

No. 1-11-2639

**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  
FIRST JUDICIAL DISTRICT

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THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County.
	)	
v.	)	Nos. YP 783-279
	)	YT 140-142
	)	
JEVONNE HODGE,	)	Honorable
	)	John D. Turner,
Defendant-Appellant.	)	Judge Presiding.

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JUSTICE SIMON delivered the judgment of the court.  
Quinn & Connors, JJ., concurred in the judgment.

**ORDER**

¶ 1 *Held:* The State proved beyond a reasonable doubt that defendant was driving under the influence of alcohol. The State failed to prove defendant guilty of failing to reduce speed to avoid an accident and that defendant operated a vehicle without evidence of registration. Affirmed in part and reversed in part.

¶ 2 Following a bench trial, defendant Jevonne Hodge was found guilty of driving under the influence of alcohol (DUI), failing to reduce speed to avoid an accident, and driving without valid insurance and registration. Defendant was sentenced to 12 months of supervision and assessed fines and fees totaling \$1,580. Defendant appeals his convictions for DUI, failing to reduce speed, and driving without valid registration, contending the State failed to establish his

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guilt beyond a reasonable doubt. He does not challenge the conviction for driving without proof of insurance.

¶ 3 Officer Michelle Archer of the Dolton Police Department testified that on November 5, 2010, she had been a Dolton police officer for approximately nine years and had made three DUI arrests. She also observed several people under the influence of alcohol in her personal experience.

¶ 4 At about 2:10 a.m. on November 5, Archer received a call of a vehicle accident and proceeded to the scene, at 139th and Park Street. Archer observed defendant exiting his vehicle, which had struck a parked vehicle. She did not observe him driving. Archer approached defendant, asked him what happened, and requested his driver's license and proof of insurance. Defendant did not provide a direct answer.

¶ 5 When the assistant State's Attorney asked Archer on direct examination whether defendant provided her with his driver's license or insurance, Archer responded, "Not at the moment, no." Archer testified she smelled a strong odor of alcoholic beverage coming from defendant, and he refused to provide a direct answer when Archer asked where he was coming from. She again asked for his license and insurance but defendant again did not provide a direct answer. Instead, he cursed at Archer repeatedly and Archer placed defendant into custody. Defendant did not perform field sobriety tests at the scene.

¶ 6 After Archer arrested defendant, she took him to the police station where defendant was read *Miranda* warnings and refused to perform field sobriety tests. He attempted to start the tests, but then did not perform them as instructed by Archer. When Archer tried to administer the breathalyzer test, defendant gave shallow breaths. Although Archer instructed defendant to provide a deep breath and keep blowing until she told him to stop, defendant refused and instead continued to provide shallow breaths.

¶ 7 Archer testified that in her personal and professional experience, defendant was under the influence of alcohol. She smelled the alcohol, his speech was slurred, he refused to cooperate, he

was sometimes incoherent, and he staggered while walking. Defendant did not indicate that he had any physical ailments that would have resulted in his staggering.

¶ 8 On cross-examination, Archer testified that defendant's vehicle was not moving at the time she arrived on the scene. There were no witnesses who could have described how the accident occurred. Archer explained that the front driver's side of defendant's vehicle made contact with the parked vehicle. She offered defendant medical assistance at the scene. Archer did not know whether defendant suffered from breathing difficulties that could have prevented him from performing the breathalyzer.

¶ 9 After the State rested, the defense moved for a directed finding. Defense counsel argued that because defendant was in a front end collision, "[a]ny field sobriety tests would have been invalidated by any injuries he may have sustained as a result of that." The trial court denied the motion and the defense rested without presenting evidence. Following closing arguments, the trial court found defendant guilty of failure to reduce speed to avoid an accident, driving under the influence of alcohol, and operating a vehicle without evidence of registration and insurance.

