2019 IL App (1st) 170656-U

Nos. 1-17-0656 & 1-17-2018
(Consolidated)

Order filed August 30, 2019

SIXTH 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. 13 CR 22221
	)	
JUAN ROSALES,	)	Honorable
	)	Alfredo Maldonado,
Defendant-Appellant.	)	Judge, presiding.

JUSTICE HARRIS delivered the judgment of the court.
Presiding Justice Delort and Justice Connors concurred in the judgment.

ORDER

¶ 1 *Held*: Defendant's conviction for driving under the influence of alcohol is affirmed over his contention that the State failed to prove the elements of the crime beyond a reasonable doubt.

¶ 2 Following a bench trial, defendant Juan Rosales was found guilty of two counts of aggravated driving under the influence of alcohol (DUI) and one count of felony driving while driver's license, permit, or privilege to operate a motor vehicle is suspended or revoked. The

court merged the counts and sentenced defendant to three years' imprisonment for aggravated DUI. On appeal, defendant contends that the State failed to prove him guilty beyond a reasonable doubt. We affirm.

¶ 3 Defendant was charged with two counts of aggravated driving under the influence of alcohol under section 11-501(a) of the Illinois Vehicle Code (Code) (625 ILCS 5/11-501(a)(2) (West 2012)). He was also charged with felony driving while driver's license, permit, or privilege to operate a motor vehicle is suspended or revoked (625 ILCS 5/6-303(a) (West 2012)). Defendant waived his right to a jury trial and the case proceeded to a bench trial.

¶ 4 Chicago police sergeant Hughes testified that he had been a police officer for 18 years.[1] In his personal and professional experience, Hughes observed people under the influence of alcohol thousands of times. Hughes attended two police academies that included training for DUI cases and had recently completed an eight hour refresher course. He was certified as a breath analysis operator (BAO) in 2002 and attended a three day standard field sobriety training course. Hughes was the arresting officer in about 350 DUI arrests "but was involved in many more."

¶ 5 On October 6, 2013 at approximately 1:55 p.m., Hughes was working as a patrol sergeant in the 10th District and monitored a call of a person with a gun in the vicinity of 2400 South St. Louis Avenue. Within minutes of the call, Hughes arrived on the scene, spoke to a young man, and then relocated to 2500 South Trumbull Avenue, which is one street east of St. Louis. There, Hughes saw the young man pointing to a gray Honda Odyssey van. Hughes approached the van and observed defendant sitting in the driver's seat. Defendant was "slumped over and appeared

[1] The arresting officers' first names were not included in the record on appeal.

to be sleeping." Defendant was alone in the van and the keys were in the ignition but the motor was not running.

¶ 6 Hughes called for additional units and as more units arrived on the scene, he banged on the driver's side window with "a little bit of force" to get defendant to wake up. Hughes banged on the window several times until defendant "slowly started to move inside the vehicle." He described defendant as being "confused and disoriented." Hughes asked defendant to show his hands and exit the vehicle. When defendant opened the door to the van, Hughes could smell a "very strong odor of alcoholic beverage." He also noticed that defendant's eyes were glassy and bloodshot. When defendant exited the van, Hughes observed that defendant was "unsure of his balance and appeared to stumble out of the vehicle." He patted defendant down and placed handcuffs on him. As Hughes escorted defendant to the responding police officers, defendant became hostile and used profanity. He also became aggressive toward the officers. Hughes opined that defendant was "highly impaired and intoxicated" and "not fit to be driving or to be in control of any motor vehicle."

¶ 7 On cross-examination, Hughes testified he had minimal conversations with defendant. He did not recover the keys from the van's ignition. The keys were returned to defendant after he was processed at the police station.

¶ 8 Chicago police officer Hanson testified that he has been a police officer for 11 years. Hanson received DUI training at the police academy and attends a refresher course every year for standardized field sobriety and drunk driving cases. Hanson testified he is breathalyzer certified and takes a refresher course for BAO yearly. He has made approximately 300 DUI arrests and observed thousands of people intoxicated. On October 6, 2013, he was working in a

three man car and on routine patrol in the 10th District. At approximately 1:55 p.m., he responded to a call of a man with a gun in the vicinity of 24th and St. Louis. As he was proceeding toward St. Louis, Hanson heard Hughes over the radio and relocated to 25th and Trumbull. There, Hanson assisted Hughes in handcuffing defendant. As Hanson did so, he was "up next to defendant" and was able to smell his breath. He testified that defendant had a "strong odor of alcohol smell emitting from his breath" and his eyes were bloodshot.

