2019 IL App (1st) 161617-U

No. 1-16-1617

Order filed March 27, 2019

Third 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. 14 CR 20969
	)	
JUAN RAMIREZ,	)	Honorable
	)	Carol M. Howard,
Defendant-Appellant.	)	Judge, presiding.

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

ORDER

¶ 1 *Held*: Affirmed. Evidence was sufficient to prove defendant guilty beyond reasonable doubt of aggravated driving under the influence of alcohol. State provided sufficient evidence that defendant was under influence of alcohol while driving his vehicle.

¶ 2 Following a bench trial, defendant Juan Ramirez was found guilty of aggravated driving under the influence of alcohol (625 ILCS 5/11-501(a)(2), (d)(1)(H) (West 2014)) and sentenced to one year in prison. On appeal, defendant contends that the State did not prove him guilty

because the State failed to prove that he was actually under the influence of alcohol while driving his vehicle. We affirm the conviction.

¶ 3 The events in question took place on November 20, 2014. At trial, Armand Nailor testified that, at about 9 a.m., he was driving his AT&T truck northbound on Sacramento Avenue and stopped at a red light at the intersection of Sacramento and Archer Avenue. He was in the left turn lane so he could turn left on Archer. When the light turned green, Nailor looked for oncoming traffic coming southbound and, after determining it was safe for him to turn left, he started to turn. He saw a car travelling westbound on Archer, speeding towards his driver's side door, go through a red light. He accelerated to try to avoid it, but the car hit the driver's side trailer of his truck, which spun completely around.

¶ 4 Nailor called 9-1-1 and went to check the other car. The driver of the other car, whom Nailor identified at trial as defendant, was bleeding from his forehead and looked disoriented. Defendant told Nailor he was all right and did not need medical assistance.

¶ 5 Pursuant to his company's protocol, Nailor took photographs at the scene and he identified the photographs at trial. Nailor testified that the photographs showed defendant's car and the damage to it, defendant sitting in his car, Nailor's truck and where defendant's car stuck it, defendant's car with a beer can on the ground next to the passenger side, and defendant taking photographs of the accident scene.[1]

¶ 6 Chicago police officer Renee Whittingham testified that she was assigned to respond to a traffic accident at Archer and Sacramento. When she arrived at the scene, the vehicles involved

[1] The photographs are not included in the record on appeal. As the appellant, it is defendant's burden to present a complete record on appeal, and we will construe any doubts arising from the incomplete record against him. See *People v. Smith*, 406 Ill. App. 3d 879, 886 (2010).

in the accident were still in the intersection. She learned that Nailor was the driver of the truck. She first spoke to the driver of the car, whom she identified at trial as defendant, in the street on Archer. She was about one or two feet away from defendant and observed that he had bloodshot and glassy eyes. His speech was "very mumbled, thick tongued," and she smelled an odor of alcoholic beverage emitting from his breath.

¶ 7 Whittingham was not fluent in Spanish but knew how to ask, in Spanish, for a driver's license, insurance, and whether a person needed medical assistance. Whittingham first spoke to defendant in English but continued in "broken" English and partially in Spanish. Defendant could not produce a driver's license or insurance and did not give Whittingham his real name. Whittingham had defendant sit in the back of her squad car to continue her investigation. Defendant gave her about four or five different names during the course of her interview with him. Whittingham did not include the fake names defendant gave her in her arrest report but documented that he provided her with several names. When defendant was sitting in the back of her squad car, she smelled an alcoholic odor coming from the back seat.

¶ 8 Whittingham observed several open and unopened beer cans in the front and back of defendant's vehicle. She did not inventory or take pictures of the beer cans. Whittingham did not attempt to conduct field sobriety tests at the scene, because it was cold and windy and they were in the middle of the intersection. At the police station, Whittingham read defendant the warning to motorists, and Chicago police officer Hector Esparza translated it into Spanish. Defendant refused to participate in field sobriety tests or take a breathalyzer test.

¶ 9 In Whittingham's experience as a police officer, she had observed people under the influence of alcohol hundreds of times. Whittingham testified that it was her opinion that

defendant was under the influence of alcohol. Her opinion was based on defendant's mumbled speech and his red, bloodshot, and glassy eyes. It was also based on the open alcohol in his vehicle, the odor of alcohol on his breath and from the back seat of her squad car when defendant was seated back there, and the fact that he was involved in an accident. Whittingham acknowledged that a person could have bloodshot eyes without being under the influence of alcohol and that she was not familiar with defendant's speech pattern to know if his speech that night was normal for him. She acknowledged the smell of alcohol on a person's breath did not show how many alcoholic beverages a person had consumed.