¶ 10 Defendant filed a motion for new trial, contending the State failed to prove him guilty beyond a reasonable doubt. Following argument, the trial court rejected the defense's argument that because this was only Archer's third DUI arrest, she was inexperienced and did not properly conduct the DUI investigation. The court explained that Archer had numerous personal and professional observations of people under the influence of alcohol. The court found there was sufficient evidence that defendant was under the influence of alcohol based on Archer's testimony that she smelled an odor of alcohol on defendant, observed defendant's inability to walk, and that defendant had a belligerent attitude.

¶ 11 Defendant first contends on appeal that the State failed to prove beyond a reasonable doubt that he drove under the influence of alcohol. To sustain a DUI conviction, the State must prove that the defendant was under the influence of alcohol to a degree that rendered him incapable of driving safely, and it may use circumstantial evidence to do so. *People v.*

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*Weathersby*, 383 Ill. App. 3d 226, 229 (2008). Such circumstantial evidence may include a refusal to take a breath alcohol test, which is probative of consciousness of guilt. *Id.* at 230, citing *People v. Johnson*, 218 Ill. 2d 125, 140 (2005). A DUI conviction may be sustained solely based on the credible testimony of the arresting officer. *People v. Janik*, 127 Ill. 2d 390, 402 (1989).

¶ 12 In assessing the sufficiency of evidence, the relevant question is whether, considering the evidence in the light most favorable to the State, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. *People v. Beauchamp*, 241 Ill. 2d 1, 8 (2011). On review, we do not retry the defendant and we accept all reasonable inferences from the record in favor of the State. *Id.* The trier of fact is not required to disregard inferences that flow normally from the evidence nor is it required to seek all possible explanations consistent with innocence and elevate them to reasonable doubt. *People v. Jackson*, 232 Ill. 2d 246, 281 (2009). A conviction will be reversed only where the evidence is so unreasonable, improbable, or unsatisfactory that a reasonable doubt of the defendant's guilt remains. *Beauchamp*, 241 Ill. 2d at 8.

¶ 13 Here, defendant indicated consciousness of guilt by refusing a breath alcohol test and by providing only shallow breaths despite Archer's directions to provide long, deep breaths and to continue blowing until she advised him to stop. See *People v. Diaz*, 377 Ill. App. 3d 339, 345 (2007); and *People v. Garstecki*, 382 Ill. App. 3d 802, 813 (2008) ("A defendant's refusal to submit to chemical testing is relevant circumstantial evidence of his consciousness of guilt."). Although Archer testified that she did not know whether defendant had any breathing ailments that could have prevented him from providing breaths, there was no evidence presented at trial related to defendant's purported difficulty with breathing.

¶ 14 Additional evidence of defendant's impairment, which the trial court indicated in its finding when denying defendant's motion for new trial, include: Archer testified defendant smelled strongly of alcohol, defendant cursed repeatedly at Archer and was belligerent, defendant

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was incoherent at times, he staggered when he walked, and he refused to perform other field sobriety tests. See, *People v. Elliot*, 337 Ill. App. 3d 275, 281 (2003) (officer's testimony as to the defendant's appearance, speech, or conduct, that the officer detected the odor of an alcoholic beverage on the defendant's person, and that the defendant failed a field sobriety test is all relevant evidence of the defendant's impairment); and *People v. Jones*, 214 Ill. 2d 187, 201-02 (2005) (a defendant's refusal to submit to testing has "some tendency to indicate a consciousness of guilt").

¶ 15 Further, there was no evidence that physical injury caused defendant to stagger while walking. Defendant relies on *People v. Clark*, 123 Ill. App. 2d 41, 44 (1970), and argues that Archer did not inquire into whether defendant was injured in the accident, and that defendant's behavior during the DUI investigation was consistent with severe to moderate head injury. This argument is unpersuasive. Archer offered defendant medical assistance and the record leads to the reasonable inference that defendant declined, as none was provided. Defendant's arguments offering potential explanations for his staggered walking, incoherent speech, and shallow breathing during the breathalyzer test are no substitute for evidence in the record supporting these claimed explanations. See *Diaz*, 377 Ill. App. 3d at 346 (concluding that while the defendant argued fatigue could have contributed to poor performance on field sobriety tests, there was no evidence in the record to support this). Defendant's reliance on *Clark* is similarly unsupported by the record in this case. In *Clark*, the defendant was unconscious when the arresting officer approached his crashed vehicle and the defendant's head had gone through the vehicle windshield. *Clark*, 123 Ill. App. 2d at 44-45. The defendant had blood on his face and head and he had to be carried to a hospital on a stretcher. *Id.* at 45. Defendant in the instant case cannot point to any similar evidence of injury.

