

No. 1-11-2727

NOTICE: This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party 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.
)	
v.)	No. TT 373 481
)	
TAMLA ADAMS,)	Honorable
)	Kevin W. Horan,
Defendant-Appellant.)	Judge Presiding.

PRESIDING JUSTICE LAMPKIN delivered the judgment of the court.
Justices Hall and Gordon concurred in the judgment.

ORDER

- ¶ 1 *Held:* Where officer testified that cannabis was detected on defendant's breath, defendant's physical appearance and speech were consistent with impairment, and defendant admitted to drug use within the past half-hour, evidence was sufficient to sustain DUI conviction; the judgment of the trial court was affirmed.
- ¶ 2 Following a bench trial, defendant Tamla Adams was convicted of driving under the influence of alcohol or drugs pursuant to section 11-501(a)(6) of the Illinois Vehicle Code (the Code) (625 ILCS 5/11-501(a)(6) (West 2010)), which prohibits a person from driving with any amount of an intoxicating substance in their breath, blood or urine. Pursuant to a sentencing

agreement, defendant received 12 months of supervision and was ordered to receive treatment, participate in a victim impact panel and pay a \$200 fine. On appeal, defendant contends the State failed to prove beyond a reasonable doubt that she had cannabis on her breath or in her blood or urine because no scientific evidence was presented on that point and the State did not establish her driving skills were impaired. We affirm.

¶ 3 At trial, the court heard testimony from the two Chicago police officers who performed a traffic stop on defendant's vehicle at 2:32 a.m. on March 8, 2010. Officer Parochelli testified he stopped the vehicle near 52nd Street and Marshfield Avenue as the vehicle exited a parking spot with a broken taillight. Parochelli admitted he did not observe a moving violation.

¶ 4 Chicago police officer Maria Guzman testified she was driving a separate squad car and stopped behind Parochelli's car to offer assistance after observing the stop. Both officers got out of their cars at the same time, and Guzman told Parochelli she would speak to the driver because they were both female.

¶ 5 Guzman testified that as she approached the vehicle, the driver's side window was down and she observed defendant and a passenger seated in front. Guzman testified defendant's eyes were "glassy" and she smelled a "strong odor of burnt cannabis" from inside the vehicle. Guzman asked defendant for her driver's license and proof of insurance, and defendant replied her driving permit had expired and that she had no driver's license.

¶ 6 Guzman asked defendant to step out of the car, and Guzman testified that "[a]t that point, I smelled the burnt odor of cannabis from her breath as she was talking to me, and she was answering my questions." The officer testified she was familiar with the smell of burnt cannabis from previous arrests in which the presence of that substance had been confirmed. Guzman testified she asked defendant "if she had smoked some weed," and defendant responded she had smoked a blunt, or a marijuana cigarette, "a half hour ago."

¶ 7 Guzman then arrested defendant. Throughout their conversation and as Guzman transported defendant to a nearby police processing room, Guzman observed defendant hiccuping and slurring her speech. The officer asked defendant if she had been drinking or using drugs, and defendant responded she had smoked about two blunts of marijuana.

¶ 8 Guzman said that in her professional and personal life she had observed people under the influence of cannabis more than 100 times. The State asked Guzman if, in her opinion, defendant was driving under the influence of cannabis. Defense counsel objected, arguing a proper foundation had not been laid for the officer's opinion, and the court sustained the objection. The State then laid a proper foundation, and then Guzman testified she observed defendant in control of the vehicle and, in her opinion, defendant operated the vehicle while under the influence of cannabis.

¶ 9 On cross-examination, Guzman acknowledged she did not know why defendant's eyes appeared glassy or if that was defendant's normal appearance. Guzman also said defendant's speech was slurred and she was mumbling but also admitted she did not know defendant's regular speech patterns. Guzman said it was possible that defendant's passenger was smoking in the car but after defendant got out of the vehicle, the officer noted the scent of cannabis on defendant's breath and "from her person as well." Guzman reiterated that defendant admitted smoking within the last 30 minutes. No materials were recovered from defendant's vehicle.

¶ 10 In finding the defendant guilty of driving with cannabis in her system, the trial court found Officer Guzman's testimony credible. The court noted defense counsel's reliance on the cases of *People v. McPeak*, 399 Ill. App. 3d 799 (2010), and *People v. Allen*, 375 Ill. App. 3d 810 (2007), in which the evidence was deemed insufficient to convict under the statute at issue.

¶ 11 However, the court found the facts before it distinguishable from those in *McPeak* and *Allen*, stating:

"The factors that I find are that the [d]efendant had glassy eyes, slurred or mumbled speech, cannabis on her breath, and admission [sic] smoked marijuana within half an hour prior to the time she was arrested; that she was sleeping and confused. Those are all factors that go above and beyond *McPeak* or *Allen* cases, and therefore, I am going to find the [d]efendant guilty."

