2018 IL App (1st) 152857-U

No. 1-15-2857

Order filed May 11, 2018

Fifth Division

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. YT709145
	)	YT709146
	)	
ALVARO PADILLA,	)	Honorable
	)	Stanley L. Hill,
Defendant-Appellant.	)	Judge, presiding.

JUSTICE LAMPKIN delivered the judgment of the court.
Justices Hall and Rochford concurred in the judgment.

ORDER

¶ 1 *Held*: The defendant's conviction was affirmed where the evidence established beyond a reasonable doubt that he was driving under the influence of cannabis.

¶ 2 Following a bench trial, defendant Alvaro Padilla was convicted of driving under the influence of cannabis (DUI) (625 ILCS 5/11-501(a)(6) (West 2014)) and reckless driving (625 ILCS 5/11-503 (West 2014)), and sentenced to 18 months' supervision. On appeal, defendant challenges the sufficiency of the evidence supporting his conviction for DUI. We affirm.

¶ 3 At trial, Berwyn police officer Robert Brenka testified that, on July 29, 2014, he was driving in an unmarked squad car when he saw a Ford Focus drive through a red light and make a U-turn in the intersection. Brenka began to follow the car. He was about "a car or two lengths" behind the Focus and was traveling at a speed of 30 miles per hour. The Focus began accelerating and, after traveling a few blocks, began making "rather quick lane changes left and right," which Brenka described as "zigzagging through the traffic." The Focus cut around numerous vehicles without signaling. The properly calibrated radar in Brenka's squad car indicated that the Focus was traveling at 55 miles per hour in a 25 miles-per-hour zone.

¶ 4 A vehicle in front of the Focus slowed down to turn, and the Focus slammed on its brakes, "nearly rear-end[ing] the vehicle." The Focus then "swerved hard" to the right lane, nearly sideswiping Brenka's car. Brenka slammed on his brakes and moved to the right, and the Focus went around him. Brenka activated his emergency lights and the Focus "pulled over properly" to the side of the road. Brenka identified the driver as defendant. There were two passengers in the car.

¶ 5 Brenka testified that defendant had "slight red, bloodshot eyes" and "there was a minor odor of burnt cannabis on his breath." While defendant was in the vehicle, Brenka "was able to detect" the smell on his breath and, once defendant exited the vehicle, "it was still emitting from his breath." Brenka was about one and one-half to two feet away from defendant. Defendant told Brenka he had "smoked weed, but it was a couple hours ago." Defendant was taken into custody and transported to the police station, where Brenka still smelled the odor of burnt cannabis on his breath. Police recovered no "contraband" from defendant. He willingly provided a urine sample, but Brenka did not know what the results were.

¶ 6 Brenka testified that he had been a Berwyn police officer for eight years and had received training for DUI stops and investigations, for which he passed written and oral examinations. He had also completed Advanced Roadside Impaired Driver Detection training, a class that went into depth on drugged driving and provided him with the opportunity to smell the odor of State-certified burnt and unburnt cannabis. During Brenka's career as a police officer, he had approximately 200 interactions with people under the influence of cannabis. He had made approximately 100 arrests involving cannabis, 50 of which involved the smell of burnt cannabis emanating from the suspect's breath. It was Brenka's opinion that defendant was under the influence of cannabis and driving recklessly.

¶ 7 The court overruled defendant's continuing objection to Brenka's testimony, made on the basis that chemical testing, rather than opinion testimony, was required to demonstrate that defendant had cannabis "in" his breath as required for the DUI offense. It then denied defendant's motion for a directed finding and found him guilty of DUI and reckless driving. The court found Brenka's testimony that defendant admitted to using cannabis "a couple hours" before he was stopped to be credible. It stated that, although impairment was not a requirement for the DUI charge, defendant's level of impairment was circumstantial evidence that drugs were in his system while he was driving, especially where he was speeding, weaving through traffic, ran a red light and made a U-turn, and nearly rear-ended another vehicle and almost side-swiped Brenka's vehicle. The court also noted that Brenka had been trained to detect burnt cannabis and "actually smelled" it on defendant's breath. The court subsequently denied defendant's motion to reconsider and sentenced him to 18 months' supervision. It denied defendant's motion to reconsider sentence. This appeal followed.

¶ 8 On appeal, defendant challenges only his DUI conviction. He contends the State failed to establish beyond a reasonable doubt that there was any amount of "a drug, substance, or compound" in his body that resulted from the consumption of cannabis, where the State provided no scientific evidence and no evidence from which it could reasonably be inferred that defendant was impaired.

¶ 9 On a challenge to the sufficiency of the evidence, we must determine 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 proven beyond a reasonable doubt. *People v. Brown*, 2013 IL 114196, ¶ 48. The reviewing court will not retry the defendant or substitute its judgment for that of the trier of fact on issues pertaining to conflicts in testimony, the credibility of witnesses, or the weight of the evidence. *Id.* To sustain a conviction, "[i]t is sufficient if all of the evidence taken together satisfies the trier of fact beyond a reasonable doubt of the defendant's guilt." *People v. Hall*, 194 Ill. 2d 305, 330 (2000). Additionally, the trier of fact is not required to disregard inferences that flow normally from the evidence or to seek out all possible explanations consistent with innocence and raise them to a level of reasonable doubt. *People v. Jackson*, 232 Ill. 2d 246, 281 (2009). A conviction will be reversed if the evidence is so improbable or unsatisfactory as to justify a reasonable doubt of the defendant's guilt. *People v. Siguenza-Brito*, 235 Ill. 2d 213, 225 (2009).

