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2011 IL App (3d) 100182-U

Order filed July 26, 2011

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IN THE  
APPELLATE COURT OF ILLINOIS  
THIRD DISTRICT

A.D., 2011

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the Circuit Court
	)	of the 12th Judicial Circuit,
Plaintiff-Appellee,	)	Will County, Illinois,
	)	
v.	)	Appeal No. 3-10-0182
	)	Circuit No. 07-CF-1206
	)	
JEFFREY IGEL,	)	Honorable
	)	Richard C. Shoenstedt,
Defendant-Appellant.	)	Judge, Presiding.

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JUSTICE McDADE delivered the judgment of the court.  
Justices Holdridge and Schmidt concurred in the judgment.

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**ORDER**

¶ 1 *Held:* Admission of purported hearsay statements on the defendant's driving abstract was harmless beyond a reasonable doubt. In addition, the evidence was sufficient to convict the defendant of driving under the influence.

¶ 2 After a bench trial, the defendant, Jeffrey Igel, was convicted of driving under the influence of alcohol (DUI) (625 ILCS 5/11-501(a)(2) (West 2006)). At issue in this case is whether the trial court properly admitted a copy of the defendant's driving abstract into evidence, whether the defendant was unfairly prejudiced by this admission, and whether the defendant was

proven guilty beyond a reasonable doubt. We affirm.

¶ 3

### FACTS

¶ 4 The defendant's trial began on October 13, 2009, and lasted a total of two days. At trial, the State offered the testimony of five witnesses. The first two witnesses, Lorin Lynch and Lynne Lichtenauer, stated that on June 8, 2007, they were on their way home on Route 30 when they saw a dark sport utility vehicle (SUV) hit a light post and proceed onto the entrance ramp of Interstate 80 (I-80). Lynch stated that while driving eastbound on Route 30 in the right lane, a dark SUV passed him in the left lane. He also stated that the SUV veered close to his vehicle, but stayed within its own lane of travel. After the SUV crashed, Lynch testified that he drove through the debris that was already lying on the ground.

¶ 5 Lichtenauer testified she was riding in the passenger seat next to Lynch when she witnessed an SUV pass them and hit the light post with its front end. Lichtenauer testified that as they drove through the debris it bounced off the road and hit their vehicle. Neither witness identified the defendant as the driver of the vehicle.

¶ 6 Officer Brian Morrison was the first officer to arrive on the scene. He stated that on June 8, 2007, he was on his way to an accident that occurred on I-80 and Route 30. He located a blue Pontiac SUV with front-end damage pulled over on the side of the road. Morrison testified that he asked the defendant to exit the vehicle, and that the defendant had to brace himself against the car while walking over to the other side of the road. He stated that the defendant had bloodshot eyes, slurred speech, and a strong odor of alcohol on his breath. Morrison also said that he asked the defendant to perform some sobriety tests, but the defendant refused.

¶ 7 During Morrison's testimony, a video depicting the defendant at the scene of the accident

was played for the trial court. The video was recorded by a camera in Officer Andrew Dowding's car. The video showed Dowding arriving at the scene and parking his car behind Morrison's squad car. The defendant was standing on the passenger side of the vehicle, near an embankment. One of the officers asked the defendant to stand up because the "car is holding you up a bit there." The defendant temporarily braced himself against the car. The defendant also stated "no" when the officer asked him if he could do some of the sobriety tests, and he was then arrested for DUI.

¶ 8 After the defendant was placed in a squad car, an officer asked "did you get the vodka on video" and the reply was "a little bit." However, no bottle of vodka appeared on the tape. One of the officers also commented about the hundreds of dollar bills in the car. The audio was then shut off.

¶ 9 Dowding testified that he arrived on the scene after Morrison. He observed the defendant with bloodshot, glassy eyes, and he could smell a strong odor of alcohol on his breath. Dowding stated that he saw boxes in the defendant's car, and he asked if the defendant was moving. The defendant responded with something along the lines of home buyers seminars. Dowding also stated that the defendant was hard to understand, and that his speech was slurred. After the defendant stated he could not do the sobriety tests, he was taken into custody.

