

drove at a time when his license was revoked as a result of a conviction for driving under the influence (625 ILCS 5/11-501(a) (West 2010)), after having nine previous convictions for driving while his license was revoked or suspended. On April 6, 2010, a grand jury indicted defendant. In August 2010, a jury trial was held. The trial testimony was as follows.

¶ 5 A. Testimony of Officer Chambers

¶ 6 At trial, Bloomington police officer Andrew Chambers testified on March 25, 2010, he was driving westbound on Front Street in Bloomington, Illinois, when he noticed a black Explorer driving eastbound on Front Street at a high rate of speed. As Officer Chambers passed the vehicle, the driver "put his left hand above the window or beside the window, blocking [his] view of the driver." Officer Chambers turned his vehicle around and followed the Explorer. The Explorer pulled off Front Street into the parking lot of an abandoned garage. Officer Chambers then proceeded eastbound on Front Street to the next intersection and stopped. He then looked back over his shoulder and observed the driver and passenger of the Explorer switch seats. Officer Chambers pulled into the parking lot across the street from the parking lot where the Explorer was parked. The Explorer then pulled out of the parking lot without yielding, and Officer Chambers followed the Explorer and activated his overhead lights. Officer Chambers' in-car camera reset to 30 seconds prior to him activating his lights and recorded the stop.

¶ 7 Officer Chambers testified when he stopped the Explorer defendant was in the passenger's seat and another man was in the driver's seat. However, when the Explorer originally passed him, defendant was in the driver's seat and the second man was in the passenger seat.

¶ 8 After stopping the Explorer, Officer Chambers informed the driver and passenger

he stopped the Explorer for emerging from the parking lot without yielding. He also informed them he had seen them switching seats. Officer Chambers testified defendant admitted he had been driving and told him he had pulled into the parking lot because he had sudden stomach pain. Officer Chambers then checked his computer database and learned defendant had a revoked license. He issued defendant a citation for driving while his license was revoked.

¶ 9 B. Testimony of Virles Aina

¶ 10 Defendant's wife, Virles Aina, testified she was the owner of the Explorer. On March 25, 2010, she had driven defendant from Peoria, Illinois, to Bloomington for a court appearance. Upon arriving in Bloomington, their child was fussy, so Aina gave the keys to Nicholas Donovan, defendant's uncle, so he could take defendant to the courthouse. When defendant and Donovan left Donovan's house, Donovan was in the driver's seat. Approximately five minutes after defendant and Donovan left Donovan's house, Aina received a call from defendant explaining they had been stopped. She testified she heard an officer speaking to defendant and did not hear defendant admit driving. An officer spoke with Aina and explained her car was being towed.

¶ 11 Aina further testified it was impossible for defendant to be driving because he had nerve damage to his leg from a back injury at work. His doctor advised him to refrain from driving. He used a cane to walk and, in her opinion, was unable to walk quickly.

¶ 12 C. Testimony of Nicholas Donovan

¶ 13 Donovan testified he was driving the Explorer on Front Street on March 25, 2010. He drove defendant to the courthouse because the baby was agitated and because Donovan had to go to the courthouse as well. When passing Officer Chambers on Front Street, Donovan had his

hand in the driver's side window because that was how he naturally drove. Donovan had noticed police following him and made this known to defendant. Defendant informed Donovan the Explorer had brake problems, so Donovan pulled over in the parking lot of the abandoned garage to check the brake lights. While Donovan checked the brake lights, defendant got out of the car to stretch and returned to the passenger's seat. They both returned to the Explorer, with Donovan in the driver's seat, and Donovan pulled out of the parking lot.

¶ 14 Donovan testified defendant had a cane with him when they were stopped by Officer Chambers. He testified defendant moved slowly due to his back injury and because he was in pain. Defendant "couldn't hardly walk that much, he couldn't hardly sit or stand too long."

¶ 15 D. In-Car Camera Recording

¶ 16 A video recording from Officer Chambers' in-car camera was admitted as evidence at trial. The video shows defendant and Donovan standing outside the Explorer, both toward the front end of the vehicle. The video shows defendant getting into the passenger's side and Donovan getting into the driver's side. Officer Chambers had an audio function operating during the stop; however, the audio recording was not admitted into evidence.

¶ 17 E. Trial Outcome

¶ 18 After hearing the testimony and viewing the evidence, the jury found defendant guilty of driving while his license was revoked, subsequent offense (625 ILCS 5/6-303(a) (West 2010)). The trial court sentenced defendant to two years and three months in prison, with one year of mandatory supervised release.

¶ 19 This appeal followed.

¶ 20 II. ANALYSIS

¶ 21 On appeal, defendant argues the State did not prove him guilty of driving while his license was revoked, subsequent offense, beyond a reasonable doubt. The State argues it proved defendant guilty beyond a reasonable doubt. We agree with the State.

