2017 IL App (2d) 141035-U
No. 2-14-1035
Order filed February 17, 2017

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IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS, Plaintiff-Appellee, v. SCOTT A. DEGELDER, Defendant-Appellant.	))))))))))	Appeal from the Circuit Court of McHenry County. No. 12-DT-574 Honorable Mary H. Nader, Judge, Presiding.

JUSTICE SCHOSTOK delivered the judgment of the court.
Justices Zenoff and Birkett concurred in the judgment.

ORDER

¶ 1 *Held*: The State proved defendant guilty beyond a reasonable doubt of DUI: although there was evidence that defendant did not display the standard indicia of intoxication, the jury's verdict was supported by the severity of his motorcycle accident, his admission to having consumed alcohol, and the level of alcohol in his blood.

¶ 2 While riding a motorcycle to his father's house, defendant, Scott A. Degelder, who admitted to drinking beforehand, crashed into a mailbox and was thrown from the motorcycle. Thereafter, defendant, who sustained serious injuries, was transported to the hospital where his blood was drawn. The results of that test, which was done only on the blood serum, revealed

that defendant's whole-blood alcohol level was 0.084. Following a jury trial, defendant was found guilty of driving while under the influence of alcohol (DUI) (625 ILCS 5/11-501(a)(2) (West 2012)), but not guilty of driving with a blood-alcohol level of 0.08 or more (625 ILCS 5/11-501(a)(1) (West 2012)). Defendant filed a motion for judgment notwithstanding the verdict, arguing that the evidence was insufficient to establish his guilt. The trial court denied the motion; sentenced defendant to 1 year of conditional discharge and 90 days of periodic imprisonment; and denied defendant's motion to reconsider his sentence. Defendant now timely appeals, arguing that he was not proved guilty beyond a reasonable doubt. We affirm.

¶ 3 Evidence presented at trial revealed that, on June 19, 2012, defendant was at the Cycle Werks in Barrington, where he had worked for 15 years and was a master motorcycle technician. He left work at about 6:20 p.m.; stopped at a bar in McHenry at around 6:30 or 6:45 p.m.; and drank two 12-ounce, light-draft beers in the 35 minutes to 1 hour that he remained there. He then left the bar and returned to his home in East Wonder Lake at about 8 p.m.

¶ 4 At home, defendant had a conversation with his fiancée, Jessica Norton, about riding his motorcycle to his father's home, which was about 2½ or 3 miles away. Norton testified that, while she was having this conversation with defendant, she noticed that defendant did not smell of alcohol; he did not mumble or slur his words; and his eyes did not appear different. Norton stated that, as a former bartender, she had had contact with or served people who were under the influence of alcohol. Norton asserted that she observed nothing about defendant that would suggest that he was under the influence of alcohol.

¶ 5 At approximately 8:30 p.m., defendant and Norton left their house to drive to defendant's father's home. Because Norton was pregnant, the couple had no alcohol in their house, and Norton testified that defendant did not consume any alcohol before heading to his father's home.

Defendant, who testified that he did not feel impaired when he left his home, agreed that the only alcohol he consumed before going to his father's house was the two beers he drank at the bar in McHenry.

¶ 6 As defendant, who was not wearing a helmet, was driving the motorcycle 35 miles per hour, Norton followed him in defendant's truck at a distance of a quarter of a mile. At one point, the couple was on Thompson Road, which has no street lights and is flanked by thick foliage and woods. Defendant testified that it was dusk at this time and that he had his headlight on. Defendant ascended a hill on Thompson and was out of Norton's sight when, according to defendant, he saw a deer run out of the woods to his right. Defendant stated that, upon seeing the deer, he:

> "[S]werved a little bit on the main road, and then as [he] noticed [he] was going to go off the road. [He] righted the bike up because [he] did not want to be in a full swerve as [he] went off the road into the grass. *** [A]s [he] was riding into the grass, [he] was trying to come back on to the road, and the bike lost traction. And then, [he] ended up slamming into a mailbox."

Defendant explained that, when he tried to get out of the ditch, the front and rear ends of the motorcycle "completely lost traction," and as a result, the bike skidded out, and he hit the mailbox.

¶ 7 Defendant asserted that he did not make a sharp turn into the ditch, because, with the "100 percent street tires" he had on the motorcycle, he would have crashed if he had swerved. Defendant also noted that the ditch consisted of gravel at the side of the road, mowed grass next to the gravel, and a "heavily" grassed area next to the mowed grass.

