2011 IL App (1st) 082487-U

SECOND DIVISION
AUGUST 23, 2011

1-08-2487

NOTICE: This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County.
	)	
v.	)	No. TP-169-287
	)	
KARL LEPAK,	)	Honorable
	)	James A. Shapiro,
Defendant-Appellant.	)	Judge Presiding.

PRESIDING JUSTICE CUNNINGHAM delivered the judgment of the court.
Justices Karnezis and Connors concurred in the judgment.

ORDER

Held: Defendant was proven guilty, beyond a reasonable doubt, of the illegal transportation of alcohol when a police officer testified that he saw an open can of beer in defendant's car and smelled its contents.

¶ 1 After defendant Karl LePak was arrested in August 2007, he was charged with, *inter alia*, driving under the influence of alcohol (DUI), and the illegal transportation of alcohol. The matter proceeded to a jury trial on the DUI charge, with a simultaneous bench trial on the other charges. Defendant was convicted by the jury of DUI and the illegal transportation of alcohol by the trial court and sentenced to 24 months of conditional discharge.[1] On appeal, defendant contends that he was

---

[1] Defendant was also found guilty of disobeying a red light. He makes no argument regarding that conviction on appeal.

not proven guilty beyond a reasonable doubt of the illegal transportation of alcohol because the State failed to prove the existence of an open can of alcohol and the trial court engaged in "conjecture and speculation." For the following reasons, we affirm the judgment of the circuit court of Cook County.

¶ 2 At trial, Officer Tupayachi testified that he curbed defendant's car after observing numerous traffic violations. As he approached the car, Officer Tupayachi saw two unopened cans of beer in the passenger compartment and an open can of beer wedged between the parking brake handle and the driver's seat. He also smelled a strong alcoholic odor coming from defendant's breath and observed that defendant's eyes were bloodshot and glazed. Based on these indicators, as well as defendant's slurred and mumbled speech, Officer Tupayachi asked defendant to exit the car and perform certain field sobriety tests.

¶ 3 As defendant exited the car, he stumbled and leaned against the car for support. Defendant's subsequent performance on the "walk and turn," "one leg stand," and "finger-to-nose" tests led Officer Tupayachi to conclude that defendant was impaired. When he took defendant into custody for DUI, defendant became very upset and asked Officer Tupayachi to give him a break for the DUI.

¶ 4 Before transporting defendant to the police station, Officer Tupayachi parked defendant's vehicle in a legal parking spot. While inside the car, he picked up the open can of Miller Lite, smelled it, and dumped it out.

¶ 5 Defendant testified that he had consumed "no more than two beers" that night, and was not even sure he had finished the second one. When a police cruiser began "riding" his car's bumper, he thought that the officer needed to get by, so he turned onto a side street. He immediately pulled over when he saw the squad car's lights.

¶ 6 When Officer Tupayachi asked for defendant's driver's license and insurance information, defendant explained that he had lost his license a few days before, but that he had his identification and his insurance. Officer Tupayachi then told him to "forget it" and to get out of the car. Although defendant thought Officer Tupayachi was rude, he exited the car and agreed to take certain field

sobriety tests. He believed he had passed the tests and was "kind of shocked" when he was arrested for DUI. Defendant admitted that he asked Officer Tupayachi to give him a break, but asserted it was because the situation was "BS."

¶ 7 Defendant testified that the open can in his car contained Monster Energy drink and denied being intoxicated that night.

¶ 8 After closing argument, the jury was instructed and retired to deliberate on the DUI charge. The trial court then asked whether it would be improper for it to wait to rule on the other charges until after the jury reached a verdict, as the trial court would be "somewhat informed" by the jury's verdict. The trial court then stated that a guilty verdict on the DUI charge would not be dispositive and that the trial court knew that the charges were "independent things" consisting of different issues and proof. However, learning what the jury did with the most serious count would inform the trial court as to what the jury believed.

¶ 9 The jury returned a guilty verdict on the DUI charge. The trial court found defendant guilty of illegal transportation of alcohol. In finding defendant guilty of the illegal transportation of alcohol, the trial court stated that "the jury believed the officer on the illegal transportation of alcohol." Defendant was ultimately sentenced to 24 months of conditional discharge.

¶ 10 On appeal, defendant contends that he was not proven guilty beyond a reasonable doubt of the illegal transportation of alcohol because the State failed to introduce the alleged open container into evidence and the trial court engaged in speculation and conjecture as to what the jury believed.

¶ 11 In assessing the sufficiency of the evidence, the relevant inquiry is whether, considering the evidence in the light most favorable to the State, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. *People v. Ross*, 229 Ill. 2d 255, 272 (2008). This court does not retry the defendant or substitute its judgment for that of the trier of fact with regard to the credibility of witnesses, the weight to be given to each witness' testimony, and the reasonable inferences to be drawn from the evidence. *Ross*, 229 Ill. 2d at 272. A conviction will be

reversed only when the evidence was so unreasonable or unsatisfactory that reasonable doubt remains as to whether the defendant was guilty. *Ross*, 229 Ill. 2d at 272.