¶ 10 Dowding further stated that he did the inventory search of the defendant's vehicle and found a partially consumed bottle of vodka. He explained that he did not take the vodka into evidence because open alcohol was only considered a petty offense at the time of the incident. He testified that he lifted the bottle up so that it could be recorded by Morrison's car, but he later learned that Morrison's video was not running so the vodka was not captured on film.

¶ 11 The State's final witness was Officer David Dileto, who observed the defendant in the booking room. Dileto testified that he read the defendant the warning to motorists and observed the defendant for 20 minutes. He also stated that the defendant refused to take a breathalyser test. On cross-examination, Dileto was confronted with Officer Martinez's report, which indicated that Martinez had issued the defendant a warning to motorists form. Dileto had no independent recollection of Martinez reading the defendant the warning to motorists.

¶ 12 At the conclusion of the State's case, the prosecution offered into evidence a certified copy of the defendant's driving abstract. The abstract was stamped with the word "suspended" and after the stamp were the words "on 06-08-07 valid judicial driving permit." The defense objected to the admission of the document and argued that the abstract was no longer self-authenticating because it had been modified by the stamp and handwriting. The document was admitted into evidence over the defendant's objection.

¶ 13 The defendant testified that on June 8, 2007, he had conducted a home buyers' seminar in Tinley Park, Illinois. He testified that there was no alcohol served at the event, and that he did not drink any alcohol before heading home. On the way home, he stopped at Kmart to buy a couple of television sets for a seminar he was conducting the next morning. He explained that he was unfamiliar with the area, and that he was unaware that I-80 had two entrances and an exit. The defendant meant to take the first exit, and when he tried to make a quick turn onto I-80, he got caught on the curb that surrounded the stoplight, which caused him to hit the light post.

¶ 14 The defendant further testified that, as long as no one was injured and no other vehicle was involved in the accident, he believed he could report the damage once he arrived home. He then proceeded onto I-80; however, his car started to shake as he continued to drive. He decided

to pull over and wait for assistance since he did not have a phone on his person.

¶ 15 An officer arrived on the scene and began accusing the defendant of stealing the items in his vehicle. The defendant explained that he ran seminars and that he gave the items away as part of the seminar. The officer eventually allowed the defendant to exit the vehicle on the passenger side. When the final officer arrived, the defendant walked to the back of the car and touched the car because he did not want to fall down the embankment. The officers then asked him to perform some DUI tests, which he refused because, after 30 to 40 minutes of being accused of stealing, he was scared and nervous. He was then placed under arrest for DUI.

¶ 16 The trial court found the defendant guilty of DUI. The court found that Lynch and Lichtenauer were credible witnesses and that any inconsistencies in their testimony were a result of the short time span within which the accident took place. The court noted that their "observation of the defendant began while they were all still west of the driveway leading to the K-Mart. The defendant could not have driven down the driveway from K-Mart, turned right towards the I-80 intersection as he testified."

¶ 17 The trial court also found that the officers were credible. The court also held that the defendant slurred his speech, that his breath smelled of alcohol, that his eyes were bloodshot and glassy, and that he stumbled and held himself up in part by using a car. In addition, the court stated, "[t]his Court believes it heard near the end of the type [*sic*] one of the officers stating, did you get the vodka on tape or something along those lines and the answer was, a little. \*\*\* This Court did not see the vodka bottle in this courtroom and that the Court did not see the vodka bottle on tape, does not mean that it didn't exist."

¶ 18 The defendant was sentenced to 24 months' probation, 100 hours of community service,

court costs, 2 days in jail with credit for time served, and ordered to complete counseling. He appealed.

¶ 19

## ANALYSIS

¶ 20 On appeal, the defendant makes three arguments: (1) the trial court erred by admitting his driving abstract because it contained hearsay statements not certified by the Secretary of State; (2) he was prejudiced by the admission of the driving abstract into evidence at trial when it was only relevant for sentencing purposes; and (3) he was not proven guilty beyond a reasonable doubt. We address each argument in turn.

¶ 21

### I. Admission of Hearsay Statements on Driving Abstract

¶ 22 The defendant alleges that the statement "suspended on 6-08-07 valid judicial driving permit" constitutes inadmissible hearsay. While he concedes that the driving abstract would normally be admissible under section 2–123 of the Illinois Vehicle Code (Code) (625 ILCS 5/2–123(g)(6) (West 2006)), he argues that the handwriting on the abstract modified or altered that document so that it was no longer self-authenticating. He further argues that he was deprived of due process because he was not able to cross-examine the writer of the statement.

