

No. 1-10-0325

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FIRST DIVISION  
DATE: FEBRUARY 22, 2011

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IN THE  
APPELLATE COURT OF ILLINOIS  
FIRST JUDICIAL DISTRICT

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THE PEOPLE OF THE STATE OF ILLINOIS	)	
	)	Appeal from the
Plaintiff-Appellee,	)	Circuit Court of
	)	Cook County.
v.	)	
	)	No. YP 146 180
JOLANTA DELROSSO,	)	
	)	The Honorable
	)	Edward N. Pietrucha,
Defendant-Appellant.	)	Judge Presiding.
	)	

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JUSTICE HOFFMAN delivered the judgment of the court.  
Presiding Justice Hall and Justice Lampkin concurred in the judgment.

**O R D E R**

*HELD:* Defendant's conviction for driving while under the influence of alcohol was upheld on appeal where the evidence proved beyond a reasonable doubt that she was impaired due to alcohol.

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Following a bench trial, defendant Jolanta DelRosso was found guilty of driving under the influence of alcohol (DUI), and she was placed on supervision for 18 months. On appeal, defendant contends that she was not proved guilty beyond a reasonable doubt.

The trial evidence established that at approximately 11:10 p.m. on April 9, 2009, a collision occurred at the intersection of Golf Road and Plum Grove Road. Aaron Wiegel and his brother were on their way to John Barleycorn, a liquor establishment in Schaumburg. Aaron Wiegel and Schaumburg police officer Layne were the only witnesses who testified at trial.

Wiegel's car had been traveling east on Golf Road, and was stopped at a stoplight at Plum Grove Road when the collision occurred. When Wiegel first stopped his car, he did not notice any other cars. He then heard a screeching sound, looked in the mirror, and saw two headlights coming directly at him. Defendant was the driver and sole occupant of the car that was coming toward Wiegel. Defendant's car swerved and sideswiped the passenger side of Wiegel's car, where Wiegel's brother was sitting, but there was no evidence that anyone was injured. Defendant's car stopped for several seconds and then proceeded southbound on Plum Grove Road. Wiegel followed defendant's car

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and caught up with it about a quarter of a mile south of Golf Road in front of an apartment complex.

Wiegel stopped his car about a car length behind defendant's car and flashed his lights to attract her attention. Wiegel and his brother inspected the passenger side of his car, a black Infiniti M45, and noticed the damage from the collision--a gray sideswipe, a dent, and scratches. Defendant got out of her car and stumbled from side to side toward Wiegel. When defendant was between her car and Wiegel's car, she placed her hand on Wiegel's car. The first thing that defendant said was, "'Wow, you have a really nice car.'" Defendant did not say anything about the collision, and instead said that she was in a hurry, that they should exchange insurance information, and that she had to leave. Wiegel noticed that defendant had a foreign accent, was slurring her words, and had "glossy" eyes, but he understood what she was saying. Wiegel told defendant that she was not going anywhere, and he called the police. Defendant got back in her car.

Wiegel noticed that defendant had a hard time standing up when talking to the police--she was constantly leaning on Wiegel's car with her hand.

Officer Layne had worked for the Schaumburg police department for 11 years, had received training to detect people

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who were under the influence of alcohol, and had experience with DUI investigations. Layne estimated that he had participated in well over 100 DUI's, and that he had witnessed people under the influence of alcohol thousands of times, personally and professionally. According to Layne, Wiegel's vehicle was a black Lexus sedan, and defendant's vehicle was a small silver Ford. When Layne first encountered defendant, defendant yelled obscenities and swore at Layne, but he did not remember the particular words she used. It was hard to understand her because she had an accent, her speech was slurred, and she mumbled.

While standing by the driver's door, Layne smelled an odor of an alcoholic beverage coming from defendant's breath. Defendant's eyes were bloodshot and glassy, and she seemed to react slowly to Layne's questioning. She paused and did not respond to Layne's instructions. When Layne reached for the ignition keys to turn off the engine and prevent defendant from leaving the scene, defendant said, "'No,'" and swatted Layne's hand with her hand. Layne got defendant out of the car and handcuffed her, and she continued to yell obscenities at him. Layne did not observe any unusual actions when defendant got out of the squad car. When Layne indicated that he was just investigating the collision, defendant told him that she did not

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remember.

Layne removed the handcuffs from defendant for field sobriety tests. Defendant performed one test, the horizontal gaze nystagmus (HGN) test, but refused the remaining tests. Initially, defendant did not keep her head still during the HGN test. After Layne explained it again, she understood. Layne did not make any unusual observations about her balance during that test. After defendant refused the other field sobriety tests, Layne formed an opinion as to whether or not she was under the influence of alcohol, and he believed that she was under the influence of alcohol, based on the reason he was dispatched, the collision, defendant's demeanor, her bloodshot and glassy eyes, the strong smell of an alcoholic beverage on her breath, her slurred and mumbled speech, and the HGN test. In addition to refusing to submit to any additional field sobriety tests, defendant refused to take a breath test at the station.

