

2013 IL App (1st) 112048-U

SIXTH DIVISION
May 10, 2013

No. 1-11-2048

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).

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. 10 CR 11651
)	
ADRIAN TELLEZ,)	Honorable
)	Vincent M. Gaughan,
Defendant-Appellant.)	Judge Presiding.

JUSTICE REYES delivered the judgment of the court.
Presiding Justice Lampkin and Justice Gordon concurred in the judgment.

ORDER

¶ 1 *Held:* Defendant's aggravated DUI conviction affirmed over his challenge to the sufficiency of the evidence based on the other driver's failure to yield before making a left turn.

¶ 2 Following a bench trial, defendant Adrian Tellez was found guilty of two counts of aggravated driving under the influence of alcohol (625 ILCS 5/11-501(d)(1)(F) (West 2010)) and was sentenced to seven years in prison. The aggravating factor underlying defendant's conviction was, while committing a DUI offense, he was involved in an accident resulting in the death of another person, and the DUI violation was a proximate cause of the death. 625 ILCS 5/11-501(d)(1)(F) (West 2010). On appeal, defendant contests the sufficiency of the evidence to sustain the conviction arguing the State failed to establish his driving was the proximate cause of the accident.

¶ 3

BACKGROUND

¶ 4 The record reveals that at about 2:30 a.m. on April 1, 2010, defendant was driving a Ford Taurus (Taurus) with three passengers inside, when he struck a United Parcel Service (UPS) truck at the intersection of Roosevelt Road and Canal Street in Chicago. The accident ultimately caused the death of defendant's front-seat passenger, Rafael Lopez.

¶ 5 At trial, Daniel Tartaglia testified that in the early morning hours of April 1, 2010, he was driving a UPS truck eastbound on Roosevelt Road, intending to make a left-hand turn on Canal Street. As he approached the intersection, he scanned the area for potential hazards, and observed that the green left-turn arrow had expired, but the traffic light was green. Upon entering the intersection, Tartaglia scanned the area for potential hazards a second time, and proceeded to turn left after observing no potential hazards impeding his ability to safely make his turn. Before completing the left turn, however, Tartaglia's truck was struck by an oncoming

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vehicle. He remembered seeing a white flash before being knocked unconscious, and when he awoke, his truck was facing the southwest corner of the intersection.

¶ 6 During his testimony, the State entered two videos of the crash into evidence from two red light cameras depicting different perspectives of the intersection. Tartaglia acknowledged the videos reflected two vehicles coming in his direction, but stated neither was in his hazard zone to prevent a safe turn.

¶ 7 Detria Wright testified that at approximately 2:30 a.m. on April 1, 2010, she was driving westbound on Roosevelt Road. While driving, she heard loud music coming from a Taurus which she observed in her rearview mirror. Wright noticed that there were four passengers in the Taurus, the windows of the vehicle were rolled down, and the driver's foot was hanging outside the window on top of the side mirror on the driver's side. As the Taurus passed Wright's vehicle, she looked at her speedometer which showed that she was driving at a speed of 40 to 45 miles per hour, and estimated that the Taurus was traveling at about 70 miles per hour. Wright then noticed the eastbound UPS truck ahead turning left. She slowed to a stop approximately three to four car lengths from the intersection because she knew that the Taurus was going to collide with the truck, and witnessed the collision.

¶ 8 Michael Thomas testified he also was employed by UPS, and that he was driving southbound on Canal Street at the time of the accident. As Thomas approached the intersection of Canal Street and Roosevelt Road, he observed an eastbound UPS truck on Roosevelt Road begin to make a left turn. Thomas then noticed a Taurus driving westbound on Roosevelt Road

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"suddenly *** [shoot] out diagonally" across the intersection and collide with the UPS truck.

Thomas estimated that the Taurus was traveling at a speed of at least 50 miles per hour when it struck the UPS truck. After the impact, Thomas got out of his automobile to check on the occupants of the other vehicles, and as he approached, Thomas observed that the driver of the Taurus was pinned inside the vehicle and that his left leg was sticking out the driver's side window.

¶ 9 The parties then stipulated Lopez died as a result of multiple injuries due to an automobile striking a truck. They also stipulated that defendant had a blood alcohol concentration of 0.136.

¶ 10 Gerardo Cervantes testified that on the night of March 31 and into the early morning hours of April 1, 2010, he was with defendant and two other friends, Rafael Lopez and Dorian Pagnanos. The four men went to a bar where Cervantes worked as a disc jockey (DJ). While there, Cervantes bought drinks for his three friends, but after he began his DJ duties, he did not observe what else defendant consumed that evening. After leaving the bar, the four men entered defendant's vehicle; defendant was occupying the driver's seat, Lopez was situated in the front passenger seat, and Pagnanos and Cervantes were in the back seat of the Taurus. Cervantes testified that he was intoxicated and not paying attention to defendant's driving, but looked up when defendant applied the brakes, and observed that the vehicle was going to collide with the UPS truck. Cervantes testified he could not estimate how fast defendant was driving, but he believed if defendant was speeding, it was not by much.