¶ 10 Chicago police officer Ruth Castelli testified that she interviewed defendant when he was seated in the back of Whittingham's squad car, and she smelled alcohol coming from him. Defendant had not been placed under arrest or given his *Miranda* rights at this time. Castelli, who was fluent in Spanish, spoke to defendant in English and Spanish and informed him that she was fluent in Spanish and could communicate with him in Spanish if need be. Defendant understood English and spoke to Castelli in English. Defendant gave Castelli his real first name but kept switching his last name. After a few attempts, defendant finally gave Castelli his full real name. Defendant's speech was slurred, and he told Castelli that he "had been drinking." Castelli acknowledged that she was not familiar with defendant's speech pattern and that the smell of alcohol on a person did not necessarily indicate whether that person was under the influence of alcohol.

¶ 11 Chicago police officer Hector Esparza testified that Whittingham read defendant the warning to motorists in English, and he translated it into Spanish for defendant. Defendant did not indicate to Esparza that he understood the warnings, and he refused to answer Esparza's

questions. Esparza asked defendant to participate in field sobriety tests and a breathalyzer test, but defendant refused.

¶ 12 The court admitted into evidence a certified document showing that defendant did not have a valid driver's license.

¶ 13 The court found defendant guilty of aggravated driving under the influence of alcohol, the aggravation based on his lack of a driver's license at the time of the offense. The court noted that its finding that defendant was under the influence of alcohol was based on "the combination" of facts, including that defendant ran a right light, the strong odor of alcohol, defendant's bloodshot eyes, and defendant's statement that he had been drinking. In finding defendant guilty, the court stated that it gave no weight to the beer can found outside next to defendant's car because there was no testimony that it was ever found inside the car. The court subsequently denied defendant's motion for new trial and sentenced him to one year in prison.

¶ 14 Defendant contends on appeal that the State did not prove him guilty of aggravated driving under the influence of alcohol beyond a reasonable doubt, because the State failed to prove that he was actually under the influence of alcohol while driving. He argues that the State failed to offer direct evidence that his ability to drive was impaired, and it relied on circumstantial evidence that an accident occurred. Defendant claims that the State's evidence, at most, shows that he had consumed alcohol at some point before his arrest but did not show that he was mentally or physically impaired by it.

¶ 15 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." (Emphasis

in original.) *Jackson v. Virginia*, 443 U.S. 307, 319 (1979). We view the evidence and draw all reasonable inferences in favor of the State. *People v. Martin*, 2011 IL 109102, ¶ 15. The fact finder, the trial court here, must resolve conflicts in the testimony, weigh the evidence, and draw reasonable inferences from the evidence. *People v. Morris*, 2014 IL App (1st) 130512, ¶ 16. We must not substitute our judgment for that of the fact finder on questions regarding the weight of the evidence or credibility of the witnesses. *People v. Turner*, 2018 IL App (1st) ¶ 74. We will only reverse a conviction if the evidence is so improbable or unsatisfactory that a reasonable doubt exists as to a defendant's guilt. *Turner*, 2018 IL App (1st) 170204, ¶ 74.

¶ 16 To prove defendant guilty of aggravated driving under the influence (DUI), as charged here, the State had to prove that defendant (1) drove a vehicle, or was in actual physical control of it, (2) while he was under the influence of alcohol, and (3) he did not possess a driver's license or permit. 625 ILCS 5/11-501(a)(2), (d)(1)(H) (West 2014); see *People v. Phillips*, 2015 IL App (1st) 131147, ¶ 17. Defendant only challenges the second element, whether he was under the influence of alcohol while driving his vehicle.

¶ 17 A person is under the influence of alcohol when, as a result of consuming any amount of alcohol, he or she was unable to " 'think or act with ordinary care.' " *People v. Diaz*, 377 Ill. App. 3d 339, 344 (2007) (quoting Illinois Pattern Jury Instructions, Criminal, No. 23.29 (4th ed. 2000). To prove a defendant was under the influence of alcohol, the State must prove that a defendant was under the influence of alcohol to a degree that rendered him incapable of safely driving. *Phillips*, 2015 IL App (1st) 131147, ¶ 18. Circumstantial evidence alone is sufficient to prove a defendant guilty of DUI. *Diaz*, 377 Ill. App. 3d at 345. Intoxication is a question of fact for the fact finder to resolve. *People v. Hires*, 396 Ill. App. 3d 315, 318 (2009). To prove a

defendant guilty of DUI, the State need not present chemical evidence of intoxication in the form of a Breathalyzer or blood test. *Diaz*, 377 Ill. App. 3d at 344-45. Rather, a conviction for DUI may be sustained based solely on the credible testimony of the arresting officer. *People v. Janik*, 127 Ill. 2d 390, 402 (1989).

¶ 18 Viewing the evidence as a whole and 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 alcohol while driving his vehicle to the degree that he was incapable of safely driving.

