficiently proved defendant's guilt.

¶ 47 In urging for a reversal of his conviction based on sufficiency of the evidence, defendant directs our attention to *People v. Crane*, 2020 IL App (3d) 170386, 178 N.E.3d 1164, and *People v. Ortiz*, 196 Ill. 2d 236, 752 N.E.2d 410 (2001). But aside from asking for a similar result, defendant does not identify similarities between these cases and his that would warrant reversal here. There are two differences between those cases and the one before us. In *Ortiz*, the supreme court focused on the knowledge element and determined the State failed to prove the defendant knew the drugs were in the trailer he was driving, noting the drugs were found in a secret compartment of a trailer the defendant did not own but had been hired to drive across the country. *Ortiz*, 196 Ill. 2d at 260-67. Here, drugs were thrown from and found within a vehicle defendant owned. The evidence showed defendant had access to his vehicles on June 11, 2019. In *Crane*, the State sought a conviction for unlawful possession of cannabis with intent to deliver based on the common-design theory of accountability. *Crane*, 2020 IL App (3d) 170386, ¶¶ 28, 31. The court reversed defendant's conviction based on the State's failure to "prove there was evidence of a criminal plan or even that Crane was aware Weston had the cannabis in his trunk." *Crane*, 2020 IL App (3d) 170386, ¶ 37. Since the State did not allege an accountability theory here, we find *Crane* totally inapt and unpersuasive.

¶ 48 B. Admission of Cell Phone Evidence

¶ 49 Defendant next argues the trial court erred in admitting inadmissible hearsay evidence relating to his cell phone, namely cell phone records, testimony about the records, and text messages. We disagree.

¶ 50 The Illinois Rules of Evidence govern the admissibility of evidence in this matter. *People v. Brand*, 2021 IL 125945, ¶ 36, 190 N.E.3d 149. Those rules define "hearsay" as an out-of-court statement offered in court to prove the truth of the matter asserted. Ill. R. Evid. 801(c) (eff. Oct. 15, 2015). Hearsay evidence is inadmissible unless the rules provide an exception. Ill. R. Evid. 802 (eff. Jan. 1, 2011). One such exception pertains to business records kept in the regular course of business activity. Illinois Rule of Evidence 803(6) (eff. Sept. 28, 2018) provides:

> "A memorandum, report, record, or data compilation, in any form, of acts, events, conditions, opinions, or diagnoses, made at or near the time by, or from information transmitted by, a person with knowledge, if kept in the course of a regularly conducted business activity, and if it was the regular practice of that business activity to make the memorandum, report, record or data compilation, all as shown by the testimony of the custodian or other qualified witness, or by certification that complies with Rule 902(11), unless the opposing party shows that the source of the information or the method or circumstances of preparation indicate lack of trustworthiness."

Business records, however, still must be authenticated, requiring the proponent to present some evidence that the business record is what it purports to be. Ill. R. Evid. 901(a) (eff. Jan. 1, 2011);

see also *Brand*, 2021 IL 125945, ¶ 36. Some business records, however, are self-authenticating, meaning extrinsic evidence is not necessary to authenticate the record. For those records, Illinois Rule of Evidence 902(11) (eff. Sept. 28, 2018) provides the proponent may produce along with the records "a written certification of its custodian or other qualified person that the record (A) was made at or near the time of the occurrence of the matters set forth by, or from information transmitted by, a person with knowledge of these matters; (B) was kept in the course of the regularly conducted activity; and (C) was made by the regularly conducted activity as a regular practice." Cell phone records containing historical cell site analysis are business records and can be admissible hearsay evidence so long as the proponent satisfies the requirements in Rules 803(6) and 902(11). See *People v. Ramos*, 2018 IL App (1st) 151888, ¶ 22, 103 N.E.3d 427.