¶ 12 To sustain a conviction for the illegal transportation of alcohol, the State was required to prove beyond a reasonable doubt that defendant, as the driver of a car, carried, transported, possessed, or had any alcoholic liquor in the passenger area of his car upon a highway and that the alcohol in question was not in the original container with an unbroken seal. See 625 ILCS 5/11-502(a) (West 2006).

¶ 13 Here, it is undisputed that there was an open can of liquid in defendant's car. Officer Tupayachi testified that he smelled the contents of the Miller Lite can and that it was beer. Although defendant asserted that the can held energy drink, it was the trial court's responsibility, as the trier of fact, to determine each witness' credibility and the weight to be given to his testimony. *Ross*, 229 Ill. 2d at 272. Clearly, the trial court found Officer Tupayachi to be a credible witness, as evidenced by the verdict; this court will not substitute its judgment on such issues. *Ross*, 229 Ill. 2d at 272.

¶ 14 Defendant however contends, relying on *People v. Gore*, 115 Ill. App. 3d 1054 (1983), that the State could not establish his guilt without introducing the alleged open container at issue into evidence at trial.

¶ 15 In *Gore,* the defendant contended that he was not proven guilty of the illegal transportation of alcohol beyond a reasonable doubt when the substance in the beer bottles at issue was not proven to be alcoholic. See *Gore,* 115 Ill. App. 3d at 1056. The *Gore* court disagreed, finding that the question of whether the liquid inside the bottles was alcoholic was a factual one, which the jury was competent to determine based upon witness testimony and the jurors' observation of the bottles themselves. *Gore,* 115 Ill. App. 3d at 1056. Expert testimony regarding the contents of the bottles was unnecessary. *Gore,* 115 Ill. App. 3d at 1056.

¶ 16 Contrary to defendant's assertion, *Gore* does not stand for the proposition that the State must introduce the open container at issue in order to sustain a conviction for the illegal transportation of

alcohol. Rather, *Gore* found that the question of whether an open container held alcohol was a question of fact. Here, Officer Tupayachi testified that the open can of Miller Lite in defendant's car contained beer, whereas defendant testified that it contained energy drink. As the question of whether the can contained alcohol was one of fact, it was for the trial court, as the trier of fact, to determine based upon the testimony presented at trial (*Gore,* 115 Ill. App. 3d at 1056). There is no requirement that the trial court had to accept defendant's version from among competing versions of the facts (see *People v. Villarreal*, 198 Ill. 2d 209, 231 (2001)).

¶ 17 Defendant also contends that the trial court engaged in speculation and conjecture as to what the jury believed.

¶ 18 In a bench trial, the trial court is presumed to know the law (*People v. Buchanan*, 211 Ill. App. 3d 305, 322 (1991)), and to have considered only competent evidence in making findings (*People v. Anton*, 100 Ill. App. 3d 344, 352 (1981)). See also *Anton*, 100 Ill. App at 352 (the presumption is not overcome by the court's "imprecise verbalization of the evidence"). This presumption "is rebutted only when it affirmatively appears that: (1) the trial court considered improper evidence; and (2) that the trial court was misled or improperly influenced thereby." *People v. Johnson*, 327 Ill. App. 3d 203, 210 (2001).

¶ 19 Defendant's argument appears to be based on the conclusion that because the trial court waited until after the jury returned its verdict and subsequently stated that the jury found Officer Tupayachi to be credible, the trial court's ultimate finding was based on speculation as to what the jury thought. We disagree.

¶ 20 The record reveals that the trial court decided to wait until after the jury's verdict to make a finding, as it would be "somewhat" informed by the verdict. However, the trial court then stated that the DUI and illegal transportation of alcohol charges entailed different elements of proof and that a guilty verdict on the DUI would not be dispositive of the issues facing the trial court. Thus, the record indicates that the trial court was aware that the jury's verdict did not control its findings, and

that it was tasked with making an independent determination as to defendant's guilt. Defendant has failed to overcome the presumption that the trial court knew and utilized the relevant legal authority when finding him guilty (*Buchanan*, 211 Ill. App. 3d at 322).

¶ 21 Here, the evidence at trial established, through Officer Tupayachi's testimony that he saw, smelled, and emptied the contents of an open can of Miller Lite, that defendant had an open can of beer in his car. This court reverses a conviction only when the evidence at trial was so unsatisfactory that reasonable doubt remains as to a defendant's guilt (*Ross*, 229 Ill. 2d at 272); this is not one of those cases. Accordingly, this court affirms defendant's conviction for the illegal transportation of alcohol.

¶ 22 For the reasons stated above, the decision of the circuit court of Cook County is affirmed.

¶ 23 Affirmed.