¶ 23 The State replies that the Secretary of State's certification was valid for all statements contained in the abstract including those that were stamped and handwritten. Accordingly, the State argues that the additional statement was properly admitted as an exception to hearsay because the Secretary of State certified the contents of the entire abstract.

¶ 24 We do not need to resolve this issue because, even assuming the document was inadmissible hearsay, the error was harmless beyond a reasonable doubt. In order for hearsay to be harmless beyond a reasonable doubt, there must be no reasonable possibility that the result

would have been different if the hearsay had not been admitted. *People v. Rush*, 401 Ill. App. 3d 1 (2010). In this case, the defendant contends that the admission of the altered driving abstract was the difference between being sentenced to a felony instead of a misdemeanor, because the hearsay statement resolved a conflict on the abstract about whether the defendant's license was suspended at the time of the occurrence. Specifically, the defendant contends that his driving abstract indicated that between April 15 and July 15, 2007, the word "no" under the "stop in effect" column meant that his license was not suspended during that time period. The "stop in effect" column of a driving abstract "indicates if a suspension, revocation, cancellation or disqualification *is* in effect." (Emphasis added.)

¶ 25 Contrary to the defendant's assertion, the "no" in the "stop in effect" column does not mean that there was no suspension in place between April 15 and July 15, 2007. Instead, the "stop in effect" column indicates whether the suspension was in effect at the time the abstract was printed. To explain,

"[t]he stop in effect column \*\*\* is one of the most important on the abstract \*\*\* [...] If the driver's license and driving privileges are suspended, revoked, or cancelled, a '9' or 'YES' will appear on the line containing the information about the particular action taken against the driver. When the suspension, revocation, or cancellation terminates, the '9' will be changed to '0' and the 'YES' changed to 'NO.'" Marc Christopher Loro, *How to Read an Abstract*, in *Defending DUI and Related Cases* 2009 Edition §10.19 (Ill. Inst. for Cont. Legal Educ. 2009).

In other words, once the defendant's suspension ended on July 15, 2007, the "yes" in his abstract would have been changed to "no" because his suspension was no longer in effect. Thus, there is

no conflict in the driving abstract because it does not indicate what the defendant argues it indicates.

¶ 26 In addition to the printed abstract, which states that the defendant's license was suspended on June 8, 2007, the State presented other evidence proving that the defendant's license was suspended. For example, the defendant did not object to the State's admission of his judicial driving permit (JDP) into evidence. A JDP is " 'only effective for statutory summary suspensions.' " *People v. Schmidt*, 286 Ill. App. 3d 322, 324 (1997) (quoting *People v. Boyd*, 211 Ill. App. 3d 99, 101 (1991)). Thus, the fact that the defendant even had a JDP was evidence that his license was suspended.

¶ 27 Based on the above, even assuming an error occurred, the error was harmless beyond a reasonable doubt. When the defendant's driving abstract is correctly interpreted, it demonstrates that the defendant's license was suspended at the time of the occurrence, regardless of the statements at the top of the abstract.

## ¶ 28 II. Admitting the Abstract at Trial Instead of Sentencing

¶ 29 The defendant next contends that he was prejudiced when the trial court allowed the State to present his abstract to the court during trial when the abstract was only relevant for sentencing purposes. There is only one offense for DUI, and once a defendant is convicted, his conviction and sentence can be enhanced for a variety of reasons, including that his license was suspended at the time of the offense. See *People v. Nunez*, 236 Ill. 2d 488 (2010); 625 ILCS 5/11–501(c-1)(1), (d)(1) (West 2006). Thus, the defendant argues that his driving abstract, which indicated that his license was suspended on June 8, 2007, offered nothing of probative value for the court and was unfairly prejudicial.

¶ 30 A trial judge "is presumed to consider only admissible evidence" during a bench trial, and that presumption is overcome only if "it affirmatively appears from the record that improper evidence was considered by the court." *People v. Dobbs*, 353 Ill. App. 3d 817, 824 (2004). Consequently, the burden is on the defendant to show that the trial court considered improper evidence when making a determination of guilt or innocence.

