2018 IL App (1st) 170072-U

No. 1-17-0072

February 27, 2018

Second 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.	)	No. TH-362-186
	)	
JASON MASON,	)	Honorable
	)	John Curry and Honorable
Defendant-Appellant.	)	Stephanie Saltouros,
	)	Judges, presiding.

PRESIDING JUSTICE NEVILLE delivered the judgment of the court.
Justices Pucinski and Mason concurred in the judgment.

ORDER

¶ 1 *Held*: The evidence was sufficient to prove defendant guilty of driving under the influence of cannabis beyond a reasonable doubt over his contentions that the arresting officer was not qualified to give an expert opinion as to whether he was under the influence of cannabis such that it rendered him incapable of safely driving and the totality of evidence was insufficient to prove him guilty.

¶ 2 Following a bench trial, defendant Jason Mason was found guilty of, *inter alia*, driving under the influence of drugs (625 ILCS 11/501(a)(4) (West 2014)) and sentenced to 18 months' conditional discharge. On appeal, defendant contends that the State did not prove him guilty of

driving under the influence of drugs because the arresting police officer was not qualified to give an expert opinion about whether he was under the influence of a drug such that it rendered him incapable of safely driving. He also argues that the totality of the evidence was insufficient to find him guilty of driving under the influence of drugs beyond a reasonable doubt. For the reasons below, we affirm.

¶ 3 Defendant was charged by citation with driving under the influence of drugs, failing to stop at a stop sign, obstructed view, and two counts of failing to use his turn signal. At trial, Chicago police officer Morlock, who had been a police officer for five and one-half years, testified that, at about 9:20 p.m., on May 25, 2015, he and his partner, Officer Ozmina, were driving southbound on Martin Luther King Drive. At "89th and King Drive," he observed a black Altima, which was travelling northbound, fail to stop at a stop sign. Morlock made a U-turn to catch up to the vehicle, which turned east on 88th Street, turned right at the end of the street, travelled southbound, and then turned right, or westbound, on 88th Place. The driver failed to use his turn signal when he turned onto 88th Street and 88th Place.

¶ 4 Morlock curbed the vehicle and observed defendant in the driver's seat. When Morlock was behind defendant's vehicle, there was a "strong smell of cannabis," which became "a stronger smell" when he approached. He asked defendant to step out of the vehicle and, when defendant got out, defendant "stumbled a little bit and looked confused." Morlock testified that he smelled "a strong odor of cannabis emitting from [defendant's] breath," and that he "had bloodshot eyes, dilated." Morlock asked defendant if he had been smoking cannabis and defendant told him he "was smoking weed," which was street terminology for cannabis. In addition to Morlock and Ozmina, there were two other officers at the scene.

¶ 5 Morlock arrested defendant and "relocated" to the police station because he was concerned for officer safety, as there was a "hostile crowd outside." At the police station, Morlock read defendant the "Warning to Motorists," which defendant signed and stated he understood. Morlock then offered him the standard field sobriety tests. Defendant refused all of the tests. Morlock described defendant as "very talkative," "cocky," "excited," and "combative."

¶ 6 Morlock testified that, in his experience as a police officer, he had smelled "unburnt" and burnt marijuana "hundreds" of times and had observed people under the influence. Based on his experience, a person under the influence of cannabis would have "glassy, bloodshot eyes, an odor of cannabis emitting from his breath, stumbling." When the State asked Morlock whether it was his opinion, based on his experiences, that defendant was under the influence of cannabis, he responded, "[t]o the best of my ability, yes, I believe he was." He believed defendant was under the influence of cannabis because "[t]he previous admission that he just got done smoking weed," "the failure to submit to any chemical testing," and "the strong smell emitting from the vehicle and disregarding the traffic signals."

