2019 IL App (1st) 171338-U
No. 1-17-1338
Order filed July 15, 2019

First Division

IN THE
APPELLATE COURT OF ILLINOIS
FIRST DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the Circuit Court of
	)	Cook County.
Plaintiff-Appellee,	)	
	)	Nos. YE 143228, YE 143322
v.	)	
	)	Honorable Steven J. Goebel,
SANTIAGO BAHENA,	)	Judge presiding.
	)	
Defendant-Appellant.	)	

JUSTICE GRIFFIN delivered the judgment of the court.
Presiding Justice Mikva and Justice Pierce concurred in the judgment.

ORDER

¶ 1 *Held*: Defendant's conviction for driving under the influence of cannabis is affirmed over his contentions that the State failed to prove the elements of the crime beyond a reasonable doubt and the trial court erred in qualifying the officer as a drug recognition expert.

¶ 2 Following a bench trial, defendant Santiago Bahena was convicted of driving under the influence of cannabis (625 ILCS 5/11-501(a)(4) (West 2016)) and improper lane usage (625 ILCS 5/11-709 (West 2016)). He was sentenced to 18 months' court supervision and assessed a total of $1369 in fines fees and costs. On appeal, defendant contends that he was not proven guilty beyond a reasonable doubt and that the trial court erred in qualifying the officer as a drug recognition expert. We affirm.

¶ 3 Defendant was charged with three counts of driving under the influence of drugs (cannabis) under section 11-501(a) of the Illinois Vehicle Code (Code) (625 ILCS 5/11-501(a)(3), (4), (6) (West 2016)). Defendant was also charged with improper lane usage (625 ILCS 5/11-709 (West 2016)). Defendant waived his right to a jury trial and the case proceeded to a bench trial.

¶ 4 Prospect Heights police officer Christopher Skeet testified that he had been a police officer for almost five years. In his professional experience, Skeet observed people under the influence of drugs "dozens of times." Skeet explained his training and experience in conducting traffic stops that involved driving under the influence of cannabis. During the course of his police training, Skeet took classes on how to detect a DUI case. These classes included an Advanced Roadside Impaired Driving Enforcement (ARIDE) and Drug Recognition Enforcement (DRE) class. In ARIDE classes, Skeet was trained on how to look for DUI cases that are non-alcohol related like cannabis, stimulants, depressants, hallucinogens, and non-alcoholic drug categories. After passing his ARIDE examination, Skeet began classes for DRE. Skeet explained the DRE class was two weeks long followed by an evaluation period and a written examination. Skeet received his certification in DRE in May 2016. Based on his certification, Skeet was able to perform an extended number of tests on motorist both in the field and at the station. Skeet identified a copy of his certificate stating he successfully completed all the requirements for the DRE class. The State moved to admit the certificate into evidence. Over defendant's objection, the certificate was admitted into evidence and the State asked that Skeet be certified as a drug recognition expert.

¶ 5 On cross-examination, Skeet explained he was going through the training and evaluation classes for DRE when he arrested defendant on May 6, 2016, and was not certified until later that month. Counsel objected and asked that Skeet not be certified as a drug recognition expert. The court overruled the objection, finding that Skeet was a drug recognition expert and "as an expert he can give his opinions even based on hypotheticals." Counsel continued with her cross-examination. Skeet testified that in DRE training there is a 12-step process and he received training on each of the 12 steps. Skeet did not go through all the 12 steps with defendant. Skeet's opinion on the night of defendant's arrest would be based on some of his DRE training but not all of the training. At the conclusion of trial counsel's cross-examination, the State again asked that Skeet be qualified as a drug recognition expert. The court ruled Skeet was qualified as a drug recognition expert.

¶ 6 On May 6, 2016 at approximately 12 a.m., Skeet was driving northbound on Elmhurst Road when he saw a silver Honda Civic about two to three hundred feet ahead of him. There were no other cars between Skeet's patrol car and the Civic and the street was illuminated with street lights. Skeet observed the Civic do a "slow weave" across the yellow center line and enter the oncoming traffic lanes on two separate occasions. Skeet "closed the gap" between his car and the Civic. As Skeet's patrol car got closer, the Civic made a "sudden, sharp left turn" onto South Parkway Avenue. Skeet followed the Civic as it traveled one block then turned onto Elm Street. Once on Elm, the Civic turned into a driveway at the first house from the corner and parked sideways in the driveway. Skeet was taken "off guard" by defendant turning into the driveway and proceeded down the street until he was able to make a u-turn at the intersection and travel back towards the direction he came. As he drove past the house, Skeet looked into the Civic to

see if there was more than one person in the car. Skeet observed defendant in the driver's seat and he was the only occupant of the Civic. Defendant backed out of the driveway and continued back south onto Elmhurst Road, the direction he was initially travelling. Skeet then performed a traffic stop on defendant's vehicle.

