

2011 IL App (2d) 100735-U
No. 2-10-0735
Order filed September 22, 2011

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IN THE
APPELLATE COURT OF ILLINOIS
SECOND DISTRICT

THE PEOPLE OF THE STATE)	Appeal from the Circuit Court
OF ILLINOIS,)	of Du Page County.
)	
Plaintiff-Appellee,)	
)	
v.)	No. 08-DT-6284
)	
GERALD ACHOR,)	Honorable
)	Robert G. Kleeman,
Defendant-Appellant.)	Judge, Presiding.

JUSTICE ZENOFF delivered the judgment of the court.
Justices McLaren and Bowman concurred in the judgment.

ORDER

Held: Where defendant's trial was free from prosecutorial misconduct and judicial bias, defendant executed a written jury trial waiver in open court, defense counsel provided effective assistance, and the State proved beyond a reasonable doubt that defendant drove his vehicle while his blood alcohol concentration was 0.08 or more, defendant's DUI conviction was affirmed.

¶ 1 Following a bench trial, defendant, Gerald Achor, was convicted of driving while his blood alcohol concentration was 0.08 or more (625 ILCS 5/11-501(a)(1) (West 2008)). He was sentenced to serve 14 days in the county jail and a 24-month term of probation. Defendant appeals, *pro se*,

arguing prosecutorial misconduct, ineffective assistance of counsel, violation of the right to a jury trial, judicial prejudice, and insufficient evidence. For the following reasons, we affirm.

¶ 2 BACKGROUND

¶ 3 Defendant was charged with driving under the influence of alcohol in count I (625 ILCS 5/11-501(a)(2) (West 2008)) and driving while his blood alcohol concentration was 0.08 or more in count II (625 ILCS 5/11-501(a)(1) (West 2008)). The charges stemmed from an incident on the evening of December 18, 2008, during which it was undisputed that: from approximately 4:15 p.m. until sometime late in the evening, defendant consumed alcoholic beverages at the “Q” Bar in Darien, Illinois; he hit another patron’s vehicle while driving his vehicle in the parking lot; and his blood alcohol concentration (BAC) was 0.265 at 1:14 a.m. on December 19, 2008.

¶ 4 Prior to trial, the following colloquy occurred:

¶ 5 “THE COURT: All right. Do you want to take a jury waiver? Has he executed a jury waiver?”

¶ 6 MR. BESBEKOS [defense attorney]: Sure. I can do that right now.

¶ 7 Sign that, [defendant].

¶ 8 DEFENDANT: Does this waive—

¶ 9 MR. BESBEKOS: This is waiving a jury trial in front of this judge.

¶ 10 DEFENDANT: Oh.

¶ 11 (Counsel and client conferring inaudibly.)

¶ 12 THE COURT: All right. While he’s filling that out, sir, are you Gerald Achor?

¶ 13 DEFENDANT: Yes, I am, sir.

¶ 14 THE COURT: Your attorney tells me at this time you wish to waive or give up your right to have a jury trial, and have a bench trial where a judge sitting alone would hear the case. Is that what you wish to do?

¶ 15 DEFENDANT: Yes, sir.

¶ 16 THE COURT: Before I accept your waiver, I have to advise you that you have a right to have a jury trial where 12 citizens would listen to the evidence and decide your guilt or innocence; you have the right to have a bench trial where a judge sitting alone would have the evidence, and the type of trial is up to you; do you understand that?

¶ 17 DEFENDANT: Yes, sir.

¶ 18 THE COURT: Has anyone forced you or threatened you to make you waive or give up your right to have a jury trial?

¶ 19 DEFENDANT: No.

¶ 20 THE COURT: Are you doing that both freely and voluntarily?

¶ 21 DEFENDANT: Yes.

¶ 22 THE COURT: And is that your signature on the jury waiver?

¶ 23 DEFENDANT: Yes, it is.

¶ 24 THE COURT: And you've read that before you signed it?

¶ 25 DEFENDANT: Yes.

¶ 26 THE COURT: And you understand that when you sign that, you're telling me that you're waiving or giving up your right to have a jury trial?

¶ 27 DEFENDANT: Yes.

¶ 28 THE COURT: All right. I'll accept the defendant's waiver of trial by jury."