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¶ 11 Sharon Norway testified that she was a traffic specialist for the Chicago police department, and was called to investigate and prepare a report on the accident. She arrived at the scene and noted the road conditions were dry and there was a posted speed limit of 30 miles per hour on Roosevelt Road. Norway documented the extensive damage sustained by both vehicles, photographed the scene, interviewed witnesses, and reviewed the red light camera footage. She also observed a 101-foot-long skid mark before the intersection and concluded that the Taurus had tried to brake before colliding with the UPS truck.

¶ 12 On cross-examination, Norway acknowledged that a citation for failure to yield the right of way had been issued to Tartaglia, the UPS driver. She explained, however, that she did not refer to the citation in her report because based on her investigation, Tartaglia did not do anything wrong and would have been able to safely complete his turn if defendant had not been traveling at an excessive rate of speed. In her opinion, defendant was traveling at such a high rate of speed that Tartaglia did not have an opportunity to see defendant's vehicle before beginning his turn.

¶ 13 The defense called Chicago police officer Larry Collins, who testified he was on duty at the time of the accident, and was assigned to prepare a report on the incident. When he arrived at the scene, he observed the wreckage of the two vehicles, and was instructed by someone from the traffic unit, whose identity he could not recall, to issue a citation to Tartaglia for failure to yield the right of way on a left turn. Officer Collins did not appear in court on the citation, and he thought another officer had delivered the citation to Tartaglia.

¶ 14 At the close of evidence and argument, the trial court found that the State proved both counts of aggravated DUI beyond a reasonable doubt, and entered judgment on its finding. In doing so, the court referred to Wright's testimony regarding her observations of defendant's vehicle and her estimate that defendant's vehicle was traveling at a speed of 70 miles per hour. Defendant now challenges the propriety of the judgment on appeal.

¶ 15 ANALYSIS

¶ 16 Where, as here, a criminal defendant alleges that the State's evidence is insufficient to sustain a conviction, the relevant question for the reviewing court is whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the elements of the crime beyond a reasonable doubt. *People v. Campbell*, 146 Ill. 2d 363, 374 (1992). This standard recognizes the responsibility of the trier of fact to resolve conflicts in the testimony, to weigh the evidence, and to draw reasonable inferences therefrom. *Campbell*, 146 Ill. 2d at 375. Accordingly, a reviewing court will not substitute its judgment for that of the trier of fact on questions involving the weight of the evidence or the credibility of the witnesses, and will not reverse a criminal conviction unless the evidence is so unreasonable, improbable, or unsatisfactory that it creates a reasonable doubt of defendant's guilt. *Campbell*, 146 Ill. 2d at 375.

¶ 17 In this case, defendant was convicted of aggravated driving under the influence of alcohol under section 501(d)(1)(F) of the Illinois Vehicle Code. 625 ILCS 5/11-501(d)(1)(F) (West 2010). This statute provides, in pertinent part, that a person commits aggravated DUI when, in

committing a DUI offense, he is involved in an accident that results in the death of another person, and the DUI violation is a proximate cause of the death.

¶ 18 On appeal, defendant does not challenge the sufficiency of the underlying DUI violation, or that he was involved in an accident which resulted in the death of another person, but rather, he solely claims that the State failed to prove his driving was the proximate cause of the accident that resulted in the death of Lopez. He maintains the evidence of an intervening act—Tartaglia's failure to yield before making a left turn—precludes such a finding.

¶ 19 Proximate cause includes both cause in fact and legal cause. *People v. Johnson*, 392 Ill. App. 3d 127, 131 (2009) (citing *People v. Hudson*, 222 Ill. 2d 392, 401 (2006)). Cause in fact exists where there is a reasonable certainty that a defendant's acts caused the injury or damage, whereas legal cause is established if an injury was foreseeable as the type of harm that a reasonable person would expect to see as a likely result of defendant's conduct. *Johnson*, 392 Ill. App. 3d at 131. Although the foreseeability of an injury will establish legal cause, the extent of the injury or the exact way in which it occurs need not be foreseeable. *Johnson*, 392 Ill. App. 3d at 131 (citing *Hooper v. County of Cook*, 366 Ill. App.3d 1, 7 (2006)).

¶ 20 Viewed in the light most favorable to the prosecution, the evidence in this case reveals that on the morning of April 1, 2010, defendant was driving westbound on Roosevelt Road at a speed estimated at 50-70 miles per hour in a 30 mile per hour speed zone with a blood alcohol level of 0.136. One eyewitness, who was traveling westbound on Roosevelt Road at a rate of speed of 40 to 45 miles per hour, observed defendant pass her vehicle prior to the crash, heard

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music blaring from his automobile and saw his foot hanging outside of the vehicle. She came to a complete stop three to four car lengths from the intersection and witnessed the crash with the eastbound UPS truck turning left, which resulted in the death of defendant's front-seat passenger, Lopez. A major accidents investigator also observed 101-feet of skid marks at the scene and ultimately concluded that the crash was caused by defendant's excessive speed. From this evidence, the trial court could rationally conclude that defendant was proven guilty of aggravated DUI beyond a reasonable doubt.