¶ 7 On cross-examination, Morlock testified that, at the stop sign at 89th and King Drive, defendant slowed down to about one to five miles per hour and then proceeded through the intersection, failing to make a complete stop. When Morlock followed defendant's vehicle, he did not observe defendant weave or cross any center lines and did not issue him a citation for speeding.

¶ 8 Morlock testified that, when defendant got out of his vehicle, defendant did not "stand up right away, he tripped." Defendant did not fall down or lean on the car to balance himself. Morlock did not hold a flashlight up to defendant's eyes. He did not conduct horizontal gaze

nystagmus, field sobriety, or "drug enforcement recognition" tests at the scene due to safety concerns, as it was a "hostile location" and a neighborhood known for "gang violence" and "shootings." Defendant's speech was not slurred, mumbled, or thick-tongued. Defendant's appearance and clothing were "orderly." Morlock did not recover any burnt cannabis or any paraphernalia used to smoke cannabis from inside defendant's vehicle.

¶ 9 Morlock testified that the police report did not indicate that he had observed the smell of cannabis coming from defendant's breath. The police report provided that defendant said he "just got done smoking weed," which was not verbatim of what defendant said. At the police station, after defendant received his *Miranda* warnings, Morlock asked him if he had been drinking and whether he had been driving under the influence of drugs, and defendant answered no.

¶ 10 On redirect, Morlock testified that, at the police academy, he had training in the detection of alcohol, not marijuana. He testified he knew that defendant smelled of marijuana because "previous experiences through the police department, previous arrests with drug and cannabis arrests."

¶ 11 Valerie Michelle Gardner, defendant's girlfriend, testified for defendant. Garner testified she had dated defendant for 15 years and, at about 9 p.m., on May 25, 2015, defendant had planned to come to her house on 88th Place to bring her food from his residence, which was around "75th and King Drive." Defendant had to drive south to get to Gardner's residence.

¶ 12 At about 9 p.m., she went outside her residence and saw defendant attempting to parallel park. He was unsuccessful because several police officers surrounded him. She saw the police officers "physically pull" defendant out of his vehicle and place him in handcuffs. One police officer told him that he "would break [his] arm." When Gardner asked an officer why defendant

was being apprehended, he told her, " 'go call Jenny Craig,' " which was a weight loss system. Gardner described her neighborhood as "quiet," with no "gang bangings and shootings." She testified that no one was acting hostile towards the police officers, but they were acting hostile towards her.

¶ 13 Defendant testified that he was at a barbeque at his mother's house on May 25, 2015, which was located north of Gardner's house. After the barbeque, he went to Gardner's house to bring her food. He generally took King Drive southbound to 88th Place to get to Gardner's house. On May 25, 2015, he did not drive northbound on King Drive at 89th Street, but he could "not quite" remember the exact route he took.

¶ 14 Defendant identified a Google map photograph retrieved from his phone, showing the "general" route he took on May 25, 2015. The map showed that he took King Drive southbound to 88th Place. He testified that when he got to the area where Gardner lived, he "actually" turned left on 88th Street to travel eastbound, turned right on "Eberhart" to travel southbound, and then turned right on 88th Place to travel westbound to Gardner's residence. He testified he used signals when he turned on 88th Street, Eberhart, and 88th Place and he did not speed or weave.

¶ 15 When defendant reached Gardner's residence, his turn signal was still on and, when he was parking, he stopped his vehicle because he saw police cars. The police officers approached, told him to get out of his car, and "snatched" him out of the car. There were four police officers present. Defendant did not recall stumbling or having any problems when he got out of the car and testified he was "stunned" and "frightened." Defendant was "immediately" placed in handcuffs and one of the officers threatened to break his arm.

¶ 16 He testified he was not under the influence of any alcohol or drugs when the police stopped him. Before he was handcuffed, one of the officers asked him if he was under the influence of any alcohol or drugs, and he told the officer he was not under the influence. He told the officer: "you're standing in front of me so you would be able to recognize that if I were." Defendant was not offered any field sobriety tests at the scene. He testified that the neighborhood was not "hostile," and described it as a "close-knit community," a "normal, nice neighborhood," and not a lot of "drug use" or "gang banging."

