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2017 IL App (3d) 160531-U

Order filed October 4, 2017

IN THE

APPELLATE COURT OF ILLINOIS

THIRD DISTRICT

2017

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the Circuit Court of the 12th Judicial Circuit, Will County, Illinois.
Plaintiff-Appellee,	)	
	)	Appeal No. 3-16-0531
v.	)	Circuit No. 13-DT-478, 13-TR-87526, 13-TR-87527, 13-TR-87528, 13-TR-87529
BEVERLY J. HARDING,	)	The Honorable Bennett J. Braun,
Defendant-Appellant.	)	Judge, presiding.

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

ORDER

¶ 1 *Held*: In a criminal case, the evidence was sufficient to prove defendant guilty beyond a reasonable doubt of driving under the influence of alcohol. The appellate court, therefore, affirmed defendant's conviction of that offense.

¶ 2 After a bench trial, defendant, Beverly J. Harding, was convicted of driving under the influence of alcohol (DUI) (625 ILCS 5/11-501(a)(1) (West 2012)) and a certain related traffic offense. Defendant was sentenced to 24 months conditional discharge and ordered to pay a fine,

undergo counseling, and perform community service work. Defendant appeals her DUI conviction, arguing that she was not proven guilty beyond a reasonable doubt. We affirm the trial court's judgment.

¶ 3 FACTS

¶ 4 On October 17, 2013, at about 9:16 p.m. or soon thereafter, defendant was arrested for DUI and certain other related traffic offenses arising out of an incident where defendant allegedly crashed into an unattended parked car, left the scene of the accident, and went home. A resident who lived in the area saw the accident occur, notified the people whose car was struck, caught up to defendant, followed defendant home, and reported defendant's whereabouts to police.

¶ 5 Defendant waived her right to a jury trial, and the case proceeded to a bench trial over two days in June 2015. The evidence presented at the bench trial can be summarized as follows.

¶ 6 Kristine Lobas testified that on October 17, 2013, at about 9:16 p.m., she was standing in the driveway of her home at 504 Laurel Avenue, Romeoville, Illinois, and was about to get into her vehicle to go to a convenience store. Lobas saw a darker-colored SUV that looked like a Trail Blazer go past her home and hit a black-colored vehicle, which was located about two houses down from Lobas's home and across the street. After the collision, the offending vehicle backed up, proceeded down Laurel Avenue, and left the scene. Lobas got into her vehicle, drove down the street to her neighbors' house, honked her horn several times until the neighbors came out, and told the neighbors what had occurred. As Lobas was doing all of that, she lost sight of the offending vehicle.

¶ 7 After telling the neighbors what had happened, Lobas left in her vehicle and went in the direction of the offending vehicle. Lobas went around a curve and turned left onto Kingston. As

Lobas came to the intersection of Arlington and Kingston, she saw the taillights of another vehicle up the road. Those were the only taillights that Lobas saw in the area. Lobas believed that the vehicle whose taillights she had seen was the offending vehicle because it was the same color as the offending vehicle and because the driver was either swerving or having problems driving the vehicle. Lobas estimated that the amount of time that had elapsed from the moment she lost sight of the offending vehicle until she saw it again was "[p]robably at least a couple of minutes" and estimated that the distance she had traveled from the accident scene to where she caught up with the offending vehicle was about an eighth of a mile, although she stated that she was not good at estimating mileage.

¶ 8 With Lobas following, the offending vehicle eventually pulled into the driveway of 41 Abbeywood Drive and parked. Lobas got out of her vehicle and looked at the front of the offending vehicle. The front bumper was "pitched upward" as if the offending vehicle had been in an accident. Lobas tried to observe the person in the offending vehicle and then went back to her own vehicle. The person in the offending vehicle got out, and Lobas told the person to get ready, that the police would be coming. Lobas drove away and went back to her home on Laurel Avenue.

