

No. 1-24-2179

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

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County, Illinois.
	)	
v.	)	No. 23 TR 40001799
	)	
LESLIE NIETO,	)	Honorable
	)	Stanley L. Hill,
Defendant-Appellant.	)	Judge Presiding.

PRESIDING JUSTICE GAMRATH delivered the judgment of the court.
Justices Pucinski and C.A. Walker concurred in the judgment.

ORDER

¶ 1 *Held:* We affirm defendant's conviction for driving under the influence of alcohol (DUI) for having a blood alcohol concentration over 0.08. We vacate her impairment-based DUI conviction, as it violates the one-act, one-crime rule.

¶ 2 Following a bench trial, defendant Leslie Nieto was convicted of two counts of driving under the influence of alcohol (DUI) under the Illinois Vehicle Code (Code) (625 ILCS 5/11-501(a)(1)-(2) (West 2022)) based, in part, on having a blood alcohol concentration (BAC) of 0.196, over twice the legal limit. On appeal, Nieto argues the trial court erred by denying her motion to quash arrest and suppress breathalyzer results, admitting those results at trial, and

violating her due process rights. She further contends her convictions violate the one-act, one-crime rule. We reject all of Nieto's contentions except for the one-act, one-crime rule violation. We, thus, vacate her DUI conviction under section 11-501(a)(2) of the Code (count II), but affirm in all other respects.

¶ 3

I. BACKGROUND

¶ 4

A. Motion to Quash Arrest and Suppress Evidence

¶ 5

Nieto was charged with driving with a blood alcohol concentration (BAC) of 0.08 or more (count I) and driving under the influence of alcohol (count II). 625 ILCS 5/11-501(a)(1)-(2) (West 2022). Nieto was also charged with speeding and transporting an open container of alcohol but was found not guilty of these charges when the State failed to produce a witness. Prior to trial, Nieto moved to quash her arrest and suppress her breathalyzer results, arguing officers lacked probable cause that she committed DUI.

¶ 6

A suppression hearing was held on June 11, 2024, establishing that in the late hours of January 13, 2023, Franklin Park Police Officer Bieze observed Nieto speeding and almost striking the curb a couple of times. By pacing her vehicle, he determined she was going 60 miles per hour (mph) in a 30-mph zone. When Bieze pulled Nieto over, he noticed her eyes were bloodshot, watery, and glassy, and an odor of alcohol was coming from the vehicle. Nieto spoke mostly Spanish, so he called Officer Quinones to assist.

¶ 7

Quinones testified that he had taken advanced DUI classes, refresher standardized field sobriety test (SFST) courses, a 24-hour SFST course, was Advanced Roadside Impaired Driving Enforcement (ARIDE) certified, investigated 250-300 DUIs, and was trained according to the National Highway Traffic Safety Administration (NHTSA). When he arrived, he observed Nieto had a flushed face and watery, bloodshot, and glassy eyes. He also smelled a strong odor of an

alcoholic-based beverage on her breath, which persisted after she exited the vehicle. Nieto, whose driver's license said she was 230 pounds and 5'6" tall, wore a long-sleeve sheer shirt and boots with three to four-inch platform soles. Nieto admitted drinking two Truly alcoholic seltzers, but Quinones did not know when she consumed them. Quinones asked Nieto to perform field sobriety tests.

¶ 8 Nieto agreed to perform the tests, which occurred in an empty strip-mall parking lot. Quinones administered three tests: the horizontal gaze nystagmus (HGN), the walk-and-turn, and the one-leg stand. NHTSA protocols require officers to check for equal pupil size, equal tracking, and resting nystagmus before administering the HGN test. Quinones testified he checked for resting nystagmus, and the video shows him holding his finger at eye level for approximately one second before beginning the test. Quinones testified that he could observe resting nystagmus immediately based on his experience. After administering the HGN test, Quinones opined that Nieto displayed all six HGN clues of impairment: lack of smooth pursuit, distinct and sustained nystagmus at maximum deviation, and onset nystagmus prior to 45 degrees in each eye. He did not mention checking for equal pupil size or tracking and testified that HGN results alone would not be enough to conclude she was impaired.

¶ 9 Quinones next performed the walk-and-turn and one-leg stand tests to indicate impairment. On the walk-and-turn, Quinones used an imaginary line. He acknowledged this test is not recommended for overweight individuals, although he stated that you can still do it. The video showed Nieto having difficulty placing one leg in front of the other.