¶ 17 None of the officers at the scene examined his eyes with a flashlight. Shown his booking photograph from May 25, 2015, he testified that his eyes did not appear bloodshot or glassy. At the police station, the officer did not ask him to take any field sobriety or breathalyzer tests. The officer asked him to take a urine or blood test, which he refused. The officer asked him if he was under the influence of drugs and alcohol. Defense counsel asked defendant if he told the officer "no." Defendant responded: "I never said no, I told you exactly what I said which was you're standing in front of me so if I were you would be able to observe that." Defense counsel then asked him "[t]he answer to that is no?" and defendant responded, "[t]he answer is no."

¶ 18 In rebuttal, the State called Chicago police officer Ozmina. Ozmina testified that he was with Morlock on May 25, 2015, and was involved in defendant's arrest. He curbed defendant's vehicle at about 88th Place and, during the arrest, defendant stated that he "just got done smoking weed." Later at the police station, defendant was read the Warning to Motorists and indicated he understood it. Defendant was offered field sobriety tests, including the "eye test," "the walk and turn," and the "blow into the machine." Defendant refused all testing.

¶ 19 Following argument, the trial court found defendant guilty of driving under the influence of drugs, failure to stop at a stop sign, and two violations of failure to operate a turn signal. It noted that "minor possible discrepancies *** in the officer's testimony such as *** in which direction the defendant's vehicle was traveling at the time it failed to come to a full and complete stop I don't find to be substantial or important." The court also found that there was "no credible or persuasive challenge to the credibility of [Morlock] on the main points of the violations *** having occurred *** and [Morlock's] testimony about the defendant's physical state and his admission at the time of the stop." It also stated: "I do not find that the defendant was compellingly credible in the contradictory testimony."

¶ 20 Defendant filed a motion to reconsider. At the hearing, defense counsel argued, *inter alia*, that Morlock "was not qualified to render an expert opinion as to the defendant being under the influence of a drug to a degree that rendered the defendant incapable of safely driving and that he did not render such an opinion." He argued Morlock "had, by his own admission, no DER or similar drug enforcement recognition training or similar training. His opinion was all based upon his personal and failed [*sic*] experience." The court denied defendant's motion to reconsider, finding that Morlock "had sufficient field experience in order to express an opinion as to whether the defendant was driving impaired due to the use of marijuana or cannabis. The lack of formal training doesn't vitiate that experience."

¶ 21 The court sentenced defendant to 18 months' conditional discharge, "significant C treatment," one victim impact panel, and 240 hours of community service at a not-for-profit.

¶ 22 Defendant contends on appeal that the State did not prove him guilty of driving under the influence of drugs beyond a reasonable doubt. He argues that Morlock was not qualified to give

an expert opinion regarding whether defendant was under the influence of drugs and that the drugs rendered him incapable of safely driving. Defendant also claims that the totality of the evidence was insufficient to prove him guilty of driving under the influence of drugs beyond a reasonable doubt.

¶ 23 The State argues in its response that, considering all the evidence in the light most favorable to the State, it proved defendant guilty of driving under the influence of drugs and that he was incapable of safely driving. The State also argues that the evidence established that defendant committed traffic infractions, that he admitted having consumed cannabis before he drove, that Morlock smelled cannabis outside of defendant's vehicle and on his breath, and that defendant had bloodshot and glassy eyes. In addition, defendant refused chemical tests, which was circumstantial evidence of consciousness of guilt. Defendant did not file a reply brief.

