

No. 1-15-0974

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 DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,)
) Appeal from the
) Circuit Court of
 Plaintiff-Appellee,) Cook County.
)
 v.) Nos. 14 MC4 00245501
) YB 237364
) YB 237366
)
 ERWIN CAMPOS,) Honorable
) Stanley L. Hill,
 Defendant-Appellant.) Judge, presiding.

JUSTICE MIKVA delivered the judgment of the court.
Presiding Justice Pierce and Justice Harris concurred in the judgment.

ORDER

¶ 1 *Held:* The evidence was sufficient to affirm defendant’s conviction for driving under the influence of cannabis and possession of drug paraphernalia.

¶ 2 After a bench trial, defendant Erwin Campos was convicted of driving under the influence of cannabis, possession of drug paraphernalia, and improper lane usage, and was sentenced to 18 months of supervision. On appeal, Mr. Campos contends that his two drug-related convictions should be reversed based on the insufficiency of the evidence. He argues that the State failed to prove beyond a reasonable doubt that he was driving under the influence of

cannabis because he was not driving unsafely and displayed no physical signs of recent impairment or inability to operate the vehicle when performing field sobriety tests. He also contends that the State did not prove beyond a reasonable doubt that he possessed drug paraphernalia, arguing that no evidence was presented that the glass pipe recovered from the glove compartment belonged to him, was in proximity to cannabis or used to ingest cannabis, or that he intended to do so unlawfully. For the following reasons, we affirm.

¶ 3 BACKGROUND

¶ 4 Mr. Campos was charged with driving under the influence of cannabis, unlawful possession of cannabis, unlawful possession of drug paraphernalia, and improper lane usage. Before trial, Mr. Campos filed a motion to quash his arrest and suppress evidence, arguing that his conduct before and during the traffic stop that led to his arrest did not create reasonable suspicion to detain or probable cause to arrest him.

¶ 5 At the motion hearing, Berwyn police officer Casey Stefano testified that at 12:30 a.m. on May 1, 2014, he stopped Mr. Campos's vehicle on Roosevelt Road after he saw Mr. Campos make "too sharp of a left turn" crossing the center line, and then saw Mr. Campos cross the center line three times while driving down Roosevelt Road. Officer Stefano testified that the plastic or fiberglass cover of the front bumper was missing on Mr. Campos's car, exposing the metal portion of the bumper, which the officer said was a violation of the law.

¶ 6 Mr. Campos testified that his bumper cover was off but that he "still had the reinforcement bumper." The trial court denied Mr. Campos's motion, finding that the officer had probable cause for the traffic stop.

¶ 7 Also before trial, Mr. Campos filed a motion *in limine* seeking to bar the State from presenting expert opinion testimony from Officer Stefano as to whether Mr. Campos was under

the influence of drugs at the time of his arrest. Mr. Campos argued that an officer “must be qualified as an expert in detecting whether the person is under the influence of drugs” to testify to such an opinion, citing *People v. Workman*, 312 Ill. App. 3d 305 (2000). In the motion, Mr. Campos argued that Officer Stefano was not trained or certified as a drug recognition expert, as some police officers are, and that he therefore could not offer an expert opinion regarding whether Mr. Campos was under the influence of drugs. The court took the motion under advisement, stating that it would rule on the admissibility of the officer’s testimony at trial.

¶ 8 Officer Stefano was the only witness at trial. He again described the circumstances that occurred before the traffic stop, stating that, in making the left turn onto Roosevelt Road, Mr. Campos’s car crossed the yellow line. Mr. Campos’s car also “drifted across the double yellow line three times” while on Roosevelt Road. The speed limit was 30 miles per hour, and Mr. Campos’s Oldsmobile was traveling at 20 miles per hour in little to no traffic.

¶ 9 Officer Stefano initiated a traffic stop. During the stop, two other police officers arrived at the scene. Officer Stefano approached the car and saw Mr. Campos in the driver’s seat and another male in the front passenger seat. The officer testified that Mr. Campos had red, bloodshot eyes, and the officer “could smell the odor of cannabis” on Mr. Campos’s breath. Mr. Campos spoke “very slowly and deliberately.”

¶ 10 Officer Stefano asked Mr. Campos if he had smoked cannabis prior to driving. According to the officer, Mr. Campos “admitted that he smoked cannabis and said it was way earlier.” The officer observed two small plastic green bags “commonly referred to as nickel bags” in the back seat. Those bags were empty. The officer said that such bags “are often times used to package narcotics.” Officer Stefano further testified that he smelled “a distinct odor of fresh cannabis coming from the passenger compartment of the vehicle” and saw ashes in an ashtray on the car’s

center console that had “a picture of a cannabis leaf in the middle of it.” Officer Stefano said he recovered two “grinders” that the officer testified were used to place cannabis in the pipe and “make it more suitable for smoking.”