¶ 29 Defendant's bench trial commenced and the State called Guy Ross as its first witness. Ross testified that on December 18, 2008, he was at the "Q" Bar with friends, including Jimmy Koudelik. At 11:45 p.m., Ross was smoking a cigarette outside in front of the bar. It was snowing and "storming pretty good." Defendant drove slowly past and then appeared to hit something. Ross saw defendant back up his vehicle and strike Koudelik's truck. Defendant began to drive away, and Ross yelled and ran toward defendant's car. As Ross was running, Koudelik came outside and followed Ross. Ross caught up with the vehicle and told defendant to stop. When defendant did not respond, Ross reached into the open driver's window, touched defendant on the shoulder, and told him to stop. Defendant stopped and said he was sorry. Ross observed that defendant's face was red, his speech was slurred, and he emitted a strong smell of alcohol. Defendant parked his car, got out, and asked if Ross and Koudelik wanted to come inside for a drink. They said no and told defendant that they had called the police; defendant went back into the bar. Ross testified that he waited outside for the police, who arrived in about five minutes. Koudelik went into the bar with the police to point out defendant. Ross told the police about confronting defendant in his car.

¶ 30 Jimmy Koudelik testified that he was at the "Q" Bar with Ross on December 18, 2008. When Ross went outside for a cigarette at 11:45 p.m., Koudelik got his coat and joined Ross a minute or two later. Ross was screaming that someone backed into Koudelik's truck. Koudelik and Ross ran to defendant's car as it was driving away. Koudelik put his hand on the driver's door and told defendant to stop. Ross was right behind Koudelik and might have put his hand on defendant's shoulder. Defendant had red eyes, was "swaying" in the seat of the car, smelled like alcohol, and had slurred speech. Koudelik testified that defendant "did not look like he should be driving a car." Koudelik called police as defendant pulled into a parking space. Defendant asked Ross and Koudelik if they wanted to go in the bar with him. They declined and defendant went into the bar.

Two police officers arrived in a squad car in two or three minutes. Another officer might have come later. One officer stayed outside with Ross while Koudelik went in the bar with a female officer to show her who defendant was. Koudelik testified that he knew defendant from seeing him in the bar before.

¶ 31 Officer Jason Norton of the Darien police department testified that he was on duty and responded to a call to the “Q” Bar at approximately 11:45 p.m. on December 18, 2008, with an officer trainee, Krista Zerth, whom he was supervising. Zerth had since resigned from the force. Norton testified that Zerth had written the police report; it was accurate. Norton was present when Zerth interviewed the witnesses. Norton used Zerth’s report to refresh his recollection several times during his testimony.

¶ 32 Norton testified that when he and Zerth pulled into the “Q” Bar parking lot, Ross met them. Zerth went into the bar with a witness and came back out a few minutes later with defendant. Norton, Zerth, Ross, Koudelik, and defendant stood and talked under the canopy at the front entrance of the bar. Defendant told the officers that he had backed into a vehicle. When the officers asked him what happened, defendant said that he did not remember because he had too much to drink. Defendant had slurred speech and glassy eyes. He emitted a strong odor of alcohol and was swaying back and forth. Defendant told the officers that he arrived at the bar at about 4:15 p.m., was drinking beer, and that the bartender had “ ‘cut him off’ ” at about 10:15 p.m. Defendant explained that he hit the truck because his car was “ ‘fishtailing’ ” in the snow. According to Norton, defendant said that he did not drink anything after the accident.

¶ 33 Norton further testified that Zerth undertook to conduct three field sobriety tests with defendant. Although Zerth explained each test to defendant, and defendant said he understood each time, defendant was unable to perform any of the tests. Zerth attempted the horizontal gaze

nystagmus test and the walk-and-turn test about five times each. Defendant lost his balance; Norton could not recall if defendant fell. Defendant then refused to try the one-leg stand test. Defendant said that the tests were not necessary because he was “ ‘drunk’ ” but not going to drive home. Norton testified that defendant was under the influence of alcohol and unfit to drive.

¶ 34 Norton testified that Zerth arrested defendant for driving under the influence and that she and Norton drove defendant to the police station a few minutes away. Norton administered a breath test to defendant. The parties stipulated as to the foundational requirements of the test and that the result was 0.265. Norton testified that defendant repeatedly told the officers that he had had too much to drink but that he could not be arrested because he had been on private property.

¶ 35 Norton did not recall Ross and Koudelik telling him that they had confronted defendant in the parking lot after the accident. He also could not recall who asked defendant if he had anything to drink after the accident, but he knew that one of the officers asked because they were trained to do so when there was a time lapse between an accident and officers’ confronting a defendant.

