

NOTICE

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2016 IL App (4th) 140598-U

NO. 4-14-0598

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED

September 30, 2016
Carla Bender
4th District Appellate
Court, IL

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from
Plaintiff-Appellee,)	Circuit Court of
v.)	Champaign County
JORDAN S. HIBLER,)	No. 13DT649
Defendant-Appellant.)	
)	Honorable
)	Richard P. Klaus,
)	Judge Presiding.

JUSTICE HARRIS delivered the judgment of the court.
Justices Holder White and Appleton concurred in the judgment.

ORDER

¶ 1 *Held:* The evidence was sufficient to prove defendant guilty beyond a reasonable doubt of operating a motor vehicle with any amount of a drug, substance, or compound in his breath, blood, or urine resulting from his unlawful use or consumption of cannabis.

¶ 2 In May, 2014, following a stipulated bench trial, defendant was found guilty of driving with any amount of a drug, substance, or compound in his breath, blood, or urine resulting from his unlawful use or consumption of cannabis (625 ILCS 5/11-501(a)(6) (West 2012)). Defendant asserts the stipulated evidence was insufficient to convict him of the offense. We affirm.

¶ 3 I. BACKGROUND

¶ 4 In December 2013, the State charged defendant, Jordan S. Hibler, with violating section 11-501(a)(6) of the Illinois Vehicle Code (625 ILCS 5/11-501(a)(6) (West 2012)), which

prohibits a person from operating a motor vehicle with any amount of a drug, substance, or compound in the person's breath, blood, or urine resulting from the unlawful use or consumption of cannabis. On May 1, 2014, the trial court held a stipulated bench trial based on a stipulation of facts presented by the parties.

¶ 5 A. Stipulated Facts

¶ 6 According to the stipulation of facts, Adam Thompson, a University of Illinois police officer, was on patrol in the area of Goodwin Avenue and Green Street in Urbana, Illinois, on the night of December 9, 2013. At approximately 8:16 p.m., Thompson observed a white Lincoln Town Car travelling north on Goodwin Avenue. The vehicle turned left onto Green Street, turning into the "furthest outside lane." Thompson observed white light coming from the driver's side brake light.

¶ 7 Thompson stopped the Lincoln based on his observations. Thompson approached the vehicle and made contact with defendant, the driver. Thompson requested assistance from a canine officer to do an open-air sniff of the Lincoln, as the passengers in the vehicle appeared to be nervous. At approximately 8:23 p.m., Officer Beckman, a canine officer with the University of Illinois police department, arrived to assist with an open-air sniff. The drug-sniffing dog alerted to the presence of "illegal drugs" in the Lincoln.

¶ 8 Thompson questioned defendant, as reflected in the stipulation of facts:

n. that he asked the defendant if there was anything in the Lincoln and the defendant replied, 'not that I know of.'

o. that he asked the defendant if he had been smoking and the defendant responded 'I had some earlier.'

p. that he asked the defendant what [*sic*] was the last time

he smoked and the defendant said, 'Probably about 7 o'clock.'

q. that he asked the defendant if it was good weed or bad weed and defendant responded, 'Good weed.' "

¶ 9 Thompson conducted a search of defendant's person but found no illegal contraband. Thompson then searched two of the passengers and found what appeared to be cannabis. Beckman searched the Lincoln and discovered a cigarette container with baggies of suspected cannabis on the floor.

¶ 10 Thompson arrested defendant and transported him to the jail, where Thompson issued him a citation pursuant to section 11-501(a)(6) of the Vehicle Code (625 ILCS 5/11-501(a)(6) (West 2012)). Defendant agreed to submit blood and urine samples.

¶ 11 Defendant's urine and blood samples were provided to the Illinois State Police for testing. According to the stipulation, the State's toxicologist would testify "that in her professional opinion the results of those tests show the presence of Tetrahydrocannabinol [THC] metabolites specifically the Carboxy type in the defendant's urine."

¶ 12 B. Stipulated Bench Trial and Sentencing

¶ 13 After reviewing the stipulation of facts, the trial court inquired whether the parties desired to present oral argument. The State declined. Defense counsel argued that, "[f]or the purposes of appeal [defendant's] argument is that the State hasn't proven that he had any amount of drug[,] substance[,] or compound in his system within the meaning of [subsection] (a)(6)."