¶ 11 Officer Stefano asked Mr. Campos to get out of the car and perform field sobriety tests because he believed that Mr. Campos was impaired, and he testified as to his training to conduct such tests. The officer first administered the horizontal gaze nystagmus (HGN) test to Mr. Campos. Mr. Campos indicated that he understood the instructions. Officer Stefano testified that Mr. Campos passed the HGN test.

¶ 12 Officer Stefano then administered the walk-and-turn test, asking Mr. Campos to stand with one foot in front of the other and touch his heel to his toe while being further instructed. When told to begin, Mr. Campos was to take nine “heel-to-toe” steps, turn around and return in the same manner with his arms at his sides, while watching his feet. Over a defense objection, the officer testified that impairment could be shown during the performance of that test by the observation of eight different indicators.

¶ 13 According to Officer Stefano, Mr. Campos appeared to understand the instructions of the walk-and-turn test. However, Mr. Campos failed that test because he demonstrated seven of the eight indicators. The officer testified as follows about Mr. Campos’s performance: “The defendant could not maintain balance during the instructions. He had gaps between his steps. He stepped off the line. He did an improper turn. He stopped walking. He used his arms for balance and did an incorrect number of steps.” Officer Stefano testified that “some of [Mr. Campos’s] steps may have been heel to toe,” but his report noted that some were not.

¶ 14 The officer then administered the one-leg stand test, which required Mr. Campos to stand on one foot, holding that foot six inches off of the ground. Mr. Campos was instructed to point

his toe out with his hands remaining at his sides and count out loud in the manner of “one thousand one, one thousand two,” etc. The officer told Mr. Campos that if he had to put his foot down, he should “immediately lift it back up and continue counting where he left off.”

¶ 15 Officer Stefano testified that Mr. Campos failed the one-leg stand test because he “put his foot down three times” while only counting to seven, and that Mr. Campos stopped performing the test at that point. Mr. Campos also “used his arms for balance while his leg was in the air,” and swayed during the test.

¶ 16 After Mr. Campos failed the one-leg stand test, Officer Stefano arrested him and placed him in the police car. The officer returned to the Oldsmobile and offered the passenger a ride to the police station, which the passenger declined.

¶ 17 Pursuant to Berwyn police department policy and based upon the odor of cannabis, Officer Stefano performed an inventory of the car, recovering from the glove compartment what he described at trial as a “glass jar that contained approximately 20 grams of a green plantlike substance.” The green substance was packaged in three plastic bags in the jar. The officer also recovered a “yellow glass pipe that had a burnt residue in there that smelled like burnt cannabis.” En route to the police station, Mr. Campos told Officer Stefano that the cannabis was “for personal use and not for sale.” Mr. Campos refused to take a drug test at the station, telling the officer that he would “take his chances with the judge.”

¶ 18 Officer Stefano testified that he had made between 10 and 12 arrests of individuals suspected of driving under the influence of cannabis and about 100 arrests for driving under the influence of alcohol or drugs. He also testified that he had observed individuals under the influence of cannabis “hundreds” of times.

¶ 19 Officer Stefano testified that in his opinion, Mr. Campos was under the influence of

cannabis at the time of the traffic stop. The officer explained the basis of that opinion as follows:

“The two traffic violations that I observed, the too sharp turn, the improper lane usage, his driving ten miles under the speed limit, when he could have safely driven 30, my observations of him, his red eyes, the odor of cannabis on his breath, his admission to smoking cannabis earlier in the day, the drug paraphernalia that I recovered from his car, the ashtray that had ashes on it with a cannabis leaf on it, the empty nickel bags which are commonly used to package cannabis or the narcotics that I recovered from the car, the defendant’s poor performance on the standardized field sobriety tests, and ultimately, his refusal to submit to a drug test.”

¶ 20 Photographs taken by another officer at the traffic stop were entered into evidence. Those photos showed the interior of the Oldsmobile, the ashtray, the plastic bags in the back seat, and the open glove compartment containing the glass jar and the glass pipe. The suspect cannabis was marked to be sent to the Illinois State Police for testing. However, the State presented no evidence as to the result of any such testing.

