2018 IL App (2d) 160454-U
No. 2-16-0454
Order filed September 26, 2018

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS, Plaintiff-Appellee, v. JAMES M. RENSBERGER, Defendant-Appellant.	)))))))))))	Appeal from the Circuit Court of Lake County. Nos. 14-DT-1187 16-DT-117 Honorable Helen S. Rozenberg, Judge, Presiding.

PRESIDING JUSTICE HUDSON delivered the judgment of the court.
Justices Jorgensen and Schostok concurred in the judgment.

ORDER

¶ 1 *Held*: The State proved defendant guilty beyond a reasonable doubt of DUI, as defendant had gone off the road, admitted to drinking, shown certain indicia of intoxication, and refused testing.

¶ 2 Following a bench trial in the circuit court of Lake County, defendant, James M. Rensberger, was found not guilty of failing to reduce speed (625 ILCS 5/11-601(a) (West 2016)), but guilty of driving under the influence of alcohol (DUI) (625 ILCS 5/11-501(a)(2) (West 2016)). Also, the trial court revoked defendant's probation for a prior conviction of reckless driving. The court sentenced defendant to a 10-month jail term for DUI and resentenced him to a

10-month jail term for reckless driving. The court ordered the sentences to be served concurrently. On appeal, defendant argues that his DUI conviction must be reversed because the State failed to prove his guilt beyond a reasonable doubt. Defendant also contends that the revocation of his probation must be reversed because it was based on the DUI conviction. We affirm.

¶ 3 At trial, Lake County deputy sheriff Thomas Zawogski testified that he had eight years' experience as a deputy sheriff and had conducted over 50 DUI stops. He had taken a 60-hour DUI course at the police academy that covered subjects including detection of DUI, observation, indicators that a driver's blood alcohol level is above 0.08, and how to administer field sobriety tests and portable breath tests.

¶ 4 On January 20, 2016, at about 7 p.m., Zawogski was dispatched to the scene of an accident in Grayslake. When he arrived, he observed a pickup truck in someone's yard. Defendant was behind the wheel. He was trying to back out of the yard, but was unable to move the truck. Zawogski observed front-end damage to the truck. He knocked on the driver's-side door and asked defendant to step out of the truck. Defendant emerged from the truck steadily, but he was disheveled, and Zawogski smelled the strong odor of alcohol. Zawogski asked defendant if he had been drinking. Defendant acknowledged that he had, but claimed that he did not know how much he drank. Zawogski asked if defendant drank so much that he could not remember the amount. Defendant responded that he had two beers.

¶ 5 According to Zawogski, defendant was noticeably swaying back and forth, he mumbled, and his eyes were watery. Zawogski asked defendant for his identification. When defendant opened his wallet, Zawogski could see his driver's license. However, defendant had difficulty finding the license. He looked through his wallet until Zawogski shined his light on the license.

Defendant was leaning forward when he took his license out of his wallet. As he did so, money fell out of the wallet. Zawogski asked defendant where he had been drinking. Defendant responded " 'here.' " Zawogski asked defendant whether he had been drinking right where they were standing. Defendant then said that he been drinking at a bar. He refused to perform field sobriety tests and asked whether Zawogski was going to " 'take [him] in.' " Zawogski started to explain to defendant why he was being arrested. Zawogski testified, "Before I could even get out the first sentence he turns around [and] placed his hands behind his back so that he could be arrested." Zawogski transported defendant to the Lake County jail where he was given the opportunity to take a breath test. Defendant refused. Zawogski testified that it was his opinion that defendant was under the influence of alcohol.

¶ 6 A video camera in Zawogski's squad car recorded his encounter with defendant. Similarly, a video camera recorded defendant as he was being searched at the Lake County jail. Both recordings were admitted into evidence. The recording at the Lake County jail shows defendant leaning against a wall and standing on one leg while taking his boots and socks off.

¶ 7 The trial court found defendant guilty of DUI and subsequently denied defendant's posttrial motion for acquittal. This appeal followed.

¶ 8 When a defendant challenges the sufficiency of the evidence to sustain a criminal conviction, " 'the relevant 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.' " (Emphasis in original.) *People v. Collins*, 106 Ill. 2d 237, 261 (1985) (quoting *Jackson v. Virginia*, 443 U.S. 307, 319 (1979)). The trier of fact is responsible for resolving conflicts in the testimony, weighing the evidence, and determining what inferences to draw, and a reviewing court ordinarily will not substitute its judgment on

these matters for that of the trier of fact. *People v. Cooper*, 194 Ill. 2d 419, 431 (2000). "A criminal conviction will not be set aside unless the evidence is so improbable or unsatisfactory that it creates a reasonable doubt of the defendant's guilt." *Collins*, 106 Ill. 2d at 261.

¶ 9 Defendant was charged with DUI under 11-501(a)(2) of the Illinois Vehicle Code (625 ILCS 5-11-501(a)(2) (West 2016)). A conviction under section 11-501(a)(2) requires proof 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. *People v. Eagletail*, 2014 IL App (1st) 130252, ¶ 36. A person is under the influence of alcohol when he or she is " 'less able, either mentally or physically, or both, to exercise clear judgment, and with steady hands and nerves operate an automobile with safety to himself and to the public.' " *People v. Bostelman*, 325 Ill. App. 3d 22, 34 (2001) (quoting *People v. Seefeldt*, 112 Ill. App. 3d 106, 108 (1983)). Circumstantial evidence may be used to prove that a motorist is under the influence of alcohol. *People v. Tatera*, 2018 IL App (2d) 160207, ¶ 25. When an offense is proved by circumstantial evidence, "[t]he trier of fact need not *** be satisfied beyond a reasonable doubt as to each link in the chain of circumstances. It 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).

