

No. 1-12-1060

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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.)	Nos. TT 456 130
)	TT 456 131
)	TT 456 132
)	
FELICIA GREEN,)	Honorable
)	Lorna E. Propes,
Defendant-Appellant.)	Judge Presiding.

JUSTICE EPSTEIN delivered the judgment of the court.
Presiding Justice Howse and Justice Fitzgerald Smith concurred in the judgment.

ORDER

¶ 1 *Held:* The State proved beyond a reasonable doubt that defendant was guilty of driving under the influence where the State's evidence showed that defendant, who was initially a passenger in the curbed vehicle, exited the vehicle and then entered the driver's seat, and proceeded to drive the vehicle, albeit only a few inches, away from the scene of the traffic stop.

¶ 2 Following a jury trial, defendant Felicia Green was found guilty of driving under the influence of alcohol and driving with an alcohol concentration of 0.08 or more and was sentenced to 12 months of supervision. Defendant appeals her conviction, contending the State failed to prove her guilty beyond a reasonable doubt because the arresting officer's testimony was incredible and contradicted by the testimony of defendant and another witness.

¶ 3 At trial, Officer E.K. Haynie testified that on May 31, 2010, at about 11:55 p.m. he was patrolling with his partner, Officer Tiffany Nelson, in the area of 500 West 63rd Street when he observed the passenger of a car stick her leg outside of the passenger door while the car was still in motion. Haynie activated his emergency lights and curbed the vehicle. As he approached, defendant exited the passenger door and walked toward the officers at the rear of the vehicle using profanity in a loud boisterous tone. Haynie then had the driver, Shaimell Wilson, exit the vehicle and he began talking to both women. He learned they were having an altercation while driving. While speaking to the women, Haynie stood a couple of feet from them and as he spoke to defendant, Haynie "detected signs on alcoholic beverage on her breath," and observed that she had bloodshot eyes and slurred, mumbled speech. Haynie observed a crying infant in the backseat.

¶ 4 While speaking with defendant and Wilson, defendant walked to the driver's side, entered the driver's side of the vehicle, put the car into gear, and attempted to drive away. Defendant refused the officers' instructions to exit the vehicle so Haynie reached into the car and turned it off. Defendant drove the vehicle a few inches before Haynie turned off the engine.

¶ 5 After Haynie turned off the car, defendant abruptly opened the car door, almost hitting Haynie in the face with the door. Haynie's partner, Officer Nelson, removed defendant from the vehicle, handcuffed her, and placed her in the squad car for transport to the police station. After learning that Wilson and defendant were friends, the officers turned the vehicle over to Wilson and allowed her to take the child home.

¶ 6 The officers transported defendant to the police station where they conducted field sobriety tests because the lighting at the scene of the traffic stop was poor and because defendant was distracted with Wilson present. During the drive to the station, defendant continued to be

boisterous and use profanity. Haynie again detected a strong odor of alcoholic beverage on her breath.

¶ 7 At the police station, defendant submitted to and failed four field sobriety tests, including: the horizontal gaze nystagmus test, the one leg stand test, the walk and turn test, and the finger to nose test. Defendant's performance on all of the tests indicated impairment. Haynie then read defendant her "Warnings to Motorists Rights" and waited the required 20-minute observation period before administering a Breathalyzer test. Defendant's breath sample registered a 0.159 on the Breathalyzer.

¶ 8 Haynie determined that defendant was driving under the influence because of the strong odor of alcoholic beverage on her breath, her slurred and mumbled speech, her bloodshot, red eyes, her attitude and demeanor, and the results of her field sobriety and Breathalyzer tests.

¶ 9 After the State rested its case-in-chief, defense counsel moved for a directed verdict on all counts. The trial court denied the motion as to the driving under the influence and driving with an alcohol concentration of 0.08 or more, but granted it as to the child endangerment count.

¶ 10 During the defense's case-in-chief, Wilson testified that while at a social gathering with defendant, she observed defendant consume two martinis. While driving, she and defendant argued, but Wilson never saw defendant stick her leg out of the car. When the police curbed the vehicle, Wilson, removed the keys from the ignition and kept them while talking to the police. Defendant remained in the car during this time. Defendant did, however, move to the driver's seat while Wilson spoke to the police. The police then asked defendant to exit the car and when she did, defendant checked on her son in the back seat. Wilson testified that defendant never drove the car and that Haynie never reached into the car to take the keys.

¶ 11 Defendant also testified that she drank two martinis at a social gathering earlier that evening. She asked Wilson to drive her car because defendant did not want to drink and drive.

She admitted that she did not belong behind the wheel of a car that night because she had been drinking. Defendant denied that she stuck her leg out of the car while they were driving. She also testified that when they were pulled over, Wilson was asked to exit the vehicle, and when she complied, Wilson removed the keys from the ignition and took them with her. After Wilson exited the vehicle, defendant moved into the driver's seat in order to observe the interaction between Wilson and the officers. She became upset because she heard Officer Nelson say that she was going to "take this nigger to jail." Defendant then exited the vehicle and argued with Nelson. She was handcuffed and placed in the squad car. Defendant denied possessing the keys and trying to drive away. While at the police station, defendant consented to and performed field sobriety and Breathalyzer tests. She also explained that Haynie was willing to let her leave the station, but that Nelson insisted that defendant be charged with a crime.

