

No. 1-11-1022

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IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellee,)	Cook County.
)	
v.)	No. TP 115-264
)	
ANGELO RODRIGUEZ,)	Honorable
)	Raymond W. Mitchell,
Defendant-Appellant.)	Judge Presiding.

JUSTICE CUNNINGHAM delivered the judgment of the court.
Justices Hoffman and Delort concurred in the judgment.

ORDER

¶ 1 *Held:* Police officers' testimony of defendant's appearance and behavior was sufficient evidence to prove beyond a reasonable doubt that defendant was guilty of driving while under the influence of alcohol; affirmed.

¶ 2 Following a bench trial in the circuit court of Cook County, defendant Angelo Rodriguez was convicted of driving while under the influence of alcohol (DUI) and sentenced to 60 days in jail. On appeal, defendant contends his conviction should be reversed because the evidence was insufficient to prove that he was under the influence of alcohol. For the following reasons, we affirm the judgment of the circuit court of Cook County.

¶ 3 At trial, Officer Mielcarz testified that on December 6, 2007, at around 12:35 a.m., in response to a noise complaint, he initiated a traffic stop of a van in an alley near the 100 or 200 block of South St. Louis Avenue in Chicago, Illinois. It was snowing at the time, and one to two inches of snow were already on the ground. Once Officer Mielcarz approached the van, he observed

defendant in the driver's seat engaged in a sexual act with a female passenger, with the engine running. Officer Mielcarz signaled to defendant to roll down the window and asked for defendant's driver's license and insurance. Defendant's eyes were red, glassy, and bloodshot, and defendant's speech was thick-tongued and slurred. Additionally, a very strong odor of alcohol came from inside the vehicle, and in between the driver's and passenger's seats were two pint-sized, open glass bottles of Hennessy liquor, one almost empty and the other almost full. After defendant failed to produce the requested documents, Officer Mielcarz asked defendant to step out of the vehicle, and upon doing so, defendant fell to the ground. When Officer Mielcarz tried to help defendant up, defendant resisted, and Officer Mielcarz subsequently placed defendant in handcuffs. As Officer Mielcarz led defendant to the police car, the officer's own "footing wasn't [100%]," but he did not slip and fall. Once defendant was inside the police car, Officer Mielcarz smelled a strong odor of alcohol coming from the back seat.

¶ 4 Upon arriving at the police station, defendant was loud and aggressive, swore, began speaking in Spanish and English, and did not comply with Officer Mielcarz's requests. Officer Mielcarz asked for help from another officer who spoke Spanish and had more experience with DUIs. Defendant was handcuffed to a pole that ran along the back of a bench, where he tried to stand up and pull away his handcuff. Defendant also ran up and down the bench while screaming, and it seemed that defendant's balance was impaired, as he would sway and use the bench for stability.

¶ 5 Officer Mielcarz testified that he was trained in DUI detection and enforcement at the police academy, had passed tests, and had taken refresher courses. As a police officer and in his personal life, he had been around people who were under the influence of alcohol over 100 times. Based on defendant's red, glassy, and bloodshot eyes, demeanor, refusal to submit to field and chemical tests that were offered, and the open alcohol containers in the car, Officer Mielcarz believed defendant was under the influence of alcohol. On cross-examination, Officer Mielcarz admitted that he had

never met defendant before, and so would not know if his eyes were always bloodshot or glassy or if he slurred his speech all the time. Additionally, he admitted that not all people who make disturbances at the police station were under the influence of alcohol. Officer Mielcarz did not recall specifically asking defendant if he had consumed any alcohol.

¶ 6 Officer Jesse Rodriguez, who assisted Officer Mielcarz, testified that he approached defendant at the bench where he was handcuffed. Defendant's speech was slurred, his eyes were bloodshot and red, and he smelled strongly of alcohol. Additionally, defendant was belligerent, uncooperative, insulting, and spoke incoherently in both English and Spanish. Officer Rodriguez spent five minutes trying to communicate with defendant, but defendant talked over him and called him names. Officer Rodriguez then removed defendant's handcuffs and tried to administer field sobriety tests in a nearby corridor. However, defendant continued to interrupt and talk over Officer Rodriguez, and could not maintain his balance. Officer Rodriguez asked defendant if he would do the field sobriety tests, but defendant would not acknowledge with a yes or no, and ultimately did not complete them. Next, Officer Rodriguez gave and explained the motorist's warning and offered a Breathalyzer test, which defendant refused.

