



defendant she noticed a strong odor of alcohol. She asked defendant to see his driver's license and proof of insurance. Defendant repeatedly told her he had both but did not produce them. After confirming that defendant had a valid license, Paul asked defendant to undergo field sobriety tests. Defendant refused. Because she believed defendant was intoxicated, Paul arrested defendant for driving under the influence. She testified that besides the strong odor of alcohol, Paul also noticed that defendant's eyes were bloodshot, that he swayed back and forth as he stood next to her, and that there were empty beer cans in the vehicle. Paul further stated that once at the police station, defendant displayed mood swings ranging from being quiet to swearing and telling jokes. Paul claimed she often saw such mood swings with people she arrested for driving under the influence. Defendant reported that he had not had any alcohol to drink, and again refused to take a breath test.

¶ 4 In addition to being arrested for driving under the influence, defendant was also given citations for no proof of insurance, for driving without a seatbelt, and for possessing open alcohol in the vehicle. Once defendant provided proof of insurance, the State dismissed the insurance charge and later dropped the illegal transportation charge for lack of evidence. The court subsequently found defendant guilty of driving while under the influence and for driving without a seatbelt.

¶ 5 For his first argument on appeal, defendant contends that he was not proven guilty of driving under the influence beyond a reasonable doubt because the State failed to present sufficient evidence of his intoxication and unsafe driving. When reviewing a challenge to the sufficiency of the evidence, we consider, after viewing the evidence in the light most favorable to the prosecution, whether any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. *People v. Cunningham*, 212 Ill. 2d 274, 278, 818 N.E.2d 304, 307 (2004); *People v. Collins*, 106 Ill. 2d 237, 261, 478 N.E.2d 267, 277 (1985). It is the trier of fact's responsibility, not ours, to resolve any conflicts or

inconsistencies in the evidence, to assess the credibility of the witnesses, and to weigh the evidence. *People v. Graham*, 392 Ill. App. 3d 1001, 1009, 910 N.E.2d 1263, 1271 (2009). Consequently, a criminal conviction will not be set aside on appeal unless the evidence is so unreasonable, improbable, or unsatisfactory that it creates a reasonable doubt as to the defendant's guilt. *People v. Hall*, 194 Ill. 2d 305, 330, 743 N.E.2d 521, 536 (2000). We see no reason to overturn defendant's conviction here.

¶ 6 To sustain a conviction for driving under the influence, the State was required to prove beyond a reasonable doubt that defendant was driving a vehicle and that he was intoxicated while driving. See 625 ILCS 5/11-501.2 (West 2010); *People v. Long*, 316 Ill. App. 3d 919, 926, 738 N.E.2d 216, 221 (2000). Scientific proof of intoxication is unnecessary to sustain a conviction for driving under the influence. A conviction for driving under the influence may be based on circumstantial evidence (see *People v. Diaz*, 377 Ill. App. 3d 339, 345, 878 N.E.2d 1211, 1216 (2007)), and the credible testimony of the arresting officer, standing alone, also may be sufficient to prove the offense (see *People v. Hires*, 396 Ill. App. 3d 315, 318, 920 N.E.2d 1083, 1085 (2009); *People v. Hostetter*, 384 Ill. App. 3d 700, 712, 893 N.E.2d 313, 323 (2008)). Additionally, the refusal to submit to testing is evidence of an indication of a consciousness of guilt and therefore is relevant and admissible in the prosecution for driving under the influence. *Hires*, 396 Ill. App. 3d at 318, 920 N.E.2d at 1085. See also *People v. Miller*, 113 Ill. App. 3d 845, 847, 447 N.E.2d 1060, 1061 (1983).

¶ 7 Paul testified she first noticed defendant driving fast and then witnessed him drive through an intersection controlled by a stop sign without making a complete stop. Upon confronting defendant in person, Paul noticed that defendant had a strong odor of alcohol about him, his eyes were bloodshot and red, and he was unsteady, swaying back and forth, as he was standing talking with her. He refused to do any field sobriety tests and even denied that he had been driving. Taking these facts in the light most favorable to the prosecution,

Paul's testimony was sufficient to prove that defendant was intoxicated beyond a reasonable doubt. She related that she had conducted over 300 DUI arrests in her career and further reported that intoxicated people typically exhibit dramatic mood swings, as did defendant while at the police station. She also testified that upon arresting defendant, she noticed multiple empty beer cans scattered throughout his vehicle. Defendant argues, however, that there was no evidence he was unable to safely operate his car. We agree with the State that defendant's failure to stop at a stop sign is evidence of dangerous driving. See *People v. Hood*, 213 Ill. 2d 244, 263-64, 821 N.E.2d 258, 269 (2004). Again, it is not for us to retry defendant or substitute our judgment for that of the trier of fact. *People v. Sutherland*, 223 Ill. 2d 187, 272, 860 N.E.2d 178, 233 (2006); *Hall*, 194 Ill. 2d at 330, 743 N.E.2d at 536. Accordingly, we see no reason to overturn defendant's conviction in this instance.

¶ 8 Defendant also argues on appeal that the record does not support the conclusion that his jury waiver was knowingly and understandingly made. We initially note that defendant waived this issue on appeal. Defendant never objected to his waiver of a jury trial either before or during his trial or in his motion for a new trial. See *People v. Enoch*, 122 Ill. 2d 176, 186, 522 N.E.2d 1124, 1130 (1988); *People v. Smith*, 106 Ill. 2d 327, 333, 478 N.E.2d 357, 360 (1985). In fact, defendant's motion for a new trial states that he "appeared before the Court and waived his right to a jury trial." While issues that are not properly preserved may still be reviewed under the plain error doctrine, we must first determine whether error actually occurred because "in the absence of error, there can be no plain error." *People v. Brant*, 394 Ill. App. 3d 663, 677, 916 N.E.2d 144, 156 (2009).

¶ 9 A defendant validly waives his or her right to a jury trial if such waiver is made understandingly and in open court. *People v. Scott*, 186 Ill. 2d 283, 285, 710 N.E.2d 833, 834 (1999). A defendant who permits his attorney, in his presence and without objection, to waive his right to a jury trial is deemed to have acquiesced in and is bound by his

attorney's action. *People v. Murrell*, 60 Ill. 2d 287, 290, 326 N.E.2d 762, 764 (1975). Here defendant stood by when the court specifically asked his attorney about the written jury waiver previously signed and filed by defendant. Defendant did not object. We therefore find defendant's jury waiver to be valid. See *People v. Neeley*, 79 Ill. App. 3d 528, 531, 398 N.E.2d 988, 991 (1979). Cf. *People v. Scott*, 186 Ill. 2d 283, 710 N.E.2d 833 (1999) (defendant not present in open court when jury waiver was discussed). Given defendant's presence in open court, his failure to object before, during, or after trial, and his signed jury trial waiver filed with the court, the record clearly establishes that defendant knowingly and voluntarily waived his right to a jury trial.

¶ 10 For the foregoing reasons, we affirm the judgment of the circuit court of Williamson County.

¶ 11 Affirmed.