

No. 1-10-1764

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SECOND DIVISION  
May 24, 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
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County.
	)	
v.	)	No. YP 337 124
	)	
MICHAEL J. MAYLAHN,	)	Honorable
	)	Bridget Jane Hughes,
Defendant-Appellant.	)	Judge Presiding.

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JUSTICE HARRIS delivered the judgment of the court.  
Presiding Justice Cunningham and Justice Karnezis concurred  
in the judgment.

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**O R D E R**

*HELD:* The credible observations of the arresting officer regarding defendant's intoxication found sufficient to sustain defendant's DUI conviction; and, 300-day sentence affirmed over claim that it was excessive and an abuse of the trial court's discretion.

Following a bench trial, defendant Michael Maylahn was found guilty of driving under the influence of alcohol (DUI) (625 ILCS

5/11-501(a)(2) (West 2008)), and sentenced to 300 days' incarceration in the Cook County Department of Corrections. On appeal, defendant contends that the State failed to prove beyond a reasonable doubt that he was under the influence of alcohol, and that his sentence was excessive and an abuse of the trial court's discretion.

Before trial, defendant moved to suppress the statements he made after a traffic stop based on the lack of *Miranda* warnings. The trial court denied the motion, finding that he had presented an insufficient factual basis because it was unclear what occurred at the police station. The court, however, left open the possibility of revisiting the issue during trial.

The cause proceeded to trial and the State presented the testimony of Elk Grove Village police officer Kevin Finnen, who stopped defendant. Officer Finnen testified that at 2:35 a.m. on October 25, 2009, he observed a car traveling east on Oakton Street with no headlights on and a flat tire. He stopped the car and asked defendant for his driver's license and proof of insurance. Defendant had difficulty removing his driver's license from his wallet, and the officer detected a strong odor of alcohol on his breath.

Defendant stepped out of his car in a dress and women's sandals. According to Officer Finnen, defendant appeared unsure of his balance, "swaying side to side," and he stumbled when he

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tried to walk. When asked if he had been drinking, defendant replied that he had, then refused to perform any field sobriety tests. Defendant was arrested for DUI, and the officer helped defendant, who was handcuffed behind his back, into the back seat of the police car.

At the police station, Officer Finnen read defendant the warning to motorists concerning his refusal or submission to chemical testing. After a 20-minute observation period, Officer Finnen asked defendant to perform a breath-alcohol test; he declined. During the routine inventory of defendant's belongings, specifically his purse, Officer Finnen recovered a bar receipt from the Ramada Hotel in Elk Grove Village, and defendant explained that he had consumed three glasses of wine at the hotel. While being processed for intake into the jail, defendant told Officer Finnen that he did not know he had a flat tire, but recalled driving over a median after leaving the Ramada Hotel. Officer Finnen further testified that the tire was extensively damaged, its sidewall destroyed beyond repair, and that the concrete median that defendant said he drove over, was about two feet wide and one foot tall.

On cross-examination, Officer Finnen referred to his police report, then testified that when he initially asked defendant whether he was aware that he had a flat tire during the traffic stop, defendant stated that he was not aware of this fact.

Officer Finnen recalled that he was wearing a coat because it was cold, but he could not remember whether it was raining. He did not hear defendant complain of difficulty getting into the back seat of the police car in heels and handcuffs.

Officer Finnen testified on redirect examination that, even with his assistance, defendant lost his balance getting into the police car. He explained that defendant was wearing a dress and no underpants and he ignored the advice to enter "buttocks first." In his opinion, defendant was unfit to drive a car due to intoxication. Finally, on recross-examination, Officer Finnen stated that he could not remember whether defendant gave a reason for refusing to perform any field sobriety tests.

The State rested, and the trial court reconsidered its ruling on defendant's motion to suppress. The court determined that it would not consider defendant's statements at the police station as to where he was coming from and that he had three glasses of wine. The court then denied defendant's motion for a directed verdict, and defendant introduced into evidence the DVD recording of the traffic stop.

