

2018 IL App (1st) 152768-U

No. 1-15-2768

March 21, 2018

Third Division

**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).

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IN THE  
APPELLATE COURT OF ILLINOIS  
FIRST DISTRICT

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THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County.
	)	
v.	)	Nos. YB 160272
	)	YB 160273
	)	YB 160274
	)	YB 160275
	)	YB 160276
	)	
MICHAEL NORMAN,	)	Honorable
	)	Elizabeth Mary Hayes,
Defendant-Appellant.	)	Judge, presiding.

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JUSTICE HOWSE delivered the judgment of the court.  
Presiding Justice Cobbs and Justice Fitzgerald Smith concurred in the judgment.

**ORDER**

- ¶ 1 *Held:* The trial court did not err in accepting a police officer's testimony as evidence that the defendant was under the influence of cannabis.
- ¶ 2 Following a bench trial, defendant Michael Norman was convicted of driving under the influence of cannabis and failing to stop at a stop sign. The trial court sentenced defendant to 12

months of supervision and imposed several other conditions. On appeal, defendant contends his conviction should be reversed and this case remanded for a new trial because the trial court erroneously allowed a police officer to testify as an expert witness in evaluating whether defendant was under the influence of drugs.

¶ 3 At trial, Chicago Heights police officer Stepich testified that at 4:30 a.m. on May 1, 2014, he was driving in a police car on Chicago Road near 16th Place when he observed a gray Chrysler van fail to stop at a stop sign. The officer testified the van “turned right southbound on Chicago Road cutting off another vehicle” causing the other vehicle to “slam on their brakes.” Stepich initiated a traffic stop.

¶ 4 Stepich testified that as he approached the van, he “observed a strong smell of burnt cannabis coming from the vehicle.” Defense counsel objected to the foundation of that testimony, and the trial court overruled that objection. Stepich testified that upon seeing the driver, who he identified in court as defendant, he “noticed [defendant’s] eyes were watery and bloodshot.” Stepich asked defendant if he had been smoking cannabis and defendant responded that “he just finished smoking weed.”

¶ 5 Stepich asked defendant to get out of the van and administered two field sobriety tests after demonstrating them to defendant. Stepich testified that before defendant started the walk-and-turn test, defendant swayed back and forth and “was unable to stand with one foot in front of the other.” During the test, defendant did not place his heel to his toe and repeatedly stepped outside a straight line. Defendant also did not pivot his feet as instructed and instead shuffled his feet while he turned.

¶ 6 Stepich testified, “I concluded that he was impaired, that he failed the test.” When Stepich was asked the basis of that conclusion, he responded:

“All the results of the -- that he couldn’t keep his balance when he put his right foot in front of the left, he missed the heel to toe, he stepped off the line, he stopped, and he did an improper turn.”

¶ 7 Stepich also administered the one-leg stand test, and he described defendant’s performance as follows:

“As I was explaining [the test to defendant], he was still swaying. And during the test he - - at first he lifted his right foot off the ground and I explained to him he could lift whatever foot he felt comfortable with. He lifted his right foot off the ground and he immediately put it down and I continued to -- I told him to continue with the test, then he lifted his left foot off the ground and he put it down four times. He only lifted his foot approximately two inches. He was [directed] to lift it six inches. And after he put it down the fourth time, I just stopped the test.”

¶ 8 Stepich testified that based on defendant’s performance on that test, he “concluded that he was impaired. He did not pass the test.” Stepich arrested defendant for driving under the influence of drugs.

¶ 9 When asked to describe defendant’s demeanor, Stepich stated that he “appeared to be very relaxed.” He said defendant “gave delayed responses” and “was slow to answer questions” and once in the police car, defendant closed his eyes and appeared “tired or sleepy.”

¶ 10 Stepich testified he had been a Chicago Heights police officer for 15 years and worked in the narcotics unit for 3 years. He had observed the odor of cannabis more than 1,000 times

professionally and had occasion to see individuals under the influence of cannabis more than 1,000 times. Stepich testified that based on that experience and his observations of defendant, defendant was driving under the influence of cannabis when the traffic stop was made.

¶ 11 On cross-examination, Stepich was asked if other people were in the van, and he replied, “Not that I recall.” Stepich said he smelled burnt cannabis while approaching the van. Stepich acknowledged his police report did not state that he smelled cannabis on defendant’s breath or that defendant’s eyes were dilated, though Stepich reiterated that defendant’s eyes were watery and bloodshot. Defendant did not stumble or fall when getting out of the van. He performed portions of each test correctly and was cooperative, though he mumbled slightly. No cannabis was recovered from inside the van or from defendant.

