

NOTICE
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2012 IL App (4th) 110143-U

Filed 6/28/12

NO. 4-11-0143

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from
Plaintiff-Appellee,)	Circuit Court of
v.)	Vermilion County
TITUS BARBER,)	No. 09CF619
Defendant-Appellant.)	
)	Honorable
)	Michael D. Clary,
)	Judge Presiding.

JUSTICE POPE delivered the judgment of the court.
Justices Appleton and Knecht concurred in the judgment.

ORDER

¶ 1 *Held:* We affirm the trial court's judgment because the jury could reasonably conclude from the evidence defendant drove a motor vehicle while under the influence of alcohol.

¶ 2 In December 2009, the State charged defendant, Titus Barber, with two counts of aggravated driving under the influence (DUI) based on his committing DUI without a valid driver's license or permit, a Class 4 felony (count I) (625 ILCS 5/11-501(d)(1)(H), (d)(2)(A) (West 2010)) and committing DUI with two or more prior DUI offenses, a Class 4 felony (count II) (625 ILCS 5/11-501(d)(1)(A), (d)(2)(A) (West 2010)). In September 2010, the State filed a motion to amend the charges, seeking to modify count I to charge defendant with aggravated DUI based on committing DUI with a revoked license, a Class 4 felony. The court granted the State's motion without any objection by defendant. Following an October 2010 trial, the jury found

defendant guilty of (1) DUI and (2) driving while his driver's license was revoked.

¶ 3 In February 2011, defendant appeared for sentencing. The trial court found People's exhibit No. A, defendant's driving abstract, proved defendant guilty of count II. The court entered judgment on counts I and II. After finding the two counts merged, the court sentenced defendant on count I of aggravated DUI to three years in prison with credit for time served from December 14 to December 15, 2009. That same month, defendant filed a motion to reconsider sentence, which the court denied.

¶ 4 Defendant appeals, arguing the State failed to prove beyond a reasonable doubt he was driving his girlfriend's car on the night he was arrested. We disagree and affirm.

¶ 5 I. BACKGROUND

¶ 6 In December 2009, the State charged defendant by information with two counts of aggravated DUI. Count I alleged on or about December 14, 2009, defendant committed DUI and defendant did not possess a valid driver's license or permit (625 ILCS 5/11-501(d)(1)(H) (West 2010)). Count II alleged on or about the same night, defendant committed DUI and defendant had committed DUI on two or more previous occasions (625 ILCS 5/11-501(d)(1)(A) (West 2010)). In September 2010, the State moved to file an amended information, modifying count I to allege on or about December 14, 2009, defendant committed DUI with a revoked or suspended license, and defendant's license had been revoked or suspended for a violation of section 11-501(a), 11-501.1, 11-401(b), or 11-501(d)(1)(G) of the Illinois Vehicle Code. In October 2010, the trial court granted the State's motion without objection by defendant. Defendant's jury trial then commenced.

¶ 7 Linda Brooks testified on December 14, 2009, at approximately 8 or 8:30 p.m.,

she stopped her car at the stoplight near Monical's Pizza in Danville. It was dark, clear, and cold outside. As she was sitting at the stoplight, a car pulled up behind Brooks' car. The car passed Brooks' car in front of a Toyota dealership, which was "very lit up." As the car passed Brooks, she looked inside and was able to see a male driving the car. After it passed, Brooks observed the vehicle weave from the left turn lane, across the left lane, into the right lane, and back into the left lane. Based on the car's erratic driving, Brooks began searching her purse for her cell phone so she could call 9-1-1.

¶ 8 Before Brooks called 9-1-1, the vehicle turned onto Spelter Lane. Brooks remembered saying to herself, "he ran that red light." She lost sight of the vehicle when it turned. When she got to the stoplight at Spelter Lane, she looked to the right and saw a car "in the fence at the Concept College of Cosmetology." She believed the car was the same one that had passed her, although she testified when she saw the vehicle near Monical's, it was right behind her so she mainly saw the vehicle's headlights. She described the car as a "dark sedan-type."

¶ 9 After seeing the car "in the fence," Brooks turned around in a nearby business and pulled next to the car to read the car's license plate. She called 9-1-1 and reported the vehicle. She did not see anyone sitting in the vehicle, but she did not get out of her car to investigate. She waited at the accident scene until the police arrived.