¶ 7 During the traffic stop, Skeet asked defendant for his driver's license and proof of insurance. Skeet inquired where defendant was coming from and defendant replied that he was going home from his job at Target. As he was talking to defendant, Skeet noticed a smell of burnt cannabis coming from defendant's car. Skeet also noticed defendant's eyes were "bloodshot and droopy" and his speech was slurred. Skeet testified that at the time of the traffic stop he had completed a two week classroom DRE training course but had not received his certification. Skeet asked defendant if he would pull down his eyelids so that he could see defendant's conjunctiva. Skeet explained that pursuant to his DRE training, a severely reddened conjunctiva is an indicator of cannabis use. Defendant complied with Skeet's request and Skeet noticed that defendant's conjunctiva was reddened. Skeet acknowledged that, after seeing defendant's conjunctive, he formed an opinion that defendant may be under the influence of cannabis.

¶ 8 Skeet next performed the Romberg balance test asking defendant to lean his head back and count to 30. Skeet explained this was an observational test and he was looking to see if defendant would sway or if he would exhibit eye tremors. Skeet explained that eyelid tremors are a possible indication of cannabis use. Skeet did not have a watch, so he could not observe if defendant was counting to 30 accurately. During the test, Skeet observed defendant sway front to back and side to side. He also noticed significant tremors in defendant's eyelids. Based on his

DRE training, Skeet determined defendant's swaying and eye tremors were a possible indication of impairment.

¶ 9 Skeet then performed the horizontal gaze nystagmus (HGN) test and found defendant had smooth pursuit in both eyes. Skeet explained that pursuant to his training in ARIDE and DRE, the HGN test does not detect the presence of cannabis in defendant's system but is used to rule out other drugs that he may have been under the influence of at the time. Skeet next performed the lack of convergence test. During this test, Skeet had defendant follow a stimulus with his eyes in a circle then he would bring the stimulus to the top of defendant's nose so the eyes crossed. Skeet noted that defendant's pupils were unable to converge on both attempts and, based on his ARIDE and DRE training, this indicated possible use of cannabis.

¶ 10 Next, Skeet asked defendant to perform the walk and turn test. Skeet demonstrated the test for defendant. As Skeet was explaining the test to defendant, Skeet saw defendant step over the line two times. Defendant proceeded with the test and stepped off the line on the fourth step. Defendant turned incorrectly for the second nine steps and his body swayed during the entire test. Skeet explained that the swaying was not enough to cause defendant to fall, but significant enough for him to observe it. Skeet asked defendant to perform the one legged stand test. Skeet explained the test to defendant and then demonstrated how to perform the test. During the test, Skeet saw defendant sway significantly. Skeet testified that he was surprised defendant did not fall during the test because his swaying was "very significant." Skeet also saw "body tremors" where defendant's limbs trembled slightly. Based on his ARIDE and DRE training, Skeet testified that this was a possible indication of drug use.

¶ 11 The last test Skeet performed was the finger to nose test where defendant, with his head back and arms outstretched to the side, would attempt to touch his finger to his nose. On six attempts, defendant was only able to touch his nose once and that was on the third attempt. Skeet did note that on the attempt where defendant did touch his nose, he "double tapped" his nose. Skeet explained that "double tap" means defendant touched his nose one time then touched it a second time.

¶ 12 After the finger to the nose test was complete, Skeet informed defendant that he did not do well on the tests and asked if he had ingested cannabis or other intoxicating substances. Defendant denied ingesting any intoxicating substances. Skeet informed defendant that he smelled burnt cannabis when he stopped defendant's car. Defendant became nervous and told Skeet he smoked two "blunts," "one just now and (defendant) smoked the other earlier in the day." Skeet placed defendant under arrest and transported him to the Prospect Heights police station.

¶ 13 At the station, Skeet read defendant his rights from a "warning to motorist" card. Skeet asked defendant if he would submit to a Breathalyzer and urine test. Defendant submitted to a Breathalyzer and the results showed that he had no alcohol in his system. Skeet did not have a urine test at the police station but offered to drive defendant to the hospital to take the test. Defendant refused stating that he had school the next day and it was late. Skeet testified that he believed defendant was driving under the influence of cannabis. Skeet based his opinion on his ARIDE and DRE training, his experience as a police officer, defendant's erratic driving, the smell of burnt cannabis, and defendant's slurred speech and bloodshot eyes.

¶ 14 On cross-examination, Skeet testified he did not find any cannabis in defendant's car or on defendant. Skeet acknowledged that, prior to stopping defendant's vehicle, defendant had made only two over the yellow line infractions and otherwise, his driving was fine. Skeet did not take defendant's pulse nor did he perform any of the DRE tests at the station. Skeet also acknowledged that the DRE does not show for sure that someone ingested cannabis. He explained there are other reasons besides ingesting cannabis that will cause a reddened conjunctiva. On redirect examination, Skeet testified he did not give the DRE tests at the police station because he was not certified at the time of his interview with defendant.