¶ 36 The State rested.

¶ 37 Defendant called Daniel Bowman, who testified that he was friends with defendant from “hang[ing] out” at the “Q” Bar. Bowman was at the bar on December 18, 2008. He was not there with defendant, but saw defendant there and talked with him a little bit. Bowman saw defendant as he was leaving the bar the first time. When asked if defendant appeared to be under the influence, Bowman testified that he “looked fine.” Ten minutes after defendant left, he came back and approached Bowman and his party of five at a table near the back of the bar. Bowman told defendant to sit and calm down and have a couple of drinks. They drank “dead nazis” consisting of shots of Jagermeister and Rumplemintz. About one and one-half hours later, at 11:45 p.m., three uniformed police officers—two males and one female—approached defendant at the table. They

followed defendant outside. Bowman was aware that night that defendant was arrested for driving under the influence, but he did not talk with defendant following the incident and had no knowledge of what happened outside the bar.

¶ 38 Defendant testified that he arrived at the “Q” Bar at about 4:15 p.m. He consumed four 12-ounce beers over the next five hours, when he decided to stop drinking and go home to eat at about 9:15. He actually left the bar at about 10 p.m. When asked if he was under the influence at the time, defendant testified that he “was well-established to drive.”

¶ 39 Defendant testified that his car “fishtailed” in the parking lot because of the sleet and snow, and he hit a truck. Defendant then parked his car; no one confronted him. He went back into the bar to find the truck’s owner and exchange information. Defendant wanted to talk to one of the “door guy[s]” but they were busy. He joined Bowman at his table and consumed four shots and a couple of beers before two police officers approached him about one and one-half hours later. One officer, who was female, called out his name. Another officer joined them. They asked him to come outside with them and talk. Defendant complied, first finishing his beer so that it would not get warm. He did not expect to be arrested.

¶ 40 Defendant testified that he was under the influence when the police approached him. When reminded of his testimony that he was not under the influence the first time he left the bar, he replied, “Under my assumption, yes, that’s correct.” Defendant did not recall telling officers that he was “drunk” in the parking lot at the time of the accident. He testified that he refused to attempt the field sobriety tests. Defendant did not tell the police that he had nothing to drink after the accident or that the bartender refused to serve him after 10:15 p.m.

¶ 41 The defense rested. After hearing closing arguments, the trial court found that there was an accident and that defendant was driving a car. The court further found that at 11:45 p.m. that

evening, and then at 1:15 a.m. the next morning when the breathalyzer was administered, defendant was “clearly under the influence of alcohol.” The court found that the State’s witnesses were credible. The court agreed with defense counsel’s observation that there were some discrepancies in the State’s witnesses’ testimony. However, the court noted that defendant “flat out denie[d] what officer Norton testified to, that he attempted field sobriety tests.” Observing that Norton was an on-duty police officer, the court stated “that doesn’t bode well in my mind for the credibility of the defendant.” Accepting the State’s witnesses’ testimonies, the court found that the accident happened at about 11:45 p.m. when defendant was “extremely intoxicated.” The court also found that defendant’s explanation of the evening’s events was not “all that plausible” because his version did not account for how the police were called or how the witnesses were able to identify defendant. The court entered a finding of guilty on both counts.

¶42 After trial and before sentencing, the court granted defense counsel leave to withdraw upon counsel’s informing the court that defendant wished to proceed *pro se*. Defendant filed a motion for a new trial and subsequently supplemented it. The court heard argument and denied it.

¶43 Meanwhile, defendant had subpoenaed Koudelik’s cell phone company for his phone records to ascertain the time that police were called. The records were delivered to the circuit court clerk, and defendant moved the court to release them to him. The court denied the motion, finding that the records were not relevant to sentencing, and filed the records under seal. During the hearing on defendant’s motion to release the records, the court smelled alcohol on defendant and ordered an immediate breathalyzer test. The result was 0.122. The court found defendant in direct criminal contempt and sentenced him to four days in jail. Thereafter, defendant filed a motion to view the cell phone records *in camera*, which the court denied. Defendant subpoenaed the Darien police chief for the 911 call log; the court quashed the subpoena.