¶ 10 Deputy Doug Showers testified he received a dispatch call on December 14 at around 8:36 p.m. Upon his arrival at the accident scene approximately 20 minutes later, Showers observed a silver, unoccupied vehicle "lying up against the guardrail or the fence" at Concept Cosmetology. In the passenger seat of the car, Showers saw what he believed was half of a 24-pack of Natural Ice beer. The pack contained five unopened beer cans, cold to the touch.

Showers also saw a slightly open can of beer on the floorboard and a box of Marlboro menthol cigarettes in a green and white box.

¶ 11 Showers learned Amanda Smith was the registered owner of the car. Smith lived at 300 Spelter, Lot No. 59, which was only a couple hundred yards from the accident scene. A cornfield provided the most direct route from the accident scene to Smith's address. After spending approximately 20 or 25 minutes at the accident scene, Showers went to Smith's address and asked Smith if she knew where her car was located. Smith responded it was parked out front. When Showers told Smith the vehicle had just been involved in an accident, she stated she had not been in possession of the vehicle and possibly her boyfriend, defendant, was out driving it. She further informed Showers defendant was in the back bedroom and gave Showers permission to enter her home.

¶ 12 When Showers went to the back bedroom, he found defendant asleep underneath the covers. He noticed a pack of Marlboro menthol cigarettes on the night table matching the pack of cigarettes Showers found in the vehicle earlier. Showers had difficulty waking defendant, and when defendant eventually awakened, his speech was slurry and his eyes were extremely red and glossy. Showers detected a strong odor of alcohol on defendant's breath. Defendant tried to get out of bed, and Showers observed defendant's legs and shorts were covered in mud. Showers testified the ground was muddy that evening.

¶ 13 Showers asked defendant whether he had been driving that night, to which defendant replied, "yeah, I was out driving it." When Showers asked defendant what he did with the vehicle after driving it, defendant said he did not know what Showers was talking about. Defendant admitted he drank three or four beers that night. He acted "very agitated" and

"somewhat aggressive." After Showers spoke with defendant, defendant said, "let's go, take me to jail." Showers placed him in hand restraints and transported him to jail in his squad car. Throughout the drive, defendant became increasingly aggressive, at one point banging his head on the cage in the rear of the car.

¶ 14 When Showers and defendant arrived at the police station, Showers advised defendant he was under arrest for DUI and asked defendant to submit to field sobriety testing. Defendant refused and cursed at Showers, challenging him to a fight. Showers testified defendant was drunk and belligerent.

¶ 15 The trial court admitted into evidence People's exhibit A, defendant's driving abstract, which showed defendant's driver's license was revoked on the night of the accident. The State orally published the exhibit to the jury.

¶ 16 Amanda Smith testified she was in a relationship with defendant and had known defendant 2 1/2 to 3 years. Smith suffers from epilepsy and bipolar depression. On December 14, she took her medication sometime between 7:30 and 8 p.m. and then left her home to get a pack of cigarettes at a Casey's gas station a couple miles north of her home. After leaving Casey's, Smith sped to get home because she had left her three children at home and defendant was asleep. On her way home, Smith almost missed her turn, then made a sharp turn, blew a tire, and hit a fence.

¶ 17 She said earlier in the day, defendant had been working on the plumbing in their home. While he worked, he drank beer. Defendant kept his beer in the car because Smith did not allow it in the house due to her three children. Defendant consumed several beers and became belligerent, at which point Smith told defendant to go to bed.

¶ 18 After getting into the car accident, Smith walked home and tried to contact her insurance company to find out what to do. She did not cross through the cornfield to get home, but rather, cut into a "grassy area." She did not call the police because she did not realize the accident was "that serious," as it had not involved another vehicle or person. When the police arrived at Smith's home, Smith panicked and told them first the car was in her driveway. Later, she said she did not know where the car was. She testified she understood her testimony at court could get her in trouble.

¶ 19 On cross-examination, Smith acknowledged she had spoken to defendant and his attorney about this case. She denied her vehicle was at Monical's on the night of the accident. She also denied ever telling the police defendant had possibly been driving her car on the night of the accident. On redirect, Smith stated she wrote a letter to the State's Attorney's office the day after the accident, providing the same version of events to which she testified at trial. On rebuttal, Showers testified Smith did not tell him at any time she was driving on the evening of the accident, and Showers did not observe mud or dirt on Smith's legs.