¶ 24 On appeal, when we review the sufficiency of the evidence, the question is whether, "after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." *Jackson v. Virginia*, 443 U.S. 307, 319 (1979). All reasonable inferences are drawn in favor of the State. *People v. Martin*, 2011 IL 109102, ¶ 15. It is the responsibility of the fact finder, the trial court here, to "resolve conflicts in the testimony, weigh the evidence, and draw reasonable inferences from the facts." *People v. Murphy*, 2017 IL App (1st) 142092, ¶ 9. We will not substitute our "judgment for that of the trier of fact on issues involving the weight of evidence or the credibility of witnesses." *People v. Siguenza-Brito*, 235 Ill. 2d 213, 224-25 (2009). We will not "reweigh the evidence" (*People v. Phillips*, 2015 IL App (1st) 131147, ¶ 26) and will only reverse a

conviction if "the evidence is so unreasonable, improbable, or unsatisfactory that there remains a reasonable doubt of defendant's guilt." *People v. Ross*, 229 Ill. 2d 255, 272 (2008).

¶ 25 To prove defendant guilty of driving under the influence (DUI) of a drug or combination of drugs, as charged here, the State had to prove that defendant (1) drove the vehicle, or was in actual physical control of it, (2) while he was under the influence of any drug or combination of drugs, and (3) to a degree that he was incapable of driving safely. 625 ILCS 5/11-501(a)(4) (West 2014); see *People v. Ciborowski*, 2016 IL App (1st) 143352, ¶ 108. Defendant only challenges the second and third elements, *i.e.* whether he was under the influence of cannabis and to such an extent that he was incapable of safely driving.

¶ 26 "Circumstantial evidence alone may suffice to prove a defendant guilty of DUI." *People v. Morris*, 2014 IL App (1st) 130512, ¶ 19. When the arresting officer provides credible testimony, "[s]cientific proof of intoxication is unnecessary to sustain a conviction for driving under the influence." *People v. Gordon*, 378 Ill. App. 3d 626, 632 (2007). "Intoxication is a question of fact, the trier of fact's responsibility to resolve." *People v. Hires*, 396 Ill. App. 3d 315, 318 (2009). Further, "[t]he opinion of a qualified police officer that an individual was under the influence of a drug or drugs is by its nature circumstantial evidence, since it depends on that officer's drawing an inference of drug intoxication from the facts he observed personally." *People v. Bitterman*, 142 Ill. App. 3d 1062, 1065 (1986).

¶ 27 Viewing the evidence in the light most favorable to the State, we conclude that the circumstantial evidence was sufficient to prove that defendant was under the influence of a drug, cannabis, to the degree that he was incapable of safely driving.

¶ 28 Morlock, who the trial court found to be credible, stopped defendant's vehicle for failing to use his signal at two different corners and for failing to come to a complete stop at a stop sign. These traffic violations are uncontested on appeal. Morlock testified that he had been a police officer for five and one-half years. During this professional experience, he had smelled "unburnt" and burnt marijuana "hundreds" of times and had observed people under the influence. During the traffic stop, when Morlock was behind defendant's vehicle, he smelled a "strong smell of cannabis," which became "stronger" when he approached defendant. Morlock testified that, when defendant got ou of his vehicle, he "stumbled a little bit" and "looked confused." Morlock smelled "a strong odor of cannabis emitting from [defendant's] breath" and observed that his eyes were "bloodshot, dilated." Morlock testified that, based on defendant's admission, his "failure to submit to any chemical testing," "the strong smell emitting from the vehicle," and "disregarding the traffic signals," he believed defendant was under the influence of cannabis. Morlock's testimony alone is sufficient to establish that defendant was driving under the influence of cannabis. See *People v. Gordon*, 378 Ill. App. 3d 626, 632 (2007) (the testimony of a credible arresting officer is sufficient to sustain a conviction for driving under the influence).