¶ 8 Officer Daniel Smith, who was off duty but driving a squad car, stated that, as he was driving on Thompson Road at about 8:50 p.m., he saw defendant lying in the ditch.[1] Smith activated his emergency lights, called 911, and went to defendant in an attempt to render aid. Defendant, who looked like he was in pain, sat up. Smith saw blood on defendant and noticed that defendant was disoriented and disheveled.

¶ 9 Jason Jankowski was one of the firefighters/paramedics who responded to the 911 call. At the scene, Jankowski saw defendant lying in the ditch, approximately 30 feet in front of the motorcycle. Although defendant complained of stomach and back pains, Jankowski noted that, other than a cut on defendant's forehead, he saw "no real deformities or anything like that to his extremities."

¶ 10 Jankowski talked with defendant at the scene and in the ambulance about what had happened. Defendant told Jankowski that he had swerved to avoid hitting a deer and that he had had a "few alcoholic beverages" before the accident happened. Jankowski indicated that, during his interaction with defendant, he was able to determine that defendant was "alert and oriented times four," meaning that defendant knew who he was, where he was, what had happened, and what time it was.

¶ 11 Although Jankowski could not recall whether defendant's eyes were bloodshot or glassy, he did state that defendant's eyes appeared normal "for as far as trauma to the spine or anything." Moreover, Jankowski asserted that defendant's speech was not slurred or mumbled, and as far as Jankowski remembered, defendant did not smell of alcohol. Although Jankowski indicated that

[1] In court, Smith was unable to identify the man he saw lying in the ditch, explaining that this incident occurred a few years ago. We will refer to the man as defendant, as neither party takes issue with the fact that Smith was unable to make an identification.

he never observed anything that would suggest that defendant was under the influence of alcohol, he stated that he had never been trained to investigate DUIs, and more importantly, he was at the scene to care for defendant, not to investigate a possible crime.

¶ 12 Officer Kyle Oligney testified that he arrived at the scene of the accident at about 9:15 p.m. and spoke to both Smith and Jankowski. While investigating the scene, Oligney observed that the weather was clear and the road was dry and free of debris. Oligney saw a motorcycle in the ditch "with very heavy damage." Oligney elaborated:

> "About 25 yards south of where the final resting place of the motorcycle was, there was a—markings in the grass which would be on the east side of the roadway. Basically, what [Oligney] observed as if [*sic*] the motorcycle just strayed off the road without any indication why and finally rested after striking a mailbox."

Oligney clarified that the motorcycle made a "gradual" stray off of the road as opposed to a "sudden" turn. Oligney was able to reach this conclusion based on the angle at which the motorcycle went into the ditch. Moreover, Oligney asserted that he did not see any sudden brake marks, gouges, or yaw marks that he could attribute to the accident.

¶ 13 While en route to the hospital, defendant was given fentanyl, an opiate-based pain killer, intravenously at 9:15 p.m. and 9:30 p.m. The ambulance arrived at the hospital at 9:35 p.m. Brooke Swanger, a registered nurse, was one of the hospital workers who treated defendant. Swanger testified that the doctor on duty ordered a blood draw, which is done during the regular course of emergency room treatment, at around 9:40 p.m. At the hospital, testing on the blood sample is done on the blood serum as opposed to the whole blood. Swanger explained that blood serum is the clear, watery part of the blood that is obtained after a blood sample is placed on a centrifuge, which separates the serum from the rest of the blood sample.

¶ 14 During Swanger's treatment of defendant, defendant was cooperative and coherent, and he told Swanger how the accident happened, which was consistent with what he had told Jankowski and testified to in court. Like Jankowski, Swanger did not notice anything unusual about defendant's speech, and she did not smell alcohol on defendant. Moreover, like Jankowski, Swanger testified that defendant was alert and oriented times four. Although Swanger could not recall whether defendant's eyes were bloodshot or glassy, she did state that his "[p]upils were normal." Based on what she observed, Swanger did not believe that defendant was under the influence of alcohol.

¶ 15 Swanger also indicated that, although, when defendant arrived at the hospital, his condition was somewhat stable, his condition worsened. More specifically, his breath became more labored, and he developed crepitus, which is air underneath the skin. Consequently, between defendant's arrival at the hospital and midnight, he was given three doses of morphine.

