

**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).

2014 IL App (3d) 120835-U

Order filed May 13, 2014

---

IN THE  
APPELLATE COURT OF ILLINOIS  
THIRD DISTRICT

A.D., 2014

THE PEOPLE OF THE STATE	)	Appeal from the Circuit Court
OF ILLINOIS,	)	of the 12th Judicial Circuit,
	)	Will County, Illinois,
Plaintiff-Appellee,	)	
	)	Appeal No. 3-12-0835
v.	)	Circuit Nos. 12-DT-57, 12-TR-2122,
	)	and 12-TR-2123
	)	
JENNIFER J. POWELL,	)	Honorable
	)	Carmen Goodman,
Defendant-Appellant.	)	Judge, Presiding.

---

JUSTICE SCHMIDT delivered the judgment of the court.  
Justices McDade and Wright concurred in the judgment.

**ORDER**

¶ 1 *Held:* Viewed in the light most favorable to the State, the evidence was sufficient to sustain defendant's driving under the influence of alcohol conviction.

¶ 2 After a bench trial, defendant, Jennifer J. Powell, was convicted of driving under the influence (DUI) (625 ILCS 5/11-501(a)(2) (West 2012)); driving with only one headlight (625 ILCS 5/12-211 (West 2012)), and driving with an expired registration (625 ILCS 5/3-413(f) (West 2012)). The trial court sentenced defendant to 12 months' court supervision. On appeal,

defendant argues that the evidence of impairment was insufficient to sustain her conviction of DUI. We affirm.

¶ 3

### FACTS

¶ 4

At trial, Romeoville police officer Michael Michienzi testified that on January 7, 2012, he stopped a vehicle with a broken driver's side headlight and expired registration. Two individuals were inside the vehicle. Michienzi identified the driver as defendant. Defendant's eyes were "extremely bloodshot and glassy," and a strong odor of alcohol emanated from defendant's breath. Defendant initially said that she had not been drinking but later said that she had consumed 1½ beers. Michienzi also noticed that defendant fumbled with some cards before producing her driver's license.

¶ 5

During the stop, Michienzi asked defendant to exit the vehicle and directed defendant to perform several field sobriety tests. Before initiating the tests, defendant said that she had injured her back in an accident several weeks earlier. According to Michienzi, defendant was "indifferent and interrupting." Michienzi performed a horizontal gaze nystagmus test and a vertical gaze nystagmus test. Defendant failed both tests, which indicated that defendant had consumed alcohol and possibly had a "higher blood alcohol content."

¶ 6

According to Michienzi, defendant also failed an alphabet test when she replaced the letter "U" with the letter "O." Michienzi reported that defendant's speech was "a little bit slurred at points." Michienzi also asked defendant to count backwards from 91 to 63. During this test, defendant started to count forward from 1 and then switched to counting backwards from 98. From 98, defendant counted backwards to 90, repeated "89, 90, 89, 90 a few times" and stopped the test at 83.

¶ 7

Michienzi also asked defendant to perform the walk and turn test. During the instruction phase, defendant did not stay in her stance and eventually refused to complete the test.

Michienzi asked defendant to perform the one-leg stand test, and defendant failed the test when she raised her arms over six inches, put her foot down twice, swayed from side to side and front to back, and nearly fell over.

¶ 8 During the duration of the stop, Michienzi observed defendant's demeanor change several times. At times, defendant was carefree and cooperative, and at other times she was indifferent, interruptive, and profane.

¶ 9 Based on the totality of the interaction, Michienzi opined that defendant was intoxicated, and placed defendant under arrest. Defendant was transported to the police station, where she refused chemical testing.

¶ 10 Michienzi stated that he had previously met defendant at a convenience store where she worked. Michienzi did not observe any speech impediments in his prior interactions and noted that defendant was polite.

¶ 11 During Michienzi's testimony, the State introduced the video recording of the traffic stop and played the recording for the court. In the video, toward the end of the field sobriety tests, defendant refused a breathalyzer test. Although there were some discrepancies between the video and Michienzi's testimony, the video was generally consistent with his testimony.

¶ 12 In denying defendant's motion for a directed verdict, the trial court stated that "this would have been a close [case]" if defendant had not been her own "worst enemy." The court made a number of other observations about the evidence. Ultimately, the court found defendant guilty of all three charges and sentenced defendant to 12 months' court supervision. Defendant appeals.

¶ 13 ANALYSIS

¶ 14 Defendant argues that she was not proven guilty beyond a reasonable doubt of driving under the influence of alcohol because the evidence failed to establish that she was intoxicated.

¶ 15 In a challenge to the sufficiency of the evidence, we must determine, after viewing the evidence in the light most favorable to the prosecution, whether any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. *People v. Beauchamp*, 241 Ill. 2d 1 (2011). We will not reverse a defendant's conviction unless the evidence is so improbable, unsatisfactory, or inconclusive that it creates a reasonable doubt of guilt. *Id.* As a court of review, it is not our function to retry a defendant, nor will we substitute our judgment for that of the trier of fact. *People v. Collins*, 214 Ill. 2d 206 (2005).

¶ 16 Defendant was charged with DUI under section 11-501(a)(2) of the Illinois Vehicle Code. 625 ILCS 5/11-501(a)(2) (West 2012). To sustain a conviction under this section, the State must prove beyond a reasonable doubt that defendant drove a vehicle while under the influence of alcohol. 625 ILCS 5/11-501(a)(2) (West 2012). A defendant is under the influence of alcohol when her mental or physical faculties are so impaired as to reduce her ability to think and act with ordinary care. *People v. Halerewicz*, 2013 IL App (4th) 120388. Defendant's intoxication is a question of fact and may be proved in a number of ways. *People v. Love*, 2013 IL App (3d) 120113.

¶ 17 Here, Michienzi noted that defendant smelled of alcohol, appeared unsteady, and failed several field sobriety tests. Additionally, defendant told Michienzi that she consumed 1½ beers, chose not to finish the walk and turn test, and refused to submit to chemical testing. The trier of fact could reasonably infer that defendant refused to submit to chemical testing because it would confirm her guilt. *Halerewicz*, 2013 IL App (4th) 120388. Finally, defendant's changing emotional state evidenced a reduced ability to think and act with ordinary care.

¶ 18 Applying the *Collins* standard, we conclude that the evidence, viewed in the light most favorable to the State, was sufficient to prove defendant's guilt of DUI beyond a reasonable doubt. *People v. Collins*, 214 Ill. 2d 206.

CONCLUSION

¶ 19

¶ 20

For the foregoing reasons, the judgment of the circuit court of Will County is affirmed.

¶ 21

Affirmed.