After the trial court viewed the DVD recording, defendant testified to his version of events. He stated that he drove over the concrete median because he wanted to make a left turn after leaving the Ramada Hotel parking lot. He noticed something wrong with his car "almost immediately," but drove a short distance to

the Days Inn Hotel where friends were staying so that he could change his outfit before examining his car. He had no difficulty complying with the police officer's request for his driver's license, which he retrieved from his "zippered little pouch or purse," and his proof of insurance, which he retrieved from the glove compartment of his vehicle. He refused to perform any field sobriety tests, explaining to the officer that he was cold and had on three-inch heels. He also complained to the officer that being in handcuffs and heels gave him no balance to back into the police car.

On cross-examination, defendant acknowledged that, although he was cold at the time, he could have removed his heels and performed the field sobriety tests. He explained that he was dressed as he was for an event at the Ramada Hotel, where he had three glasses of wine. He added, on redirect examination, that his bar receipt from the Ramada Hotel was for three glasses of wine.

In finding defendant guilty of DUI, the trial court credited the testimony of Officer Finnen regarding defendant's condition, particularly the strong odor of alcohol on his breath. The court considered that defendant continued to drive despite the extensive damage to his tire and without his headlights on, that he had difficulty retrieving his driver's license, that he refused to perform any field sobriety tests, and his testimony in

court that he had three glasses of wine. The court observed that neither the cold weather, nor his high heels, would have hindered defendant's ability to submit to a Breathalyzer test at the police station, and his refusal was relevant as circumstantial evidence of his consciousness of guilt.

The court specifically rejected defense counsel's argument that the officer's testimony was significantly impeached by the DVD recording of the traffic stop. The court found it insignificant that Officer Finnen could not remember whether it was raining and that the DVD recording showed that it was. The court also noted that defendant spoke clearly on the DVD recording, and that this fact was not a basis for impeachment because Officer Finnen did not testify that defendant's speech was slurred. Based on the DVD recording, the court found that defendant had difficulty getting into the police car, not simply because he was wearing heels, but because he was impaired by alcohol. Considering the totality of the evidence presented, the court found that the State proved defendant guilty of DUI beyond a reasonable doubt.

Following the imposition of sentence, the court heard and denied defendant's motion to reconsider. This appeal follows.

In this court, defendant first contends that the State failed to prove beyond a reasonable doubt that he was under the influence of alcohol. He correctly acknowledges that scientific

proof of intoxication is unnecessary (*People v. Gordon*, 378 Ill. App. 3d 626, 632 (2007)) where there is credible testimony from the arresting officer, which, alone, is sufficient to sustain a DUI conviction (*People v. Hires*, 396 Ill. App. 3d 315, 318 (2009)). However, he maintains that the testimony of Officer Finnen merely supports the conclusion that he consumed some alcohol and not that he was intoxicated. We disagree.

When a defendant challenges the sufficiency of the evidence to sustain his conviction, the relevant question on review is whether, after 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. *Jackson v. Virginia*, 443 U.S. 307, 319 (1979); *People v. Collins*, 106 Ill. 2d 237, 261 (1985). This standard of review gives "'full play to the responsibility of the trier of fact fairly to resolve conflicts in testimony, to weigh the evidence, and to draw reasonable inferences from basic facts to ultimate facts.'" *People v. Jackson*, 232 Ill. 2d 246, 281 (2009), quoting *Jackson*, 443 U.S. at 319.

Section 11-501(a)(2) of the Illinois Vehicle Code provides that a person shall not drive or be in actual physical control of any vehicle while "under the influence of alcohol." 625 ILCS 5/11-501(a)(2) (West 2008). A person is "under the influence of alcohol" when, as a result of drinking alcohol, "'his mental or

physical faculties are so impaired as to reduce his ability to think and act with ordinary care.'" *Gordon*, 378 Ill. App. 3d at 631, quoting Illinois Pattern Jury Instructions, Criminal No. 23.29 (4th ed. 2000). The question of defendant's intoxication is determined by the trier of fact. *People v. Janik*, 127 Ill. 2d 390, 401 (1989).