¶ 19 The evidence at trial established that defendant ran a red light and hit Nailor's vehicle, causing an accident and damage to both vehicles. Officer Whittingham testified that defendant's eyes were bloodshot and glassy, and his speech was mumbled and thick-tongued. She smelled an odor of alcohol coming from defendant's breath and continued to smell an odor of alcohol coming from him when he sat in the back of her squad car. See *People v. Morris*, 2014 IL App (1st) 130512, ¶ 20 (relevant evidence for a DUI prosecution includes testimony that a defendant's breath smelled of alcohol, and defendant had glassy and bloodshot eyes).

¶ 20 Further, Whittingham observed open and unopened beer cans in the front and back of defendant's vehicle. Whittingham had been a police officer for 10 years and had observed people under the influence of alcohol hundreds of times. Based on Whittingham's experience, it was her opinion that defendant was under the influence of alcohol. In finding defendant guilty, the trial court necessarily found Wittingham's testimony credible. See *People v. Moody*, 2016 IL App (1st) 130071, ¶ 52. Whittingham's testimony alone is sufficient to establish that defendant was driving under the influence of alcohol. 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 DUI).

¶ 21 Officer Castelli corroborated Whittingham's testimony. Castelli, who was fluent in Spanish, testified that defendant had slurred speech and did not give Castelli his full name right away. Castelli smelled alcohol coming from the back of the squad car when defendant was sitting there. Moreover, defendant admitted to Castelli that he "had been drinking." Defendant's admission corroborates Whittingham and Castelli's observations of him and is direct evidence of guilt. See *People v. Bitterman,* 142 Ill. App. 3d 1062, 1065 (1986). In addition, defendant refused to submit to a breathalyzer test, which is circumstantial evidence of his consciousness of his own guilt. See *Diaz,* 377 Ill. App. 3d at 345.

¶ 22 The evidence, viewed as a whole, was more than sufficient for a reasonable trier of fact to conclude that defendant was guilty of driving a vehicle under the influence of alcohol to a degree that rendered him incapable of driving safely. See *Morris,* 2014 IL App (1st) 130512, ¶¶ 21-22 (finding evidence was sufficient to prove defendant guilty of driving under influence of alcohol where he refused to submit to breathalyzer test, and two police officers testified that he had bloodshot eyes and smelled of alcohol).

¶ 23 Defendant nevertheless asserts that the fact that an accident occurred does not show that his ability to operate his vehicle was impaired. He claims that Nailor's testimony regarding the cause of the accident was suspect, because the physical evidence contradicted his testimony. During closing argument, the court asked defense counsel and the State to discuss Nailor's testimony regarding the direction defendant had been driving and whether he was traveling against the light. After hearing the evidence and counsel's arguments, the court, the fact finder, expressly found that defendant ran a red light. It was the court's responsibility to weigh the evidence and resolve the conflicts in the testimony. See *Morris,* 2014 IL App (1st) 130512, ¶ 16.

Given the court's finding that defendant ran a red light, we are unpersuaded by defendant's argument that the fact that he was involved in an accident does not support the finding that he had an impaired ability to operate a vehicle.

¶ 24 Defendant claims that the empty beer cans and his statement that he had been drinking suggests that he had consumed an unspecified amount of alcohol at an unspecified time, but was insufficient to prove that he was impaired when he was driving. He also asserts that his accent and attempts at bilingual conversation with the officers could have led the officers to misunderstand him as having slurred speech.

¶ 25 As previously stated, intoxication is a question for the fact finder and may be established in several ways, such as testimony that defendant's breath smelled of alcohol and that he had glassy and bloodshot eyes. *People v. Love*, 2013 IL App (3d) 120113, ¶ 35; *Diaz*, 377 Ill. App. 3d at 345 (finding that facts, in combination, presented sufficient evidence to find defendant guilty of driving under influence of alcohol). It was the responsibility of the trial court, not this court, to weigh the evidence and draw reasonable inferences therefrom. See *People v. Ciechanowski*, 379 Ill. App. 3d 506, 518 (2008).

¶ 26 The court was not required to accept any possible explanation consistent with defendant's innocence and raise to reasonable doubt the possibility that. The court was not required to accept defendant's theory that the officers misconstrued his accent and attempt at bilingual conversation as slurred speech, or that the empty beer cans and his admission that he had been drinking only showed that he had consumed an unspecified amount of alcohol at some point that day. See *People v. Siguenza-Brito*, 235 Ill. 2d 213, 229 (2009). We see no reason from the evidence

presented to disturb the court's finding. The court's judgment was not so unreasonable, improbable, or unsatisfactory that it raised a reasonable doubt as to defendant's guilt.

¶ 27 Accordingly, the evidence was sufficient for a rational trier of fact to conclude that defendant was driving under the influence of alcohol to a degree that he was rendered incapable of driving safely. The evidence was therefore sufficient to find defendant guilty of aggravated driving under the influence of alcohol.

¶ 28 For the reasons stated above, we affirm defendant's conviction.

¶ 29 Affirmed.