¶ 10 Before the test, Nieto tapped her leg as if supposedly identifying an issue. Quinones did not recall whether Nieto said she had a "leg problem," and then stated she must not have because he did not note one in his report. Quinones stated he believed this is where he was explaining

how she was going to be positioned for the test, since he pointed at his leg too. Nonetheless, on appeal, Nieto's counsel contends this tapping of the leg somehow shows she had a leg problem, though there is no evidence or testimony supporting this supposition. Quinones opined that Nieto exhibited four of eight clues: starting too soon, failing to maintain balance during instructions, failing to touch heel-to-toe, and stepping off the imaginary line. Though she did not actually lose her balance, she did on the turn.

¶ 11 Quinones administered the one-leg stand test last. He acknowledged that overweight persons may be poor candidates for the test. He observed two of four clues, both related to balance: Nieto swayed and stepped down repeatedly. The video also shows difficulty raising her leg to the required height. Quinones testified that all three tests indicated impairment.

¶ 12 Before Nieto completed the last field test, Bieze retrieved a preliminary breath test (PBT) device. Quinones testified he "offered" her the PBT test and she did not refuse. Before Bieze hands the device to Quinones, Nieto clasps her hands together in a prayer-type motion and continues this gesture while Quinones tries to set up the PBT, for about 25 seconds. Notably, her hands were clasped this same way when she got out of the vehicle and there is a point where she seemingly tries to warm her hands by pulling her sleeves down over them. Quinones then hands the device back to Bieze, who handles it for 10 seconds and walks off camera with it. Quinones and Nieto speak for an additional 45 seconds and then walk off camera. Nieto continues clasping her hands for most of the interaction and leans forward. Her counsel argues that this indicates she was pleading not to take the test, though there is no testimony to support this argument. The PBT test revealed a BAC of 0.201.

¶ 13 Nieto objected to the test result for lack of foundation, without further explanation or argument. The trial court overruled the objection and admitted the result.

¶ 14 Nieto argued that the evidence showed alcohol consumption, not impairment, and that Quinones’s conclusions were unreliable because he deviated from standardized procedures, did not document the pretest medical checks on video, and treated balance-related clues as proof of impairment despite Nieto’s weight and footwear. Counsel emphasized that Nieto complied with traffic laws other than speeding, communicated appropriately, followed instructions, and showed no cognitive signs of impairment.

¶ 15 The trial court denied Nieto’s motion to quash and suppress, finding that the PBT result, by itself, would establish probable cause. The court also found Quinones qualified to interpret the field tests and credited his conclusion that all three tests indicated impairment. Considering the PBT, the officers’ observations, Nieto’s drinking admission, and the field-test evidence, the court found probable cause to arrest.

¶ 16 Nieto moved to reconsider, challenging the foundation for the PBT and Quinones’s qualifications and reliability. The court denied reconsideration. The court noted Nieto objected to the PBT for lack of foundation, but “did not specifically challenge Officer Quinones’s training, certification, and re-certification to operate the PBT, nor challenge [his] knowledge of the PBT’s inspection or operating efficiency.” Without further addressing the foundation issue, it ruled that the PBT was admissible because the State was not using it as an “offensive weapon at trial,” and it found that probable cause existed even without the PBT based on Quinones’s observations and field-test conclusions.

¶ 17 B. Trial

¶ 18 Nieto opted for a bench trial. Quinones was the only witness. His trial testimony mostly tracked his prior testimony except for a few points. In addition to his prior testimony, Quinones testified he was ARIDE certified, took multiple DUI enforcement classes, and was an SFST

instructor. Quinones described Nieto's flushed face, watery, bloodshot, glassy eyes, and strong odor of an alcoholic beverage on her breath even after she exited her car.

¶ 19 Quinones testified Nieto needed to hold her car's door to help her exit but admitted that Nieto's car, a Jeep Wrangler, had a high step, which could be difficult for someone short or someone wearing platform boots to exit. He also testified that Nieto only admitted consuming "a Truly," as opposed to two. He conceded that he had no idea when Nieto consumed the drinks that night. Quinones also claimed at trial that Nieto acknowledged at the police station speeding about 5-10 mph over the limit, but Quinones never saw her drive. Quinones claimed that he could conclude Nieto was impaired from each individual field sobriety test, later clarifying that these tests show consumption and impairment.

