2018 IL App (4th) 170080-U

NO. 4-17-0080

FILED
May 1, 2018
Carla Bender
4th District Appellate
Court, IL

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
Plaintiff-Appellee,	)	Circuit Court of
v.	)	Champaign County
ROY A. CASTRO MONTAGUE,	)	No. 15DT407
Defendant-Appellant.	)	
	)	Honorable
	)	Brett N. Olmstead,
	)	Judge Presiding.

PRESIDING JUSTICE HARRIS delivered the judgment of the court.
Justices Knecht and Turner concurred in the judgment.

ORDER

¶ 1 *Held*: The evidence was sufficient to prove defendant guilty beyond a reasonable doubt of operating a motor vehicle with any amount of a drug, substance, or compound in his breath, blood, or urine resulting from his unlawful use or consumption of cannabis. Section 11-501(a)(6) of the Illinois Vehicle Code (625 ILCS 5/11–501(a)(6) (West 2014)) was not unconstitutionally vague or ambiguous and it did not unconstitutionally criminalize defendant's status of having a metabolite in his system.

¶ 2 In May 2016, following a bench trial, defendant, Roy A. Castro Montague, was found guilty of driving with any amount of a drug, substance, or compound in his breath, blood, or urine resulting from his unlawful use or consumption of cannabis (625 ILCS 5/11–501(a)(6) (West 2014)). Defendant argues that (1) the State failed to establish a violation of section 11-501(a)(6) of the Illinois Vehicle Code (Vehicle Code) as it failed to prove that the THC metabolites found in his urine resulted from his unlawful use of cannabis; (2) the State failed to

prove he unlawfully used or consumed cannabis; (3) section 11-501(a)6) of the Vehicle Code is unconstitutionally vague and ambiguous as applied to his circumstances; and (4) section 11-501(a)(6) of the Vehicle Code unconstitutionally penalizes defendant's "status" of having had a THC metabolite in his system. We affirm.

¶ 3 I. BACKGROUND

¶ 4 In August 2015, the State charged defendant with improper lane usage (625 ILCS 5/11-709) (West 2014)) and driving under the influence of any drug or combination of drugs to a degree that renders the person incapable of safely driving (625 ILCS 5/11-501(a)(4) (West 2014)). In November 2015, defendant was also charged with driving with any amount of cannabis in his breath, blood, or urine, resulting from the unlawful use or consumption of cannabis (625 ILCS 5/11-501(a)(6) (West 2014)). On May 24, 2016, the trial court held a bench trial.

¶ 5 Officer John Tatum testified that, on August 12, 2015, at approximately 11:44 p.m., he observed defendant's vehicle traveling southbound in Champaign, Illinois. He stated that he observed both of defendant's left side tires cross the centerline of the road.

¶ 6 Officer Tatum testified that he stopped defendant's vehicle based on his observations. He stated that upon making contact with defendant he immediately noticed a strong odor of cannabis coming from inside the vehicle. According to Officer Tatum, defendant admitted that he had smoked a "spliff," which Officer Tatum described as a cigarette with half tobacco and half cannabis. Officer Tatum testified that defendant said he smoked the cannabis "about six hours ago."

¶ 7 Officer Tatum asked defendant to perform field sobriety tests. He testified that

defendant performed the walk and turn test where defendant was instructed to take nine heel-to-toe steps forward, turn by keeping one foot planted in place, and then take nine additional heel-to-toe steps. Officer Tatum described the typical indicators of impairment: using one's arms for balance, missing heel-to-toe steps, stepping out of line, and failing to perform the turn "correctly." Officer Tatum testified that defendant took an incorrect number of steps by counting two heel-to-toe steps as a complete step.

¶ 8 A video recording of the traffic stop was played in court. The video shows Officer Tatum demonstrating the walk and turn test. He is shown taking one step forward placing the heel of one foot against the toe of the other foot, taking another heel-to-toe step while stating the word "one." Thereafter, Officer Tatum demonstrated an additional five heel-to-toe steps where he counted each heel-to-toe step as a complete step.

¶ 9 On cross-examination, Officer Tatum acknowledged that his example of the walk and turn test could be interpreted to mean that two heel-to-toe steps counted as a complete step. However, Officer Tatum testified that he was simply "getting into the *** starting position" before he began counting his steps.

¶ 10 Officer Tatum testified that defendant also performed the one-legged-stand test. Officer Tatum testified that he was "looking to see if [defendant] sway[ed] while balancing, if [he] put [his] foot *** down, hopp[ed], us[ed] [his] arms for balance." Officer Tatum explained a suspect needed to display two indicators in order for an officer to form an opinion that the suspect was impaired. Officer Tatum stated that defendant displayed three indicators by swaying while balancing on one leg, hopping, and putting his foot down.

