

2012 IL App (2d) 111170-U  
No. 2-11-1170  
Order filed September 11, 2012

**NOTICE:** This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

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IN THE  
APPELLATE COURT OF ILLINOIS  
SECOND DISTRICT

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THE PEOPLE OF THE STATE	)	Appeal from the Circuit Court
OF ILLINOIS,	)	of Du Page County.
	)	
Plaintiff-Appellee,	)	
	)	
v.	)	No. 11-CF-166
	)	
LEODGARIO CUAUTLE,	)	Honorable
	)	George J. Bakalis,
Defendant-Appellant.	)	Judge, Presiding.

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JUSTICE SCHOSTOK delivered the judgment of the court.  
Presiding Justice Jorgensen and Justice Hutchinson concurred in the judgment.

**ORDER**

*Held:* The State proved defendant guilty beyond a reasonable doubt of aggravated DUI: the State corroborated defendant's confession that he was driving, as it provided evidence that defendant was alone in proximity to a vehicle in an accident, was able to describe the accident, asked for leniency, and refused a Breathalyzer; the trial court was free to infer from defendant's intoxication and the circumstances that defendant was intoxicated while he was driving and did not become intoxicated only afterward.

¶ 1 Following a bench trial, defendant, Leodgario Cuautle, was convicted of aggravated driving while under the influence of alcohol (DUI) (625 ILCS 5/11-501(a)(2) (West 2010)). After he was convicted of that offense, he filed a timely posttrial motion, arguing that the State failed to prove him

guilty beyond a reasonable doubt. The trial court denied the motion and sentenced defendant to 42 months' imprisonment. Defendant timely appeals, claiming that he was not proved guilty beyond a reasonable doubt. We affirm.

¶ 2 The relevant evidence presented at trial is as follows. At around 6 p.m. on October 20, 2010, Officer Alaniz, a West Chicago police officer, received a call from dispatch, informing him about an automobile accident in a nearby residential area. Officer Alaniz got into his patrol car, activated his lights and sirens, and arrived at Vine and Church streets a minute later. Another officer, Officer Griffin, was already at the scene.

¶ 3 When Officer Alaniz arrived at the scene, he saw two vehicles butted up against each other. The vehicles could not be separated without the aid of a tow truck, as the metal tow hooks on the second vehicle, a Blazer, had punched through the plastic molding surrounding the bumper of the first vehicle, a minivan. Officer Alaniz got out of his squad car and went to help Officer Griffin, who was talking with the occupants of the Blazer. These people were standing next to their vehicle.

¶ 4 The only other person at the scene was defendant, who was standing on the sidewalk near the minivan. Officer Alaniz approached defendant and asked him if he was the driver of the minivan. Initially, defendant told Officer Alaniz that he was not. Defendant said that his brother had been driving, and, when Officer Alaniz asked defendant where he could find defendant's brother so that the officers could speak to him before completing a crash report, defendant explained that his brother had run away from the scene. After Officer Alaniz asked defendant why his brother had run away from the accident, the officer asked whether defendant could give him his brother's address and a description of what his brother was wearing. Defendant "stared at [Officer Alaniz] for a few seconds, and then [defendant] told [the officer] that, [defendant was] the one who was driving."

Officer Alaniz asked defendant why he had initially lied about who was driving, and defendant replied that he lied because “he is required to blow into a breath machine in order to operate a vehicle, and that [the minivan] wasn’t the vehicle that he was required to blow into the machine to operate[.]”

¶ 5 Defendant then told Officer Alaniz how the accident happened. Specifically, defendant explained:

“[He] drove down Church Street, made a left onto Vine, decided he wasn’t on the correct street that he was supposed to be on, decided to back up on Vine Street, which in turn another vehicle was coming down Church, and [he] explained to [Officer Alaniz] that the vehicle struck him.”

¶ 6 Officer Alaniz told defendant that his actions were improper and that defendant should have proceeded to the next street, where he could have driven around the corner, thus avoiding backing up a residential street.

¶ 7 As defendant and Officer Alaniz continued to talk, the officer detected the smell of alcohol on defendant’s breath. Officer Alaniz asked defendant if he had consumed any alcohol, and defendant replied that he had had two beers. Subsequent field sobriety tests confirmed that defendant was under the influence of alcohol.

¶ 8 After these tests were completed, defendant and Officer Alaniz were talking about defendant running a children’s soccer league. During that conversation, defendant said that “[h]e made a bad mistake.” Defendant asked Officer Alaniz “[i]f [he] could give just *[sic]* [defendant] a chance today.” Defendant said that “he wasn’t supposed to be driving that vehicle.” Defendant reiterated that “[h]e is required to breathe into a breath machine to operate his own vehicle.”

¶ 9 During a search of the minivan, Officer Alaniz found a cold unopened can of beer on the floorboard next to the driver's seat. Defendant was then transported to the police station, where he refused to submit to a Breathalyzer test.