¶ 20 In describing the field tests, Quinones explained that before the HGN "[y]ou first do a pre-medical check" to see "[i]f they have any medical issues with their eyes, general health, or back." The defense objected to the HGN for lack of foundation, since Quinones failed to do a required "pre-check *** to make sure that the eyes are equal, there is no resting nystagmus." The court found the objection may be "premature." When no additional testimony was elicited regarding the "pre-check," the defense held its objection, which was overruled.

¶ 21 The court admitted the video of Nieto performing the field sobriety tests. Quinones addressed the portion of the video where Nieto pats the side of her leg. Quinones explained that this is where they were talking about her shoes, which had three to four-inch platform soles. He asked if she was comfortable taking the test with them or preferred to take them off. She kept them on.

¶ 22 Nieto was arrested shortly after midnight on January 14, 2023, and agreed to a breathalyzer test at the station. The breathalyzer registered a BAC of 0.196, more than twice the legal limit.

¶ 23 At trial, the State sought to admit three documents related to the breath test: the DUI Breath Test Observation Checklist, the Illinois State Police (ISP) verification and accuracy logs, and the breath test results strip. Nieto argued that the verification and breath strips were inadmissible because the State failed to prove that Quinones was a licensed Breath Analyst Operator (BAO).

¶ 24 Quinones testified he was licensed at the time of the test, though he could not recall whether he completed the course in “2022 or 2023.” According to Nieto, this leaves open the possibility that he was unlicensed on January 14, 2023. To establish his licensure, Quinones relied on the Observation Checklist he completed during the 20-minute observation period, which listed his license expiration date as October 25, 2025, consistent with a valid three-year certification, which Quinones testified to. Defense counsel objected, arguing the Checklist was a police report containing hearsay. The trial court admitted the document. The court also admitted an ISP Verified Certification Form showing accuracy checks for the breathalyzer from October 1, 2022, to April 1, 2023, as well as the breathalyzer ticket reflecting Nieto’s BAC of 0.196.

¶ 25 Nieto submitted a written closing argument, maintaining the State failed to prove her guilty beyond a reasonable doubt of DUI where her performance on the balancing tests is attributable to the weather, her weight, and platform shoes. She also asserted the court erred in allowing Quinones to testify regarding the HGN where he failed to do the required pre-check.

¶ 26 On September 13, 2024, the trial court found Nieto guilty of DUI under both counts I and II. The court found Quinones was experienced and knowledgeable in DUI investigations, having “taken advanced DUI classes, refresher SFST courses, and 24-hour SFST courses, testified in many DUI cases and was ARIDE certified.” Quinones’s training and BAO certification was sufficient foundation for the breath ticket showing Nieto’s BAC was almost two and a half times the legal limit. The breathalyzer results in addition to Nieto’s poor performance on the fields, her

admission to “drinking alcoholic beverages shortly before stopped by police,” her glassy, bloodshot, watery eyes, and the strong smell of alcohol on her breath “proved beyond a reasonable doubt [she] was driving impaired.”

¶ 27 The trial court sentenced Nieto to 12 months’ supervision, 100 hours of independent community service, a victim impact panel, zero tolerance while driving, and to follow any Alcohol and Drug Evaluation Services. The sentencing order lists the statutory citation for section 11-501(a)(1) (count I) on the first page, but later states Nieto is sentenced to “12 months supervision (both counts).” The trial court denied Nieto’s motion to reconsider. Nieto appeals.

¶ 28 II. ANALYSIS

¶ 29 A. Motion to Quash Arrest and Suppress Evidence

¶ 30 Nieto challenges the denial of her motion to quash her arrest and suppress evidence, arguing that Quinones lacked probable cause to arrest her for DUI. Specifically, she contends that the PBT and HGN test results were inadmissible and that her balance issues were caused by alternative factors, such as her weight and platform shoes.