¶ 7 As to DUI training, Officer Rodriguez testified that he had participated in a week-long sobriety testing training and refresher courses, and had passed tests to become certified in field sobriety training. As a police officer and in his personal experience, he had been around people under the influence of alcohol several hundred times. In his opinion, based on his interaction with defendant, and defendant's slurred speech, bloodshot and red eyes, strong odor of alcohol, inability to maintain his balance, and uncooperative and insulting behavior, defendant was under the influence of alcohol that evening. On cross-examination, Officer Rodriguez admitted that because he had never met defendant before, he would not know if defendant's eyes were normally bloodshot, red, or glassy, if defendant had a good grasp of either English or Spanish, or if defendant's speech was normally slurred.

¶ 8 In closing, the State argued that the circumstances indicated that defendant was under the influence of alcohol. These circumstances included the strong odor of alcohol, defendant's bloodshot eyes, and the two open bottles found in the vehicle. Additionally, defendant fell out of the van and was incomprehensible and uncooperative at the police station. The State also contended that defendant's refusal to complete the Breathalyzer test showed consciousness of guilt. Defense counsel asserted that rather than falling out of the van, defendant slipped due to the snow and because he had just been confronted by a police officer "who [was] obviously unhappy *** at the outset." Defense counsel posited that defendant was belligerent and agitated because he had just been interrupted during a sexual act and perhaps did not know why he had been arrested. The State's only evidence of intoxication was the odor of alcohol, and no one testified that defendant was asked if he had been drinking. Defense counsel asserted that red, bloodshot eyes can occur for a number of reasons, the officers did not know if defendant's speech was always slurred, and the female passenger could have been drinking from the Hennessy bottles. Defendant's swaying while handcuffed to the bench was weak evidence because it would be difficult for anyone to stand up while handcuffed in that manner. When defense counsel commented on the refused Breathalyzer test, the trial court stated it had "yet to find a case where [it] found it appropriate to draw any inference of consciousness of guilt" from a defendant's refusal to take the test. In rebuttal, the State argued that, looking at the totality of the circumstances, defendant had not acted like a person who was sober. The State asserted that defense counsel's explanations for each piece of evidence were not reasonable and posited, "what are the chances of all this happening to someone who is sober[?]"

¶ 9 In finding defendant guilty, the trial court noted that there were no observations of defendant's driving, which would otherwise serve as the strongest indicator of whether defendant was impaired, and no field sobriety tests were performed in part because defendant did not cooperate. However, there were observations of defendant's glassy eyes, thick-tongued speech, and an odor. The trial court also noted that the two Hennessy bottles were recovered from the vehicle,

although there was no testimony of the bottles' contents. The trial court found that the strongest evidence of impairment consisted of defendant's difficult nature, belligerent and agitated state, and lack of cooperation and compliance. While it would be possible to generate reasonable alternative explanations for the evidence, considering the evidence in totality, including the officers' observations of defendant exiting the van and his behavior at the station, there was "[too] much here in [the trial court's] mind to simply discount the defendant's behavior." Defendant was sentenced to 60 days in jail, satisfied by time spent in pre-sentence custody.

¶ 10 On appeal, defendant argues the evidence was insufficient to prove he was under the influence of alcohol where there were no breath, blood-alcohol, or field sobriety tests, no evidence of the amount of alcohol defendant consumed, and no evidence of the contents of the bottles found in the vehicle. According to defendant, the State's only evidence—the smell of alcohol coming from defendant and the officers' observations of defendant's eyes and speech—was insufficient, unreliable and speculative. Defendant contends his lack of balance outside the van was due to the snowy conditions and his lack of balance at the police station was due to the late hour, his exhaustion, and the difficulty of standing while handcuffed. Further, defendant asserts his disgruntled demeanor is explained by the circumstances under which he was initially approached by the police.