¶ 12 On redirect examination, Stepich said the individuals he had observed under the influence of cannabis were “relaxed and mellow,” similar to defendant. Defendant refused to submit to chemical testing.

¶ 13 At the close of evidence, defense counsel moved for a directed verdict, arguing that Officer Stepich “did not testify and the State did not bring out whether or not he was a [] drug recognition expert.” Counsel further argued:

“[The officer] testified only to smelling the odor of cannabis a thousand times and that he saw people under the influence of it a thousand times. I don’t think the officer today has testified and is qualified to be an expert in regards to drugs.”

¶ 14 Counsel asserted that according to Stepich’s testimony, no cannabis was recovered. He also argued no physical evidence corroborated defendant’s statement that he had just smoked it.

¶ 15 The State responded that Stepich's account was credible and based on his experience and that the officer did not have to be "some sort of drug recognition expert." The trial court denied defendant's motion, and the defense presented no evidence.

¶ 16 In finding defendant guilty of driving under the influence of drugs and failing to stop at a stop sign, the trial court stated Stepich's testimony was credible and the court did not "believe that the law required the officer" to be a drug recognition expert.

¶ 17 The court further stated:

"The officer testified that he has been involved in the Chicago Heights Police Department for over 15 years, that he was a narcotics officer for a number of years, and that he has observed people under the influence in his professional capacity on over a thousand instances. So I do find him an expert in evaluating somebody under the influence of drugs. The defendant's statement that the officer testified to was also corroborated by the field sobriety test. So I do find that your client was under the influence at the time of that stop and he is guilty of that."

¶ 18 The court also found defendant guilty of failing to obey a stop sign at Chicago Road and 16th Place based on the officer's testimony. The trial court sentenced defendant to 12 months of supervision, ordered him to complete "significant risk treatment" and a victim impact panel and ordered him to pay \$1,244 in fees, fines and costs.

¶ 19 On appeal, defendant contends that Officer Stepich lacked the relevant skills, experience or training to present an expert opinion as to whether defendant was under the influence of drugs and that the trial court erred in relying on the officer's opinion to find him guilty. Defendant emphasizes he is not challenging the sufficiency of the evidence to convict but, rather, he is

disputing Stepich's ability to offer testimony as to defendant's condition. He argues the officer did not describe any specific training in detecting whether someone was under the influence of drugs or recount any previous arrests of individuals for driving under the influence of drugs.

¶ 20 We first address the standard of review to be applied in this case. Defendant asserts the sufficiency of the basis for an expert opinion is subject to *de novo* review, citing *People v. Safford*, 392 Ill. App. 3d 212, 221-22 (2009). However, this court has recently rejected *Safford* and similar cases discussing that standard. *People v. Simmons*, 2016 IL App (1st) 131300, ¶¶ 110-114 (applying an abuse of discretion test to the issue of whether an adequate foundation was laid for an expert opinion). The trial court is given broad discretion when determining the reliability of an expert witness and the court's admission of such evidence is reviewed for abuse of that discretion. *People v. Lerma*, 2016 IL 118496, ¶ 23. An abuse of discretion is found where the trial court's decision is arbitrary, fanciful or unreasonable to the degree that no reasonable person would agree with it. *Id.*

¶ 21 In general, an individual will be permitted to testify as an expert "if his experience and qualifications afford him knowledge which is not common to lay persons and where such testimony will aid the trier of fact in reaching its conclusion." *Lerma*, 2016 IL 118496, ¶ 23 (quoting *People v. Enis*, 139 Ill. 2d 264, 288 (1990)). The degree of a proposed expert's knowledge or expertise is not based on "an assigned level of academic qualifications." *People v. Adams*, 404 Ill. App. 3d 405, 417 (2010). Rather, the key inquiry is whether the proposed expert possesses knowledge and experience beyond that of an average citizen. *Id.* (citing *People v. Novak*, 163 Ill. 3d 93, 104 (1994)).