¶ 31 We apply a two-part standard of review when reviewing a ruling on a motion to quash arrest and suppress evidence. *People v. Grant*, 2013 IL 112734, ¶ 12. We review the trial court’s factual findings under the manifest weight of the evidence standard but review *de novo* the ultimate ruling on the motion. *Id.* The defendant bears the burden of proving the evidence was obtained pursuant to an illegal search or seizure. *People v. Brooks*, 2017 IL 121413, ¶ 22. Once a defendant makes a *prima facie* showing, the burden shifts to the State to counter. *Id.* However, the ultimate burden of proof remains with the defendant. *Id.*

¶ 32

1. Admission of the PBT

¶ 33

Section 11-501.5(a) of the Vehicle Code permits an officer to request a preliminary breath test (PBT) when the officer has reasonable suspicion of DUI, though the motorist may refuse. 625 ILCS 5/11-501.5(a) (West 2022). PBT results are inadmissible at trial but may be considered at a suppression hearing to determine probable cause. *People v. Davis*, 296 Ill. App. 3d 923, 928-29 (1998).

¶ 34

Nieto argues the State failed to lay a proper foundation for the PBT. The foundational requirements for breath testing, whether a PBT or evidentiary breath test, include: (1) proof the test was performed according to Department of Public Health standards; (2) proof the operator was certified; (3) proof the machine was an approved model, regularly tested, and functioning properly; (4) proof the motorist was observed for 20 minutes; and (5) proof the printout reflects the test administered. *People v. Orth*, 124 Ill. 2d 326, 340 (1988); *People v. Rozela*, 345 Ill. App. 3d 217, 228 (2003). Critically, however, the State is required to lay this foundation only after the defendant makes a *prima facie* showing that the test was unreliable. *Rozela*, 345 Ill. App. 3d at 228. Although *Orth* and *Rozela* address summary-suspension hearings, the same principles apply here. *Id.* at 227.

¶ 35

A reliability challenge may rest on any circumstance casting doubt on accuracy, including credible testimony that the motorist was not intoxicated. *Orth*, 124 Ill. 2d at 341. Nieto argues this is a low burden that is satisfied “as long as something casts doubt on the results,” but Nieto never made such showing. At the suppression hearing, she offered no testimony or evidence suggesting the PBT was inaccurate. Her appellate claim, that Quinones did not perform a “blank check” and “struggled” with the device, finds no support in the record. No witness testified to these points, and no circumstance was presented that could cast doubt on the test’s reliability.

¶ 36 Nieto’s counsel raised only a general objection to admission of the PBT. That is insufficient to establish a *prima facie* case of unreliability. Without such a showing, the burden never shifted to the State to lay the *Orth* foundation. See *Rozela*, 345 Ill. App. 3d at 228–29 (no foundation required where defendant failed to present any circumstance casting doubt on accuracy); *cf. People v. Acevedo*, 2017 IL App (3d) 150750, ¶ 16 (foundation required only after burden shifts).

¶ 37 Nieto alternatively argues her consent to the PBT was invalid because she lacked a reasonable opportunity to refuse. An officer may request a PBT, and the motorist may refuse. 625 ILCS 5/11-501.5(a). Consent is voluntary so long as the officer requests and does not command the test and the motorist has a reasonable opportunity to decline. *People v. Taylor*, 2016 IL App (2d) 150634, ¶ 42. The officer need not inform the motorist of the right to refuse. *Id.* ¶¶ 40, 42; *People v. Gutierrez*, 2015 IL App (3d) 140194, ¶¶ 20-21.

¶ 38 Nieto argues she “pleaded” with Quinones not to take the test, pointing to a moment in the video where she clasped her hands together. The record does not support that claim. No witness testified that Nieto pleaded or refused. The video shows her clasping her hands at other points as well, including at the very beginning. Her posture of leaning forward has other plausible explanations unrelated to refusal, including discomfort or cold. She never shook her head “no,” and nothing in the video or testimony suggests she declined.

¶ 39 Quinones consistently testified that he “offered” the PBT and Nieto accepted. He did not place the device near her face or otherwise signal that submission was mandatory. See *Taylor*, 2016 IL App (2d) 150634, ¶¶ 44-45 (suppression warranted where officer positioned device inches from defendant’s mouth and allowed less than two seconds to refuse). Here, Nieto had ample time to decline while Quinones and Bieze prepared the device, and the video shows she and Quinones continued talking for roughly 45 seconds after Bieze walked off camera, thus providing further

opportunity to refuse. The objective, non-speculative evidence shows that Quinones requested the PBT, Nieto accepted, and she had a reasonable opportunity to refuse. The PBT results were properly admitted.