¶ 51 "The admissibility of evidence is within the sound discretion of the trial court and will not be disturbed absent an abuse of discretion." *Brand*, 2021 IL 125945, ¶ 36. A trial court abuses its discretion when its "decision is arbitrary, fanciful, or unreasonable or when no reasonable person would agree with the trial court's position." *Brand*, 2021 IL 125945, ¶ 36. Because defendant neither objected to admitting this cell phone evidence during trial nor did he raise this argument in his posttrial motion, he forfeited the issue. *Brand*, 2021 IL 125945, ¶ 32. "The plain-error rule bypasses normal forfeiture principles and allows a reviewing court to consider unpreserved claims of error ***." *People v. Thompson*, 238 Ill. 2d 598, 613, 939 N.E.2d 403, 413 (2010). Under the plain-error doctrine, a reviewing court may consider an unpreserved error if the error is clear or obvious and either (1) the evidence is so closely balanced that the jury's verdict may have resulted from the error rather than the evidence or (2) the error was so fundamental and of such a magnitude that it affected the fairness of the trial and challenged the

integrity of the judicial process, regardless of the closeness of the evidence. *People v. Herron*, 215 Ill. 2d 167, 178-79, 830 N.E.2d 467, 475 (2005).

¶ 52 Defendant specifically contends, "the court erroneously admitted the Sprint cellphone records and Dailey's hearsay opinion interpretation without the proper foundation or authentication." The record belies defendant's argument, however. People's Exhibit No. 6 contained the Sprint cell phone records for the two numbers associated with defendant (217-775-**** and 217-519-****) and included two certifications compliant with Rule 902(11)'s requirements. Furthermore, both Detectives Roseman and Dailey testified the Sprint records came with certifications. Defendant believes the jury needed to see the certifications in order for the cell phone records and attendant testimony to be admissible, but he is mistaken. The trial court is the gatekeeper of the evidence, not the jury. See *People v. Feldmann*, 314 Ill. App. 3d 787, 798, 732 N.E.2d 685, 695 (2000). As for proper foundation, Cunningham and Detective Roseman's testimony linked defendant to the two phone numbers requested from Sprint, and Roseman's and Dailey's testimony identified the cell phone records admitted into evidence as those they requested from Sprint. This testimony, coupled with the certifications that authenticated the records, provided a proper foundation for the evidence. See *People v. Price*, 2021 IL App (4th) 190043, ¶ 115, 193 N.E.3d 320 (quoting *People v. Ziemba*, 2018 IL App (2d) 170048, ¶ 51, 100 N.E.3d 635).

¶ 53 Defendant cites *Ramos* as an example where this court found cell phone records and concomitant testimony inadmissible hearsay. In *Ramos*, the court based its opinion on the State's failure to "put on any witnesses to fulfill [the] foundational requirement" for the business records exception in Rule 803(6). *Ramos*, 2018 IL App (1st) 151888, ¶ 22. It further noted the cell phone records were not self-authenticating under Rule 902(11) because they were not

certified. *Ramos*, 2018 IL App (1st) 151888, ¶ 23. But unlike *Ramos*, here the Sprint cell phone records were certified pursuant to Rule 902(11). Accordingly, we find *Ramos* unpersuasive. Defendant next cites *People v. Brown*, 2021 IL App (3d) 170621, 175 N.E.3d 789, as another example where this court found cell phone records were improperly admitted. The *Brown* court found "that the State failed to satisfy the second set of foundational elements that are required for the admission of a computer-generated record into evidence under the business-records exception to the hearsay rule." *Brown*, 2021 IL App (3d) 170621, ¶ 35. But the *Brown* decision addressed a July 2015 murder and subsequent July 2017 trial and involved an old version of Rule 902(12) that included additional foundational requirements for computer-generated records. Illinois Rule of Evidence 902(12) (eff. Sept. 28, 2018) was amended in 2018, and those additional requirements were removed. Now records generated by an electronic process or system can be self-authenticated under Rule 902(11)'s requirements. Consequently, *Brown* is inapplicable here.