¶ 20 At the close of the evidence, the trial court instructed the jury it should find defendant guilty of DUI if the State proved beyond a reasonable doubt (1) defendant drove or was in actual physical control of a vehicle, and (2) at the time defendant drove or was in actual physical control of the vehicle, defendant was under the influence of alcohol. The court further instructed the jury it should find defendant guilty of driving while his driver's license was revoked if the State proved beyond a reasonable doubt (1) defendant drove a motor vehicle on an Illinois highway, and (2) at the time defendant drove a motor vehicle, his driver's license was revoked. The jury found defendant guilty of both DUI and driving while his license was revoked.

¶ 21 In October 2010, defendant filed a motion for new trial, arguing in part the State failed to prove defendant's guilt beyond a reasonable doubt. Following a January 2011 hearing, the trial court denied defendant's motion.

¶ 22 In February 2011, defendant appeared in court for sentencing. The State entered into evidence People's exhibit A, defendant's driving abstract. The court found exhibit A proved defendant guilty of count II, driving under the influence based upon two or more prior DUI offenses. The court entered judgment on counts I and II; however, the court found the two counts merged and thereafter sentenced defendant to three years in prison on count I, aggravated DUI while defendant's license was revoked. That month, defendant filed a motion to reconsider sentence, which the court denied.

¶ 23 This appeal followed.

¶ 24 II. ANALYSIS

¶ 25 On appeal, defendant argues the State failed to prove beyond a reasonable doubt he was driving Smith's vehicle on the night he was arrested.

¶ 26 In reviewing the sufficiency of the evidence on appeal, the question is 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. *People v. Beasley*, 384 Ill. App. 3d 1039, 1046, 893 N.E.2d 1032, 1038 (2008). An appellate court may not reverse a conviction "unless the evidence is so improbable, unsatisfactory, or inconclusive that it creates a reasonable doubt of defendant's guilt." *People v. Collins*, 214 Ill. 2d 206, 217, 824 N.E.2d 262, 267-68 (2005).

¶ 27 In this case, the jury could reasonably conclude defendant drove Smith's car on the

night police arrested defendant. First, Brooks, a disinterested witness, testified she saw a car, driven erratically by a man. She then saw what she believed to be the same car crashed against the fence of the cosmetology school on Spelter. Defendant points out Brooks described the car she saw driving erratically as a "dark sedan," which does not match the description of Smith's silver Taurus, and Brooks did not have a clear view of the driver, nor did she see the accident. However, the trier of fact has the responsibility of determining the credibility of witnesses and the weight to give their testimony. *People v. Ortiz*, 196 Ill. 2d 236, 259, 752 N.E.2d 410, 425 (2001).

¶ 28 Showers also testified on the night of the accident, he arrived at Smith's home approximately 40 minutes after receiving the dispatch call and found defendant asleep in his bed, his legs and shorts covered in mud. Showers said the ground was muddy that night. When Showers woke defendant and asked him about the car, defendant stated, " 'yeah, I was out driving it.' " Showers also testified the accident site was only a "couple hundred yards" from Smith's home, with a cornfield providing the most direct route between the accident site and the home.

¶ 29 Defendant argues the State's theory was "contrary to the evidence." Specifically, defendant asserts Brooks' testimony the weather was clear and cold on the night of the accident contradicted Showers' testimony the ground was muddy. Defendant also contends (1) defendant would have had to have fallen down several times for his legs and shorts to be muddy from walking in the cornfield, and (2) defendant would not have had time to fall repeatedly but still be at home, sound asleep, 40 minutes after the accident. Finally, defendant asserts Smith's statement at trial she was the driver must have created reasonable doubt in the minds of the jurors as to whether defendant was driving Smith's car.

¶ 30 We will not substitute our own judgment for that of the trier of fact on matters of credibility or weight of the evidence. *Beasley*, 384 Ill. App. 3d at 1046, 893 N.E.2d at 1038. Here, we do not find the evidence was "so improbable, unsatisfactory, or inconclusive" as to create a reasonable doubt of defendant's guilt. *Collins*, 214 Ill.2d at 217, 824 N.E.2d at 267-68. In light of Showers' testimony defendant's home was only a few hundred yards from the accident site, the jury could reasonably conclude defendant drove Smith's vehicle, crashed it against the fence, and was still able to walk home before Showers arrived at defendant's home.

¶ 31 III. CONCLUSION

¶ 32 For the reasons stated, we affirm the trial court's judgment. As part of our judgment, we award the State its \$50 statutory assessment against defendant as costs of this appeal.

¶ 33 Affirmed.