¶ 40

2. Admission of the HGN

¶ 41

Nieto next challenges the admissibility of the HGN because there is no evidence Quinones checked for equal pupil size and equal eye tracking prior to administering the test. We agree with Nieto on this point, as there is no testimony by Quinones or video evidence showing he complied with these requirements. See *People v. McKown*, 236 Ill. 2d 278, 306, 309 (2010); see also *People v. Flores*, 2026 IL App (3d) 250132-U, ¶ 30 (HGN erroneously admitted where officer did not testify that he checked defendant's eyes for equal pupil size and eye tracking). Nonetheless, the erroneous admission of the HGN is harmless error because Nieto's speeding, performance on the other field sobriety tests, and PBT results provided Quinones with probable cause to arrest Nieto for DUI. See *People v. McClellan*, 232 Ill. App. 3d 990, 1002 (1992) (erroneously admitted evidence was harmless where "sufficient information existed to establish probable cause").

¶ 42

3. Totality of the Circumstances Established Probable Cause to Arrest for DUI

¶ 43

"Probable cause to arrest exists when the totality of the facts known to the officer at the time of the arrest are sufficient to lead a reasonably cautious person to believe that the arrestee has committed a crime." *People v. Meo*, 2018 IL App (2d) 170135, ¶ 25. Nieto was charged under sections 11-501(a)(1) and (a)(2) of the Code, providing that a person shall not drive or be in actual physical control of a vehicle while (1) having a BAC of 0.08 or more or (2) under the influence of alcohol. 625 ILCS 5/11-501(a)(1)-(2). " 'A person is under the influence of alcohol when, as a result of drinking any amount of alcohol, [her] mental or physical faculties are so

impaired as to reduce [her] ability to think and act with ordinary care.’ ” *People v. Gordon*, 378 Ill. App. 3d 626, 631 (2007) (quoting IPI Criminal No. 23.29 (4th ed. 2000)).

¶ 44 Even excluding the HGN test, the totality of the circumstances established probable cause to arrest Nieto for DUI. Nieto was driving 60 mph in a 30-mph zone and almost struck the curb. Upon contact, her eyes were bloodshot, watery, and glassy, a strong odor of alcohol emanated from her breath even after she exited her vehicle, and she admitted to consuming one or two Truly alcoholic beverages. Physical indicators further supported impairment. Nieto noticeably swayed while standing still for the HGN, swayed and put her foot down during the one-leg stand, and could not maintain balance while listening to instructions. Additionally, she started the walk-and-turn test before being instructed, failed to touch heel-to-toe, and stepped off the imaginary line. Finally, her PBT results were 0.201, over two and a half times the legal limit. Collectively, these factors are more than sufficient to establish probable cause that Nieto was driving under the influence. See *People v. Cervantes*, 2026 IL App (3d) 250214-U, ¶ 15 (finding probable cause where the defendant’s car crossed lines multiple times, his eyes were bloodshot and glassy, he smelled of alcohol, admitted to drinking, and displayed significant clues during field tests).

¶ 45 Nieto speculates her balancing issues were caused by her platform shoes, weight, and “leg problem” rather than impairment. There is no evidence whatsoever of a leg problem or that her weight and platform shoes affected her balance. Being overweight is not an automatic disqualifier for taking the balancing tests, and Nieto’s shoes had the same sole all around for stability.

¶ 46 Nieto’s reliance on *People v. Day*, 2016 IL App (3d) 150852, is inapposite. There, the officer admitted it was “improper” to administer balancing tests while it was raining, the defendant performed largely satisfactorily on the field sobriety tests, and he did not commit any

traffic violations. *Id.* ¶¶ 4, 31-32, 35. Without more than an admission to drinking alcohol and bloodshot, watery eyes, probable cause was lacking. *Id.* ¶ 37. Nieto, in contrast, was driving 30 mph over the speed limit, admitted to consuming alcohol, had a strong, persistent odor of alcohol on her breath, and there is no evidence the walk-and-turn or one-leg stand were improperly administered. Nieto also points to her lack of slurred speech or difficulty communicating, but the absence of those factors is not dispositive, especially given the other substantial evidence of impairment, including the PBT. See *Cervantes*, 2026 IL App (3) 250214-U, ¶ 16 (probable cause to arrest for DUI even where defendant did not slur, was not swaying, and had no difficulty communicating). Because Quinones had more than sufficient probable cause to arrest Nieto for DUI, the court did not err in denying her motion to quash and suppress.