¶ 54 Since the trial court's decision to admit the cell phone records comported with the rules of evidence, we cannot say the decision was arbitrary, fanciful, or unreasonable or that no reasonable person would agree with it. *Brand*, 2021 IL 125945, ¶ 36. Alternatively, even if the Sprint records were properly admitted, defendant maintains, "Detective Dailey should not have been allowed to testify and interpret the contents of the cellphone records." But police officers are allowed to "testify as to the steps taken in an investigation of a crime 'where such testimony is necessary and important to fully explain the State's case to the trier of fact.' " *People v. Boling*, 2014 IL App (4th) 120634, ¶ 107, 8 N.E.3d 65 (quoting *People v. Simms*, 143 Ill. 2d 154, 174, 572 N.E.2d 947, 954-55 (1991)). Dailey was never tendered as an expert witness, nor did counsel object, ostensibly because Detective Dailey was not testifying about how the cell phone

records were obtained or how cell site location information is acquired, but merely testifying about how he used the cell phone information to map out defendant's location at various relevant times. His experience with cell phone records and their analysis allowed him to describe the information gleaned from defendant's records as "course of conduct" testimony relevant to explain how investigators were able to narrow down defendant's location.

¶ 55 Although defendant now objects to Dailey's testimony and claims it was part of the cumulative errors at trial to which counsel failed to object, we need to look at the effects of such an objection had it occurred. Trial counsel's decision to object to testimony is generally a matter of trial strategy that is entitled to great deference and does not necessarily establish deficient performance. *People v. Perry*, 224 Ill. 2d 312, 345, 864 N.E.2d 196, 216 (2007). Further, if the objection proves to be meaningless, or the evidence otherwise admissible, then no error occurred, plain or otherwise. See *People v. Mister*, 2016 IL App (4th) 130180-B, ¶ 95, 58 N.E.3d 1242 (Defense counsel is not required to make futile motions or objections in order to provide effective assistance.). Although never formally tendered as an expert, Dailey testified he spent 21 of his 25½ years with the Decatur Police Department as a detective with the street crimes unit. He was "certified through Pen-Link as a certified Cellebrite physical analyzer and logical operator through Pen-Link which certifies [him] to conduct extractions on electronic devices such as cell phones and iPads and such." In addition, he had been qualified in analyzing CDRs, which are different than cell phone or electronic devices in that a CDR is the information or data that is obtained from a cellular provider such as Verizon, Sprint, AT&T, or T-Mobile. He testified to having over 200 hours of training from the FBI, and 48 hours from the National Domestic Communications Assistance Center in Fredericksburg, Virginia. Dailey testified he'd analyzed "over probably 1 million cellular records" during his career and testified numerous

times in reference to CDR analysis. He then explained how CDRs are generated, what information they contain, and how cell site location information can be obtained from them. He also explained how, through his frequent work with cell phone records, he has "access to a Sprint law enforcement portal" where he can connect to a private account with Sprint to serve search warrants to access information directly. He then testified to the certified CDR composing People's Exhibit No. 6, which was properly admitted under the self-authenticating requirements of Rule 902(11). Based on this record, any objection to lack of foundation as an expert or lack of foundation for the admissibility of properly certified records would have been fruitless and would have done nothing more than highlight the expertise of the witness and the importance of the information to the jury. To find it was error to admit Dailey's explanations of the CDRs without formally tendering him as an expert witness, we would have to conclude it was not part of defense counsel's trial strategy. It is clear from the record this was never an issue for defendant at trial—and for good reason. Dailey's qualifications were impressive and unquestionable, and the records themselves were certified and self-authenticating. Defense counsel appears to have accepted this and elected not to focus the jury's attention on either. It was not an unreasonable trial strategy to avoid highlighting Dailey's expertise or the significance of his opinions to the jury. Instead, counsel left the jurors with somewhat confusing maps that were not particularly easy to understand and did not pinpoint the location of defendant's phone, let alone identify who might have possessed his phone at that time. In fact, in closing argument, defense counsel barely mentioned the substance of Dailey's testimony at all, choosing instead to leave the evidence regarding the location of the phone and who might have possessed it purposely obscure:

> "No matter how many people that come in and say we think this, and we think that, and there's a cell phone tower, and this phone was in that area along with—by Dr.—I'm sorry, Dr.—detective Dailey's own testimony this morning, hundreds of phones within that same range. He said he would expect maybe that covered a mile. Well, he had his azimuth or whatever he described it as. So it's entirely possible that this phone was in there somewhere.
>
> Finally, we don't know who had that phone. It's one thing to say, well, that's—that's a number that's attributable to [defendant]. It's connected to [defendant]. We don't know who had his phone. Maybe he did or maybe he didn't, but that's not good enough for reasonable doubt."

We do not find trial counsel's approach to be unreasonable, and we do not find the evidence to have been admitted in error.

¶ 56 Finally, building off his argument that the cell phone records were not properly authenticated business records, defendant argues the trial court erred in admitting text messages that were inadmissible hearsay. But defendant's argument fundamentally misunderstands how the text messages were admitted. The State did not admit the text messages through the Sprint records, but through pictures of Cunningham's phone and her testimony. In other words, the text messages were not business records and did not need to be authenticated in the same way.

¶ 57 For purposes of laying a proper foundation for admission into evidence, " 'text messages are treated like any other form of documentary evidence.' " *Price*, 2021 IL App (4th) 190043, ¶ 115 (quoting *Ziemba*, 2018 IL App (2d) 170048, ¶ 51). A proponent lays a proper

foundation for a text message when he or she presents evidence identifying and authenticating the message. *Price*, 2021 IL App (4th) 190043, ¶ 115 (quoting *Ziemba*, 2018 IL App (2d) 170048, ¶ 51). Like other documentary evidence, a text message is authenticated when the proponent provides evidence, typically testimony from the message's author or recipient, showing the text message is what the proponent claims it to be. *Price*, 2021 IL App (4th) 190043, ¶ 115 (quoting *Ziemba*, 2018 IL App (2d) 170048, ¶ 51). " 'The proponent need only prove a rational basis upon which the fact finder may conclude that the [text message] did in fact belong to or was authored by the party alleged.' " *Price*, 2021 IL App (4th) 190043, ¶ 116 (quoting *People v. Watkins*, 2015 IL App (3d) 120882, ¶ 36, 25 N.E.3d 1189).

¶ 58 The State laid a proper foundation for the text messages. Cunningham testified she used her phone to call and text Streetz, whom she recognized as defendant. She identified her phone, the saved contact "Streetz," and the text exchanges between her and Streetz through photographs the State showed her and admitted into evidence. She identified which messages were incoming or outgoing. Detective Roseman testified he took the photographs of Cunningham's phone on June 11, 2019, and stated the photographs were a fair and accurate representation of the phone. The evidence showed the text messages were what the State claimed them to be—communication between Cunningham and defendant. Moreover, Cunningham's and Roseman's testimony provided a rational basis for jury to conclude the text messages were authored by Cunningham and defendant. Consequently, we find the State laid a proper foundation for the text messages. See *Price*, 2021 IL App (4th) 190043, ¶¶ 115-116.

¶ 59 We further find the text messages were not inadmissible hearsay because they were not offered to prove the truth of the matter asserted. See Ill. R. Evid. 801(c) (eff. Oct. 15,

2015). Through the pictures of Cunningham's phone and her testimony, the State introduced the following text exchange:

"Streetz: U ready

Cunningham: At atm on my way home

Streetz: Bet I'll meet u there

Cunningham: I'm here.

Cunningham: What's up I'm here.

Streetz: Set up u nuts.