¶ 10 Defendant admitted to Zawogski that he had consumed an alcoholic beverage and Zawogski detected the odor of alcohol on his breath. Defendant contends, however, that the record does not indicate when he drank and that "neither the mere consumption nor the odor of alcohol proves a defendant guilty of DUI." Defendant argues that "[t]he record contains no evidence that [defendant's] consumption of alcohol impaired his ability to operate a motor vehicle or rendered him incapable of driving safely." Defendant points out that Zawogski did

not observe him committing any traffic violations and that, because there was evidence that driving conditions were poor, "no rational trier of fact could have found *beyond a reasonable doubt* that alcohol consumption caused the accident." (Emphasis in original.) According to defendant, the squad car video refutes Zawogski's testimony that defendant swayed noticeably after stepping out of his truck and that he mumbled when speaking with Zawogski. Defendant notes that the booking room video shows that defendant's balance was good, inasmuch as he was able to balance against a wall on one leg while taking off his boots and socks. Furthermore, the trial court indicated that it "did not see balance as an issue." Defendant also contends that there are many possible explanations other than intoxication for his watery eyes.

¶ 11 Defendant's arguments are not persuasive. It is undisputed that defendant consumed alcohol. Although defendant is correct that this alone does not prove that he committed DUI, defendant's conviction does not rest solely on that evidence. Defendant appeared disheveled when Zawogski encountered him. He was also evasive about how much he drank, first claiming that he did not know, and then indicating that he had two beers. Furthermore, Zawogski testified that defendant had difficulty retrieving his driver's license. That testimony is germane to the question of whether he was under the influence of alcohol. *People v. Robinson*, 368 Ill. App. 3d 963, 974 (2006).

¶ 12 Defendant's refusal to submit to testing of his blood alcohol level also may be considered evidence of consciousness of guilt. *People v. Garriott*, 253 Ill. App. 3d 1048, 1052 (1993). Similarly, defendant's refusal to perform field sobriety tests may be considered probative of guilt. *People v. Banks*, 378 Ill. App. 3d 856, 867 (2007); see also *People v. Miller*, 113 Ill. App. 3d 845, 847 (1983) (refusal to perform field sobriety test was admissible in DUI prosecution). Defendant's watery eyes were also evidence that he was intoxicated. Although there are other

possible explanations for defendant's watery eyes, " 'the trier of fact is not required to disregard inferences which flow normally from the evidence and to search out all possible explanations consistent with innocence and raise them to a level of reasonable doubt.' " *People v. Wheeler*, 226 Ill. 2d 92, 117 (2007) (quoting *Hall*, 194 Ill. 2d at 332).

¶ 13 That defendant's vehicle was stuck in someone's yard is further evidence that his ability to drive safely was impaired. Defendant notes that Zawogski issued a ticket that indicated that the road condition was icy. Even under such conditions, it would be unusual for a vehicle driven with reasonable caution to wind up stuck in someone's yard. Moreover, as noted above, the trial court was not required to search out innocent explanations for this evidence. That defendant's truck was found stuck in the yard is a link in the chain of circumstantial evidence showing that defendant was under the influence of alcohol. Defendant contends that the evidence was insufficient to prove *beyond a reasonable doubt* that alcohol consumption caused him to drive his truck into the yard. The argument is a red herring because, as explained above, proof through circumstantial evidence does not require every link in the chain of circumstances to be proved beyond a reasonable doubt.

¶ 14 Defendant is correct that the squad car video appears to contradict Zawogski's testimony in two respects. The video does not show defendant swaying and defendant did not mumble when speaking with Zawogski. Defendant contends that the squad car video undermines Zawogski's credibility. However, the contradiction of part of a witness's testimony does not render his or her other testimony unworthy of belief. *People v. Hill*, 53 Ill. App. 3d 280, 287 (1977). We note that the testimony that was contradicted does not appear to have affected the trial court's decision. Although the trial court referred to Zawogski's testimony that he observed

defendant swaying, the court specifically stated that defendant's balance was not an issue. Furthermore, the court said nothing about whether defendant mumbled or spoke clearly.

¶ 15 Defendant also contends that the trial court relied on "non-existent" evidence. In denying defendant's posttrial motion for acquittal, the trial court stated that defendant "struck and knocked down a fence in someone's front yard." During trial, however, the court sustained an objection to Zawogski's testimony that defendant's truck struck a fence. Nevertheless, defendant's argument is unpersuasive. If a trial court's misrecollection of the evidence does not affect the outcome of the case, reversal is not required. See *People v. Saravia*, 64 Ill. App. 2d 479, 483-84 (1965). There is no dispute that defendant's vehicle left the road and ended up stuck in someone's yard. Whether the truck hit a fence would seem to be a matter of chance. As such, the "non-existent" evidence could not have contributed to the trial court's finding of guilt.

¶ 16 We cannot say that the evidence was so improbable or unsatisfactory that it creates a reasonable doubt. Accordingly, we affirm defendant's conviction and the revocation of his probation. 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 2016); see also *People v. Nicholls*, 71 Ill. 2d 166, 178 (1978).

¶ 17 Affirmed.