¶ 10 To sustain defendant's conviction for DUI as charged, the State was required to prove defendant was driving a vehicle with "any amount of a drug, substance, or compound in [defendant's] breath, blood, or urine resulting from the unlawful use or consumption of cannabis." 625 ILCS 5/11-501(a)(6) (West 2014).

¶ 11 Circumstantial evidence may be used to prove the presence of a substance in a defendant's breath, blood, or urine. *People v. Kathan*, 2014 IL App 2d. 121335, ¶ 20. Likewise, a conviction for DUI may be supported solely by the credible testimony of the arresting officer. *People v. Janik*, 127 Ill. 2d 390, 402 (1989). Moreover, a defendant's admissions can provide direct evidence of his intoxication to sustain a conviction. *People v. Ciborowski*, 2016 IL App (1st) 143352, ¶ 110. Intoxication is a question for the trier of fact to resolve based on assessing the credibility of the witnesses and the sufficiency of the evidence. *Janik*, 127 Ill. 2d at 401. We find the evidence sufficient for a rational trier of fact to conclude defendant was driving under the influence of cannabis.

¶ 12 Defendant admitted to Brenka that he had smoked "weed" "a couple hours" before being stopped, and the court found Brenka's testimony to be credible. When Brenka stopped him, defendant's eyes were red and bloodshot, and Brenka detected the odor of cannabis on his breath, both at the scene and later at the police station. Brenka had extensive training in DUI and had made about 100 arrests involving cannabis, of which 50 involved the smell of burnt cannabis emanating from the suspect's breath. He was, therefore, by training and experience, well-equipped to identify the smell of cannabis. *Janik*, 127 Ill. 2d at 402 (conviction for DUI may be supported solely by the credible testimony of the arresting officer).

¶ 13 The State was not required to prove when defendant consumed the cannabis. See 625 ILCS 5/11-501(a)(6) (West 2014). However, as the odor was still emanating from defendant's breath when Brenka stopped him, the court could reasonably infer not only that cannabis was still "in" defendant's breath when he was driving as required by section 501(a)(6), but that defendant had smoked the cannabis more recently than "a couple hours" earlier.

¶ 14 Further, although the State was not required to prove that the cannabis in defendant's system impaired his ability to drive (see 625 ILCS 5/11-501(a)(6) (West 2014)), impaired driving is relevant as circumstantial evidence of driving under the influence of cannabis. *Kathan*, 2014 IL App (2d) 121335, ¶ 20. Here, while still emitting the odor of cannabis from his breath, defendant had driven through a red light, made a U-turn in the red-light intersection, driven his car at 30 miles over the speed limit while "zigzagging" through traffic without using a signal, and nearly side-swiped Brenka's car while swerving to avoid rear-ending another car. Circumstantial evidence is proof of facts and circumstances from which the trier of fact, here the trial court, may infer other connected facts that reasonably and usually follow according to common experience. *Id.*; *People v. McPeak*, 399 Ill. App. 3d 799, 801 (2010). We find that, given defendant's admission and Brenka's observations of defendant's erratic and dangerous driving, the circumstantial evidence here is, as the trial court found, sufficient to prove beyond a reasonable doubt that defendant was driving under the influence of cannabis.

¶ 15 Defendant contends that, although he admitted to smoking cannabis "a couple hours" earlier, the State did not present any scientific evidence or "evidence that tetrahydrocannabinol would remain in his system more than two hours after smoking marijuana." He argues that Brenka's testimony supporting his reckless driving conviction does not support an inference that defendant was impaired from having smoked cannabis hours earlier. We disagree.

¶ 16 Section (a)(6) of the DUI statute under which defendant was convicted required only that the State prove defendant was driving and had some amount of cannabis in his breath, blood, or urine. 625 ILCS 5/11-501(a)(6) (West 2014). Effective June 29, 2016, the statute was amended, requiring the State to prove the driver "has within 2 hours of driving *** a tetrahydrocannabinol

concentration in the person's whole blood or other bodily substance," defined as "either 5 nanograms or more of delta–9–tetrahydrocannabinol per milliliter of whole blood or 10 nanograms or more of delta–9–tetrahydrocannabinol per milliliter of other bodily substance." 625 ILCS 5/11-501(a)(7) (West 2016); 625 ILCS 5/11-501.2(a)(6) (West 2016). However, at the time of defendant's offense in July 2014, the State did not have to prove tetrahydrocannabinol would remain in his system for more than two hours, let alone present scientific evidence of the presence of cannabis in his breath, blood, or urine.

¶ 17 Nor was the State required to prove that the inhaled substance was of an impairing nature or that defendant was actually impaired by its consumption. See *People v. Martin*, 2011 IL 109102, ¶ 26 (the State must simply establish that defendant used or consumed a controlled substance prior to driving); *People v. Way*, 2017 IL 120023, ¶ 28 (the State is not required to prove the defendant was driving while impaired, only that the defendant was driving with an illegal substance in his system). Although evidence of impaired driving can be circumstantial evidence that the defendant was driving under the influence, it is not required for a conviction under section 501(A)(6). In conclusion, viewing the evidence in the light most favorable to the State, we find the trial court reasonably could have found the State proved the essential elements of DUI beyond a reasonable doubt.

¶ 18 For the reasons set forth above, we affirm the judgment of the trial court.

¶ 19 Affirmed.