Cunningham: Wtf u talking about

Streetz: Yeah ok"

The State did not offer these text messages to prove each assertion as true. For example, the State was not trying to prove Cunningham was at the automatic teller machine or at her home. She testified she was in the interrogation room at the South Shores police station when she sent those texts. Her testimony about these texts explained how she set up the drug buy with defendant on June 11, 2019. Detective Roseman testified the purpose in taking pictures of the text messages between Cunningham and defendant "[w]as to document the date and the timeline of when the transaction was set up as to when it actually occurred. It was to document the phone number that was being utilized by Streetz and just to document that we had set up a narcotics transaction." (Emphasis omitted.) The text message exchange was not offered for the truth of the substance of the conversation but to prove Cunningham set up a drug buy with defendant. As such, the text messages were not hearsay, and the trial court properly admitted them into evidence.

¶ 60 C. Ineffective Assistance of Counsel

¶ 61 The Illinois and United States Constitutions guarantee criminal defendants the right to counsel, and the latter mandates, " ' the right to counsel is the right to the effective assistance of counsel.' " *Strickland v. Washington*, 466 U.S. 668, 686 (1984) (quoting *McMann v. Richardson*, 397 U.S. 759, 771 n.14 (1970)); U.S. Const., amends. VI, XIV; Ill. Const. 1970, art. I, § 8. When presented with a defendant's ineffective-assistance-of-counsel claim, we apply the well-established, two-part *Strickland* test. The defendant must prove: (1) counsel rendered deficient performance, meaning counsel's representation fell below an objective standard of reasonableness as gauged by prevailing professional norms and (2) counsel's deficient performance prejudiced the defendant, *i.e.*, but for counsel's errors the result of the proceeding would have been different. See *People v. Young*, 341 Ill. App. 3d 379, 383, 792 N.E.2d 468, 472 (2003) (citing *Strickland*, 466 U.S. at 687, 694); *People v. Peck*, 2017 IL App (4th) 160410, ¶ 26, 79 N.E.3d 232.

¶ 62 When assessing the deficient-performance prong, "a court must indulge a strong presumption that the challenged action, or inaction, was the result of sound trial strategy." *People v. Poole*, 2012 IL App (4th) 101017, ¶ 10, 972 N.E.2d 340. Similarly, "a reviewing court will be highly deferential to trial counsel on matters of trial strategy, making every effort to evaluate counsel's performance from his perspective at the time, rather than through the lens of hindsight." *Perry*, 224 Ill. 2d at 344. If a defendant fails to prove deficient performance, the court need not consider the prejudice prong, and vice versa. *People v. Torres*, 228 Ill. 2d 382, 395, 888 N.E.2d 91, 100 (2008);see also *People v. Graham*, 206 Ill. 2d 465, 476, 795 N.E.2d 231, 238 (2003).

¶ 63 Defendant argues defense counsel committed several prejudicial errors which amounted to ineffective assistance of counsel. First, he contends counsel should have objected to

hearsay statements from Detective Roseman and Detective Wolfe about what happened during the attempted drug buy and subsequent chase when they were not present at the scene or did not see something. Roseman testified about what happened during the drug buy, *i.e.*, Detective Wolfe approaching defendant's vehicle and the vehicle fleeing in reverse and tossing bags out the window, based on him monitoring radio traffic and viewing the dash-cam video from Hunt's patrol vehicle. Contrary to defendant's argument now, trial counsel did object to this testimony, arguing "[Roseman] wasn't present he's already testified so this would be hearsay." The State countered the objection by maintaining, "If he knows, he can testify to it. He was monitoring it." The trial court overruled defense counsel's objection and allowed the testimony. Defendant's argument that trial counsel should have objected to Roseman's testimony about what happened during the drug buy is unfounded. Even so, "Illinois has long allowed identification testimony by witnesses who did not personally observe events depicted in a video recording." *Mister*, 2016 IL App (4th) 130180-B, ¶ 52.

