

No. 1-12-0412

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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. YT 305010
	)	YT 305011
	)	
JASMANI FRANCIS,	)	Honorable
	)	Ellen B. Mandeltort,
Defendant-Appellant.	)	Judge Presiding.

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JUSTICE QUINN delivered the judgment of the court.  
Justices Connors and Simon concurred in the judgment.

**ORDER**

- ¶ 1 *Held:* There was sufficient evidence that defendant was driving under the influence of alcohol. The trial court did not err in its findings where the findings were based on the record, and any error was harmless. Defendant's conviction for DUI is affirmed.
- ¶ 2 Following a bench trial, defendant Jasmani Francis was found guilty of Driving Under the Influence of Alcohol (DUI) and Improper Lane Usage. He was sentenced to court supervision with mandatory costs and fines. Defendant appeals his DUI conviction, contending the State

failed to prove him guilty beyond a reasonable doubt and that the trial court erred when it based its ruling on evidence that was not supported by the record.

¶ 3 Chief of Police for the Mount Prospect Police Department John Dahlberg testified that on April 30, 2011 at approximately 1:35 a.m. he observed defendant's car weaving a couple of times within its lane. As Dahlberg followed the vehicle, he also observed its left tires cross the double yellow lines on two occasions, partially into oncoming traffic. The vehicle also entered the right lane on two occasions. When a traffic light turned red and the car began to slow down, it encroached upon the right lane of travel a third time and nearly hit a vehicle that was stopped for the red light. Dahlberg then contacted Commander Mike Eterno who indicated he was two blocks north of Dahlberg's location. Dahlberg did not have an in-squad car camera to record defendant's driving while Eterno did. Dahlberg observed defendant commit two more improper lane usages while waiting for Eterno to arrive.

¶ 4 When Eterno arrived behind Dahlberg and radioed that Dahlberg could relinquish his position, Dahlberg pulled into a parking lot while Eterno followed approximately 200 feet behind defendant. Dahlberg then continued following approximately 200 feet behind Eterno. The officers followed the vehicle until it turned right into a driveway located at 325 Hatlen without signaling first. They activated their Mars lights at the same time that defendant pulled into the driveway.

¶ 5 Dahlberg approached the passenger side of the vehicle and Eterno approached the driver's side. There was an occupant in the right front passenger seat. The parties stipulated that defendant was driving. Dahlberg heard defendant indicate to Eterno, "I knew you were on my ass." When Eterno asked whether defendant lived at 325 Hatlen, defendant replied, "No, I don't but I have friends who live just north of here." Eterno returned to Dahlberg and indicated that he

smelled an odor of alcoholic beverage on defendant's breath. Eterno called for Officer Michael Angarola to administer field sobriety tests and Dahlberg left the scene after Angarola arrived.

¶ 6 On cross-examination, Dahlberg testified that defendant traveled over the lines for less than a second each time and corrected the vehicle each time. Dahlberg did not observe any other vehicle take evasive action due to defendant going over the line. Dahlberg believed defendant's driving was consistent with someone who was impaired, although he did not know whether defendant had been drinking that night. The closest Dahlberg came to defendant was 20 feet.

¶ 7 The parties also stipulated to the testimony of Officer Eterno which was substantially consistent with Dahlberg's. Eterno's testimony added that he observed an improper signal during a right-hand turn and no signal when the driver turned into a driveway. Eterno activated his lights and the vehicle pulled into the driveway. When he asked whether defendant lived at the address of the driveway, defendant stated that he did not but his friends lived either at that address or the house immediately north of it. Defendant stated that he knew Eterno "was on his ass" and could see the squad car behind him. Eterno would also testify that he detected a strong odor of alcoholic beverage on defendant's breath when he spoke with defendant. Eterno dispatched for Officer Angarola and observed Angarola perform field sobriety tests on defendant.