¶ 11 Defendant was placed under arrest and he agreed to submit blood and urine

samples. The parties stipulated that the subsequent laboratory tests showed the presence of tetrahydrocannabinol (THC) metabolite in defendant's urine.

¶ 12 At the close of the evidence, defense counsel moved for a directed judgment. The trial court granted the motion with respect to the impaired driving charge (section 11-501(a)(4) of the Vehicle Code (625 ILCS 5/11-501(a)(4) (West 2014))). The court noted that there was no testimony about whether driving a vehicle six hours after smoking cannabis would cause "an impairing effect." The trial court further noted that the instructional phase for the walk and turn test was a "bit lacking" and "it's clear when [defendant] starts that test that he misunderstands how the counting works." The court noted that the video shows that Officer Tatum "does take two steps and then starts counting" during the example of the walk and turn test. The court further explained that defendant's one-legged-stand test "isn't great." The court observed that "[t]here is hopping *** [and] he puts [his] foot down and then that's the end of the test." The court noted that although there was evidence that defendant consumed cannabis, the court concluded that the evidence of impairment was "thin."

¶ 13 With respect to section 11-501(a)(6) of the Vehicle Code (625 ILCS 5/11-501(a)(6) (West 2014)), the trial court denied defense counsel's motion for directed judgment. The court stated, in pertinent part, as follows:

> "[Y]ou do have the admissions of use and then you have the lab tests. The lab tests for metabolite and *** what's found is in his urine, tetrahydrocannabinol metabolite***[.] So it's not a drug. It's a metabolite, a THC compound.
>
> The definition of compound is a little bit unclear. I guess I'm not going to resolve that. *** I'm going to look at whether it's a substance. So the question is

whether it's a substance resulting from the unlawful use or consumption of cannabis.

Well, THC is *** itself cannabis under the definition of the Cannabis Control Act, 720 ILCS 550/3(a). It's a metabolite, so it's a *** metabolite from the body's *** metabolization of THC unlawfully consumed.

* * *

[B]ut I think the lack of clarity within the statute was deliberate because the legislature was trying to *** bring within the statute people who had anything in their system. And the word substance is so far reaching and broad, there's no principled way to constrain it to active metabolite or active substance. There's *** no qualifier on it. Substance means practically anything, any kind of element or molecule is the *** natural reading of the statute and one [that is] consistent *** with the original intent in its passage. So while I have in front of me evidence that there is THC metabolite, it's not been proved to me that it's active[.] I believe under the statute it doesn't have to be proved to me that it's active. I believe *** what the State has presented carries its burden for a [s]ubsection (a)(6) charge."

¶ 14 At the conclusion of the bench trial, the trial court found defendant guilty of driving with any amount of a drug, substance, or compound in his breath, blood, or urine resulting from his unlawful use or consumption of cannabis (625 ILCS 5/11-501(a)(6) (West 2014)) and improper lane usage (625 ILCS 5/11-709) (West 2014)).

¶ 15 On June 23, 2016, defendant filed a posttrial motion challenging his conviction. The trial court denied the motion.

¶ 16 This appeal followed.

¶ 17 II. ANALYSIS

¶ 18 Defendant argues on appeal that (1) the State failed to establish a violation of section 11-501(a)(6) of the Vehicle Code as it failed to prove that the THC metabolites found in defendant's urine resulted from his unlawful use of cannabis; (2) the State failed to prove he unlawfully used or consumed cannabis; (3) section 11-501(a)(6) of the Vehicle Code is unconstitutionally vague and ambiguous as applied to his circumstances; and (4) section 11-501(a)(6) of the Vehicle Code unconstitutionally penalizes defendant's "status" of having had a THC metabolite in his system.

¶ 19 A. Sufficiency of the Evidence

¶ 20 Defendant challenges the sufficiency of the evidence, arguing that the State failed to establish section 11-501(a)(6) of the Vehicle Code "can be violated by having metabolites in one's body without evidence of cannabis."

¶ 21 In reviewing a challenge to the sufficiency of the evidence, "the relevant inquiry is whether, when 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. Ngo*, 388 Ill. App. 3d 1048, 1052, 904 N.E.2d 98, 102 (2008) (quoting *People v. Singleton*, 367 Ill. App. 3d 182, 187, 854 N.E.2d 326, 331 (2006)). "The trier of fact has the responsibility to determine the credibility of witnesses and the weight given to their testimony, to resolve conflicts in the evidence, and to draw reasonable inferences from that evidence." *Id.* A reviewing court "will not overturn the verdict of the fact finder 'unless the evidence is so unreasonable, improbable[,] or unsatisfactory that it raises a reasonable doubt of defendant's

guilt.' " *Singleton*, 367 Ill. App. 3d at 187-88 (quoting *People v. Evans*, 209 Ill. 2d 194, 209, 808 N.E.2d 939, 947 (2004)).