¶ 16 Moreover, the trial court accepted Archer's testimony as credible. We will not disturb the trial court's findings unless the evidence is so unbelievable, improbable, or unsatisfactory that it creates a reasonable doubt of guilt. *Beauchamp*, 241 Ill. 2d at 8. In sum, the evidence was

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sufficient to convict defendant of DUI beyond a reasonable doubt. See *Diaz*, 377 Ill. App. 3d 339.

¶ 17 Defendant next contends that the State failed to prove beyond a reasonable doubt that he failed to reduce speed to avoid an accident. At least three courts of review have considered this issue and applied the reasonable doubt standard, and we will do the same here. See *People v. Sturgess*, 364 Ill. App. 3d 107, 116 (2006); *People v. Sampson*, 130 Ill. App. 3d 438, 444 (1985); and *People v. Brant*, 82 Ill. App. 3d 847, 851(1980). In order to prove a defendant guilty of failure to reduce to avoid an accident, the State must establish that the defendant drove carelessly and that the defendant failed to reduce speed to avoid colliding with persons or property. 625 ILCS 5/11-601(a) (West 2010); and *Brant*, 82 Ill. App. 3d at 851. The State is not required to provide evidence that the defendant was exceeding the speed limit "because the offense can be committed regardless of the speed of the defendant's vehicle or the relevant speed limit." *Sturgess*, 364 Ill. App. 3d at 116.

¶ 18 Here, the evidence established that Archer responded to the call of an accident that had already occurred, she arrived on the scene and observed defendant exiting a vehicle. The front driver's side of defendant's vehicle had collided with a parked car. Archer did not observe defendant driving and no eyewitnesses were present at the scene. There was no evidence of defendant's speed, his manner of driving, the road or weather conditions, or other circumstances surrounding how the accident occurred. See *Sampson*, 130 Ill. App. 3d at 444. On this record, we cannot conclude that this testimony was sufficient to establish defendant committed the offense of failing to reduce speed to avoid an accident. See *Sturgess*, 364 Ill. App. 3d at 116. We therefore reverse the trial court's guilty finding on this count. There was no fine imposed for this conviction.

¶ 19 Finally, defendant contends there was insufficient evidence to prove him guilty of operating a vehicle without evidence of registration. The Illinois Vehicle Code provides that no person shall operate a vehicle unless a current and valid Illinois registration sticker and plate are

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attached and displayed on the vehicle. See 625 ILCS 5/3-701(1) (West 2010). At trial, the State asked Archer whether defendant provided her with his driver's license or insurance and Archer responded, "Not at the moment, no." The record does not indicate at which point defendant provided his registration. The State agrees that defendant's conviction for operating a vehicle without evidence of registration should be reversed. Accordingly, because there was no evidence presented at trial that defendant's vehicle was not properly registered in Illinois, as provided for in section 3-701 of the Illinois Vehicle Code, we reverse defendant's conviction and vacate the associated \$100 fine. See 625 ILCS 5/3-701(1) (West 2010).

¶ 20 Based on the foregoing, the judgment of the circuit court of Cook County finding defendant guilty of driving under the influence of alcohol is affirmed. Defendant's convictions for failing to reduce speed and operating a vehicle without evidence of registration are reversed. We order the clerk of the circuit court of Cook County to vacate the \$100 fine for driving without evidence of valid registration and correct the order assessing fines, fees, and costs to reflect a total assessment of \$1,480.

¶ 21 Affirmed in part and reversed in part; fees order corrected.