¶ 8 The parties also stipulated to the proper foundation of the DVD that recorded the events at issue. Officer Michael Angarola testified next. The parties stipulated that Angarola was properly trained in the administration of field sobriety tests and that defendant was the driver. When Angarola arrived at the scene, Dahlberg explained that he observed defendant make several lane violations and that Eterno was called and stopped the vehicle. Defendant said he had seen the other officer's squad car "on his ass." Angarola asked defendant how much alcohol he consumed that evening and defendant responded that he drank Blue Moon beer.

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¶ 9 Angarola observed that defendant's eyes were glassy and when defendant was outside the vehicle and within a couple of feet of him, Angarola detected a strong odor of alcoholic beverage from his breath. While defendant was still in the vehicle, Angarola asked him to recite the alphabet starting with letter E and ending with letter T. After defendant's unsuccessful first attempt, Angarola asked him to recite the alphabet again, starting with letter G and ending with U. Defendant skipped various letters, stopped at the wrong letter both times, and slurred over letters M, N, O, P.

¶ 10 At this point, Angarola asked defendant to step out of the vehicle and defendant complied. Prior to Angarola administering the standardized field sobriety tests, defendant stated that he had a shattered right ankle and lower back pain. Angarola administered the horizontal gaze nystagmus (HGN) test according to the NHTSA standards. Angarola observed the onset of nystagmus prior to a 45 degree angle in both eyes on both passes that Angarola conducted, indicating impairment due to alcohol.

¶ 11 Angarola administered the "walk and turn" test. Defendant stooped over twice while Angarola spoke to him and was unable to maintain the start position. During this test, defendant presented clues of impairment when he raised his hands more than six inches on steps two, three, seven, and eight. Defendant further presented clues of impairment when he took 11 steps on the initial walk despite Angarola's instruction to take just nine steps. He also pivoted incorrectly.

¶ 12 When Angarola administered the "one leg test," he considered that defendant said he had shattered his right ankle and instead told defendant to stand on his left leg, lift his right leg while keeping his hands at his sides, and was told to count until he told defendant to stop. Angarola did not recall how long he told defendant to count, but testified that defendant placed his foot down twice and raised his hands more than six inches various times.

¶ 13 After the field sobriety tests, Angarola asked defendant how many alcoholic drinks defendant consumed and defendant replied that he had one “Blue Moon” beer and an “Irish Car Bomb.” Angarola testified that based on his training and experience, defendant was under the influence of alcohol. Angarola arrested defendant.

¶ 14 Defendant was transported to the Mount Prospect police station where he was read the warning to motorists and refused to take a breathalyzer test, stating "I'm not taking that." Defendant was read his *Miranda* rights and indicated his understanding of them. He then spoke with Angarola, telling Angarola that “he had a Blue Moon beer and an Irish Car Bomb at Bar Louie,” a bar in Mount Prospect. He last ate food in the early afternoon, when he had soup and salad. Defendant told Angarola that he started drinking at about 7 p.m. and stopped at about 8:30 p.m.

¶ 15 On cross-examination, Angarola testified that he did not observe defendant driving and that Dahlberg informed him of defendant's infractions. Angarola also testified that defendant's speech was good during the alphabet and that slurring only occurred when defendant said "M, N, O, P." Defendant complained about his injuries and said that his injuries made it difficult for him to stand in the initial heel-to-toe position. Defendant was cooperative and polite and had no difficulty getting out of the car. Angarola further testified that on the walk and turn test defendant did not step off the line or stop to steady himself. He also did not stagger or stumble during this test.

¶ 16 The State published People's Exhibit #1, a DVD containing a video file from Eterno's squad car and a video file from Angarola's squad car camera depicting the field sobriety tests he administered to defendant. The trial court viewed the file from Angarola's squad car. After the State rested, defendant moved for a directed finding which the trial court denied.