¶ 10 The trial court found defendant guilty. In doing so, the court stated:

“First of all, regarding corpus delicti, if all the State has is a confession of an individual without something more, that, that would not be sufficient.

There's more here than just [defendant's] statement that he was the driver of the vehicle. He described the driving, and the vehicle itself with the damage that resulted from his driving in reverse is there, so there's something there to substantiate what it is that he told the officers [*sic*] that he was the driver.

Now, he initially—his initial denials of being the driver could be for a variety of reasons, but certainly one could be that he knew that he should not be driving and have consumed alcohol while driving.

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He indicated to the officer that he made a bad mistake, asked for a chance, and all are indications that he realized that he was under the influence of alcohol and should not be driving, as is the consciousness of guilt regarding refusal to take the breath test.”

¶ 11 Defendant filed a posttrial motion, arguing, among other things, that he was not proved guilty beyond a reasonable doubt, as there was no evidence that he was “under the influence *while* operating a motor vehicle.” (Emphasis in original.) The trial court denied the motion, drawing the inference that the accident happened a short time before Officer Alaniz arrived on the scene. The

court also noted that defendant not only admitted to driving the minivan, but explained why he initially lied.

¶ 12 At issue in this appeal is whether defendant was proved guilty beyond a reasonable doubt. In considering that issue, we must first determine what standard of review applies. Citing *People v. Krueger*, 175 Ill. 2d 60 (1996), and *People v. Mattis*, 367 Ill. App. 3d 432 (2006), defendant argues that a *de novo* standard of review should be employed here, as the facts are not in dispute. Neither *Krueger* nor *Mattis* involved the issue of whether a defendant was proved guilty beyond a reasonable doubt in a case where the trial court drew inferences from the evidence presented. See *Krueger*, 175 Ill. 2d at 64 (because question raised on appeal concerned whether the trial court applied the correct law to uncontroverted facts, court considered *de novo* propriety of order granting the defendant's motion to quash arrest and suppress evidence); *Mattis*, 367 Ill. App. 3d at 435-36 (court considered *de novo* whether motion to dismiss charges was properly granted when essential facts were not in dispute). Because the trial court drew inferences from the evidence after observing the witnesses and assessing their credibility, we decline to apply a *de novo* standard of review here. Rather, we consider whether, after viewing all the evidence in a light most favorable to the prosecution, a rational trier of fact could have found all the elements of the offense beyond a reasonable doubt. *People v. Collins*, 106 Ill. 2d 237, 261 (1985). In doing so, because the trier of fact is charged with assessing the witnesses' credibility, weighing their testimony, and drawing reasonable inferences from the evidence, we will not substitute our judgment for that of the trier of fact on these questions. *People v. Slinkard*, 362 Ill. App. 3d 855, 857 (2005).

¶ 13 Turning to the merits, defendant was convicted of aggravated DUI. As relevant to this appeal, the State had to prove that defendant (1) was driving or "in actual physical control" of a

motor vehicle (2) while under the influence of alcohol. 625 ILCS 5/11-501(a)(2) (West 2010); see *People v. Lurz*, 379 Ill. App. 3d 958, 967 (2008). Defendant claims that the State failed to prove beyond a reasonable doubt that he was driving or “in actual physical control” of a motor vehicle and that he was intoxicated when he was allegedly driving. We consider each of these contentions in turn.

¶ 14 First, we address whether the State proved beyond a reasonable doubt that defendant was the driver or “in actual physical control” of the minivan when the accident occurred. In determining whether the State proved beyond a reasonable doubt that defendant was driving or “in actual physical control” of a motor vehicle, we note that the observation of a defendant in the act of driving is not necessary for a DUI conviction. Rather, driving can be proved by circumstantial evidence. *Lurz*, 379 Ill. App. 3d at 969. “Circumstantial evidence is proof of certain facts and circumstances from which the fact finder may infer other connected facts which usually and reasonably follow from the human experience and is not limited to facts that may reasonably have alternative, innocent explanations.” *People v. Diaz*, 377 Ill. App. 3d 339, 345 (2007).

¶ 15 Defendant claims that, other than his confession to driving, nothing established that he was driving or in control of the minivan. Although defendant is correct in his assertion that a mere confession to driving, without corroboration, is insufficient to prove that a defendant was driving or in actual physical control of a motor vehicle (see *Lurz*, 379 Ill. App. 3d at 967-68), there was evidence presented at defendant’s trial that corroborated his confession to driving.