¶ 9 When Lobas arrived at her home, the police were already at the scene of the accident. Lobas told the police the address of where the offending vehicle was located and the license plate number of the offending vehicle and gave the police a description of the driver. On the witness stand, Lobas could not remember whether she had told police that the driver of the offending vehicle was a male or a female. Lobas stated that when she first saw the offending vehicle go past her house, she thought the vehicle was her neighbor's vehicle from across the street and that the driver was male. Lobas remembered telling the officer, however, that the person's hair was

up in back, so Lobas thought that she had told the officer that the driver of the offending vehicle was a female, but Lobas could not recall on the witness stand for sure. Lobas did not know the defendant and stated in court that she could not identify defendant as the person who was driving the offending vehicle that night. Lobas testified that when she saw the person getting out of the offending vehicle, she thought she recognized that person as being one of the waitresses at a restaurant Lobas frequented, but on the witness stand, Lobas realized that defendant was not that person.

¶ 10 Lobas acknowledged during her testimony that the intersection of Arlington and Kingston was a four-way intersection and that it was possible that the offending vehicle had turned and gone in another direction. Lobas reiterated, however, that the taillights she had seen were the only taillights in the area. Lobas acknowledged further during her testimony that although she believed that the vehicle she caught up to was the offending vehicle, she was not 100% sure. According to Lobas, the location of the accident and the location of where the offending vehicle eventually parked were both residential areas. There were streetlights in the area where the accident occurred, but the street of the accident had both light and dark areas. In Lobas's opinion, there was enough lighting at the time of the accident for her to be able to identify the offending vehicle as being a Chevrolet Trail Blazer. Lobas did not get the license plate of the vehicle at the scene of the accident but did get it later when she was following what she believed to be the offending vehicle after she had initially lost sight of it.

¶ 11 The arresting officer, Romeoville police officer Brian McClellan, testified that on October 17, 2013, at about 9 p.m., he was dispatched to 508 Laurel Avenue in Romeoville for an accident call. Upon arriving at that location, McClellan noticed that there was a black Toyota

that had sustained heavy rear end damage parked along the street. McClellan also saw at the scene a part of a grille from another vehicle.

¶ 12 Shortly after being dispatched to the accident call, McClellan was advised by dispatch that a witness had followed the offending vehicle to 41 Abbeywood Drive in Romeoville. McClellan went to that location about 15 minutes after he had arrived at the accident scene. When McClellan arrived at the Abbeywood address, there were already three other officers present. McClellan saw that there was a Chevrolet SUV parked in the driveway. The SUV had front-end damage, and there were broken pieces of another vehicle on the hood of the SUV. The pieces were black in color. In addition, the grille of the SUV was damaged.

¶ 13 Inside the home at that address, defendant, who was alleged to be the driver of the offending vehicle, and two other people were present. McClellan spoke to defendant. Defendant denied being involved in an accident and stated that she was coming from a friend's house at 417 Laurel. When defendant was asked about whether she had been drinking alcohol that evening, she stated that she had split a bottle of wine with a friend on Laurel and had driven home from that location. McClellan again asked defendant if she had been involved in a collision. Defendant again denied being in an accident but did state that she was sorry.

¶ 14 McClellan asked defendant to step outside to observe the damage to her vehicle. Defendant continued to deny that she was involved in an accident. During his interaction with defendant, McClellan noticed certain indications of possible alcohol impairment. McClellan asked defendant to perform field sobriety tests, which defendant failed. Defendant was placed under arrest at that time. McClellan transported defendant to the police station where she submitted to a breath test.

¶ 15 The following day, McClellan took a photographic lineup, which included a picture of defendant, to the home of Kristine Lobas. Lobas was unable to identify defendant as the driver of the offending vehicle.

¶ 16 During his testimony, McClellan acknowledged that at a previous summary suspension hearing pertaining to the same incident, he had testified that he had matched the debris that was on the SUV at 41 Abbeywood Drive to the vehicle that was struck on Laurel Avenue. McClellan stated that he had confused this case with another case when he made that statement at the prior summary suspension hearing and that he did not compare the debris on the offending vehicle in this case to the vehicle that had been struck in the collision. McClellan also acknowledged that although defendant had admitted that she had consumed alcohol and that she had driven a vehicle, McClellan did not know the time frame of when defendant had done either of those two things. Other than the statement of Lobas, McClellan had no independent knowledge of how long defendant was at the Abbeywood Drive address before McClellan got there.