¶ 17 Sarah Kraft, the passenger in defendant's car when he was pulled over, testified for defendant. Kraft testified that defendant picked her up between 6 p.m. and 7 p.m. and they went to Moretti's restaurant where they ordered an Irish Car Bomb mixed drink, which consisted of separate glasses of Guinness beer and Jameson Irish Whiskey. Defendant drank the beer and Kraft drank the whiskey. Both defendant and Kraft sampled another mixed drink called a Lou Ferrigno and did not like it, so they both ordered a Blue Moon beer instead. The restaurant was loud, so they left and went to Bar Louie. Kraft testified that defendant had no trouble driving from Moretti's to Bar Louie. When they arrived at the bar, they went to the bar area where someone spilled his cocktail on defendant's shoulder area. Defendant tried to clean himself up in the bathroom and then they left and went to defendant's law office, which was about five minutes away. While at defendant's office, defendant worked on motions while they both watched the NFL draft. They did not consume alcohol at the office and left at around 1:30 a.m. During the drive home, Kraft did not observe any traffic violations and testified that defendant had no trouble driving from the office to the time they were pulled over.

¶ 18 On cross-examination, Kraft testified that during the drive home, they went into the subdivision where the driveway that defendant pulled into was located because she wanted to show defendant where her friend was going to move. She confirmed that she noticed the police following them. Kraft denied that defendant pulled into a driveway before the officer activated his lights. She also testified on cross-examination that she believed defendant was outside of the car during the alphabet test. After her testimony, the parties waived closing arguments.

¶ 19 The trial court summarized the evidence and found that both Chief Dahlberg and Officer Angarola testified credibly but Kraft did not. The judge found Kraft was impeached significantly twice: first, Kraft testified that the squad car lights were on before defendant pulled into the driveway, but the video, People's Exhibit #1, showed that the officers turned on their squad car

lights after defendant stopped in the driveway. It also found that Dahlberg observed defendant's car weaving noticeably various times and nearly struck another vehicle when it drifted slowly to a stop. The court viewed the video from Eterno's squad car and observed defendant had "a great difficulty driving" a straight line. The court also found that defendant's consciousness of guilt was evidenced by his pulling into the driveway of a house that he had no connection to in an effort to lose the police, who were "on his ass."

¶ 20 The trial court found defendant's injuries to be excuses for his poor performance on the field sobriety tests and Kraft's testimony that a drink was spilled on defendant was an excuse for the officer's detecting a strong odor of alcohol on defendant. Defendant's injuries and wheel alignment "have nothing to do with flunking the alphabet test, [and] have nothing to do with taking 11 steps instead of nine." The court then stated:

"I know, Counsel, you want this Court to believe that because it was the Chief of Police that observed these traveling infractions that somehow there was pressure on these police officers to arrest your client and to charge him with something. This Court will note that I have had numerous DUI files in front of me, Officer Angarola has testified before me and there's nothing he did in this case as evidenced by that video that is any different than any other traffic investigation of a DUI or possible impaired driver. And there was nothing in this record to show that the reason your client is standing before [*sic*] is because of the Chief."

¶ 21 The trial court also found that defendant's prosecution for driving under the influence was based upon more than Dahlberg's testimony. It also stated that defendant's "jovial" demeanor during the stop, referring to the officer as "dude," showed that defendant did not take it seriously

and was inappropriate. The court believed this behavior was indicative of defendant's impairment. The trial court also stated that based on Dahlberg's observations, which, if it was any indication of what the court observed from Eterno's video, defendant's driving was "horrendous." The trial court concluded that based on defendant's inability to say the alphabet, his performance on the field sobriety tests, his refusal to take the Breathalyzer test "which is consciousness of guilt," and the manner in which defendant tried to evade police by pulling into the driveway, the State met its burden of proof. The trial court found defendant guilty of DUI and illegal lane change. His motion to vacate judgment and for new trial was denied.

¶ 22 For the DUI conviction, defendant was sentenced to one year of court supervision along with other requirements. With regard to the illegal lane change, defendant was sentenced to court supervision. This appeal followed.