¶ 22 At the time defendant was charged in this case, Section 11-501(a)(6) of the Vehicle Code stated, in pertinent part:

> "A person shall not drive or be in actual physical control of any vehicle within this State while *** *there is any amount of a drug, substance, or compound in the person's breath, blood, or urine resulting from the unlawful use or consumption of cannabis* listed in the Cannabis Control Act, a controlled substance listed in the Illinois Controlled Substances Act, an intoxicating compound listed in the Use of Intoxicating Compounds Act ***." (Emphasis added.) 625 ILCS 5/11-501(a)(6) (West 2014).

¶ 23 Here, the State inexplicably failed to present evidence that the THC metabolites found in defendant's urine resulted from his use of cannabis. See *cf. People v. Way*, 2015 IL App (5th) 130096, ¶ 7, 39 N.E.3d 1149 (2015), *rev'd on other grounds*, 2017 IL 120023, 89 N.E. 3d 355 (The parties stipulated "a qualified forensic scientist would * * * testify that the defendant's urine specimen * * * contained THC metabolite, *which results from the use of cannabis* [.]") (Emphasis added.). In this case, that key fact was missing. Nonetheless, the State argues the presence of THC metabolites, coupled with the evidence of the odor of cannabis inside defendant's vehicle, the field sobriety tests, and defendant's admission to smoking cannabis was sufficient for a rational tier of fact to find defendant violated section 11-501(a)(6) of the Vehicle Code. Defendant contends his admission that he smoked cannabis sometime prior to his arrest was insufficient to support his conviction under the *corpus delicti* rule. We agree with the State.

¶ 24 To prove defendant guilty of a crime, the State must prove beyond a reasonable doubt "(1) that a crime occurred, *i.e.,* the *corpus delicti;* and (2) that the crime was committed by the person charged." *People v. Sargent*, 239 Ill. 2d 166, 183, 940 N.E.2d 1045, 1055 (2010). A defendant's extrajudicial confession, admission, or other statement cannot prove the *corpus delicti*. *Id.*; *People v. Lara*, 2012 IL 112370, ¶ 17, 983 N.E.2d 959. A defendant's out-of-court admissions must also be accompanied by "independent corroborating evidence." *Lara*, 2012 IL 112370, ¶ 17. However, "our case law has consistently required far less independent evidence to corroborate a defendant's confession under the *corpus delicti* rule than to show guilt beyond a reasonable doubt." *Id.* ¶ 45. The independent corroborating evidence need only *tend* to show the crime occurred. *Sargent*, 239 Ill.2d at 183.

¶ 25 Here, the State presented independent corroborating evidence of defendant's admission to his use of cannabis and that it remained in his system while he operated a motor vehicle. The State's evidence established that Officer Tatum conducted a traffic stop after observing defendant's improper lane use. Defendant admitted he had smoked cannabis several hours earlier that day. Officer Tatum testified that he immediately noticed a strong odor of cannabis coming from inside defendant's vehicle. Further, as the trial court noted, defendant performed poorly on the field sobriety tests. Viewing the evidence in the light most favorable to the prosecution, as we must, we find the State presented sufficient evidence from which a rational trier of fact could have found defendant operated a motor vehicle with "any amount of a drug, substance, or compound in the person's breath, blood, or urine resulting from the unlawful use or consumption of cannabis" in violation of section 11–501(a)(6) of the Vehicle Code.

¶ 26 B. Vague and Ambiguous

¶ 27 Next, defendant argues section 11-501(a)(6) of the Vehicle Code is unconstitutionally vague and ambiguous. Specifically, defendant contends the statute does not clearly define the prohibited criminal activity and it did not put him on notice that the presence of a metabolite in his system could be the basis for a violation of the statute as applied to his circumstances. We disagree.

¶ 28 A statute is presumptively constitutional. *People v. Cornelius*, 213 Ill. 2d 178, 189, 821 N.E.2d 288, 295-96 (2004). "The cardinal rule of statutory construction is to ascertain and give effect to the legislature's intent." *Acme Markets, Inc. v. Callanan*, 236 Ill. 2d 29, 37, 923 N.E.2d 718, 724 (2009). "Further, in ascertaining the meaning of a statute, the statute should be read as a whole with all relevant parts considered." *Kraft, Inc. v. Edgar*, 138 Ill. 2d 178, 189, 561 N.E.2d 656, 661 (1990).