¶ 31 The record does not support the defendant's argument. In determining that the defendant was guilty of DUI, the trial judge found that the State's witnesses were credible, and that the defendant was untruthful with regard to a portion of his testimony. The trial court also found that the defendant slurred his speech, his breath smelled of alcohol, his eyes were bloodshot and glassy, he stumbled and held himself up using his vehicle for support, and that there was an open and partially empty bottle of vodka in his vehicle. The court's decision specifically lacks any reference to the defendant's driving abstract or JDP. Therefore, there is no indication that the trial court considered the defendant's driving status when rendering its decision.

¶ 32 III. Proven Guilty Beyond a Reasonable Doubt

¶ 33 The defendant's final argument on appeal is that he was not proven guilty of DUI beyond a reasonable doubt.

¶ 34 Due process requires proof of guilt beyond a reasonable doubt to convict a criminal defendant. *People v. Ross*, 229 Ill. 2d 255 (2008). When reviewing a challenge to the sufficiency of the evidence, a reviewing court must determine whether, after viewing the evidence in the light most favorable to the State, any rational trier of fact could have found the elements of the crime beyond a reasonable doubt. *Id.* "Under this standard, the reviewing court does not retry the defendant, and the trier of fact remains responsible for making determinations

regarding the credibility of witnesses, the weight to be given their testimony, and the reasonable inferences to be drawn from the evidence." *Id.* at 272. A conviction will be reversed when there is a reasonable doubt as to the defendant's guilt because the evidence is so unreasonable, improbable, or unsatisfactory. *Id.*

¶ 35 Section 11–501(a)(2) of the Code provides that an individual "shall not drive \*\*\* any vehicle" while the individual is "under the influence of alcohol[.]" 625 ILCS 5/11–501(a)(2) (West 2006). A defendant is guilty of DUI pursuant to section 11--501(a)(2) of the Code if the State establishes that he was driving while under the influence of alcohol to a degree that it rendered him incapable of driving safely. *People v. Weathersby*, 383 Ill. App. 3d 226 (2008). The State need not present scientific evidence to prove that the defendant was intoxicated. *People v. Gordon*, 378 Ill. App. 3d 626 (2007). Rather, a DUI conviction can be sustained based solely on the testimony of the arresting officer, provided that officer's testimony is credible. *Id.*

¶ 36 We conclude that the evidence was sufficient to prove the defendant guilty beyond a reasonable doubt. When viewed in the light most favorable to the State, the record shows that two witnesses saw a dark SUV hit a light post. Lynch testified that the SUV veered close to his vehicle before hitting the post. The defendant was driving a blue Pontiac SUV that night. Based on the testimony of the officers, a rational trier of fact could find that the defendant had bloodshot eyes, slurred his speech, stumbled, and smelled of alcohol. A rational trier of fact could also find that the defendant had a partially consumed bottle of vodka in his car.

¶ 37 The defendant strongly contends that the bottle of vodka did not actually exist, and that the officers manufactured it to support the DUI charges. Even if the bottle of vodka did not exist, enough facts are present to support a conviction for DUI. The trial court found that the officers

were credible, and Morrison and Dowding testified that the defendant had bloodshot eyes, smelled of alcohol, and had slurred speech. Moreover, the defendant was found to be untruthful because he could not have driven down the driveway from Kmart and turned right toward I-80, as he testified.

¶ 38 Furthermore, as the trial court acknowledged, there is evidence to suggest that the bottle of vodka did exist. Dowding testified to finding the bottle, and he recalled its brand and size. Although the officers did not specifically recall having a conversation about the vodka during their testimony, the video shows that one of the officers asked "did you get the vodka on video?" and another one replies "a little bit."

¶ 39 While it is true that Dowding did not bring the bottle of vodka back to his car so that it could be captured on film, his explanation that he thought Morrison's tape was running is a reasonable one. Given all of the evidence produced at trial, and viewing that evidence in the light most favorable to the State, we find that there was sufficient evidence to convict the defendant of DUI.

¶ 40 CONCLUSION

¶ 41 For the foregoing reasons, the judgment of the circuit court of Will County is affirmed.

¶ 42 Affirmed.