

No. 1-11-2791

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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. TT 139799
)	
ANTONIO BARRERA,)	Honorable
)	Caroline Moreland, &
)	Kevin Horan,
Defendant-Appellant.)	Judges Presiding.

PRESIDING JUSTICE HOWSE delivered the judgment of the court.
Justices Lavin and Epstein concurred in the judgment.

ORDER

- ¶ 1 **Held:** The State presented sufficient evidence to corroborate defendant's confession to using PCP, and therefore proved defendant guilty of driving under the influence of drugs beyond a reasonable doubt. The judgment was affirmed.
- ¶ 2 Following a jury trial, defendant Antonio Barrera was convicted of driving under the influence (DUI) of drugs and sentenced to 74 days in jail. On appeal, defendant contends that he was not proven guilty beyond a reasonable doubt because there was no evidence, apart from his

confession, to support the *corpus delicti* of the offense, and the State failed to prove that he was under the influence to such a degree that it rendered him incapable of driving safely. We affirm.

¶ 3 Defendant was arrested while he was stopped near the intersection at 18th Street and Pulaski Road in Chicago on September 15, 2009. He was subsequently charged, *inter alia*, with DUI of drugs.

¶ 4 At trial, Officer Granado testified that he had been a police officer for 10 years and received training on detecting individuals under the influence of drugs, including PCP, the symptoms of which included impaired motor skills, an inability to control bodily functions, droopy eyes, and incoherent speech. During his career as a police officer, Granado encountered "a few dozen" individuals under the influence of PCP.

¶ 5 On the date in question, Officer Granado was working with his partner, Officer Bajorek. At about 10 p.m., they were traveling to the area of 19th Street and Pulaski Road, responding to a call of a person shot. On his way to the scene, Granado observed a vehicle in the middle of the southbound lane near 1800 South Pulaski Road not moving, even though there were no stop lights or stop signs at that address. Emergency vehicles, police vehicles, and fire trucks were driving in the area with their sirens and lights activated. Granado approached the motionless vehicle and saw that the ignition and brake lights were on, defendant was in the driver's seat, and an unidentified woman was in the passenger seat. Defendant appeared to be "dazed and confused, semiconscious, and he had a spittle bubbling from his mouth." For about five minutes, Granado attempted to get defendant's attention by banging on the car windows, shouting, and shining a flashlight on him. Defendant never responded and police had to gain access to the car through the rear driver's side door.

¶ 6 After entering the vehicle, Officer Granado placed it in park and escorted defendant, who had crossed and droopy eyes, out of the vehicle. Defendant's responses to Granado's questions

were incomprehensible and he was unable to stand without using the vehicle to hold himself up. Granado assisted defendant to the rear of the car because he could not walk on his own, and then called an ambulance because he was unsure if defendant needed aid. When the ambulance arrived, defendant refused treatment. Defendant was too impaired to perform any field sobriety tests in a safe manner, Granado told him he was being placed under arrest for DUI, and Granado read defendant his *Miranda* rights. Defendant then told Granado that he "just smoked *** PCP." At the police station, defendant refused to submit to chemical testing. After the court found Granado qualified to render an opinion as to whether he believed defendant was under the influence of PCP, Granado testified affirmatively.

¶ 7 Officer Bajorek, who the State did not tender as an expert, testified similarly to Officer Granado. He also testified that at the time of the arrest in question he had been a police officer for one year, and made a couple dozen arrests, two of which were for drugs. This incident was Bajorek's first arrest where an individual admitted to smoking PCP.

¶ 8 Defendant, who had a prior felony conviction for possession of a controlled substance, testified that on the date in question he was driving with a woman in the passenger seat near 18th Street and Pulaski Road when he heard gunfire. He stopped the car out of fear and was unable to move it because he was blocked by emergency vehicles and other cars in the area. Police officers then approached his car, knocked on the window, pulled him out of the vehicle, and arrested him. The police never asked defendant any questions, and he made no statements to the officers. Defendant did not know why he was arrested until he was told at the police station he was taken into custody for driving under the influence.