¶ 11 When a defendant challenges the sufficiency of the evidence, 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.) *People v. Collins*, 106 Ill. 2d 237, 261 (1985) (quoting *Jackson v. Virginia*, 443 U.S. 307, 319 (1979)). This standard of review applies regardless of whether the evidence is direct or circumstantial. *People v. Wheeler*, 226 Ill. 2d 92, 114 (2007). It is not the reviewing court's function to retry the defendant. *People v. Sutherland*, 223 Ill. 2d 187, 242 (2006). In a bench trial, it is for the trial judge, sitting as the trier of fact, to determine the credibility of the witnesses, weigh and draw reasonable inferences from the evidence, and resolve any conflicts in the evidence. *People*

v. Siguenza-Brito, 235 Ill. 2d 213, 228 (2009). Where a defendant is convicted based on circumstantial evidence, the trier of fact does not have to be satisfied beyond a reasonable doubt as to each link in the chain of circumstantial evidence. *People v. Edwards*, 218 Ill. App. 3d 184, 196 (1991). It is sufficient if all the evidence taken as a whole satisfies the trier of fact beyond a reasonable doubt of the defendant's guilt. *Id.* We will not reverse a conviction unless the evidence is so unreasonable, improbable, or unsatisfactory that it raises a reasonable doubt of the defendant's guilt. *People v. Evans*, 209 Ill. 2d 194, 209 (2004).

¶ 12 To convict a defendant for DUI, the State must prove that the defendant drove or was in actual physical control of a vehicle while he was under the influence of alcohol. 625 ILCS 5/11-501(a)(2) (West 2006). Although defendant only contests that he was under the influence of alcohol, we find that the evidence was sufficient to prove both elements of "actual physical control of a vehicle" and "while under the influence of alcohol." Indeed, Officer Mielcarz's testimony revealed that defendant was found in the driver's seat of the vehicle with the engine running at the time he approached defendant. See *City of Naperville v. Watson*, 175 Ill. 2d 399, 402 (1997) (defendant in "actual physical control" of vehicle where he was found asleep in parked car with engine running); *People v. Robinson*, 368 Ill. App. 3d 963, 983-84 (2006) ("physical control" of car was proven where defendant was unconscious in driver's seat, slumped over steering wheel, and car's engine was running). Thus, we find that the State proved beyond a reasonable doubt that defendant was in actual physical control of the vehicle. With respect to the second element, a person is under the influence of alcohol when, as a result of drinking any amount of alcohol, his mental or physical faculties are so impaired as to reduce his ability to think and act with ordinary care. *People v. Gordon*, 378 Ill. App. 3d 626, 631 (2007) (quoting Illinois Pattern Jury Instructions, Criminal, No. 23.29 (4th ed. 2000)). Intoxication is a question of fact for the trier of fact to resolve. *People v. Hires*, 396 Ill. App. 3d 315, 318 (2009). The State can use circumstantial evidence to prove a defendant guilty of DUI (*People v. Hostetter*, 384 Ill. App. 3d 700, 712 (2008)), and need not

present chemical evidence of intoxication in the form of a Breathalyzer or blood test (*People v. Diaz*, 377 Ill. App. 3d 339, 344-45 (2007)). A conviction may be sustained solely on the testimony of the arresting officer, if credible. *People v. Janik*, 127 Ill. 2d 390, 402 (1989).