¶ 16 Ramone Santana, Jr., a medical technologist who tested the blood sample taken from defendant, testified that there were 100 milligrams of alcohol per deciliter in the blood serum. Santana also stated that the margin of error on these tests is plus or minus 5%. Because the alcohol in serum is more concentrated than that found in whole blood, the court advised the jury that, in order to convert the amount of alcohol found in a serum blood sample to that found in a whole blood sample, the jury needed to (1) be aware of the fact that 100 milliliters per deciliter is equal to 0.1 grams per deciliter and (2) then divide the serum blood result by 1.18 (see 20 Ill. Adm. Code 1286.40 (2001)). In light of these provisions, defendant's blood-alcohol level was 0.084 (see 625 ILCS 5/11-501.2(a)(5) (West 2012) ("Alcohol concentration shall mean *** grams of alcohol per 100 milliliters of blood.").[2]

[2] That is, taking defendant's blood-serum level of 100 milliliters per deciliter, which is

¶ 17 At 11:30 p.m., Oligney arrived at the hospital and made contact with defendant, who did not smell of alcohol. Defendant, who was in the emergency room, was heavily medicated. Oligney explained that "[i]t was apparent that [defendant] had sustained some pretty severe injuries." Because of his condition, Oligney was unable to speak with defendant.

¶ 18 Oligney learned that a blood test was performed on a sample taken from defendant, and after learning the blood-alcohol results of that test, and talking with his lieutenant, Oligney, who had read the warning to motorists to defendant, issued defendant a ticket for DUI. [3] Oligney then released defendant on his own recognizance, as he was told that defendant would be in the hospital for a while.

¶ 19 At issue in this appeal is whether defendant was proved guilty beyond a reasonable doubt of DUI. As noted, defendant was found guilty of DUI pursuant to section 11-501(a)(2) of the Illinois Vehicle Code (Code) (625 ILCS 5/11-501(a)(2) (West 2012)). To prove a defendant guilty of DUI, as charged here, the State must establish beyond a reasonable doubt that the defendant was (1) in actual physical control of a vehicle and (2) under the influence of alcohol at the time and to such a degree that the defendant's ability to operate the vehicle was impaired. *People v. Eagletail*, 2014 IL App (1st) 130252, ¶ 36; see also 625 ILCS 5/11-501(a)(2) (West 2012). Defendant does not dispute that he was in actual physical control of the motorcycle. Rather, he claims that the evidence presented failed to establish beyond a reasonable doubt that he was under the influence of alcohol to such a degree that his ability to operate the motorcycle was impaired.

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equal to 0.1 grams per deciliter, and dividing 0.1 by 1.18, the quotient is 0.08474576.

[3] Oligney stated that defendant was in no condition to consent to or refuse any testing.

¶ 20 When a defendant challenges the sufficiency of the evidence, we must look at all the evidence in the light most favorable to the State and determine if any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. *People v. Cunningham*, 212 Ill. 2d 274, 278 (2004). This role is distinct from that of the trier of fact. See *People v. Ortiz*, 196 Ill. 2d 236, 259 (2001). The trier of fact must assess the credibility of the witnesses, weigh the testimony, and draw reasonable inferences from the evidence. *Id.* In a DUI case, whether a defendant was intoxicated presents a question of fact that the trier of fact must resolve. *People v. Hires*, 396 Ill. App. 3d 315, 318 (2009). We will neither retry a defendant nor substitute our judgment for that of the trier of fact. *Ortiz*, 196 Ill. 2d at 259.

¶ 21 In assessing whether a defendant was proved guilty beyond a reasonable doubt, we need not engage in a "point-by-point discussion of every piece of evidence as well as every possible inference that could be drawn therefrom." *People v. Wheeler*, 226 Ill. 2d 92, 117 (2007). "To engage in such an activity would effectively amount to a retrial on appeal, an improper task expressly inconsistent with past precedent." *Id.* Moreover, we will neither disregard inferences that normally flow from the evidence nor search out all possible explanations consistent with a defendant's innocence and raise them to the level of reasonable doubt. *Id.* Rather, we will reverse a conviction only if the evidence is so improbable or unsatisfactory as to raise a reasonable doubt of the defendant's guilt. *People v. Collins*, 106 Ill. 2d 237, 261 (1985).