¶ 12 On appeal, defendant contends the State failed to prove beyond a reasonable doubt that she had cannabis in her breath, blood or urine while she was driving. She argues the prosecution offered no scientific evidence regarding cannabis in her body or proof that her driving skills were impaired.

¶ 13 In reviewing the sufficiency of the evidence in a criminal case, the inquiry of this court is whether any rational trier of fact could have found the essential elements of the offense beyond a reasonable doubt. *People v. Martin*, 2011 IL 109102, ¶ 15; *Jackson v. Virginia*, 443 U.S. 307, 319 (1979). This court views the evidence in the light most favorable to the State and allows all reasonable inferences from that evidence to be drawn in favor of the prosecution. *People v. Martin*, 2011 IL 109102, ¶ 15. It is not the task of the appellate court to "second-guess" the trial court or retry the defendant on appeal. *People v. Villareal*, 198 Ill. 2d 209, 231 (2001). We may not substitute our judgment for that of the trier of fact as to the weight of the evidence or the credibility of the witnesses or set aside a criminal conviction unless the evidence is so improbable or unsatisfactory as to create a reasonable doubt of the defendant's guilt. *People v. Siguenza-Brito*, 235 Ill. 2d 213, 224-25 (2009).

¶ 14 Defendant was charged with violating section 11-501(a)(6) of the Code (625 ILCS 5/11-501(a)(6) (West 2010)), which states that a person shall not drive or be in actual physical control of any vehicle while there is any amount of a drug, substance, or compound in the person's

breath, blood or urine resulting from the "unlawful use or consumption" of a controlled substance. This section does not require proof of a driver's impairment; rather, it only requires that a driver unlawfully use or consume any amount of a controlled substance. *Martin*, 2011 IL 109102, ¶ 26 (a driver "with controlled substances in his body violates section 11-501(a)(6) simply by driving"); see also *People v. Vente*, 2012 IL App (3d) 100600, ¶ 11.

¶ 15 It is undisputed that no tests were performed to ascertain the presence of any substance in defendant's system. The evidence of defendant's use of cannabis rested solely on the testimony of Officer Guzman that defendant had "glassy" eyes, slurred her speech and mumbled and that the officer detected a "burnt odor of cannabis" on defendant's breath. When questioned, defendant admitted she had smoked marijuana in the last half-hour.

¶ 16 This court has upheld a conviction under section 11-501(a)(6) based on a police officer's observational testimony. In *People v. Briseno*, 343 Ill. App. 3d 953, 955-56 (2003), the sole witness was an officer who, after the defendant was stopped at a DUI roadblock, smelled cannabis on the defendant's breath and in his vehicle. When asked if he had smoked marijuana that evening, the defendant responded he had done so just prior to driving. *Id.* at 956. The officer also testified that the defendant's eyes were dilated, his speech was slurred, and his motor skills were slower than normal, and those observations were made while performing field sobriety tests. *Id.* The trial court denied the defendant's motion to suppress his inculpatory statement and convicted the defendant under section 11-501(a)(6). *Id.*

¶ 17 In affirming the conviction, this court discussed the defendant's claim that the trial judge erred in considering the results of the field sobriety tests. *Id.* at 961-62. The court concluded that even without that testing, the officer's observations, along with the defendant's admission, were sufficient to prove the defendant guilty beyond a reasonable doubt of driving under the influence of cannabis. *Id.* at 962.

¶ 18 In the instant case, the trial court noted that the parties had raised the precedent of *Briseno*, along with *McPeak* and *Allen*. In *McPeak*, this court reversed the defendant's conviction for driving under the influence of cannabis, stating that the arresting officer only testified that he smelled burnt cannabis emanating from the defendant's "person." *McPeak*, 399 Ill. App. 3d at 800. Although the defendant admitted smoking cannabis within the last two hours, the appellate court drew a distinction between smelling cannabis on a person's body, as in that case, and on his breath, which fell under the language of section 11-501(a)(6). *Id.* at 802.

¶ 19 In *Allen*, the officer's testimony that he smelled cannabis on the defendant's breath was deemed insufficient to establish his guilt under section 11-501(a)(6). *Allen*, 375 Ill. App. 3d at 816. The court observed that although the defendant admitted to smoking cannabis the previous night, it could not be determined if any of the substance remained in his system, noting that the "statute does not criminalize having breath that smells like burnt cannabis." *Id.*

¶ 20 The trial court in this case expressly found the evidence here to be stronger than that offered in *McPeak* and *Allen*, and our review supports that conclusion. The court expressly found Officer Guzman's testimony to be credible. The officer observed defendant's physical characteristics and detected cannabis on defendant's breath, which did not occur in *McPeak*. Moreover, in contrast to *Allen*, defendant in this case admitted to smoking cannabis in the 30 minutes prior to the traffic stop, and the officer opined that defendant was driving under the influence of cannabis. The evidence was sufficient to support defendant's conviction.

¶ 21 Accordingly, the judgment of the trial court is affirmed.

¶ 22 Affirmed.