¶ 22 Defendant challenges the sufficiency of the evidence. On appeal, we "must determine 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. Evans*, 209 Ill. 2d 194, 209, 808 N.E.2d 939, 947 (2004). A reversal is warranted only if the evidence is so unreasonable, improbable, or unsatisfactory that it leaves a reasonable doubt as to defendant's guilt. *Evans*, 209 Ill. 2d at 209, 808 N.E.2d at 947.

¶ 23 The trier of fact has the responsibility to weigh the testimony and the credibility of the witnesses, to draw all reasonable inferences from the testimony, and to resolve any inconsistencies or conflicts in the evidence. *People v. Owens*, 386 Ill. App. 3d 765, 770, 899 N.E.2d 625, 630 (2008). As a reviewing court, we are not at liberty to substitute our judgment for that of the trier of fact. *Owens*, 386 Ill. App. 3d at 770, 899 N.E.2d at 630.

¶ 24 Defendant first argues Officer Chambers' in-court identification of defendant as the original driver should not be given credence since Officer Chambers had previously been unable to identify defendant as the original driver. Defendant refers to the following exchange between the State and Officer Chambers:

"Q. And the person who was originally the driver on Front

Street that day, do you see that person in the courtroom here today?

A. No.

Q. The person who was originally the driver?

A. From my initial contact?

Q. Yes.

A. From when he drove past me?

Q. Yes.

A. No.

Q. Okay. And what did you do next?"

However, immediately following this testimony, Officer Chambers identified defendant as the person in the passenger's seat at the time of the stop. This testimony is consistent with Officer Chambers' testimony defendant was the original driver and his testimony he saw defendant and Donovan switching seats. The State then clarified as follows:

"Q. Now Officer Chambers, the man sitting here in the courtroom today, the defendant John Moore, when you originally observed the vehicle driving on Front Street passing you, was the defendant, John Moore, the driver of the vehicle or the passenger of the vehicle?

A. The driver.

Q. Okay. And is he, the defendant John Moore, the same person that you referred to in your testimony a few minutes ago as the person who got out of the driver's seat and walked around into the passenger seat?

A. Yes."

¶ 25 The jury heard this testimony and, as the trier of fact, had the duty of assessing the

reliability and credibility of Officer Chambers. The jury found this testimony credible and believed Officer Chambers did in fact identify defendant as the original driver, and we will not substitute our judgment for the jury's.

¶ 26 Defendant next argues the video recording of the stop did not corroborate Officer Chambers' testimony he saw defendant and Donovan switch seats of the Explorer. Defendant is correct the video did not capture defendant and Donovan switching places, but merely shows them standing by the front of the vehicle and later entering it. However, Officer Chambers testified the video did not show defendant and Donovan switching places because he was looking behind him, over his shoulder, when he observed the switch, and the camera was still facing forward. Officer Chambers' testimony need not be corroborated, but rather "must support a finding by a rational trier of fact that the essential elements of the crime were proved beyond a reasonable doubt." *People v. Doll*, 371 Ill. App. 3d 1131, 1138, 864 N.E.2d 916, 922 (2007). Although the video may not have corroborated the switch, Officer Chambers' testimony does support a finding that defendant was driving while his license was revoked, and the jury chose to believe this testimony.

¶ 27 Finally, defendant argues the audio recording of defendant's stop should have been admitted by the State because it would have included the conversation where, according to Officer Chambers' testimony, defendant admitted he had been driving. Defendant argues the State's failure to present the audio recording creates an unfavorable evidentiary presumption against the State. We disagree. Officer Chambers testified defendant had been driving; the audio was not definitive evidence on the matter, and thus, an unfavorable evidentiary presumption does not arise against the State. See *People v. Hawn*, 99 Ill. App. 3d 334, 339, 425 N.E.2d 1024, 1028

(1981) (where the definitive evidence of the defendant's intoxication—the results of the blood test—was in the exclusive control of the State, and the State did not offer the results into evidence, an unfavorable evidentiary presumption arose against the State).

¶ 28 "The testimony of even one witness, if positive and credible, is sufficient to convict in a criminal prosecution in this State, even though it is contradicted by the accused." *People v. Novotny*, 41 Ill. 2d 401, 411, 244 N.E.2d 182, 188 (1968). Defendant presented the testimony of two witnesses, both contradicting the testimony of Officer Chambers. (Of the two witnesses who testified on defendant's behalf, Donovan was impeached on prior felony convictions.) The State presented the testimony of Officer Chambers and a video recording of the stop. The jury presumably concluded Officer Chambers was a more credible witness and weighed his testimony more heavily than that of the defendant's witnesses. We will not substitute our judgment for the trier of fact's as to the credibility of witnesses or the weight of disputed evidence. *Novotny*, 41 Ill. 2d at 411, 244 N.E.2d at 188. We conclude the State presented sufficient evidence to find defendant guilty of driving while his license was revoked, subsequent offense, beyond a reasonable doubt.

¶ 29 III. CONCLUSION

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

¶ 31 Affirmed.