¶ 22 Here, we are mindful of the closeness of the evidence presented in this case. Nevertheless, even if we might have reached a different conclusion if we had been sitting as the trier of fact, we cannot conclude, viewing the evidence in the light most favorable to the State, that no rational trier of fact could have found defendant guilty beyond a reasonable doubt of DUI. That is, the evidence supports a conclusion that defendant was under the influence of

alcohol to such a degree that his ability to operate the motorcycle was impaired. Specifically, the evidence revealed that, approximately one hour before riding the motorcycle to his father's home, defendant had consumed at least 24 ounces of beer. While driving 35 miles per hour, defendant got into an accident. Defendant, who is very knowledgeable about how motorcycles work, claimed that a deer ran out in front of him, and he had the wherewithal to swerve slightly so that, although he was driving a street bike, he would not crash. Yet, after avoiding the alleged deer and attempting to get back on the road, defendant, who knew that the tires on his motorcycle were not designed to handle any of the terrain in the ditch, was driving in such a manner that he hit a mailbox and was thrown 30 feet from his then-heavily-damaged motorcycle. By all accounts, the injuries defendant sustained were quite serious, as defendant was given two doses of fentanyl within 15 minutes and three doses of morphine within the next approximately two hours, and he remained in the hospital for some time after being admitted. Added to this is the fact that a test of defendant's blood serum revealed that, he did in fact have alcohol in his system, at a level around the legal limit.[4] To the extent that defendant presented evidence minimizing his intoxication, such as the fact that he allegedly consumed only 24 ounces of light beer and got into the accident because of a deer, the jury was not required to accept defendant's account. See generally *People v. Luckett*, 339 Ill. App. 3d 93, 103 (2003) ("The credibility of the defendant, like that of any witness, is a fact question for the jury to decide, and the jury may reject or accept all or part of the defendant's testimony."). The jury, when faced with defendant's admission to consuming alcohol, the circumstances of the accident, the severity of

[4] Indeed, the evidence indicated that defendant's blood-alcohol level was slightly over the legal limit of 0.08, although the jury, likely because of the margin of error, acquitted him of that form of DUI.

defendant's injuries, and the presence of alcohol in defendant's blood, along with the testimony of Oligney regarding his crime scene investigation, certainly could infer that defendant committed DUI.

¶ 23 In reaching this conclusion, we acknowledge that many of the witnesses testified that they did not observe any of the classic indicia of intoxication, such as slurred speech or a smell of alcohol coming from defendant. However, Norton was a biased witness, Norton, Jankowski, and Swanger were not trained in investigating DUIs, Smith approached defendant only to render aid, and Jankowski and Swanger were interacting with defendant solely for the purpose of treating defendant's injuries. The jury was charged with weighing the evidence suggesting a lack of intoxication against all the other evidence. The jury chose to credit the other evidence. Given that evidence, as delineated above, we cannot conclude that no rational trier of fact could have found defendant guilty beyond a reasonable doubt.

¶ 24 Citing "confirmation bias," defendant argues that this court should reverse his conviction, because "Oligney knew that [defendant] had been in an accident and that [defendant] had consumed alcohol, so [Oligney] intrinsically hypothesized that the two facts were related." To the extent that such an argument is even relevant in an appeal based on the sufficiency of the evidence, we disagree. Oligney's testimony made clear that he issued defendant a ticket for DUI only after Oligney investigated the scene of the accident, observed that defendant was seriously injured, learned the results of the blood test, and conferred with his lieutenant. In our view, rather than jumping to conclusions, Oligney ticketed defendant based on a thoughtful examination of all of the evidence he had gathered.

¶ 25 Defendant also cites *People v. Wheatley*, 4 Ill. App. 3d 1088 (1972), to support his claim that his conviction must be reversed. Defendant argues that the evidence against the defendant in

Wheatley was more inculpating than that presented here and yet was deemed insufficient. To the extent that this type of comparison is appropriate, we disagree. In *Wheatley*, the court determined that the State's evidence was weak in light of the lack of foundation to support the officer's conclusion that the defendant committed DUI. *Id.* at 1090-91. That is not at issue here. Rather, here, the issue concerns the jury's assessment of the evidence and whether, given all of the evidence presented, the jury's verdict can be upheld.

¶ 26 For these reasons, the judgment of the circuit court of McHenry County is affirmed. As part of our judgment, we grant the State's request that defendant be assessed $50 as costs for this appeal. 55 ILCS 5/4-2002(a) (West 2014); see also *People v. Nicholls*, 71 Ill. 2d 166, 178 (1978).

¶ 27 Affirmed.