¶ 9 Following argument, the jury found defendant guilty of DUI of drugs. On appeal from that conviction, defendant challenges the sufficiency of the evidence to sustain his conviction. We initially reject defendant's assertion that we should review this issue *de novo*. Where, as

here, defendant disputes the inferences to be drawn from the facts, we apply the deferential standard of review. *People v. Gilmore*, 356 Ill. App. 3d 1023, 1034 (2005).

¶ 10 Under that standard, the relevant question is whether, after 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. Jackson*, 232 Ill. 2d 246, 280 (2009). We will reverse a conviction only where the evidence, taken as a whole, is so unreasonable, improbable, or unsatisfactory as to justify reasonable doubt of the defendant's guilt. *Jackson*, 232 Ill. 2d at 280-81.

¶ 11 In order to establish guilt of driving under the influence of drugs, the State is required to prove that "(1) defendant was either driving or in actual physical control of a vehicle (2) while under the influence of any drug or combination of drugs (3) to such a degree that it rendered defendant incapable of safely driving." *People v. Shelton*, 303 Ill. App. 3d 915, 921 (1999); 625 ILCS 5/11-501(a)(4) (West 2008). Defendant does not contest that he was in actual physical control of his vehicle.

¶ 12 Defendant first contends that he was not proven guilty of the offense beyond a reasonable doubt because there was no evidence, apart from his alleged confession, to support the *corpus delicti* of the offense.

¶ 13 In Illinois, the State must prove beyond a reasonable doubt, that a crime occurred, the "*corpus delicti*," and that the crime was committed by the person charged. *People v. Lara*, 2012 IL 112370, ¶ 17, citing *People v. Sargent*, 239 Ill. 2d 166, 183 (2010). While a defendant's confession may be integral to proving the *corpus delicti*, the prosecution must also adduce corroborating evidence independent of the defendant's own statement. *Sargent*, 239 Ill. 2d at 183. That is, proof of the *corpus delicti* may not rest exclusively on a defendant's extrajudicial confession, admission, or other statement. *Sargent*, 239 Ill. 2d at 183. Although the

corroboration requirement demands that there be some evidence, independent of the confession, tending to show the crime did occur, that evidence need not, by itself, prove the existence of the crime beyond a reasonable doubt. *Sargent*, 239 Ill. 2d at 183.

¶ 14 We conclude that the corroboration requirement was met in this case through the testimony of Officers Granado and Bajorek. They observed defendant in the driver's seat of a stopped vehicle in the middle of Pulaski Road. When the officers approached the vehicle, they observed that defendant was dazed and confused, semiconscious, and had saliva running down from his mouth. Despite the officers attempts to get his attention by banging on the windows, shouting, and shining a flashlight on him, defendant never responded. The officers eventually entered the vehicle and escorted defendant, who had crossed and droopy eyes, out of the vehicle. Defendant's responses to Granado's questions were incomprehensible, he was unable to stand under his own power, and he was too impaired to perform any field sobriety tests. After defendant was placed under arrest for DUI, he stated that he "just smoked *** PCP." Based on Granado's training and his 10 years of experience as a police officer, which included encountering "a few dozen" individuals under the influence of PCP, the court found him qualified to render an opinion as to whether defendant was under the influence of PCP. Granado then testified that he believed defendant was under the influence of PCP.