Here, Officer Finnen observed defendant driving on Oakton Street with no headlights on and a severely damaged flat tire. When Officer Finnen stopped him and asked for his driver's license and proof of insurance, defendant had difficulty removing his driver's license from his purse, and he detected a strong odor of alcohol on his breath. When defendant stepped out of his car in a dress and high heels, he was "swaying side to side," and admitted that he had three glasses of wine. He then refused to submit to any field sobriety tests or a Breathalyzer test. Based on this evidence, any rational trier of fact could reasonably infer that defendant was intoxicated. *Hires*, 396 Ill. App. 3d at 319.

In reaching this conclusion, we find defendant's assertion that Officer Finnen's observations are contradicted in significant measure by the DVD recording to be without merit. According to defendant, the DVD recording only shows that he "stumbled briefly while being frisked when Officer Finnen placed his hand near [his] naked groin area," and not that he was

intoxicated and "unsure of his balance." This suggestion is found only in defendant's closing argument, which is not evidence, and, thus, cannot be considered as such. *People v. Diaz*, 377 Ill. App. 3d 339, 346-47 (2007).

We likewise find no merit in defendant's assertion that any inference of his consciousness of guilt arising from his refusal to perform field sobriety tests is "extremely weak in view of [his] more than plausible misgivings about performing the tests in the rain while either wearing high heels or going barefoot." We note, as did the trial court, that these "plausible misgivings" were irrelevant inside the police station where defendant refused to perform a Breathalyzer test. The trial court was free to reject defendant's explanation (*People v. Hostetter*, 384 Ill. App. 3d 700, 714 (2008)), and in this case, the court did not find that it negated his consciousness of guilt (*People v. Connolly*, 322 Ill. App. 3d 905, 919 (2001)).

Defendant next contends that his 300-day sentence was excessive and an abuse of the trial court's discretion. He acknowledges that the sentence is within the range allowed by law, but argues that the court abused its discretion by considering an improper factor in aggravation, failing to make the necessary findings to exclude probation or conditional discharge as options, and that the sentence of incarceration is

inconsistent with any rehabilitative goal in view of his background.

The trial court's determination as to the appropriate punishment is accorded great deference and will not be disturbed on review absent an abuse of discretion. *People v. Sims*, 403 Ill. App. 3d 9, 24 (2010). Where, as here, the sentence imposed falls within the statutory range for Class A misdemeanors (730 ILCS 5/5-4.5-55 (West 2008)), an abuse of discretion will be found only if the sentence is greatly at variance with the spirit and purpose of the law, or manifestly disproportionate to the nature of the offense. *People v. Stacey*, 193 Ill. 2d 203, 210 (2000). We do not find this to be such a case.

Our review of the record shows that before pronouncing sentence, the trial court noted that this was defendant's third DUI conviction and fourth arrest. The trial court then stated, "I have to consider the safety of the public at the same time that I have to consider all the other mitigation." The record further shows that in denying defendant's motion to reconsider sentence, the trial court disagreed with defendant's claim that he did not contemplate that his criminal conduct would cause or threaten serious physical harm to another. The trial court reasoned, "I think when someone gets behind the wheel of a car who is intoxicated they likely cause a great threat of harm to other innocent individuals on a public highway or a street."

Defendant cites this comment as the improper factor considered by the trial court in aggravation. However, when viewed in the context of the whole record, we find that the comment was merely a response to defendant's claim in his motion to reconsider, that his sentence should be reduced because the trial court failed to consider in mitigation that he did not contemplate that his criminal conduct would cause or threaten serious physical harm to another. *People v. Dal Collo*, 294 Ill. App. 3d 893, 896-97 (1998).

Moreover, in denying the motion to reconsider, the trial court specifically stated that it had considered probation as an option but decided that it was not appropriate given that "he had probation three times" before. In addition, we observe that the trial court is not required to set forth specific findings, or to recite the reasons, or to expressly state the basis upon which it relies for refusing to grant probation. *People v. Ruskey*, 149 Ill. App. 3d 482, 495 (1986). The same is true regarding defendant's rehabilitative potential. *People v. Flores*, 404 Ill. App. 3d 155, 158-59 (2010). In light of the above, we conclude that the trial court did not abuse its discretion in sentencing defendant to 300 days' incarceration on his DUI conviction (*People v. Alexander*, 239 Ill. 2d 205, 215 (2010)), and affirm the judgment of the circuit court of Cook County.

Affirmed.