The court stated, in part, as follows:

"[Subsection] (a)(6) is an absolute liability charge for which the State has to prove two things; that the Defendant was driving a motor vehicle and when the Defendant drove a motor ve-

hicle he had any amount of a drug[,] substance[,] or compound in his breath, blood or urine.

The stipulation categorically establishes those two elements of the offense[.] ***

The State has proven that the Defendant is guilty beyond a reasonable doubt. The State has established all the elements of the offense for an (a)(6) violation of 11-501."

¶ 14 The trial court found defendant guilty.

¶ 15 On May 28, 2014, defendant filed a motion for acquittal or a new trial arguing the State failed to prove him guilty beyond a reasonable doubt. The court denied defendant's motion and sentenced defendant to 18 months of conditional discharge.

¶ 16 This appeal followed.

¶ 17 II. ANALYSIS

¶ 18 On appeal, defendant argues the trial court erred in finding him guilty of violating section 11-501(a)(6) of the Vehicle Code, as the evidence was insufficient to establish that the presence of THC metabolites in his urine was due to his use or consumption of cannabis. The State argues the evidence was sufficient and the "court properly concluded from the evidence stipulated to that [THC] metabolites constituted cannabis."

¶ 19 A. Forfeiture

¶ 20 As a preliminary matter, the State asserts defendant's argument on appeal regarding the insufficiency of the evidence does not mirror the argument he made at trial or in his posttrial motion, and therefore he has forfeited his argument on appeal. We note, however, that a defendant's challenge to the sufficiency of the evidence is not subject to forfeiture and may be

raised for the first time on direct appeal. *People v. Enoch*, 122 Ill. 2d 176, 190, 522 N.E.2d 1124, 1132. Therefore, we will consider defendant's claim that the evidence was insufficient to convict him of the offense.

¶ 21 B. Sufficiency of the Evidence

¶ 22 Defendant argues that the evidence of THC metabolites in his urine was insufficient to convict him under section 11-501(a)(6) of the Vehicle Code, since no evidence established that the THC metabolites resulted from his use or consumption of cannabis. The State contends the court could properly infer that the THC metabolites in defendant's urine were the result of his use of cannabis, or in the alternative, defendant's guilt could be inferred from other evidence presented.

¶ 23 When reviewing the sufficiency of the evidence in a criminal case, the relevant inquiry is whether, when 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. Ward*, 215 Ill. 2d 317, 322, 830 N.E.2d 556, 558-59 (2005). The trier of fact has the responsibility to determine the credibility of witnesses and the weight given to their testimony, to resolve conflicts in the evidence, and to draw reasonable inferences from the evidence. *People v. Jackson*, 232 Ill. 2d 246, 281, 903 N.E.2d 388, 406 (2009). "[A] reviewing court will not reverse a criminal conviction unless the evidence is so unreasonable, improbable[,] or unsatisfactory as to create a reasonable doubt of the defendant's guilt." *People v. Rowell*, 229 Ill. 2d 82, 98, 890 N.E.2d 487, 496-97 (2008). This same standard of review applies irrespective of whether the defendant received a bench or jury trial. *People v. Siguenza-Brito*, 235 Ill. 2d 213, 231, 920 N.E.2d 233, 241 (2009).

¶ 24 Under section 11-501(a)(6) of the Vehicle Code, a person is prohibited from op-

erating a vehicle with "any amount of a drug, substance, or compound in the person's breath, blood, or urine resulting from the unlawful use or consumption of cannabis listed in the Cannabis Control Act[.]" 625 ILCS 5/11-501(a)(6) (West 2012).

¶ 25 Under the Cannabis Control Act:

"(a) 'Cannabis' includes marihuana, hashish and other substances which are identified as including any parts of the plant Cannabis Sativa, whether growing or not; the seeds thereof, the resin extracted from any part of such plant; and any compound, manufacture, salt derivative, mixture, or preparation of such plant, its seeds, or resin, including tetrahydrocannabinol (THC) and all other cannabinol derivatives, including its naturally occurring or synthetically produced ingredients, whether produced directly or indirectly by extraction, or independently by means of chemical synthesis or by a combination of extraction and chemical synthesis[.]" 720 ILCS 550/3(a) (West 2012).