¶ 17 Romeoville police officer John Allen testified that he gave defendant a breath test on the date in question at about 10 p.m. at the Romeoville police department. The breath test indicated that the alcohol concentration in defendant's breath was a .222 or a .22. According to Allen, after defendant completed the breath test, she apologized and stated that she had gone by a friend's house after work and had a few drinks and that she knew she should not have done that. During Allen's testimony, a copy of the printed breath test result was admitted into evidence along with some other items.

¶ 18 Olivia Knapp testified for the defense that on the date in question, she was at the Abbeywood Drive residence with her boyfriend, Justin Rice, when the police arrived. Defendant was Rice's mother. Knapp drove a black Avenger to the residence that evening and did not drive

the SUV. Knapp did not see her boyfriend, Rice, drive the SUV that evening either. As far as Knapp knew, defendant was already present at the residence when Knapp arrived a few hours before. Knapp did not know, however, whether there was a vehicle parked in the driveway when she arrived and stated that defendant usually parked in the garage. Knapp also did not know whether defendant had been driving the SUV or drinking that evening and did not speak to defendant before the police arrived. Knapp was present during part of the conversation between defendant and the police and did not hear defendant admit that she had been drinking or driving that day.

¶ 19 At the conclusion of the bench trial, the trial judge found defendant guilty of DUI and of a certain related traffic offense. In reaching that conclusion, the trial judge specifically found that the arresting officer's testimony as to the admission of defendant was credible, despite the officer's prior mistaken testimony. Defendant filed a motion to reconsider, which was subsequently denied. After a sentencing hearing, defendant was sentenced to 24 months conditional discharge and ordered to pay a fine, undergo counseling, and perform community service work. Defendant appealed.

¶ 20 ANALYSIS

¶ 21 On appeal, defendant argues that she was not proven guilty beyond a reasonable doubt of DUI. Defendant asserts that the evidence was insufficient to prove her guilty because the State's only eyewitness, Kristine Lobas, was not able to reliably identify defendant's vehicle as the offending vehicle, since Lobas had lost sight of the offending vehicle after the accident occurred, and was also not able to identify defendant in court as the driver of the offending vehicle. In the alternative, defendant asserts that the evidence was insufficient because the testimony of the arresting officer could not be believed since the arresting officer testified earlier at the summary

suspension hearing that he matched the debris on defendant's vehicle to the vehicle that had been struck but testified at trial that he was mistaken in his earlier testimony, that he had confused this case with another case, and that he had not tried to match the debris on defendant's vehicle to the other vehicle. For all the reasons stated, defendant asks that we reverse her DUI conviction and enter a judgment of not guilty (which defendant refers to as a judgment of acquittal) on that offense.

¶ 22 The State argues that the trial court's finding of guilty of DUI was proper and should be upheld. In support of that argument, the State asserts that the evidence presented at the bench trial, considered in the light most favorable to the State, overwhelmingly established that defendant was driving the offending vehicle and that she was intoxicated at the time. Most notably, the State points out that defendant admitted to the arresting officer, McClellan, that she had been drinking and driving, although she denied being involved in a collision, and made a somewhat more implicit admission to Officer Allen. In addition, the State contends that the physical evidence found at the scene of the crash and on defendant's own vehicle suggests, circumstantially, that defendant's vehicle was the one involved in the crash. Finally, the State disagrees with defendant's characterization of Officer McClellan's testimony and maintains, instead, that McClellan was merely correcting a mistake he had made in his prior testimony. Furthermore, the State points out that the trial court found McClellan to be a credible witness. For all of the reasons set forth, the State asks that we affirm defendant's conviction of DUI.