¶ 13 Here, the evidence sufficiently supports the trial court's finding that defendant was under the influence of alcohol. Relevant evidence of impairment may include testimony that a defendant's breath smelled of an alcoholic beverage, his eyes were glassy and bloodshot, his speech was slurred, he staggered, and he failed a sobriety test. *People v. Elliott*, 337 Ill. App. 3d 275, 281 (2003). In this case, Officer Mielcarz testified that when he first approached defendant, defendant's eyes were bloodshot, red, and glassy, and defendant's speech was thick-tongued and slurred. A strong odor of alcohol emanated from inside the van and two open Hennessy bottles were found inside. Defendant fell out of the van when exiting, and when he was in the police car, a strong odor of alcohol came from the backseat area. At the police station, defendant screamed and ran up and down the bench to which he was handcuffed. Officer Rodriguez observed that defendant's eyes were glassy and bloodshot, his speech was slurred and incoherent, and defendant was belligerent and unable to balance. Defendant did not complete the field sobriety tests and refused a Breathalyzer test. Both officers had training and experience in DUI detection and enforcement. Viewing the evidence in the light most favorable to the State, a rational trier of fact could find that defendant was under the influence of alcohol. Further, symptoms similar to defendant's, including bloodshot eyes, a smell of alcohol, slurred speech, and a lack of balance or coordination, have been found sufficient to find that a defendant was under the influence of alcohol. See *Hires*, 396 Ill. App. 3d at 319 (officer smelled alcohol in vehicle, and defendant slurred his speech, fumbled to pull out his identification card, and stumbled out of the driver's seat, nearly falling to the ground, and was incapable of performing field sobriety tests); *Diaz*, 377 Ill. App. 3d at 345 (officer observed defendant with bloodshot eyes and mumbled speech, there was a moderate odor of alcohol, and defendant exhibited a balance problem and failed to complete a field sobriety test); *People v.*

Mathews, 304 Ill. App. 3d 514, 516 (1999) (officer concluded defendant was intoxicated based on odor of alcohol and defendant's speech, poor balance, and manner of walking); *People v. Brant*, 82 Ill. App. 3d 847, 849 (1980) (officer smelled alcohol in the air, defendant's eyes appeared droopy and bloodshot, defendant's speech was slurred, and defendant stated repeatedly that he was going to be sick).

¶ 14 We are not persuaded by defendant's citation to cases where the testimony that a defendant smelled of alcohol was not sufficient to prove that the defendant was intoxicated. In those cases, the defendant had been in a vehicle collision that could have caused the symptoms of the alleged intoxication (*People v. Thomas*, 34 Ill. App. 3d 578, 580-81 (1975); *People v. Holtz*, 19 Ill. App. 3d 781, 788 (1974); *People v. Clark*, 123 Ill. App. 2d 41, 44-45 (1970)), or a collision had occurred and the only evidence that intoxication was the cause was an odor of alcohol (*People v. Barham*, 337 Ill. App. 3d 1121, 1131-32 (2003); *People v. Boomer*, 325 Ill. App. 3d 206, 210 (2001); *People v. Winfield*, 15 Ill. App. 3d 688, 690 (1973)). Here, in contrast, there was no collision that could have caused defendant's appearance or behavior, and there were numerous other symptoms that defendant was intoxicated, including his belligerence, lack of balance, red and bloodshot eyes, and slurred speech. Additionally, while the trial court may not have considered it, we note that refusal to submit to a Breathalyzer test is circumstantial evidence of a defendant's consciousness of his own guilt (*Diaz*, 377 Ill. App. 3d at 345), and we may affirm the trial court on any basis supported by the record (*People v. Dinelli*, 217 Ill. 2d 387, 403 (2005)).

¶ 15 More broadly, we reject defendant's attempts to explain away each piece of the State's evidence. Many of defendant's arguments about the weaknesses of specific pieces of evidence were presented to, and rejected by, the trier of fact, and are therefore unpersuasive. *People v. Baugh*, 358 Ill. App. 3d 718, 737 (2005). Further, we reiterate that it is sufficient if all the evidence taken as a whole satisfies the trier of fact beyond a reasonable doubt of the defendant's guilt. *Edwards*, 218 Ill. App. 3d at 196. Here, the evidence of defendant's intoxication, taken as a whole, is not so

1-11-1022

unreasonable, improbable, or unsatisfactory that it raises a reasonable doubt of defendant's guilt.

¶ 16 For the foregoing reasons, we affirm the judgment of the circuit court of Cook County..

¶ 17 Affirmed.