¶ 21 On cross-examination, Officer Stefano stated that Mr. Campos pulled his car over in a reasonable amount of time and had no trouble producing his driver’s license. Mr. Campos’s speech was slow but he was not slurring, and the officer could understand Mr. Campos’s verbal responses. Officer Stefano also acknowledged on cross-examination that Mr. Campos’s red, bloodshot eyes could have been caused by something other than cannabis use. Although Mr. Campos said that he had smoked cannabis “way earlier,” he did not specify when or whether it was that day. Additionally, the officer admitted that he did not observe any green residue or debris in Mr. Campos’s mouth, that the ashes in the ashtray were not smoldering, and that the

pipe recovered from the glove compartment was not hot to the touch. The ashtray's contents and pipe were not tested for the presence of cannabis. Officer Stefano acknowledged that his police report did not specify whether the odor in the car was fresh or burnt cannabis.

¶ 22 On cross-examination, Officer Stefano also admitted that he did not remember how many steps Mr. Campos took before stopping during the walk-and-turn test or other details about Mr. Campos's performance on that test. He did remember that Mr. Campos did not fall down during that test. Officer Stefano also admitted that before Mr. Campos began the tests, he told the officer that he suffered from anxiety.

¶ 23 On redirect examination, Officer Stefano testified that as Mr. Campos got out of the car at the beginning of the traffic stop, he used the door to maintain his balance. Officer Stefano also testified that Mr. Campos did tell the officer that his anxiety would prevent him from performing the sobriety tests.

¶ 24 The defense presented no evidence.

¶ 25 In making its ruling, the trial court noted the presence of the bags and ashtray in the car, the odor of cannabis testified to by Officer Stefano, and Mr. Campos's performance on the field sobriety tests. The court also noted Mr. Campos's statement to the officer that the cannabis was for his personal use, as well as his refusal to submit to drug testing.

¶ 26 The court summarized Officer Stefano's testimony as to his prior arrests of this nature and the officer's opinion that Mr. Campos was under the influence of cannabis based on his observations, the items recovered from the car, and the results of the sobriety tests. The court also stated that it had viewed the photographs entered into evidence, which are included in the supplemental record in this case.

¶ 27 In denying Mr. Campos's motion *in limine*, the court stated that it had reviewed

Workman and other cases that discussed whether a conviction for driving under the influence of drugs could solely be based on a police officer's testimony as to the defendant's impairment, without further evidence. The court noted the facts here were distinguishable from *Workman* and other precedent about officers being qualified to opine on impairment in that, along with Officer Stefano's observations of behavior suggesting that Mr. Campos was under the influence of cannabis, Mr. Campos told the officer that he had smoked cannabis earlier and the officer saw what appeared to be cannabis and drug paraphernalia in the car.

¶ 28 The trial court then stated:

“As to driving under the influence of drugs, based upon [Mr. Campos's] admission and based upon [section 11-501(a)(4) of the Illinois Vehicle Code (625 ILCS 5/11-501(a)(4) (West 2014))], if [Mr. Campos] operates a vehicle under the influence of a drug, and [Mr. Campos] admitted that he had used it, so that means that he is under the influence of it, to the degree that it renders him incapable of safely driving. Well, I guess that's up to the court to make a call on. To the point of where he's incapable of driving. He's going down the street at 20 in a 30-mile-per-hour speed zone. He drifted across the middle line on at least two occasions. I think that under the circumstances, it's sufficient to find that he was driving under the influence of drugs, to the extent that he was incapable of safely driving the vehicle. I think that the State has proved that [] beyond a reasonable doubt.”

¶ 29 The court, however, found the evidence was not sufficient to show that Mr. Campos was in possession of cannabis, stating:

“With respect to cannabis, the specifics of the cannabis charge and whether or not they proved that, the charge is that he was in possession of at least

10 [grams] but not more than 30 [grams]. *** I can't find beyond a reasonable doubt that that's the case. So there will be a finding of not guilty with respect to the cannabis charged. Because you know, it could have been oregano. It could be something else in there. It might not be 10 to 30. I mean, I'll give him the benefit of the doubt on that, and there's a not guilty on the possession of cannabis charge."

¶ 30 In finding defendant guilty of possession of drug paraphernalia, the court stated:

"I think clearly in looking at the pipe, looking at the grinder, looking at what appears to be burnt ashes, I think that the State has proven beyond a reasonable doubt that there was drug paraphernalia in the car, and it was [Mr. Campos's] car. There's no dispute about that. He was driving the car. It was found in his glove box. It's found in his car.

Grant it [*sic*], it might be joint possession. It may have belonged to [the passenger], but I've heard nothing to suggest that, and even if it did, he can be found guilty *vis-à-vis* it being jointly possessed by them both, with the greater right of possession being the owner of the vehicle, which turns out to be Mr. Campos. So I find him guilty of [the possession of] drug paraphernalia."