¶ 9 Hanson spoke to defendant in Spanish and defendant told him that he had eight beers and had not been driving. Hanson placed defendant into Hughes' squad car and returned to the 10th District to process defendant. Hanson gave defendant his motorist warnings in Spanish and asked him if he wanted to take a breathalyzer. Defendant also refused field sobriety tests. Hanson testified defendant was "argumentative and used a lot profanity." Hanson placed defendant into a holding cell and defendant fell asleep. Hanson testified that based on his training and background, defendant was under the influence of alcohol.

¶ 10 The State introduced a certified title for the Honda van under defendant's name and also a driving abstract showing defendant was never issued a driver's license. The State rested.

¶ 11 The court found defendant guilty of the two counts of driving under the influence of alcohol and one count of felony driving while driver's license, permit or privilege is suspended or revoked. In announcing its ruling, the court noted that "the State has proven beyond a reasonable doubt that [defendant] was under the influence of alcohol" and that he was "absolutely in actual physical control of that motor vehicle." The court found Hughes was an "entirely credible witness" and that the testimony of the officers regarding the "observations they made of [defendant], his belligerency, the odor of alcohol, the fact he was slumped behind the

wheel. The fact there was some slurred speech, all those are clear indicators of [him] being under the influence of alcohol."

¶ 12 After a February 2, 2017 sentencing hearing, the court merged the three counts and sentenced defendant to three years imprisonment for aggravated DUI (count 1) and assessed a total of $2047 in fees, fines, and costs. On February 21, 2017, defendant filed a notice of appeal (No. 1-17-0656).

¶ 13 On February 23, 2017, defendant mailed a *pro se* motion to reconsider his sentence and that his trial counsel was ineffective for failing to call two witnesses on his behalf. During an August 2, 2017, hearing on the motion, he agreed to withdraw his argument regarding his trial counsel's failure to call witnesses and proceeded on his request to reconsider his sentence. The court denied the motion and defendant filed a notice of appeal (No. 1-17-2018). We have consolidated the appeals for review.

¶ 14 On appeal, defendant challenges the sufficiency of the evidence to sustain his conviction. The standard of review on a challenge to the sufficiency of the evidence 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. *People v. Wheeler*, 226 Ill. 2d 92, 114 (2007). This standard is applicable in all criminal cases regardless of whether the evidence is direct or circumstantial. *People v. Herring*, 324 Ill.App.3d 458, 460 (2001); *People v. Campbell*, 146 Ill. 2d 363, 374-75 (1992). The trier of fact is responsible for assessing the credibility of the witnesses, weighing the testimony, and drawing reasonable inferences from the evidence. *People v. Hutchinson*, 2013 IL App (1st) 102332 ¶ 27; *People v. Ortiz*, 196 Ill. 2d 236, 259 (2001). When considering the sufficiency of the evidence, it is not the reviewing court's

duty to retry the defendant. *People v. Beauchamp,* 241 Ill. 2d 1, 8 (2011); *People v. Collins,* 106 Ill. 2d 237, 261 (1985). The State must prove each element of an offense beyond a reasonable doubt. *People v. Siguenza-Brito*, 235 Ill. 2d 213, 224 (2009). A reviewing court will only reverse a criminal conviction when the evidence is so improbable or unsatisfactory that there remains a reasonable doubt as to the defendant's guilt. *Beauchamp,* 241 Ill. 2d at 8; *People v. Collins,* 214 Ill. 2d 206, 217 (2005).

¶ 15 In this case, defendant was convicted of aggravated driving under the influence of alcohol. In order to sustain his conviction, the State was required to prove beyond a reasonable doubt that defendant was: (1) in actual physical control of a vehicle; and (2) under the influence of alcohol at the time. 625 ILCS 5/11-501(a)(2) (West 2016); *People v. Diaz,* 377 Ill. App. 3d 339, 344 (2007); *People v. Siguenza-Brito*, 235 Ill. 2d 213, 224 (2009) (the State must prove each element of an offense beyond a reasonable doubt).

¶ 16 Defendant does not challenge that he was in control of the vehicle. Rather, he argues that he was not under the influence of alcohol at the time because it was unknown when he consumed alcohol and no field sobriety tests or breathalyzer tests were conducted to establish his impairment.