¶ 22 Officers and ordinary citizens can offer testimony as to the influence of alcohol or drugs on a particular individual; even a lay witness may testify regarding a person's alcohol intoxication because such observations are within the competence of all adults of normal experience. *People v. Workman*, 312 Ill. App. 3d 305, 310 (2000); *People v. Vanzandt*, 287 Ill. App. 3d 836, 845 (1997). The opinion of a police officer as to whether a person is under the influence of drugs can be offered if the officer has the relevant skills, experience, or training to render such an opinion. *People v. Ciborowski*, 2016 IL App (1st) 143352, ¶ 79; *People v. Foltz*, 403 Ill. App. 3d 419, 424 (2010); *Workman*, 312 Ill. App. 3d at 310 (citing *People v. Bitterman*, 142 Ill. App. 3d 1062, 1064 (1986)); see also *People v. Jacquith*, 129 Ill. App. 3d 107, 115 (1984). The officer “would have to be qualified by the court as an expert in order to reach such a conclusion.” *Workman*, 312 Ill. App. 3d at 310.

¶ 23 Defendant recognizes the test in which the court must consider whether the officer had the relevant skills, experience or training to offer an opinion as to whether an individual is under the influence of drugs. See *Ciborowski*, 2016 IL App (1st) 143352, ¶ 79; *Workman*, 312 Ill. App. 3d at 310. Still, defendant asserts that despite the use of the word “or” in those cases, an officer is required to provide proof in all three of those categories. We reject defendant's position, given the common and ordinary meaning ascribed to the word “or.” Moreover, our supreme court has held that a person may testify as an expert “[r]egardless of how specialized knowledge is acquired, whether through education, training or experience, or a combination” thereof. *Novak*, 163 Ill. 2d at 104; see also Ill. R. Evid. 702 (eff. Jan. 1, 2011) (a witness may be qualified to testify as an expert “by knowledge, skill, experience, training, or education”).

¶ 24 Here, the trial court rejected the defense argument that Stepich was required to be a “drug recognition expert,” and the court found Stepich to be “an expert in evaluating somebody under the influence of drugs.” In so doing, the court noted the officer’s 15 years of police experience, including several years as a narcotics officer, along with his testimony that he had observed more than 1,000 people under the influence of drugs.

¶ 25 Defendant next asserts that Stepich testified to his observation of people under the influence of cannabis but did not state that he had “actually dealt with or had interactions with people under the influence of cannabis.” Defendant contends that a distinction exists between observing someone under the influence of cannabis and determining that a person “is under the influence of drugs to a degree that renders the person incapable of driving safely.” Stepich observed defendant disobey a stop sign and cause another vehicle to stop suddenly. The officer testified that defendant’s eyes were watery and bloodshot and detected a “strong smell of burnt cannabis coming from the vehicle.” The officer observed defendant’s performance on two field sobriety tests. Based on that testimony, the trial court did not abuse its discretion in finding the officer could testify that in his opinion, defendant was under the influence of drugs.

¶ 26 Defendant relies on cases including *Jacquith* and *People v. Shelton*, 303 Ill. App. 3d 915 (1999); however, those decisions do not defeat our determination that the officer’s testimony was properly admitted here. In *Jacquith*, a police officer testified that based on the defendant’s hyperactive movements, general appearance and speech, the defendant was under the influence of “something” in addition to alcohol. *Jacquith*, 129 Ill. App. 3d at 109. Another officer at the scene testified the defendant was under the influence of both alcohol and drugs. *Id.* at 110. In finding that testimony was insufficient to support a finding that the defendant was under the



influence of drugs, this court noted that neither officer testified to any prior experience with narcotics users. *Id.* at 115. Similarly, in *Shelton*, a police officer testified the defendant was under the influence of drugs and could not drive safely; however, that officer admitted to “limited training” in detecting drug users and the officer testified a person under the influence of drugs will be “a little more confused” than someone under the influence of alcohol. *Shelton*, 303 Ill. App. 3d at 926.

¶ 27 Defendant also cites *People v. Foltz*, 403 Ill. App. 3d 419, 425 (2010), in which this court found a police officer lacked the necessary experience to testify that a defendant was under the influence of drugs. The officer in *Foltz* had no specific training in drug recognition, had never arrested someone for driving under the influence of drugs and had been a police officer for less than two years. *Id.* at 422. In contrast to those cases, Stepich testified he had more than 15 years of police experience and had observed more than 1,000 people under the influence of drugs.

¶ 28 In conclusion, Officer Stepich presented testimony that he had the relevant skills, experience or training to render an opinion as to whether defendant was under the influence of drugs. Therefore, the trial court did not abuse its discretion in allowing that evidence.

¶ 29 Accordingly, the judgment of the trial court is affirmed.

¶ 30 Affirmed.