¶ 31 The court also found the evidence sufficient to convict Mr. Campos of improper lane usage. Mr. Campos filed a motion for a new trial, which the court denied after reviewing the trial evidence. The court sentenced Mr. Campos to 18 months of supervision.

¶ 32 JURISDICTION

¶ 33 Mr. Campos was sentenced on March 4, 2015, and timely filed his notice of appeal on April 1, 2015. Accordingly, this court has jurisdiction pursuant to article VI, section 6, of the

Illinois Constitution (Ill. Const. 1970, art. VI, § 6) and Illinois Supreme Court Rules 603 and 606, governing appeals from final judgments of conviction in criminal cases (Ill. S. Ct. Rs. 603, 606 (eff. Feb. 6, 2013)).

¶ 34

ANALYSIS

¶ 35 On appeal, Mr. Campos argues that the State failed to prove that he was guilty of driving under the influence of cannabis and possession of drug paraphernalia. He contends that the evidence was insufficient to establish that he was impaired at the time of his arrest or was driving unsafely. He also argues that the State did not present evidence that the pipe contained or was in proximity to the cannabis or that the pipe belonged to him and not his passenger.

¶ 36 In considering those arguments, we use the familiar standard that when weighing a challenge to the sufficiency of the evidence, the relevant inquiry is whether, after viewing the evidence in the light most favorable to the State, any rational trier of fact could have found the essential elements of the offense beyond a reasonable doubt. *Jackson v. Virginia*, 443 U.S. 307, 319 (1979); *People v. Bradford*, 2016 IL 118674, ¶ 12. It is the responsibility of the trier of fact, which was the trial court in this bench trial, to resolve conflicts in the testimony, weigh the evidence, and draw reasonable inferences from the facts. *Id.* As a reviewing court, we will not substitute our judgment for that of the trier of fact on questions involving the weight of the evidence or the credibility of witnesses. *Id.* A conviction will not be overturned unless the evidence is so improbable, unsatisfactory or inconclusive that it creates a reasonable doubt as to the defendant's guilt. *Id.*

¶ 37 An individual commits the offense of driving under the influence of a drug or combination of drugs when he (1) drives or is in actual control of a vehicle (2) while under the influence of any drug or combination of drugs (3) to a degree that he is incapable of driving

safely. 625 ILCS 5/11-501(a)(4) (West 2014); see also *People v. Ciborowski*, 2016 IL App (1st) 143352, ¶ 108. Mr. Campos's arguments on appeal challenge the second and third elements. A conviction for driving under the influence can be supported solely by the credible testimony of the arresting officer. *People v. Gordon*, 378 Ill. App. 3d 626, 632 (2007); see also *Ciborowski*, 2016 IL App (1st) 143352, ¶ 110 (the State is not required to provide scientific proof of the defendant's intoxication).

¶ 38 Mr. Campos contends that, although he admitted to having ingested cannabis at some time prior to his driving, the State failed to show that he was under the influence of the substance at the time he was driving or that he was incapable of driving safely. Here, Officer Stefano testified that he had made about 100 arrests for driving under the influence of alcohol or drugs and between 10 and 12 arrests of individuals suspected of driving under the influence of cannabis. The officer based his opinion that Mr. Campos was driving under the influence of cannabis on his observation of Mr. Campos's driving and on Mr. Campos's appearance during the traffic stop. Mr. Campos's eyes were red and bloodshot, and the officer detected the odor of cannabis on his breath. The officer also testified to seeing what appeared to be the contraband in the car and described Mr. Campos's performance on three sobriety tests, two of which Mr. Campos failed. As Mr. Campos acknowledges in his brief, his refusal to submit to a drug test at the police station is also relevant and admissible in his DUI prosecution and can be used to demonstrate his consciousness of guilt. See 625 ILCS 5/11-501.2(c)(1) (West 2014); *People v. Jones*, 214 Ill. 2d 187, 201 (2005). All of this evidence, considered in the light most favorable to the State, was sufficient to show beyond a reasonable doubt that Mr. Campos was driving under the influence of cannabis to the degree that he was incapable of driving safely.

¶ 39 Mr. Campos points to the 24 actions listed in the National Highway Transportation Safety

Administration (NHTSA) law enforcement training manual that can be used by officers to determine if a driver is impaired at night, and argues that he was not impaired because few of them were part of Officer Stefano's observations of his driving. Mr. Campos offers no authority for his argument that some number of these 24 actions must occur for a driver to be found impaired. Also, Mr. Campos committed at least three of the acts listed in the NHTSA manual. Officer Stefano testified that Mr. Campos committed several traffic violations, crossing the center line while making a left turn onto Roosevelt Road. He also observed Mr. Campos's car cross the center line multiple times while driving on Roosevelt Road. In addition, the officer testified that Mr. Campos was driving at least 10 miles per hour below the 30-miles-per-hour speed limit. These actions are listed in the manual and, combined with Officer Stefano's other observations, supported Mr. Campos's conviction.