¶ 44 On June 25, 2010, the court sentenced defendant to 14 days in the county jail and 24 months' probation on count II (driving while blood alcohol content was 0.08 or more pursuant to 625 ILCS 5/11-501(a)(1) (West 2008)) and merged count I with count II. Defendant timely appeals.

¶ 45 ANALYSIS

¶ 46 Defendant argues that (1) he was harmed by a “prejudicial and fraudulent complaint” and prosecutorial misconduct; (2) he received ineffective assistance of counsel; (3) he was denied his right to a jury trial because his jury waiver was invalid; (4) the trial court was biased against him; and (5) the State failed to prove him guilty beyond a reasonable doubt. We address each argument in turn.

¶ 47 Defendant asserts that a “fender bender” was transformed into a “bad arrest” and “false prosecution.” He further maintains that the “unclean hands doctrine” is applicable and that the prosecutor failed to perform his duty to “seek justice” and not simply to convict. However, defendant fails to say what the prosecutor did or did not do that would entitle defendant to a reversal. Citing *People v. Schmidt*, 56 Ill. 2d 572 (1974), defendant seemingly argues that the prosecutorial misconduct pertained to discovery. *Schmidt*, 56 Ill. 2d at 575 (stating that the prosecutor is required to furnish misdemeanor defendants with a list of witnesses, any confession of the defendant, any exculpatory evidence, and, where applicable, results of a breathalyzer test). Still, defendant has not offered even one example of the alleged prosecutorial misconduct in his case. Defendant does assert in the facts section of his brief that he was unaware that the State had three witnesses until the day of trial and that he was denied the right to confront his accuser, Officer Zerth. However, defendant offers no explanation of how those alleged facts denied him a fair trial and cites no relevant case law in support of reversing his conviction based on those facts. Accordingly, defendant has forfeited this argument. See *People v. Agnew-Downs*, 404 Ill. App. 3d 218, 231 (2010) (concluding that the

defendant's failure to develop his argument and provide relevant legal support for his position resulted in forfeiture).

¶ 48 Defendant next contends that he received ineffective assistance of counsel because his attorney did nothing to prepare for trial. Under the familiar, two-prong test of *Strickland v. Washington*, 466 U.S. 668 (1984), “a defendant must show that (1) his counsel’s performance was deficient in that it fell below an objective standard of reasonableness, and (2) the deficient performance prejudiced the defendant in that, but for counsel’s deficient performance, there is a reasonable probability that the result of the proceeding would have been different.” *People v. Houston*, 226 Ill. 2d 135, 144 (2007). Failure to satisfy either prong of the *Strickland* test defeats an ineffective assistance claim. *Strickland*, 466 U.S. at 697; *People v. Richardson*, 189 Ill. 2d 401, 411 (2000).

¶ 49 Here, defendant offers no explanation of how his counsel’s alleged failure to prepare for trial prejudiced him, other than that he was not acquitted. Even taking into account defendant’s arguments improperly raised in the facts section of his brief, *e.g.*, his attorney did not conduct requested discovery because he did not subpoena Officer Zerth or talk to the State’s witnesses, defendant makes no argument as to how the trial result would have been different had his attorney done so. The record reveals that Officer Norton testified that he was present when Zerth interviewed witnesses at the bar and that Zerth’s report was accurate. Moreover, defense counsel tested the State’s case by zealously cross-examining its witnesses. Indeed, in denying defendant’s supplemental motion for a new trial, the trial court noted that despite the strong evidence against defendant, defense counsel “presented a case that made [the court] wrestle with whether or not the State had met its burden beyond a reasonable doubt, which [wa]s no small feat.” Accordingly, defendant’s argument is purely speculative and must fail. See *Houston*, 226 Ill. 2d at 144 (stating

that, under the second *Strickland* prong, a defendant must show that the reasonable probability of a different result is “a probability sufficient to undermine confidence in the outcome”).

¶ 50 Defendant also maintains that his jury waiver was invalid because he was unaware at the time he executed the waiver that the State had three witnesses and that his attorney was unprepared. A criminal defendant enjoys the fundamental right to a trial by jury under both the United States Constitution and the Illinois Constitution. *People v. Bracey*, 213 Ill. 2d 265, 269 (2004). The right may be waived if done so “understandingly.” 725 ILCS 5/103-6 (West 2008); *Bracey*, 213 Ill. 2d at 269. Although it is preferable that the court admonish a defendant of the jury trial right, for a waiver to be effective, the court need not impart any set admonition or advice to a defendant. *People v. Rincon*, 387 Ill. App. 3d 708, 718 (2008). The existence of a written waiver supports a finding that the waiver was made understandingly when accompanied by defense counsel’s request for a bench trial in the defendant’s presence in open court. *People v. Turner*, 375 Ill. App. 3d 1101, 1108 (2007).