¶ 64 As for Detective Wolfe's testimony about finding the bags of methamphetamine tossed from defendant's silver Pontiac Grand Prix based on Detective Hunt's communication and then videoing the bags with his iPhone, we find this was admissible testimony and unobjectionable. Wolfe was explaining consequential steps in his investigation, namely how police obtained the four bags of methamphetamine pills, which is permissible. "A police officer may testify as to the steps taken in an investigation of a crime 'where such testimony is necessary and important to fully explain the State's case to the trier of fact.' " *Boling*, 2014 IL App (4th) 120634, ¶ 107, (quoting *Simms*, 143 Ill. 2d at 174); see also *People v. Bell*, 2021 IL App (1st) 190366, ¶ 54, 189 N.E.3d 531 (quoting *People v. Thompson*, 2014 IL App (5th)

120079, ¶ 46, 21 N.E.3d 1) (" 'In general, the consequential steps of an investigation are relevant to explaining the State's case to a jury.' ").

¶ 65 Through Wolfe's testimony, the State laid a proper foundation for various videos (dash-cam video and Wolfe's iPhone videos), admitted them into evidence as People's Exhibit No. 5, and played or showed still pictures from them for the jury.

¶ 66 Nevertheless, based on our review of the report of proceedings, we do not find Wolfe's testimony objectionable since he was describing the steps in his investigation and documenting what he found—both necessary to explain the State's case to the jury. *Boling*, 2014 IL App (4th) 120634, ¶ 107. Trial counsel's decision not to object during Wolfe's testimony was objectively reasonable and not deficient performance. As we have already noted, "[c]ounsel cannot be considered ineffective for failing to make or pursue what would have been a meritless objection." *People v. Edwards*, 195 Ill. 2d 142, 165, 745 N.E.2d 1212, 1225 (2001).

¶ 67 Defendant next argues trial counsel rendered ineffective assistance when he stipulated to the laboratory report (People's Exhibit No. 10) that confirmed the pills recovered from the scene contained methamphetamine. He directs our attention to *People v. Miramontes*, 2018 IL App (1st) 160410, 116 N.E.3d 199, and *People v. Coleman*, 2015 IL App (4th) 131045, 25 N.E.3d 82, where we found defense counsel provided ineffective assistance by stipulating to laboratory reports. Those cases, however, are distinguishable from the facts before us now.

¶ 68 In *Miramontes*, police found three bags of " 'clear with a tint of whitish' crystalized rocks" they believed to be methamphetamine. *Miramontes*, 2018 IL App (1st) 160410, ¶ 4. Police combined the substances in each bag into one bag and sent it to the crime laboratory for testing. At trial, the parties stipulated, "a forensic chemist at the Illinois State Police crime laboratory received the sealed item, weighed and tested the crystalline substance,

and found it to be 415 grams of a substance containing methamphetamine." *Miramontes*, 2018 IL App (1st) 160410, ¶ 6. On appeal, the defendant argued "his trial counsel rendered ineffective assistance by stipulating to the weight of the substance despite knowing that the substance had been commingled before testing." *Miramontes*, 2018 IL App (1st) 160410, ¶ 12. The appellate court agreed, noting that since the State seized three different bags containing drugs and had to prove defendant possessed between 400 and 900 grams of methamphetamine, "defense counsel had a duty to at least raise the defense that the State had failed to test each bag individually." *Miramontes*, 2018 IL App (1st) 160410, ¶ 16.

¶ 69 *Coleman* also involved commingling of drugs. There, police seized 15 bags containing a white, powdery substance. *Coleman*, 2015 IL App (4th) 131045, ¶¶ 29, 31. The officer on the scene field tested the substance in one bag, which tested positive for cocaine. *Coleman*, 2015 IL App (4th) 131045, ¶ 29. The officer then combined all 15 bags into one bag and sent it to be tested by the Illinois State Police crime laboratory. *Coleman*, 2015 IL App (4th) 131045, ¶¶ 30-31. At trial, "[t]he parties stipulated that a forensic scientist with the Illinois State Police *** had 'determine[d,] to a reasonable degree of scientific certainty[,] that the white powder in People's [e]xhibit N[o.] 2 was 926.0 grams of cocaine.' " *Coleman*, 2015 IL App (4th) 131045, ¶ 26. This court determined defense counsel provided ineffective assistance by entering into the stipulation. Specifically, we found the stipulation freed the State from the requirement of chemically testing the contents of each bag seized. *Coleman*, 2015 IL App (4th) 131045, ¶ 83.