¶ 29 A vagueness challenge to a statute "is a due process challenge, examining whether a statute give[s] [a] person of ordinary intelligence a reasonable opportunity to know what is prohibited, so that he may act accordingly." (Internal citations omitted.) *People v. Greco*, 204 Ill. 2d 400, 415, 790 N.E.2d 846, 856 (2003). "The determination of whether a statute is void for vagueness must be made in the factual context of each case." *People v. Falbe*, 189 Ill. 2d 635, 639, 727 N.E.2d 200, 204 (2000). The party challenging the statute "must show that the statute did not provide clear notice that the party's conduct was prohibited." *People v. Jihan*, 127 Ill. 2d 379, 385, 537 N.E.2d 751, 754 (1989).

¶ 30 Here, defendant challenges as unconstitutionally vague section 11-501(a)(6) of the Vehicle Code, which provides, in pertinent part, as follows:

"A person shall not drive or be in actual physical control of any vehicle

within this State while *** there is any amount of a drug, substance, or compound in the person's breath, blood, or urine resulting from the unlawful use or consumption of cannabis ***." 625 ILCS 5/11-501(a)(6) (West 2014).

¶ 31 As stated, defendant argues that the statute failed to put him on notice that he could not drive with THC metabolites in his system and it did not clearly define the prohibited criminal activity. Here, however, defendant admitted to smoking cannabis several hours prior to the traffic stop. We agree with the State that "[a] person of ordinary intelligence in defendant's position would know that this statute prohibited driving after smoking cannabis," since it prohibited driving with *any amount* of "a drug, substance, or compound" after the unlawful use of cannabis. 625 ILCS 5/11-501(a)(6) (West 2014). Defendant argues that an individual could have THC metabolites in his system for several weeks after lawfully using cannabis in another jurisdiction and thus be in violation of the statute. However, those are not the facts of this case. Here, defendant admitted that he smoked cannabis only hours before his arrest. Further, defendant fails to identify any evidence that his use or consumption of cannabis was lawful or that it occurred in another jurisdiction. We do not find the statute is unconstitutionally vague and ambiguous as applied to defendant's circumstances. *People v. Briseno*, 343 Ill. App. 3d 953, 960, 799 N.E.2d 359, 364 (2003).

¶ 32 Defendant also appears to argue that the statute is facially unconstitutional. However, because we have found the statute is not unconstitutional as applied to his circumstances, defendant's facial challenge must also fail. See *Jackson v. City of Chicago*, 2012 IL App (1st) 111044, ¶ 27, 975 N.E.2d 153 ("Where a statute or ordinance is constitutional as applied to a party, a facial challenge will also fail, since there is necessarily at least one

circumstance in which the statute or ordinance is constitutional.").

¶ 33 C. Status

¶ 34 Finally, defendant argues section 11-501(a)(6) unconstitutionally penalizes his "status" of having a THC metabolite in his system. We disagree.

¶ 35 In support of his argument, defendant cites *People v. Davis*, 27 Ill. 2d 57, 188 N.E.2d 225 (1963). In that case, the defendant argued that a statute unconstitutionally criminalized the "status" of narcotic addiction by making it a crime to "be under the influence of or be addicted to the unlawful use of narcotic drugs. Ill.Rev.Stat.1961, chap. 38, par. 22-3." (Emphasis omitted). *Id.* at 58. Our supreme court noted that the statute did not punish an "overt act"; rather, it made the status of narcotic addiction a criminal offense. *Id.* at 61. The court concluded the statute violated the constitutional prohibition against cruel and unusual punishment.

¶ 36 Here, defendant contends that, like *Davis*, he is "being punished for his status of having a metabolite in his urine without any proof of wrongdoing." We disagree. As the State points out, defendant was punished for the *act* of operating a motor vehicle after unlawfully consuming cannabis—not his *status.* Further, contrary to defendant's assertion, there was "proof of wrongdoing." As discussed, defendant admitted to smoking cannabis only hours before the traffic stop, the arresting officer noted a strong odor of cannabis emanating from defendant's vehicle, and defendant failed at least one field sobriety test prior to his arrest. Thus, we cannot agree that defendant was punished based on his "status" of having a metabolite in his system without any proof of wrongdoing.

¶ 37 III. CONCLUSION

¶ 38 For the reasons stated, we affirm the trial court's judgment. As part of our judgment we award the State its $50 statutory assessment against defendant as costs of this appeal. 55 ILCS 5/4-2002 (West 2014).

¶ 39 Affirmed.