¶ 23 Defendant contends that the evidence at trial was insufficient to convict him of DUI beyond a reasonable doubt. His insufficiency of the evidence claim includes five findings by the trial court, which defendant argues were based on evidence that was not supported by the record. Specifically, defendant argues the trial court erred by finding: (A) evidence of fleeing and eluding as consciousness of guilt; (B) defendant had difficulty getting out of the car; (C) defendant's driving was horrendous; (D) defendant performed terribly on the field sobriety tests; and (E) defendant's behavior was inappropriate for the setting. Considering the totality of the evidence adduced at trial and defendant's allegations of error, we conclude that the evidence was sufficient to prove defendant guilty beyond a reasonable doubt

¶ 24 A person commits DUI when he drives a vehicle under the influence of alcohol. 625 ILCS 5/11-501(a)(2) (West 2010). 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. 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).

¶ 25 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.

¶ 26 We find sufficient evidence that defendant was driving under the influence of alcohol on the night in question independent of his ankle and lower back injuries and absent any chemical testing for alcohol. Chief Dahlberg testified that he observed defendant weaving across the double lines and into the lane to his right on numerous occasions. Dahlberg further observed defendant drift into the right lane while slowing to a stop such that defendant nearly collided with another vehicle. After Dahlberg called Eterno, whose squad car was equipped with a camera, Dahlberg observed defendant engage in two more instances of improper lane usage.

¶ 27 Angarola testified that he observed that defendant's eyes were glassy and he detected a strong odor of alcoholic beverage on defendant's breath. *People v. Janik*, 127 Ill. 2d 390, 402 (1989) (a DUI conviction may be sustained solely based on the credible testimony of the arresting officer); and *People v. Elliot*, 337 Ill. App. 3d 275, 281 (2003) (officer's testimony that defendant's breath smelled of an alcoholic beverage and that his eyes were glassy is relevant

evidence of physical and mental impairment). Defendant also performed poorly on the field sobriety tests, as evidenced by Angarola's testimony. See *Elliot*, 337 Ill. App. 3d at 281 (other relevant evidence of impairment may include slurred speech, staggering, or that defendant failed a field sobriety test). Moreover, defendant admitted to Angarola that he consumed alcoholic beverages, including beer and a mixed drink. Defendant's own witness, Sarah Kraft, also testified that defendant had been drinking alcohol.

¶ 28 Defendant also indicated consciousness of guilt by refusing a breath alcohol test. *People v. Diaz*, 377 Ill. App. 3d 339, 345 (2007). There was also behavioral evidence of impairment, which the trial court also indicated in its findings: defendant's jovial nature, referring to Angarola as "Dude," indicated defendant's impairment as it showed that defendant did not take the DUI investigation seriously. The trial court also found that the manner in which defendant tried to evade police by pulling into the driveway indicated his impairment and helped the State meet its burden of proof. We note that defendant's argument that his injuries resulted in his poor performance on the field sobriety tests is unpersuasive. Angarola testified to adjusting the tests to accommodate defendant's injuries.

¶ 29 Our finding is also supported by the trial court's finding that Dahlberg and Angarola were credible witnesses, Kraft was incredible, and Kraft was significantly impeached on two occasions. 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 sufficient to convict defendant of DUI beyond a reasonable doubt.

¶ 30 Finally, based on our review and consideration of the trial court's findings, defendant's argument that the trial court erred in considering investigations and DUI cases outside of the record also fails. The trial court's comments regarding prior DUI cases she presided over and in which Angarola testified were not improper because the court was merely rejecting defense

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counsel's argument that because the Chief of Police observed the infraction, that there was pressure to arrest defendant. Additionally, even if this court were to find that the comments were improper, any error was harmless because the evidence clearly established beyond a reasonable doubt that defendant was driving under the influence of alcohol. See *People v. Hamilton*, 361 Ill. App. 3d 836, 848 (2005) (error is harmless where the reviewing court can safely conclude that the trial would have produced the same result had the error not occurred).

¶ 31 Accordingly, the judgment of the circuit court is affirmed.

¶ 32 Affirmed.