¶ 70 Both *Miramontes* and *Coleman* involved the police seizing multiple bags of drugs and commingling them into one bag before sending that one bag to the laboratory. There was no commingling here. While Roseman testified he removed the drugs from their original packages in order to preserve latent fingerprints on the bags, he put the pills into separate bags. He did not

put them all into one bag. The stipulation reflects Roseman's procedure by noting Stiefvater tested Exhibit Nos. 1, 2, 3, and 4 separately and provided the results for each exhibit. What police did here comported with the law. See *People v. Coleman*, 391 Ill. App. 3d 963, 971-72, 909 N.E.2d 952, 961 (2009) ("If the police seize separate bags or containers of suspected drugs, they must test a sample from each bag or container to prove it contains a controlled substance."). We find defendant's comparison of his case to *Miramontes* and *Coleman* inapt and unconvincing. The differences between those cases and this case preclude a similar outcome.

¶ 71 Generally, "the use of a stipulation does not establish ineffective assistance of counsel." *People v. Beeler*, 2012 IL App (4th) 110217, ¶ 34, 970 N.E.2d 110. Stipulations are favored because they can simplify issues and expedite a trial. *Beeler*, 2012 IL App (4th) 110217, ¶ 19. Stipulations can be strategic—a way for the defense to avoid potentially prejudicial testimony. When presented with an ineffective-assistance-of-counsel claim involving a stipulation, we still "indulge a strong presumption" that counsel's decision to enter the stipulation amounted to "sound trial strategy.' " *Poole*, 2012 IL App (4th) 101017, ¶ 10. Here, defendant has not overcome that presumption. Indeed, we find counsel's use of a stipulation reasonable here and probably strategic. Unlike *Miramontes* and *Coleman*, there appeared to be no issue regarding how the police handled or packaged the bags of suspected drugs before sending them for testing; consequently, it was reasonable to enter the stipulation rather than have Stiefvater testify and expound upon her testing and findings. It is clear the defense strategy here centered on identity—specifically, defendant was not in the silver Grand Prix at the buy bust and Cunningham was not a reliable witness for identifying defendant. Although the defense can certainly employ more than one strategy, we do not find it irrational or unreasonable to stipulate

to the laboratory results but challenge the evidence identifying defendant or placing him at the scene. See *Poole*, 2012 IL App (4th) 101017, ¶ 10.

¶ 72 Defendant next argues defense counsel should have called Anthony Thomas and Adrian Barbee as witnesses for the defense because police had found items belonging to both men in the abandoned silver Grand Prix. He suggests defense counsel abdicated his obligation to "explore all readily available sources of evidence that might benefit their clients." *People v. Morris*, 335 Ill. App. 3d 70, 79, 779 N.E.2d 504, 512 (2002). But it is well-established that "[t]he decision whether to call particular witnesses is a matter of trial strategy and thus will not ordinarily support an ineffective-assistance-of-counsel claim." *People v. Patterson*, 217 Ill. 2d 407, 442, 841 N.E.2d 889, 909 (2005). Furthermore, "matters of trial strategy will not support a claim of ineffective assistance of counsel unless counsel failed to conduct any meaningful adversarial testing." *Patterson*, 217 Ill. 2d at 441.