¶ 40 Mr. Campos also argues that the field sobriety test scores offer no value because they were not performed according to NHTSA protocol. He cites *People v. McKown*, 236 Ill. 2d 278, 306 (2010), in which our supreme court did appear to adopt the NHTSA standards as applied to the HGN test. But Mr. Campos passed the HGN test, so it really does not matter whether that test was performed according to NHTSA protocol. See also *People v. Borys*, 2013 IL App (1st) 111629, ¶ 39 (citing *McKown* and noting that the Illinois Supreme Court has "adopted the HGN testing requirements as outlined in the NHTSA Manual").

¶ 41 As to the other two field tests, Mr. Campos did not raise his concerns about NHTSA protocol to the trial court, so this argument would appear to be forfeited. It is also difficult to assess this argument since there is no clear record as to whether or to what extent to which the administration of the other two tests deviated from NHTSA protocol. In any event, Officer Stefano's other observations, as set out above, together with Mr. Campos's refusal to take a drug

test, provided sufficient evidence to convict him, even without the results of the field sobriety tests. See *People v. Briseno*, 343 Ill. App. 3d 953, 962 (2003) (evidence sufficient where the officer detected the odor of cannabis on the defendant's breath and in the defendant's car, and the defendant admitted to smoking marijuana).

¶ 42 Mr. Campos's remaining contention is that the State failed to prove beyond a reasonable doubt that he possessed drug paraphernalia. He argues that no evidence was presented that the pipe recovered from the glove compartment actually contained cannabis or was in proximity to cannabis, and he also argues that it was not shown that the pipe belonged to him, as opposed to his passenger and that he might have been smoking legally.

¶ 43 A person commits unlawful possession of drug paraphernalia when he knowingly possesses an item of drug paraphernalia with the intent to use it in ingesting, inhaling, or otherwise introducing cannabis into the human body. 720 ILCS 600/3.5(a) (West 2014). To convict a defendant of this offense, the State must prove that that the defendant had knowledge of the presence of the drug paraphernalia and had it in his immediate and exclusive possession or control. *People v. Schmalz*, 194 Ill. 2d 75, 81 (2000). In determining whether the defendant intended to use the paraphernalia, the trier of fact "may take into consideration the proximity of the cannabis or controlled substances to drug paraphernalia or the presence of cannabis or a controlled substance on the drug paraphernalia." 720 ILCS 600/3.5(b) (West 2014).

¶ 44 We find that the evidence was sufficient to prove Mr. Campos's possession of the drug paraphernalia recovered from the car. Officer Stefano recovered from the glove compartment of the car a glass jar containing 20 grams of suspect cannabis and a glass pipe that "smelled like burnt cannabis." The officer also observed two empty "nickel bags" from the back seat of the car and an ashtray in the center console that depicted a cannabis leaf.

¶ 45 Mr. Campos points out that the composition of the suspect cannabis was never presented in court and that the trial court acquitted him on the charge of possession of cannabis. However, the officer testified that the pipe had an odor of burnt cannabis and was found in the glove compartment together with the suspect cannabis. The trial court, as the trier of fact in this bench trial, could consider the officer's testimony of the characteristics of the items, including the odor of the burnt cannabis from the pipe, along with Mr. Campos's admission that he had smoked cannabis earlier.

¶ 46 While there was another occupant in the car, Mr. Campos was the driver. Possession can be "joint possession" when two or more persons share immediate and exclusive control or the intention and power to exercise control. *Schmalz*, 194 Ill. 2d at 82. The evidence was sufficient for the trier of fact to conclude that Mr. Campos was in either sole possession or joint possession of the items.

¶ 47 Mr. Campos also argues that because marijuana use is legal in some states, such as Colorado, he might have intended only lawful use of the drug paraphernalia. But the trial court was not required to engage in such speculation, even in order to, as Mr. Campos suggests, draw all "reasonable" inferences in favor of legitimacy. Moreover, Mr. Campos offers no authority for his argument that the legalization of marijuana in Colorado makes possession of drug paraphernalia legal in Illinois. The evidence was sufficient to sustain Mr. Campos's conviction for possession of drug paraphernalia.

¶ 48 **CONCLUSION**

¶ 49 For the reasons stated, the judgment of the circuit court of Cook County is affirmed.

¶ 50 Affirmed.