

2011 IL App (1st) 100430-U
No. 1-10-0430

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THIRD DIVISION
August 10, 2011

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. 08 MC2 6050
)	
DAVID CORRAL,)	Honorable
)	Henry M. Singer,
Defendant-Appellant.)	Judge Presiding.

JUSTICE NEVILLE delivered the judgment of the court.
Presiding Justice Quinn and Justice Steele concurred in the judgment.

O R D E R

HELD: Where the trial court takes judicial notice of the time required to travel between two points, it does not deny defendant a fair trial; convictions affirmed.

¶ 1 Following a bench trial, defendant David Corral was convicted of aggravated driving under the influence of alcohol (DUI), driving

with a suspended license, and other driving infractions. Defendant was sentenced to 140 days in jail. On appeal, he contends that the trial court committed reversible error which denied him a fair trial by taking judicial notice of the time required to travel between two points and concluding the credibility of defense witnesses was suspect. We affirm.

¶ 2 Winnetka Police Sergeant Ed Trage testified as the State's sole witness. By stipulation, the trial court incorporated Trage's testimony from a pretrial hearing on a motion to quash and suppress as well as a video recording from a camera mounted in Trage's police car. The video, which was received in evidence, played during trial, and included in the record on appeal, depicts defendant's car from when it pulled over onto the highway shoulder until after defendant was arrested.

¶ 3 On December 21, 2009, at 3:37 a.m., Trage was traveling eastbound in his police vehicle at about 3300 Lake Avenue in Wilmette when he saw a vehicle driven by defendant exit a shopping center at that location and travel westbound on Lake without its headlights on. Trage's radar showed the vehicle was traveling at 45 miles per hour in a 35-mile-per-hour zone. Noticing the vehicle was straddling two lanes of traffic, Trage followed the vehicle as it entered the eastbound entrance ramp for Highway I-94. After the vehicle had traveled about ½ mile on the expressway toward Chicago, Trage activated his police car lights and onboard video camera,

pulled the vehicle over to the shoulder, and approached the vehicle on foot.

¶ 4 Trage asked defendant for his driver's license. Defendant initially stated he did not have one, then produced his wallet and pulled out a State identification card. Trage asked defendant where his driver's license was and defendant said he thought it might be suspended. As Trage and defendant conversed, Trage "detected a strong odor of an alcoholic beverage" on defendant's breath and also detected "a slight odor of cannabis" coming from the vehicle. Trage also noticed defendant's eyes were glassy and bloodshot. The videotape showed Trage asking defendant where he was going and defendant replying that he was coming from the city and going to his home in Round Lake. When Trage asked defendant if he could get home in the direction he was headed, he replied he was going to his uncle's house to stay over. When reminded of his earlier statement, defendant acknowledged he was going home.

¶ 5 Trage asked defendant to get out of the car and observed that defendant used the car door for support. As defendant walked to the rear of his vehicle, he appeared unsteady on his feet. Trage, who had been trained in drug detection and field sobriety tests and had performed "in excess of a thousand" DUI arrests, performed sobriety tests on defendant. The video showed defendant was very slow in responding to commands and did not accurately complete reciting the alphabet when asked to do so. Trage formed the opinion

that defendant was under the influence of alcohol and placed him under arrest for DUI.

¶ 6 The defense presented the testimony of two witnesses: Roberto Garcia, defendant's uncle, and Francisco Cancino, defendant's brother. Garcia, a Chicago police detective, testified that on the night of December 20, 2009, he hosted a family holiday party in the basement of his home at 5655 North Rogers Avenue in Chicago. About 20 people attended the party. He first noticed defendant at the party at about 11:30 p.m. and saw defendant drinking one beer. To the best of Garcia's knowledge, defendant did not have any more drinks, but Garcia was in different parts of the basement during the evening and defendant was not in his sight the entire time. When defense counsel asked Garcia how far his home was from I-94 at Lake Street, he responded, "It's approximately a 15, 20-minute drive." Cancino testified that defendant arrived at the party at about 11 p.m. and Cancino saw him shortly afterward with a beer. Cancino did not see defendant drink any other alcoholic beverages.