¶ 16 Specifically, despite the fact that the accident, which was more than a mere fender-bender, happened in a residential area during the early evening, only the occupants of the Blazer and defendant were found at the scene. The occupants of the Blazer were standing by their vehicle, and

Officer Alaniz found defendant on the sidewalk near the minivan. Under these circumstances, the fact that defendant was in close proximity to the minivan suggests that he was the driver of that vehicle. See *Slinkard*, 362 Ill. App. 3d at 858. Additionally, defendant was able to describe how the accident happened. Defendant explained how he had made a wrong turn and how he had decided to back up on a residential street to find the street for which he was looking. As he was backing up, the minivan collided with the Blazer. The fact that defendant was able to describe how the accident happened leads to the inference that he was driving. Likewise, after defendant failed the field sobriety tests, he asked Officer Alaniz for leniency. Once at the police station, defendant refused to take a Breathalyzer test. Asking for leniency and refusing the Breathalyzer indicate that defendant was the driver, as they show a consciousness of guilt on defendant's part. See *People v. Weathersby*, 383 Ill. App. 3d 226, 230 (2008).

¶ 17 Added to this evidence is not only defendant's confession, but the circumstances under which his confession was given. When Officer Alaniz asked defendant about the accident, defendant first denied that he was the driver of the minivan. Instead, defendant told Officer Alaniz that his brother had been driving and that his brother ran away from the accident scene. However, defendant soon recanted only after he was faced with having to explain where his brother lived, what his brother was wearing, and to where his brother fled. When Officer Alaniz posed these questions to defendant, defendant first stared at Officer Alaniz for a few seconds and then confessed that he had lied about not being the driver. Defendant explained why he had lied, saying that he could drive a vehicle only with a breath alcohol ignition interlock device (BAIID) and that the minivan did not have such an apparatus.

¶ 18 Defendant presents many scenarios, based on a “ ‘reasonable hypothesis consistent with innocence,’ ” to explain away the evidence suggesting that he was the driver. For instance, defendant contends that a passenger in the minivan would be just as capable as the driver of describing how the accident occurred. Although that certainly is true, defendant, in describing at the scene how the accident happened, indicated that *he* made a wrong turn and that *he* backed up a residential street. More importantly, our supreme court has expressly repudiated the “reasonable hypothesis of innocence” test. *People v. Pintos*, 133 Ill. 2d 286, 291 (1989). Rather than employ the “reasonable hypothesis of innocence” test, courts apply the reasonable-doubt test set forth in *Collins* in all criminal cases, whether the evidence is direct or circumstantial. *Id.* Under the reasonable-doubt test, the trier of fact is not required to search out all possible explanations consistent with innocence and raise them to a level of reasonable doubt. *People v. Hall*, 194 Ill. 2d 305, 332 (2000). Thus, no error occurred here when the trial court did not find that defendant’s version of events amounted to reasonable doubt.

¶ 19 Defendant claims that lacking in this case, and necessary to finding him guilty beyond a reasonable doubt of operating a motor vehicle, was proof that the minivan belonged to defendant or his family, that defendant was in possession of the keys to the minivan, or that defendant’s fingerprints or DNA were found on the minivan. Moreover, defendant argues that the State should have presented evidence from the occupants of the Blazer or bystanders that corroborated defendant’s admission to driving the minivan. We disagree.

¶ 20 As this court observed in *Slinkard*, although such evidence can establish that a defendant was driving or in actual physical control of a motor vehicle, the absence of such facts does not require a conclusion that the defendant was not the driver. *Slinkard*, 362 Ill. App. 3d at 859. Rather, in

deciding whether a defendant was the driver, courts must consider the specific facts presented in each case. *Id.* Considering the facts unique to this case, we conclude that the State established beyond a reasonable doubt that defendant was driving or in actual physical control of the minivan.

¶ 21 The next issue we consider is whether the State proved beyond a reasonable doubt that defendant was intoxicated when he was driving the minivan. On this point, defendant essentially argues that no evidence indicated “how soon *after* the accident Officer Alaniz made contact with [d]efendant to observe his balance, odor of alcohol[,], and speech.” (Emphasis in original.) That is, defendant argues that it is no more plausible that he was intoxicated while he was driving than it is that he consumed alcohol after driving and while waiting for the police to arrive. We disagree.

¶ 22 The trial court reasonably inferred that defendant was intoxicated while he was driving. This inference is far more implausible, as it is unlikely that defendant, who was involved in a car accident, would proceed to get drunk and then wait for the police, who obviously would suspect him of DUI once they detected alcohol on his breath, administered field sobriety tests that defendant failed, and found a cold beer next to the driver’s seat in the minivan. Defendant’s claim that he consumed alcohol only after being involved in the accident becomes even more implausible when one considers that, based on the fact that he could drive a vehicle only with a BAIID, he was familiar with DUI.

¶ 23 In any event, the tasks of deciding witness credibility and drawing reasonable inferences from the evidence belong to the trier of fact, which in this case was the trial court, and not this court. We may not disturb the trial court’s judgment merely because different inferences, despite how implausible they might seem, can be drawn from the evidence. See *Rodda v. White*, 222 Ill. App. 3d 989, 998 (1991).

¶ 24 For these reasons, the judgment of the circuit court of Du Page County is affirmed.

¶ 25 Affirmed.