¶ 15 In concluding that the corroboration requirement was met here, we find unpersuasive defendant's argument that Officer Bajorek did not have the requisite training to validate Officer Granado's testimony. In support, defendant relies on *People v. Foltz*, 403 Ill. App. 3d 419, 425 (2010), where the Fifth District reversed the defendant's conviction for aggravated driving under the combined influence of alcohol and drugs where the arresting officer did not have the necessary experience to provide sufficient testimony that the defendant was under the influence of drugs. We first note that, unlike the arresting officer *Foltz*, Granado was qualified as an expert

by the court to render his opinion on whether defendant was under the influence of PCP. With regard to Bajorek, we acknowledge that he was never tendered as an expert, and thus could not provide an expert opinion on whether defendant was under the influence of PCP. Nevertheless, Bajorek could still corroborate, as he did at trial, Granado's testimony that defendant admitted smoking PCP, could not stand under his own power, appeared dazed, and was unresponsive to their attempts to rouse him.

¶ 16 Even assuming, *arguendo*, that the officers' testimony alone was insufficient to prove defendant guilty of DUI of drugs, that evidence combined with defendant's confession proved him guilty beyond a reasonable doubt. *Sargent*, 239 Ill. 2d at 183. That is, the evidence showed that defendant was in physical control of the vehicle on Pulaski Road, while under the influence of PCP to such a degree that it rendered him incapable of driving safely. Defendant's testimony that he never confessed to using PCP does not change this result where the jury, in convicting defendant, clearly did not find his testimony credible, and we see no reason to disturb its judgment on appeal. See *Jackson*, 232 Ill. 2d at 281 (stating that reversal is warranted only where the evidence is so improbable as to justify reasonable doubt of the defendant's guilt). Moreover, the fact that alcohol and other drugs besides PCP could have caused the symptoms observed by the officers is not dispositive. As stated above, the officers' observations do not have to independently show that defendant used PCP. Instead, their observations, combined with defendant's confession that he smoked PCP, was sufficient. See *Lara*, at ¶ 45 (stating that independent evidence must only "correspond" to the confession, and not necessarily affirmatively verify it).

¶ 17 Alternatively, defendant argues that the evidence was insufficient to prove beyond a reasonable doubt that he was under the influence of drugs to such a degree that it rendered him incapable of driving safely. We disagree. The evidence showed that defendant was in the

driver's seat of his car with the engine running and his foot on the brake pedal blocking traffic. He failed to move his car when emergency vehicles were approaching him from the rear. Moreover, defendant was unresponsive to the officers' attempts to get his attention when they approached his vehicle. Officers Granado and Bajorek banged on the car windows, shouted, and shined flashlights at him. Despite these attempts to rouse defendant, the officers were only able to get inside the vehicle to place it in park by entering the rear driver's side door. Defendant appeared "dazed and confused," "semiconscious," and had saliva bubbling from his mouth. In addition, defendant's speech was slurred, and his motor skills were so compromised that he could not stand or walk under his own power. When viewed in the light most favorable to the State, the evidence readily established that defendant was incapable of driving safely. See *Shelton*, 303 Ill. App. 3d at 922 (affirming the defendant's conviction for DUI of drugs where his statements that he was on "Tylenol 3 with codeine" together with the arresting officers testimony about the defendant's lack of balance and his inability to pass the field sobriety tests were sufficient to prove he could not drive safely).

¶ 18 In reaching this conclusion, we find *People v. Workman*, 312 Ill. App. 3d 305 (2000), relied on by defendant, distinguishable from the case at bar. In *Workman*, the Second District reversed the defendant's conviction for DUI of drugs because the arresting officer was not knowledgeable about the drug in question, *i.e.*, lorazepam, and there was "no competent testimony whatsoever" regarding the drug's physiological effects, the amount required to produce any significant effect, or how the drug would affect a person's ability to drive safely. *Workman*, 312 Ill. App. 3d at 311-12. Furthermore, there was conflicting testimony regarding whether defendant had taken the drug, and the defendant never admitted to being under the influence of any chemical substance. *Workman*, 312 Ill. App. 3d at 312. Here, however, Officer Granado

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competently testified regarding the effects of PCP, defendant admitted smoking PCP, and there was ample evidence that defendant was too impaired to drive safely.

¶ 19 For the foregoing reasons, we affirm the judgment of the circuit court.

¶ 20 Affirmed.