¶ 7 Both Garcia and Cancino testified defendant left the party at about 3:30 a.m. Garcia noticed nothing unusual about the way defendant walked and his speech was not slurred. As a police officer, Garcia had seen hundreds of people under the influence and defendant did not appear to be drunk. When defendant left, he told Garcia he was going north to his home in Round Lake. Cancino testified that when he left the party with defendant at about 3:30

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a.m., defendant appeared normal and not under the influence of alcohol.

¶ 8 After the parties rested, the court made factual findings which included the following:

"Okay, I've listened to the evidence; I've viewed the video. And counsel, *** you brought in two witnesses, family members ***.

"The trouble I have is the fact that they're coming in here obviously to tell the truth the way they saw it. *** [Y]our client shows up at about 11:30, he leaves at 3:30. 5600 North on Rogers, and he's pulled over at 3:37 in Wilmette on Lake Street, coming out of a shopping strip. Now, something isn't right there. He can't get there in seven minutes, at 3:30 in the morning even. Okay? Unless he's going 100 miles per hour. I drive that stretch of the Edens all the time, and I'm not coming from as far south as 5600 Rogers, and I can't make it there in that seven minutes, and again, I'm not speeding. Okay? It isn't possible.

Okay, so I don't believe he left at
3:30."

¶ 9 The court found defendant guilty of aggravated DUI, driving with a suspended license, driving without headlights, and improper lane usage. At the subsequent hearing on defendant's motion for a new trial, defense counsel argued that it was improper for the trial court to have rejected a travel time of seven minutes between the Garcia home and Lake Street in Wilmette, where the State had proffered no evidence concerning the time. In denying the motion, the trial court stated that when assessing the credibility of the witnesses, it took "everything into consideration," including body language, a witness's bias or prejudice, and "the little nuances" of their testimony. The court sentenced defendant to 140 days in jail.

¶ 10 On appeal, defendant contends that, in assessing the credibility of Garcia and Cancino, the court impermissibly relied on its own knowledge of how long it would take to drive between the Chicago and Wilmette locations, and that this error denied him a fair trial. The State responds that defendant has forfeited review of the alleged error when no contemporaneous objection was made to the court's comment, although the issue was raised in defendant's written posttrial motion. Defendant replies that forfeiture should not apply where the error was introduced by the court itself.

¶ 11 We dispose of this issue, however, on the basis that no error occurred. Courts of review may take judicial notice of the distances between two or more locations and the customary routes and usual times required for travel between them. *People v. Rojas*, 359 Ill. App. 3d 392, 409 n.1 (2005), citing *Dawdy v. Union Pacific R.R. Co.*, 207 Ill. 2d 167, 177-78 (2003).

¶ 12 In support of his claim, defendant relies on *People v. Wallenberg*, 24 Ill. 2d 350 (1962), which held that the trial court in that case improperly relied on matters not in the record. In commenting on the defendant's testimony that there were no gas stations along a stretch of road, the trial court stated, "I happen to know different. I don't believe his story." The supreme court reversed defendant's robbery conviction after concluding that a determination made by the trial judge based upon his private knowledge, untested by cross-examination or any of the rules of evidence, constituted a denial of due process of law. *Wallenberg*, 24 Ill. 2d at 354.

¶ 13 *Wallenberg* was distinguished in *People v. Cain*, 14 Ill. App. 3d 1003 (1973), a case nearly identical factually with the case at bar, where the trial court took judicial notice of the time required to travel between two points. In affirming defendant's attempted armed robbery conviction, this court ruled that, although there was no evidence as to the time required to travel between the place where defendant testified he was at 4 p.m. and the scene of

the crime which occurred at 4:40 p.m., the locations and times were in evidence. From those facts we determined that "the court was entitled to have drawn an inference as to how long it would have taken the defendant to have traveled from one location to another and to have formed a conclusion as to whether he could have arrived at the liquor store in time to attempt the robbery." *Cain*, 14 Ill. App. 3d at 1007. We concluded that as the comments made by the trial court did not introduce a fact wholly unsupported by any evidence in the record, they were distinguishable from the comments made in *Wallenberg*. *Cain*, 14 Ill. App. 3d at 1007.

¶ 14 Here, the trial court also properly took judicial notice of the time required to traverse the two locations. Consequently, defendant was not denied a fair trial, and we affirm his convictions.

¶ 15 Affirmed.