¶ 17 Being under the influence of alcohol requires that a person's mental or physical faculties are so impaired, as a result of any amount of alcohol, that his ability to act and think with ordinary care is diminished. *People v. Gordon*, 378 Ill. App. 3d 626, 631 (2007). The defendant need be under the influence only to a degree to render him incapable of driving safely. *Id*. at 631-32. "A person is under the influence of alcohol when, as a result of drinking any amount of alcohol, his mental or physical faculties are so impaired as to reduce his ability to think and act

with ordinary care." *People v. Morris*, 2014 IL App (1st) 130512, ¶ 20. This determination is a question for the trier of fact to resolve based on its assessment of witness credibility and the evidence presented at trial. *Id*. Circumstantial evidence alone may suffice to prove a defendant guilty of DUI (*People v. Morris*, 2014 IL App (1st) 130512, ¶ 19) and the testimony of a sole credible police officer is sufficient (*People v. Janik*, 127 Ill. 2d 390, 402 (1989)).

¶ 18 After viewing the evidence in the light most favorable to the prosecution, we conclude that a rational trier of fact could have found that defendant was intoxicated at the time Hughes found him sitting behind the wheel of his van. Hughes testified that he observed defendant behind the wheel of a van. Hughes noted the key was in the ignition and defendant appeared to be asleep. Hughes knocked on the van window and defendant awoke. Defendant opened the van door and as Hughes spoke with defendant, he smelled a strong odor of alcohol on defendant's breath and coming from the open van door. Hughes also noticed that defendant's eyes were bloodshot and glassy and defendant slurred his speech. As defendant exited the van, his gait was unsteady and he appeared to stumble. See *Morris*, 2014 IL App (1st) 130512, ¶ 20 (the credible testimony of an arresting officer by itself can sustain a conviction of driving under the influence and evidence of the odor of alcohol on defendant's breath, and that his eyes were bloodshot and glassy, are all relevant factors to a conviction).

¶ 19 In addition, Officer Hanson also noticed the strong odor of alcohol coming from defendant's breath and his eyes were bloodshot and glassy and his balance was unsure. Defendant admitted to Hanson that he drank eight beers. Defendant also refused to submit to a breathalyzer or field sobriety tests. *People v. Garriott*, 253 Ill. App. 3d 1048, 1052 (1993) (a defendant's refusal to submit to a breathalyzer test is circumstantial evidence of a defendant's

consciousness of his own guilt). Both officers, who had training in detecting DUI cases, testified that defendant was impaired and not fit to be in control of a motor vehicle. *Gordon*, 378 Ill. App. 3d 626, 632 (2007) (When the arresting officer provides credible testimony "[s]cientific proof of intoxication is unnecessary to sustain a conviction for driving under the influence"). This evidence and reasonable inferences therefrom, were sufficient for a rational trier of fact to conclude that defendant was driving under the influence of alcohol.

¶ 20 Defendant nevertheless argues that the State failed to show when he consumed the alcohol and offered no proof that defendant's consumption of alcohol rendered him impaired to operate a motor vehicle.

¶ 21 Defendant's arguments are, essentially, asking us to reweigh the evidence in his favor and substitute our judgment for that of the trier of fact. This we cannot do. See *People v. Abdullah*, 220 Ill. App. 3d 687, 693 (1991) ("A reviewing court has neither the duty nor the privilege to substitute its judgment for that of the trier of fact"). As mentioned, it is the responsibility of the trier of fact to resolve conflicts in the testimony, to weigh evidence, and to draw reasonable inferences therefrom. *People v. Brown*, 2013 IL 114196, ¶ 48. In doing so, the trier of fact is not required to disregard inferences that flow from the evidence or search out all possible explanations consistent with innocence and raise them to a level of reasonable doubt (*Brown*, 2013 IL 114196, ¶ 71 (citing *Wheeler*, 226 Ill. 2d at 117). Based on its decision, it is clear that the court found the testimony of Hughes and Hanson credible. See *People v Loferski*, 235 Ill. App. 3d 675, 682 (1992) (the testimony of a single police officer, if positive and credible, is sufficient to convict); *People v. Diaz*, 377 Ill. App. 3d 339, 344-45 (2007) (The State need not present scientific evidence such as a breathalyzer or blood test). A defendant's conviction will be

overturned only if the evidence is so unreasonable, improbable, or unsatisfactory that there remains a reasonable doubt of defendant's guilt. *Brown*, 2013 IL 114196, ¶ 48. This is not one of those cases.

¶ 22 For the reasons stated, we affirm the judgment of circuit court of Cook County.

¶ 23 Affirmed.