¶ 51 Here, the record contains a written jury waiver signed by defendant. Moreover, the report of proceedings from the day of trial reveals that, before accepting defendant’s waiver, the trial court explained to defendant the difference between a jury trial and a bench trial and ascertained that defendant understood the difference and freely and voluntarily gave up his right to a jury trial. On this record, we conclude that defendant’s jury waiver was made understandingly. Defendant’s contention notwithstanding, neither the content of the State’s case nor the extent of his attorney’s trial preparation had any bearing on his right to a jury trial. See *People v. Bannister*, 232 Ill. 2d 52, 69 (2008) (“When a defendant waives the right to a jury trial, the pivotal knowledge that the defendant must understand—with its attendant consequences—is that the facts of the case will be

determined by a judge and not a jury.”). Accordingly, we reject defendant’s argument that his jury trial waiver was invalid.

¶ 52 Defendant next argues that he was “prejudiced by prejudicial trial & post-trial conduct; pervasive biases regarding fixed opinions as to matters of facts; and biases & prejudice of extra-judicial causes.” A judge’s impartiality is presumed and the party alleging judicial bias bears the burden of overcoming the presumption. *Eychaner v. Gross*, 202 Ill. 2d 228, 280 (2002); *In re Marriage of O’Brien*, 2011 IL 109039, ¶ 31. Defendant asserts that the trial court’s bias against him was evinced by several of its actions. The first two asserted actions, that the trial court allowed hearsay testimony to be admitted at trial and allowed the State’s exhibit 2 to be suppressed, are forfeited for failure to provide argument supported by legal authority. See *Agnew-Downs*, 404 Ill. App. 3d at 231. Defendant also contends that the trial court exhibited its bias by stating that it believed the State’s witnesses while acknowledging that there were inconsistencies in the testimony and because the court did not accept defendant’s explanation of the events—that his BAC reached 0.265 only after the accident. We agree with the State that defendant mistakes judgment for bias. It was within the trial court’s province as fact finder to assess the credibility of the witnesses and to resolve any inconsistencies. *People v. Irvine*, 379 Ill. App. 3d 116, 122-23 (2008). Defendant additionally maintains that the trial court exhibited its bias by repeatedly stating that defense counsel was experienced and competent. Suffice it to say that since we have already rejected defendant’s contention of ineffective assistance of counsel, this argument has no merit.

¶ 53 Defendant further contends that the trial court’s bias was demonstrated in its violation of “attorney-client confidentiality” when it ordered the State to subpoena defense counsel to a posttrial hearing and failed to advise defendant to bring certain witnesses. Although defendant does not provide record citation for this contention, we note that he refers to the hearing on his *pro se* motion

for a new trial. The context of the trial court's "advice" was that the court was allowing defendant, in an abundance of fairness, an opportunity to supplement his motion and produce additional evidence. When the assistant State's attorney asked if he would be given notice of what defendant intended to produce, the court replied, "No, I'm going to ask you to be prepared. The only issues, given what I have seen in those motions, is [*sic*] his waiver of trial by jury or—and his failure to call Officer Zerth. If he presents evidence, if you want to have [defendant's trial counsel] under subpoena, that probably would be advisable." Put in context, defendant's argument has no merit.

¶ 54 Defendant's last example of judicial bias is the trial court's refusal to release Koudelik's cell phone records to defendant posttrial and prior to sentencing. Defendant sought the phone records as evidence of the time of Koudelik's 911 call, and therefore, the time of the accident. The court correctly explained to defendant numerous times that the records were not relevant to sentencing. Accordingly, defendant's claims of judicial bias lack merit.