¶ 29 Furthermore, both Morlock and Ozmina, testified, respectively, that defendant admitted that he "was smoking weed" and "just got done smoking weed," which was street terminology for cannabis. Defendant's admission that he just consumed cannabis corroborates Morlock's observations and "constitutes direct evidence of guilt." See *People v. Bitterman*, 142 Ill. App. 3d 1062, 1065 (1986). Although defendant testified that he was not under the influence of cannabis when the officers stopped him, and that he did not tell the officers that he had just consumed cannabis, the conflict in the trial witnesses' testimony was an issue to be resolved by the trier of

fact: the trial court. *People v. Alvarez*, 2012 IL App (1st) 092119, ¶ 51. Here, the court found the officer's version of events credible and defendant's contrary version was not "compellingly credible." Therefore, we defer to the court's finding. See *Siguenza-Brito*, 235 Ill. 2d at 224-25.

¶ 30 In addition, defendant testified that he was offered blood and urine tests, but he refused. His refusal to take chemical tests was relevant circumstantial evidence of his consciousness of guilt. See *People v. Romanowski*, 2016 IL App (1st) 142360, ¶ 17 (a defendant's refusal to take a blood-alcohol test, is " ' relevant as circumstantial evidence of his consciousness of guilt' ") (quoting *People v. Garriott*, 253 Ill. App. 3d 1048, 1052 (1993)); see also 625 ILCS 5/11-501.2(c)(1)(2014)).

¶ 31 Here, the evidence, when considered in the light most favorable to the State, was sufficient for a rational trier of fact to conclude that defendant was driving under the influence of cannabis. See *People v. Briseno*, 343 Ill. App. 3d 953, 956, 961-62 (2003) (affirming the defendant's conviction for driving under the influence of cannabis where the defendant admitted he smoked cannabis before driving, the officer detected the odor of cannabis in the defendant's vehicle and on his breath, and the officer testified that the defendant had slurred speech, dilated pupils, and slower than average motor skills).

¶ 32 The evidence also supports the court's finding that defendant was under the influence of cannabis and that he was incapable of safely driving. Defendant had committed three different traffic violations in a short amount of time and distance and, when the officers stopped him, he had bloodshot and dilated eyes, a strong odor of cannabis coming from his breath, and was stumbling and looked "a little bit confused" when he exited his vehicle. From this evidence, a rational trier of fact could conclude that the defendant was incapable of safely driving a vehicle.

See *Ciborowski*, 2016 IL App (1st) 143352, ¶ 116 (in finding that the evidence was sufficient to support that the defendant was incapable of safely driving, the court discussed the officer's observations regarding defendant's exhibited signs of intoxication).

¶ 33 Defendant argues the trial court erred in finding him guilty because Morlock "was never qualified to give an expert opinion as to whether [defendant] was under the influence of drugs to a degree that rendered him incapable of safely driving."

¶ 34 We disagree. The trial court expressly found that Morlock had sufficient field experience to render an opinion that defendant was under the influence of cannabis. After the hearing on the motion to reconsider, the court found that the evidence at trial "showed that [Morlock], who arrested the defendant, had sufficient field experience in order to express an opinion as to whether the defendant was driving impaired due to the use of marijuana or cannabis" and "[t]he lack of formal training doesn't vitiate that experience."

¶ 35 Although Morlock testified that he had no cannabis training at the police academy, he had five and one-half years' experience as a police officer in observing people under the influence of cannabis and in making drug and cannabis arrests. He identified the smell coming from defendant and his car as cannabis based on having smelled unburnt and burnt cannabis "hundreds" of times. A police officer's testimony that a defendant was under the influence of drugs is sufficient where the officer had the relevant skills, experience, or training to render such an opinion. *Ciborowski*, 2016 IL App (1st) 143352, ¶ 79. Here, the court properly found that Morlock had the requisite experience to state an opinion.

¶ 36 We find the evidence was sufficient for a rational trier of fact to conclude that defendant was driving under the influence of cannabis to a degree that he was rendered incapable of safely

driving. Accordingly, the trial court's judgment was not so unreasonable, improbable, or unsatisfactory that it raised a reasonable doubt as to defendant's guilt.

¶ 37 Affirmed.