¶ 12 The defense rested and the State called Officer Nelson in rebuttal, who denied calling defendant any "profane names." The parties presented closing arguments and the jury found defendant guilty of driving under the influence of alcohol and driving with an alcohol concentration 0.08 or more. The trial court merged the two counts and sentenced defendant to an agreed-upon 12 months of supervision, in addition to other conditions, fines, fees, and costs. The trial court later denied defendant's motion for a new trial.

¶ 13 Defendant appeals, contending the state failed to prove her guilty beyond a reasonable doubt because Haynie's testimony was incredible, contrary to human nature, and contradicted by defendant and Wilson's testimony. We disagree, and find that the State proved its case against defendant beyond a reasonable doubt.

¶ 14 When a defendant challenges the sufficiency of the evidence, the relevant inquiry 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."

Jackson v. Virginia, 443 U.S. 307, 319 (1979); *People v. Ross*, 229 Ill. 2d 255, 272 (2008). The reviewing court must also construe all reasonable inferences in favor of the prosecution. *People v. Bush*, 214 Ill. 2d 318, 326 (2005). The reviewing court does not retry the defendant. *Ross*, 229 Ill. 2d at 272. Rather, the trier of fact determines witness credibility, weighs testimony, and draws reasonable inferences from the evidence. *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. *People v. Beauchamp*, 241 Ill. 2d 1, 8 (2011).

¶ 15 To prove defendant guilty of driving under the influence and driving with an alcohol concentration of 0.08 or more, the State was required to prove that defendant drove or was in actual physical control of the car. 625 ILCS 5/11-501(a)(1)-(2) (West 2010); see also *People v. Lurz*, 379 Ill. App. 3d 958, 967 (2008). 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). Defendant concedes that the State presented sufficient evidence that she was under the influence of alcohol and that her blood alcohol concentration exceeded 0.08.

¶ 16 We can address defendant's first two arguments at the same time. First, defendant contends that she was not proved guilty beyond a reasonable doubt because the State relied on the problematic testimony of Officer Haynie. Specifically, she argues that Haynie's testimony that defendant drove the car during the traffic stop and with her son in the backseat was incredible and contrary to human nature. Second, defendant argues that it is highly unlikely that she would have been able to break away from the officer and try to drive away while Haynie stood less than two feet away from her.

¶ 17 Defendant cites *People v. Vasquez*, 233 Ill. App. 3d 517, 527 (1992), for the proposition that "a conviction based upon testimony that is improbable, unconvincing, and contrary to human experience requires reversal." She also cites *People v. Bryant*, 212 Ill. App. 3d 452, 454-55 (1991), as providing that a reviewing court is not bound to believe testimony that is inherently improbable or contrary to universal human experience. Defendant argues that Haynie's testimony regarding her conduct, *i.e.*, that she entered an automobile and attempted to drive away when confronted by the police was improbable and contrary to human experience. We disagree. Defendant behaved irrationally, irresponsibly, and in violation of the law. This behavior is not inconsistent with the clear evidence of defendant's intoxication; rather, evidence of irrational behavior bolsters a finding that defendant was under the influence of alcohol. Defendant points to her testimony that she chose not to drive after drinking and buckled her child into a car seat and argues, in essence, that she was safe and law-abiding, albeit intoxicated. First, there is no evidence of these matters in the record outside of defendant's own self-serving testimony. Second, and more importantly, this evidence is contradicted by Haynie's testimony that defendant was belligerent, profane, and reckless, swearing at police officers and attempting to exit a moving vehicle. Haynie's description of defendant's behavior is not contrary to human experience; it is merely contradicted by defendant's own depiction of her demeanor when intoxicated.

¶ 18 Defendant also argues it is unlikely that she would have been able to enter the car and begin driving when Haynie was standing only a couple of feet away from her. There is no basis for this argument. Although one might speculate that a police officer would maintain better control of an intoxicated suspect, it is contrary to neither the laws of physics nor outside the realm of human behavior, to find that defendant was able to momentarily elude Haynie's control and enter the car. Moreover, Haynie's testimony demonstrates that this was, at most, a very brief

escape attempt, and Haynie was able to reach inside the car to regain control of the situation after defendant had driven only a few inches. Therefore, we cannot conclude that Haynie's testimony was so improbable that we should disregard the jury's acceptance of it that is implicit in the verdict.

¶ 19 Finally, defendant argues that Haynie's testimony was contradicted by her and Wilson's testimony that the defendant did not try to drive the car and that Wilson kept the car keys from the time the car was pulled over. The trier of fact need not accept the defendant's version of events and raise them to reasonable doubt. See *People v. Villareal*, 198 Ill. 2d 209, 231 (2001), citing *People v. Ortiz*, 196 Ill. 2d 236, 267 (2001). As our supreme court explained in *Wheeler*, "the trier of fact is not required to disregard inferences which normally flow from the evidence and to search out all possible explanations consistent with innocence and raise them to the level of reasonable doubt." *Wheeler*, 226 Ill. 2d at 117. Similarly, it is the trier of fact's responsibility to determine witness credibility, the weight to be given to witness testimony, and resolve inconsistencies or conflicts in the evidence (*People v. Collins*, 106 Ill. 2d 237, 261-62 (1985)), and a jury's credibility finding is entitled to great weight (*Lurz*, 379 Ill. App. 3d at 968). Here, the jury considered the evidence, which included Officer Haynie's testimony as compared to defendant and Wilson's version of events. The jury, as evidenced by its verdict, found Haynie more credible, and this court cannot say that no trier of fact could have reached the same conclusion.

¶ 20 Accordingly, we affirm the judgment of the circuit court of Cook County.

¶ 21 Affirmed.