¶ 55 Defendant finally contends that the State failed to prove him guilty beyond a reasonable doubt because the State's witnesses were impeached and he was not arrested while "behind the wheel," but rather had a "fender bender" in the snow and drank heavily for 90 minutes afterward, which caused his 0.265 BAC. A defendant's conviction will not be set aside "unless the evidence is so improbable or unsatisfactory that it creates a reasonable doubt of the defendant's guilt." *People v. Collins*, 106 Ill. 2d 237, 261 (1985). It is not the function of this court to retry the defendant. *Collins*, 106 Ill. 2d at 261. Rather, " 'the relevant question is whether, after 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.' " (Emphasis in original.) *Collins*, 106 Ill. 2d at 261 (quoting *Jackson v. Virginia*, 443 U.S. 307, 319 (1979)). The trier of fact must assess the credibility of the witnesses and the weight of their testimony, resolve conflicts in the evidence, and

draw reasonable inferences from that evidence. *Irvine*, 379 Ill. App. 3d at 132. This court will not substitute its judgment for that of the trier of fact on these matters. *People v. Ortiz*, 196 Ill. 2d 236, 259 (2001); *People v. Martin*, 408 Ill. App. 3d 891, 894 (2011). “We will not reverse a conviction unless the evidence is so unreasonable, improbable or unsatisfactory that it raises a reasonable doubt of defendant’s guilt.” *People v. Evans*, 209 Ill. 2d 194, 209 (2004).

¶ 56 In order to sustain a conviction for driving under the influence of alcohol under section 11-501(a)(1), the State was required to prove beyond a reasonable doubt that defendant was driving a vehicle while his BAC was 0.08 or more. Defendant does not dispute that he was driving his vehicle and hit Koudelik’s truck, that he was under the influence of alcohol at 11:45 p.m. that night, or that his BAC was 0.265 at 1:15 a.m. His position is that the accident occurred at about 10:15 p.m. when he was not under the influence of alcohol and that he drank heavily for 90 minutes following the accident until police arrived at 11:45 p.m.

¶ 57 Viewing the evidence in the light most favorable to the State, a rational trier of fact could have found that defendant hit Koudelik’s truck at about 11:45 p.m. Both Ross and Koudelik testified that defendant hit the truck at about 11:45 p.m. that evening and that the police arrived within a few minutes of the accident. Officer Norton testified that he and Officer Zerth responded to a call at about 11:45 that night. If defendant’s testimony that the accident occurred at about 10:15 p.m. was true, it would mean that it took the police 90 minutes to respond to Koudelik’s call. The court, as the trier of fact, found that the State’s witnesses were credible and that the defendant was not. Thus, accepting the State’s evidence as true, the accident occurred at about 11:45 p.m.

¶ 58 Again, viewing the evidence in the light most favorable to the State, a rational trier of fact also could have found that defendant’s BAC was 0.08 or more at the time of the accident. Testimony from Ross and Koudelik established that defendant was visibly impaired and under the

influence of alcohol at 11:45 p.m. when he was driving in that his eyes were red, his speech was slurred, he emitted a strong smell of alcohol, and he was “swaying” even while seated in his car. Norton testified that, minutes after the accident, defendant was under the influence of alcohol and could not perform the field sobriety tests because he kept losing his balance. Taking this evidence as true, defendant would not have had more than a few minutes to reenter the bar and resume drinking. And, Norton testified that defendant told officers that he did not drink anymore after the accident. Defendant himself testified that he consumed four beers before the accident. The parties stipulated that defendant’s BAC was 0.265 at 1:15 a.m. If defendant’s BAC at 1:15 a.m. was 0.265—more than three times the legal limit, a rational trier of fact could have found that it was 0.08 or more at 11:45 p.m., while he was driving 90 minutes earlier. See *People v. McClain*, 128 Ill. 2d 500, 508 (1989) (a delay between driving and breathalyzer testing goes to the weight of the breathalyzer result and must be considered in light of the circumstances surrounding the arrest); *People v. Borst*, 162 Ill. App. 3d 830, 836 (1987) (same).

¶ 59 Moreover, we agree with the trial court that defendant’s version of the events does not account for the police arriving and knowing to look for defendant. According to defendant, no one confronted him in the parking lot at the time of the accident at 10:15 p.m. Assuming *arguendo* that this were true and Koudelik and Ross did not observe the accident, there is no explanation for their ability to identify defendant when the police arrived shortly after 11:45 p.m. Defendant himself testified that the police approached him and even called him by name. Accordingly, a rational trier of fact could have found that the State proved beyond a reasonable doubt that defendant operated a motor vehicle while his BAC was 0.08 or more.

¶ 60

CONCLUSION

¶ 61 For the reasons given, we affirm the judgment of the circuit court of Du Page County.

¶ 62 Affirmed.