When Layne was walking with defendant, she did not stumble or fall. Layne did not see her use her car or Layne's car for support when she was walking. Her clothing was disorderly. She denied having consumed any alcoholic beverage that night. Layne did not know what alcoholic beverage defendant drank that night or how much she had to drink that night. Nor could he testify

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that she had anything of an alcoholic nature to drink that night.

There were several discrepancies between Layne's testimony and the written reports that he prepared, as to whether defendant used profanity, was combative, was indifferent to him, and was crying.

The court observed in part that defendant's comment, "Wow, you have a nice car," was inconsistent with someone who was not intoxicated and was aware of what she was doing. The court further observed that there was no evidence defendant acknowledged that she had hit a car or that she had been involved in an accident. The court stressed that defendant did not remember the accident that happened moments earlier, with screeching tires, swerving, and sideswiping a car, all indicating that she was in no condition to drive a car. The court also reviewed the other circumstances.

On appeal, defendant contends that she was not proved guilty beyond a reasonable doubt. She argues that her accent demonstrates that she was born in a foreign country and that there was a problem with her communication and/or her comprehension during the HGN test. She argues further that the record is devoid of any observations by the officer during the HGN test except that he did not notice anything about her balance

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during that test, and no other field sobriety tests were administered. She maintains that she did not stumble, fall, or use her car or the police vehicle for support. She also maintains that she was crying, she refused to take a breath test at the police station, and she did attempt to stop, as evidenced by the screeching tires of her vehicle. She argues that she could not have forgotten an accident that she attempted to avoid, and that she could not have been under the influence of alcohol given that she tried to avoid the accident. She suggests that, given that she offered to provide insurance information, it is possible when she told the officer she did not remember, that she meant she could not remember how the accident happened, not that she could not remember the accident at all. She further suggests that by complimenting Wiegel's car, she was merely trying to placate two screaming strangers who confronted her alone at night.

"Each individual item of evidence does not have to prove the fact at issue beyond a reasonable doubt. Rather, each individual item of evidence must tend to show that the fact at issue, in this case impairment due to alcohol, is more or less likely. By way of

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analogy, it is often said that "'a brick is not a wall.'" [Citations.] That is, an individual item of evidence is merely a brick, one of many bricks used to build the wall that is the fact at issue." *People v. McKown*, 236 Ill. 2d 278, 304 (2010).

The question is whether any rational trier of fact, considering the evidence in the light most favorable to the State, could have found that the defendant was guilty beyond a reasonable doubt. *People v. Botsis*, 388 Ill. App. 3d 422, 429 (2009).

The basis for defendant's drunken driving conviction was not solely her exclamation, "Wow, you have a nice car," or her failure to remember the collision. The following are additional bricks of evidence proving defendant's impairment due to alcohol. Defendant's tires screeched, she swerved, and she sideswiped Wiegel's stopped vehicle with no other vehicles around. Defendant did not stop and instead drove away after the collision. After Wiegel caught up with defendant, she stumbled from side to side toward him and put her hand on Wiegel's car, and Wiegel noticed that she constantly leaned on his car with her hand because she had a hard time standing up while talking to the

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police. It reasonably can be construed from those circumstances that defendant used the car for support. Moreover, defendant reacted slowly to the officer's instructions, yelled obscenities and swore at him, slurred her speech, and mumbled. Her breath smelled strongly of an alcoholic beverage, and her eyes were bloodshot and glassy. She swatted the officer's hand when he reached for the keys in the ignition. Her clothing was disorderly. After taking an HGN test, she refused to take other potentially incriminating field sobriety and breathalyzer tests. An inference of her intoxication and consciousness of guilt may be drawn from her refusal to submit to those potentially incriminating tests. See *People v. Roberts*, 115 Ill. App. 3d 384, 387-88 (1983). Furthermore, the police officer who believed that defendant was under the influence of alcohol had witnessed people under the influence of alcohol thousands of times professionally and personally. The officer detected that defendant's speech was slurred and mumbled even with her accent. Thus, many bricks comprised defendant's wall of guilt. See *McKown*, 236 Ill. 2d at 304. Viewed in the light most favorable for the State, the evidence was sufficient to satisfy any rational trier of fact that defendant was guilty of DUI beyond a reasonable doubt. We have considered, and rejected, all of

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defendant's arguments on appeal.

The judgment of the circuit court is affirmed.

Affirmed.