¶ 15 After hearing closing arguments the court found that while Skeet was not a drug recognition expert at the time of defendant's arrest, he was in the middle of classes and had done "voluminous work" in "evaluating people under the influence of drugs and/or cannabis." The court noted that "his opinion today is the same as it was on that day, and he's certified today." The court addressed the evidence presented at trial and found defendant's statement to Skeet that he "smoked one [blunt] just now meaning cannabis" to be most important. The court also noted that by ducking into the driveway, defendant exhibited a "consciousness of guilt." The court concluded, "[S]o there's bad driving. There's consciousness of guilt by ducking into the driveway. And as [the court] stated, the most significant is [defendant's] statement saying that he had just did cannabis. But they're also borne out by the officer's field sobriety tests." The court ultimately found defendant guilty of one count of driving under the influence of drugs and improper lane usage.

¶ 16 After a hearing, the court sentenced defendant to 18 months' court supervision and assessed $1369 in fees, fines, and costs.

¶ 17 On appeal, we first address defendant's argument that the trial court erred in finding Skeet qualified as a drug recognition expert. He argues that Skeet should not have been qualified as an expert to give an opinion on whether defendant was under the influence of drugs to a degree that rendered him incapable of driving safely.

¶ 18 In setting forth this argument, defendant, citing *People v. Safford*, 392 Ill. App. 3d 212 (2009), asserts the sufficiency of the basis for an expert opinion is subject to *de novo* review. However, this court has recently rejected *Safford* and similar cases discussing that standard. See *People v. Simmons*, 2016 IL App (1st) 131300, ¶¶ 110-114 (applying an abuse of discretion test to the issue of whether an adequate foundation was laid for an expert opinion). The trial court is given broad discretion when determining the reliability of an expert witness and the court's admission of such evidence is reviewed for an abuse of that discretion. *People v. Lerma*, 2016 IL 118496, ¶ 23. An abuse of discretion is found where the trial court's decision is arbitrary, fanciful or unreasonable to the degree that no reasonable person would agree with it. *Id*.

¶ 19 In determining whether a person should be qualified as an expert, our supreme court has held "[A] person will be allowed to testify as an expert if his experience and qualifications afford him knowledge that is not common to laypersons, and where his testimony will aid the trier of fact in reaching its conclusions." *Thompson v. Gordon*, 221 Ill. 2d 414, 428 (2006). "'There is no predetermined formula for how an expert acquires specialized knowledge or experience and the expert can gain such through practical experience, scientific study, education, training or research.'" *Gordon*, 221 Ill. 2d at 428-29, quoting *People v. Miller*, 173 Ill. 2d 167, 186 (1996). Thus, "'[f]ormal academic training or specific degrees are not required to qualify a person as an

expert; practical experience in a field may serve just as well to qualify him.'" *Gordon*, 221 Ill. 2d at 429 quoting *Lee v. Chicago Transit Authority*, 152 Ill. 2d 432, 459 (1992).

¶ 20 Here, we find that the trial court did not err in qualifying Skeet as drug recognition expert where the record shows that he had experience and qualifications that afforded him knowledge beyond the average person. See *People v. Jackson*, 2017 IL App (1st) 142879, ¶ 50 (citing *People v. Novak*, 163 Ill. 2d 93, 104 (1994) "[E]xpert witnesses differ from lay witnesses—they have experience and qualifications that afford them knowledge beyond the average citizen that aids the jury in weighing the evidence."). The record shows that Skeet, who had been a police officer for almost five years, testified that in his professional experience he had observed persons under the influence of drugs "dozen of times." Skeet also testified extensively about his drug recognition training and experience in conducting traffic stops that involved driving under the influence of cannabis. Specifically, in his ARIDE classes, Skeet was trained on how to look for DUI cases that are non-alcohol related, such as driving under the influence of cannabis. After passing his ARIDE examination, Skeet began classes for DRE. Although at the time Skeet stopped defendant he was not certified, Skeet received his DRE certification later that month. Given this record, the trial court's decision to qualify Skeet as an expert in drug recognition was not arbitrary, fanciful or unreasonable such that it constituted an abuse of discretion.

¶ 21 Defendant next challenges the sufficiency of the evidence to sustain his driving under the influence of drugs conviction.

¶ 22 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 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).

¶ 23 In this case, defendant was found guilty of driving under the influence of drugs. In order to sustain defendant's conviction, the State was required to prove beyond a reasonable doubt that he (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 he was incapable of driving it safely. *People v. Ciborowski*, 2016 IL App (1st) 143352, ¶ 108; 625 ILCS 5/11-501(a)(4) (West 2016).