¶ 73 Defendant does not propose what Thomas and Barbee would have testified to. Besides incriminating themselves by admitting they were in the vehicle during the buy bust, or that the drugs were theirs, what else could their testimony add to the defense? Evidence already tied them to the silver Grand Prix—Anthony Thomas's prescription bottle, Barbee's debit card, and other documents with Barbee's name on them. Furthermore, Cofield already testified both men had access to defendant's vehicles. Even without calling Thomas and Barbee, defense counsel submitted the State's case to "meaningful adversarial testing." *Patterson*, 217 Ill. 2d at 441. Contrary to defendant's argument, we will not evaluate counsel's performance "through the lens of hindsight" (*Perry*, 224 Ill. 2d at 344); rather, we will presume counsel acted strategically (*Poole*, 2012 IL App (4th) 101017, ¶ 10). Defense counsel's strategic decision on what witnesses to call did not amount to deficient performance.

¶ 74 Defendant finally argues defense counsel was ineffective for not filing a motion to suppress Cunningham's identification of defendant as Streetz based on seeing one photograph. He specifically argues, "[t]he display of a single photo gave rise to an unreliable and suggestive identification," and defense counsel should have moved to suppress it.

¶ 75 It is a well-worn principle that defense counsel need not make futile motions to be considered effective. See *People v. Bradford*, 2019 IL App (4th) 170148, ¶ 14, 123 N.E.3d 1285. Decisions whether to move to suppress evidence are matters of trial strategy, and "counsel enjoys the strong presumption" that decisions not to file a suppression motion are proper. *People v. Spann*, 332 Ill. App. 3d 425, 432, 773 N.E.2d 59, 66 (2002). "Under the *Strickland* analysis, it could only be concluded counsel's conduct was objectively unreasonable in not filing the motion to suppress if there is a likelihood that defendant would have prevailed on the motion." *People v. Henne*, 165 Ill. App. 3d 315, 330, 518 N.E.2d 1276, 1286 (1988). Showing a witness a single photograph when asking her to identify a suspect can be unduly suggestive and may risk misidentification, leading to an unreliable identification. *People v. Kelly*, 185 Ill. App. 3d 43, 50, 540 N.E.2d 1125, 1130 (1989). But using a single-photograph process is not necessarily unreliable, and a reviewing court must consider the totality of the circumstances of the identification. *Kelly*, 185 Ill. App. 3d at 50.

¶ 76 Defendant argues showing Cunningham a single photo to identify defendant as Streetz was unduly suggestive because she had not given a physical description of Streetz, nor had she identified Streetz by his legal name, Terrance Thomas. The record shows Cunningham told police she knew Streetz—she had met him in person and talked with him on the phone. This was not a situation where Cunningham witnessed a crime committed by someone she did not know and was being asked to identify the perpetrator after seeing him once. Cunningham knew

Streetz, but she did not know his legal name. Moreover, Roseman testified he knew Streetz to be defendant and found a photograph of him to show Cunningham. Given these circumstances, we do not find Roseman showing Cunningham one photograph of defendant and asking if this was the man she knew as Streetz was unduly suggestive or risked misidentification. The question was not whether Cunningham could recognize defendant, but simply whether the man she knew as Streetz, and whom Roseman knew as Thomas, were the same person. Since Cunningham's identification of Streetz was proper, we conclude a motion to suppress the identification would have failed and been a futile motion. Trial counsel reasonably decided against moving to suppress the identification. See *Henne*, 165 Ill. App. 3d at 330; *Bradford*, 2019 IL App (4th) 170148, ¶ 14. Having found no deficient performance on the part of defense counsel, we need not consider *Strickland*'s prejudice prong. *Torres*, 228 Ill. 2d at 395. Defendant received effective assistance from counsel.

¶ 77 D. Cumulative Error

¶ 78 Defendant finally alleges, "the cumulative effect of the erroneous admission of text messages, Sprint cellphone records and opinion testimony regarding the same, hearsay testimony and reference to Roseman's previously knowing Defendant demands a new trial." He contends these errors rendered his first trial unfair. Defendant raised these issues in his prior arguments, and we found no error. When there is no single error there can be no cumulative error.

¶ 79 III. CONCLUSION

¶ 80 For the reasons stated, we affirm the trial court's judgment.

¶ 81 Affirmed.