In its brief, the State argues the presence of THC metabolites in defendant's urine constitutes proof beyond a reasonable doubt of his use of cannabis, stating as follows:

"[I]n this case, the court as the trier of fact rationally concluded that Tetrahydrocannabinol metabolites, specifically the Carboxy type, was a substance resulting from defendant's use of cannabis before driving. The Cannabis Control Act specifically defines Tetrahydrocannabinol (THC) and all other cannabinol derivatives

as constituting cannabis. According to Dictionary.com, a derivative is a substance or compound obtained from another substance or compound. In addition, according to Dictionary.com, a metabolite is a substance produced by metabolism, a process by which substances are produced, maintained, or broken down. The court properly concluded that Tetrahydrocannabinol metabolites were cannabinol derivatives, within the definition of cannabis. The court properly concluded from the evidence stipulated to that Tetrahydrocannabinol metabolites constituted cannabis. See *People v. Way*, 2015 IL App (5th) 130096, ¶ 14, 39 N.E.2d 1149[.]"

¶ 26 Here, we find the evidence of THC metabolites in defendant's urine was insufficient to prove his use of cannabis. Absent expert testimony or other evidence establishing that THC metabolites result from cannabis use, a trier of fact could only speculate as to a causal relationship between the two. The State's attempt to establish the necessary linkage via dictionary definitions of "metabolite" and "derivative" is unavailing. From the above quoted definitions, the State asserts "[t]he court properly concluded that [THC] metabolites were cannabinol derivatives," thus bringing THC metabolites within the statutory definition of cannabis. However, the above definitions in no way establish that "metabolite" is a synonym of "derivative." Simply, the stipulation of facts presented by the parties was missing a key fact—that the THC metabolites found in defendant's urine resulted from his use of cannabis. This fact could easily have been included in the parties' stipulation of fact, but it was not. See *People v. Way*, 2015 IL App (5th) 130096, ¶ 7, 39 N.E.2d 1149 (2015) (In a stipulated bench trial, the parties stipulated "a qualified forensic scientist would *** testify that the defendant's urine specimen, *** contained THC me-

tabolite *which results from the use of cannabis[.]*" (Emphasis added.)

¶ 27 The State contends in the alternative that other evidence, specifically defendant's admission to smoking cannabis, was sufficient to establish he used or consumed cannabis before driving. Defendant argues that his extrajudicial admissions of smoking cannabis before driving were uncorroborated by other evidence, and therefore, the evidence was insufficient to find him guilty.

¶ 28 To prove a defendant guilty of a crime, the State must prove beyond a reasonable doubt that (1) a crime occurred, known as the *corpus delicti*; and (2) the crime was committed by the defendant. *People v. Sargent*, 239 Ill. 2d 166, 183, 940 N.E.2d 1045, 1055 (2010). A defendant's out-of-court admissions alone cannot prove the *corpus delicti*. *People v. Lara*, 2012 IL 112370, ¶ 17, 983 N.E.2d 959; *Sargent*, 239 Ill. 2d at 183, 940 N.E.2d at 1055. A defendant's extrajudicial admissions must also be accompanied by "independent corroborating evidence." *Lara*, 2012 IL 112370, ¶ 17, 983 N.E.2d 959. However, "[o]ur case law has consistently required far less independent evidence to corroborate a defendant's confession under the *corpus delicti* rule than to show guilt beyond a reasonable doubt." *Id.* ¶ 45. The independent corroborating evidence need only *tend* to show the crime did occur. *Sargent*, 239 Ill. 2d at 183, 940 N.E.2d at 1055.

¶ 29 The State's evidence as set forth in the stipulation of facts shows that Officer Thompson conducted a traffic stop of defendant's vehicle at approximately 8:16 p.m. on December 9, 2013. Defendant told Thompson he had smoked "half a blunt" at "[p]robably about 7 o'clock," and that it was "good weed." Thompson found what appeared to be cannabis while searching two of the passengers in defendant's vehicle. Officer Beckman also discovered suspected cannabis on the floor of the vehicle. We find this was sufficient "independent corrobo-

rating evidence" of defendant's admission he had used cannabis earlier that day.

¶ 30 Viewing the evidence in the light most favorable to the prosecution, as we must, we find the State presented sufficient evidence from which a rational trier of fact could have found defendant used or consumed cannabis before driving.

¶ 31 III. CONCLUSION

¶ 32 For the foregoing reasons, we conclude the State presented sufficient evidence to sustain defendant's conviction for operating a motor vehicle while there was any amount of a drug, substance, or compound in his breath, blood, or urine resulting from his unlawful use or consumption of cannabis. As a result, 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. 55 ILCS 5/4-2002 (West 2014).

¶ 33 Affirmed.