¶ 24 "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, which is 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 of 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).

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

¶ 26 Officer Skeet testified that at approximately 12 a.m., he observed defendant driving his car down Elmhurst Road. Skeet saw defendant cross over the yellow center line and enter the oncoming traffic lane on two separate occasions. As Skeet attempted to close the distance between his car and defendant's car, defendant turned sharply then drove a short distance and turned into a driveway and parked sideways. When Skeet drove past, defendant pulled out of the driveway and continued back toward his original direction. Skeet was able to curb defendant's car and as he approached for a field interview, Skeet noticed the odor of burnt cannabis coming from defendant's car. Skeet asked defendant if he would pull down his eyelid and when defendant complied, Skeet saw that defendant's conjunctiva was reddened indicating a possibility of cannabis consumption. Skeet performed several field sobriety tests on defendant and noticed that defendant had trouble keeping his balance and did not perform well on many of the tests. When Skeet informed defendant that he smelled burnt cannabis coming either from defendant's person or car, defendant told Skeet that he had smoked two blunts, one earlier in the day and "one just now." After defendant's statement and based on his observations and his

training and experience, Skeet believed defendant to be under the influence of drugs and placed him under arrest.

¶ 27 This 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). Moreover, Skeet testified that defendant admitted that he just smoked cannabis. The court found defendant's statement that he "smoked one just now meaning cannabis" to be most important. Defendant's admission that he had just consumed cannabis corroborates Skeet's observations and "constitutes direct evidence of guilt." *People v. Bitterman*, 142 Ill. App. 3d 1062, 1065 (1986).

¶ 28 Moreover, the evidence also supports the court's finding that while defendant was under the influence of cannabis, he was incapable of safely driving. See *Ciborowski*, 2016 IL App (1st) 143352, ¶ 114 (quoting *People v. Shelton*, 303 Ill. App. 3d 915, 921-22 (1999) ("under the offense that defendant was charged with (625 ILCS 5/11-501(a)(4) (West 2014)), the State must prove, as an element of the offense, that he was not only under the influence, but also under the influence to 'such a degree that it rendered defendant incapable of safely driving.'"). In this case, defendant had committed two traffic offenses when Skeet stopped him, both times crossing the center line and entering into the oncoming traffic lane. Once stopped, Skeet noticed defendant had slurred speech, bloodshot and droopy eyes and Skeet detected the smell of burnt cannabis

coming from defendant's car. Based on this, a rational trier of fact could conclude that defendant was incapable of safely driving a vehicle. See *Cibrowski*, 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).

¶ 29 Defendant nevertheless argues that the State failed to meet their burden of proof because he was driving safely and he passed two of the three standardized field sobriety tests. He also maintains that Skeet did not administer the tests according to standardized protocol as per the National Highway Transportation Safety Administration (NHTSA) citing *People v. Borys*, 2013 IL App (1st) 111629, ¶ 37 (citing *People v. McKown*, 236 Ill. 2d 278, 306 (2010) (noting that the Illinois Supreme Court has "adopted the HGN testing requirements as outlined in the NHTSA manual). Defendant contends that "this lack of evidence regarding whether Skeet knew how to administer the tests in accordance with NHTSA protocols, undermines Skeet's testimony."

¶ 30 We initially note that defendant did not raise this claim at trial nor in his posttrial motion for new trial. "Generally, a defendant must both object at trial and raise the specific issue again in a post-trial motion to preserve it for appeal." *People v. Thompson*, 238 Ill. 2d 598, 611-12 (2012). Given that defendant did not raise the issue that Skeet failed to follow NHTSA protocol when administering the standardize field sobriety tests, we find he did not properly preserve this issue on appeal and has forfeited his argument.

¶ 31 That said, we are not persuaded by defendant's argument that Skeet did not administer the field sobriety tests according to NHTSA protocol. It is clear from the trial court's findings that it considered defendant's statement that he had smoked cannabis to be most relevant in

finding him guilty. The court also found defendant's evasive actions in trying to get away from Skeet as a "consciousness of guilt." This, combined with Skeet's observations of defendant's eyes being "bloodshot and droopy," slurred speech, and the smell of burnt cannabis, provided sufficient evidence to convict defendant even without the field sobriety tests. See *People v. Briseno*, 343 Ill. App. 3d 953, 962 (2003) (evidence sufficient where the officer detected the odor of cannabis on the defendant's breath, and in defendant's car, and defendant admitted to smoking marijuana).

¶ 32 Moreover, 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"). These alleged inconsistencies in the testing that Skeet conducted as well as his training and experience were fully explored at trial. 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. *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 Skeet 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). We will not reverse a conviction simply because defendant claims that a witness was not credible. *People v. Evans*, 209 Ill. 2d 194, 211-12 (2004). Rather, as mentioned, 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.

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

¶ 34 Affirmed.