¶ 21 Defendant disagrees, however, and first argues that there was insufficient evidence to establish he was speeding at the time of the accident. In support of this argument, he observes that there was no evidence taken from a properly calibrated speedometer, the red light video did not show enough of defendant's vehicle prior to impact to indicate which driver was at fault, and the witnesses' testimony regarding his rate of speed was substantially inconsistent and should have been deemed unreliable.

¶ 22 Defendant has cited no authority in support of his contentions that evidence from either a speedometer or a "better" red light video is required. To the contrary, it is well settled that a lay witness may testify to the speed of a vehicle, and state his or her opinion based upon an observation of the vehicle while in motion. *Watkins v. Schmitt*, 172 Ill. 2d 193, 207 (1996). The lay eyewitnesses in this case provided their estimates of defendant's speed based on their observations and positions on the roadway at the time of the collision, and, in Wright's case, by comparison to her own rate of speed as indicated by her speedometer.

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¶ 23 Defendant further argues the estimates of his speed provided by Wright and Thomas (70 miles per hour and "at least 50 miles per hour," respectively) were substantially inconsistent and should have been deemed unreliable. We disagree. As previously noted, discrepancies in the evidence are to be resolved by the trier of fact (*Campbell*, 144 Ill. 2d at 375), and here, the trial court could have reasonably inferred that the different estimates reflected the speed of defendant's car at different points on the roadway; *i.e.*, Wright's higher estimate reflected defendant's speed when he passed her vehicle, and Thomas's lower estimate reflected defendant's speed near the point of impact when defendant was attempting to brake. Thus, we find no inconsistencies raising a reasonable doubt as to defendant's guilt.

¶ 24 Defendant further claims even if he was speeding, there was insufficient evidence to prove he was the proximate cause of the accident when there was evidence that Tartaglia failed to yield the right of way when turning left. In support of this claim, defendant primarily relies on the fact that Officer Collins had written a citation to Tartaglia for failure to yield the right of way on a left turn.

¶ 25 At trial, Officer Collins testified that he had been instructed to write the citation, but he had no personal knowledge of the basis for the alleged traffic violation, and he never appeared in court on the citation. Additionally, Investigator Norway testified that based on her investigation, Tartaglia had not done anything wrong and would have been able to complete his turn safely if defendant had not been traveling at such a high rate of speed. Thus, the issuance of the traffic

citation under these circumstances was insufficient to preclude the trial court from finding defendant's actions were the proximate cause of the crash. *Johnson*, 392 Ill. App. 3d at 131.

¶ 26 Moreover, even if Tartaglia failed to yield when turning left, his actions would not warrant the reversal of defendant's conviction. See *Herman*, 347 Ill. App. 3d at 530; *People v. Merritt*, 343 Ill. App. 3d 442, 448 (2003) (holding that the fact that the victim's actions were also a proximate cause of his injuries did not warrant reversal of defendant's conviction); *People v. Cook*, 2011 IL App (4th) 090875, ¶ 22 (holding that the unexpected swerving of a third person involved in a multiple-vehicle traffic accident was not an intervening and superseding cause of victim's death in accident). In *Johnson*, 392 Ill. App. 3d at 128-29, the state's evidence demonstrated that defendant was driving with cannabinoid metabolites in his system and a blood alcohol level above the legal limit, and that he was speeding when he collided with another vehicle at an intersection. Additional testimony revealed defendant had entered the intersection on a yellow light and the other vehicle involved in the accident, driven by Arnold, had illegally entered the intersection on a red light. *Johnson*, 392 Ill. App. 3d at 129-30. As in the case at bar, defendant in *Johnson* argued that no reasonable person could conclude his decision to enter the intersection on a yellow light was the proximate cause of the collision when Arnold's car had entered the intersection unlawfully. *Johnson*, 392 Ill. App. 3d at 131. The court found, however, that the evidence that Arnold may have run a red light did not negate defendant's actions as being a proximate cause of the victims' injuries where a reasonable person could foresee injury as a likely result of defendant's conduct. *Johnson*, 392 Ill. App. 3d at 131.

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¶ 27 The same result should occur here, where even if defendant's actions were not the sole and immediate proximate cause of the victim's death, a reasonable person could foresee the victim's death as a likely result of defendant's conduct. *Johnson*, 392 Ill. App. 3d at 131-32. The evidence sufficiently established defendant's actions were a proximate cause of the victim's death, and satisfies the elements for his conviction of aggravated DUI.

¶ 28 CONCLUSION

¶ 29 For these reasons, we affirm the judgment of the circuit court of Cook County.

¶ 30 Affirmed.