¶ 23 Pursuant to the Collins standard (*People v. Collins*, 106 Ill. 2d 237, 261 (1985)), a reviewing court faced with a challenge to the sufficiency of the evidence must view the evidence in a light most favorable to the prosecution and determine whether any rational trier of fact could have found the elements of the crime proven beyond a reasonable doubt. *People v. Jackson*, 232

Ill. 2d 246, 280 (2009). In applying the *Collins* standard, the reviewing court must allow all reasonable inferences from the record in favor of the prosecution. *People v. Bush*, 214 Ill. 2d 318, 326 (2005). The reviewing court will not retry the defendant. *People v. Austin M.*, 2012 IL 111194, ¶ 107. Determinations of witness credibility, the weight to be given testimony, and the reasonable inferences to be drawn from the evidence are responsibilities of the trier of fact, not the reviewing court. *People v. Jimerson*, 127 Ill. 2d 12, 43 (1989). Thus, the *Collins* standard of review fully recognizes that it is the trier of fact's responsibility to fairly resolve conflicts in the testimony, to weigh the evidence, and to draw reasonable inferences from basic facts to ultimate facts. See *Jackson*, 232 Ill. 2d at 281. That same standard of review is applied by the reviewing court regardless of whether the evidence is direct or circumstantial or whether defendant received a bench or a jury trial, and circumstantial evidence meeting that standard is sufficient to sustain a criminal conviction. *Id.*; *People v. Kotlarz*, 193 Ill. 2d 272, 298 (2000). In applying the *Collins* standard, a reviewing court will not reverse a conviction unless the evidence is so improbable, unsatisfactory, or inconclusive that it leaves a reasonable doubt of the defendant's guilt. *Austin M.*, 2012 IL 111194, ¶ 107.

¶ 24 To prevail on a charge of DUI under subsection (a)(1) of the DUI statute, the State must prove beyond a reasonable doubt that: (1) the defendant drove or was in actual physical control of a vehicle; and (2) at the time defendant did so, the alcohol concentration in the defendant’s blood or breath was 0.08 or more. 625 ILCS 5/11-501(a)(1) (West 2012); Illinois Pattern Jury Instructions, Criminal, No. 23.20 (4th ed. 2000). In this particular case, there was no dispute at trial about the second element of the offense—that the alcohol concentration in defendant’s breath was 0.08 or greater at the time defendant was allegedly driving. The only question, rather,

was as to the first element of the offense, identification—whether defendant was the person who was driving.

¶ 25 After reviewing the trial record in the instant case, we find that the circumstantial evidence of identification that was presented and the evidence of defendant's admissions, considered in the light most favorable to the State, were sufficient to prove beyond a reasonable doubt that defendant was driving a vehicle on the night in question. Although defendant did not specify the timeframe, she admitted that she had been driving, that she had consumed alcohol, and that she had come from a friend's house at 417 Laurel Avenue. Defendant also apologized to the officers, although she denied being in the accident. Based on all of the circumstantial evidence presented, the evidence of defendant's admissions, and the standard of review, we find that the evidence was sufficient to prove that defendant guilty of DUI. See *Collins*, 106 Ill. 2d at 261; *Jackson*, 232 Ill. 2d at 280; *People v. Larson*, 82 Ill. App. 3d 129, 137 (1980) (recognizing that it is well settled that the identity of an accused may be proven through circumstantial evidence). Therefore, we affirm defendant's conviction.

¶ 26 As for defendant's assertion in the alternative—that her DUI conviction should be reversed because the arresting officer's testimony was not believable under the circumstances—we do not agree. It was the trial judge's role, as the trier of fact in this case, to assess the credibility of the witnesses. See *Jimerson*, 127 Ill. 2d at 43. After hearing the arresting officer's testimony at trial, including the arresting officer's acknowledgment that he had made a mistake in his testimony in the earlier proceeding, the trial judge specifically found that the arresting officer's testimony at trial as to defendant's admissions was credible. We will not substitute our judgment for that of the trial court on that issue. See *id.*

¶ 27 CONCLUSION

¶ 28 For the foregoing reasons, we affirm the judgment of the circuit court of Will County.

¶ 29 Affirmed.