¶ 47 B. Admission of Breathalyzer at Trial

¶ 48 Nieto challenges the admission of the breathalyzer results at trial, arguing the State failed to prove Quinones was a licensed BAO because the Observation Checklist was an inadmissible police report. Even if so, Quinones testified without rebuttal that he was a licensed BAO when he performed the test on January 14, 2023, and he would have had to document his license expiration date when conducting the test, which he did. See *People v. Caruso*, 201 Ill. App. 3d 930, 941 (1990) (officer’s testimony that he was certified when he administered the test is sufficient for second *Orth* factor). Thus, Nieto’s breathalyzer result of 0.196 was admissible and properly considered.

¶ 49 C. Due Process

¶ 50 Nieto raises a due process violation based on the trial court misstating evidence in its ruling. A defendant’s right to due process is denied where the trial court fails “to correctly recall crucial evidence.” *People v. Heard*, 2021 IL App (1st) 192062, ¶ 16. If a due process violation

occurs, we may affirm only if, after considering all the evidence, the error was harmless beyond a reasonable doubt. *People v. Williams*, 2013 IL App (1st) 111116, ¶ 93. An error is harmless beyond a reasonable doubt if “the error did not contribute to the verdict.” *Id.*

¶ 51 Nieto takes issue with the trial court’s recitation of Quinones’s training introduced at the suppression hearing and its erroneous statement that Nieto admitted to “drinking alcoholic beverages shortly before stopped by police.” Even assuming these are “crucial” misstatements of evidence, they did not contribute to the verdict.

¶ 52 Regardless of the additional training Quinones detailed at the suppression hearing, the trial evidence consistently established Quinones’s expertise in DUI investigations. Furthermore, the court’s minor misstatement that Nieto consumed “alcoholic beverages” (plural) rather than a single drink “shortly before” the stop does not undermine the comprehensive ruling. Any such errors were harmless beyond a reasonable doubt given the overwhelming evidence of guilt. Nieto had bloodshot, glassy, and watery eyes, a strong, lingering smell of alcohol, difficulty on the one-leg-stand and walk-and-turn tests, a sway during the HGN, and a BAC nearly two and a half times the legal limit. See *People v. Schuit*, 2016 IL App (1st) 150312, ¶ 107 (finding a minor misstatement had no effect on the basis of the court’s ruling and did not result in a mistake in the decision-making process).

¶ 53 D. One-Act, One-Crime Rule Violation

¶ 54 Finally, Nieto contends her convictions violate the one-act, one-crime rule, which prohibits a defendant from being “convicted of multiple offenses that are based upon precisely the same physical act.” See *People v. Johnson*, 237 Ill. 2d 81, 97 (2010). At oral argument, the State withdrew its contention that Nieto’s convictions were “implicitly merged.” We agree that they were not implicitly merged and should have been expressly merged.

¶ 55 Nieto’s sentencing order lists the statutory citation for section 11-501(a)(1) (count I) on the first page, but later states Nieto is sentenced to “12 months supervision (both counts).” Both counts arose from the same physical act of driving under the influence of alcohol in violation of the one-act, one-crime rule, which needs correcting. See *People v. May*, 2021 IL App (4th) 190893, ¶ 52 (multiple convictions for aggravated DUI were premised on same physical act, in violation of the one-act, one-crime rule). Accordingly, under Supreme Court Rule 615(b)(1), we vacate Nieto’s DUI conviction under count II and direct the clerk of the circuit court of Cook County to correct the sentencing order to reflect a single conviction and sentence on count I. Because we are vacating Nieto’s DUI conviction under count II, we need not address her argument regarding the sufficiency of the evidence for that specific count.

¶ 56 III. CONCLUSION

¶ 57 Nieto’s appellate counsel served as a strong advocate, presenting the best possible arguments on Nieto’s behalf. However, the underlying facts do not support a reversal of her conviction or disturbing the trial court’s findings of fact based on Quinones’s testimony and evidence in the record. Accordingly, we affirm Nieto’s DUI conviction under count I and vacate her DUI conviction under count II, directing the clerk of the circuit court of Cook County to correct the sentencing order to reflect a single conviction and sentence on count I.

¶ 58 Affirmed in part; vacated in part.