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IN THE
APPELLATE COURT OF ILLINOIS
SECOND DISTRICT

THE PEOPLE OF THE STATE)	Appeal from the Circuit Court
OF ILLINOIS,)	of Kane County.
)	
Plaintiff-Appellee,)	
)	
v.)	No. 10-CF-1434
)	
STEPHANIE R. FLORO,)	Honorable
)	Patricia Piper Golden,
Defendant-Appellant.)	Judge, Presiding.

JUSTICE SCHOSTOK delivered the judgment of the court.
Justices Hudson and Birkett concurred in the judgment.

ORDER

¶ 1 *Held:* The State proved defendant guilty beyond a reasonable doubt of DUI: despite defendant's evidence to the contrary, the jury was entitled to credit the State's circumstantial evidence that the key was in the ignition when defendant was in the driver's seat, thus establishing that defendant was in actual physical control of the vehicle.

¶ 2 Following a jury trial, defendant, Stephanie R. Floro, was convicted of unlawful possession of a controlled substance (720 ILCS 570/402(c) (West 2010)) and two counts of driving while under the influence of alcohol (DUI) (625 ILCS 5/11-501(a)(1), (a)(2) (West 2010)). The court sentenced her to, among other things, 24 months of supervision for DUI and 30 months of probation for

unlawful possession of a controlled substance. At issue in this appeal is whether the evidence established beyond a reasonable doubt that defendant was in actual physical control of the vehicle. We affirm.

¶ 3 The facts relevant to resolving this appeal are as follows. In April 2010, defendant lived with her father at 555 Covered Bridge Road in Elgin. On April 9, 2010, several of defendant's friends, including Jeffrey Zarate, came over to her house to, among other things, drink beer and "hang[] out."

¶ 4 Between 3:30 and 4 a.m. on April 10, 2010, defendant, Zarate, and two other boys got into the Dodge Durango that Zarate drove to defendant's house. The Durango belonged to Zarate's mother. Zarate and defendant testified that, once in the vehicle, Zarate put the key in the ignition, turned on the battery, removed the key, and then affixed the key to a belt loop on his pants.¹ Zarate and defendant stated that the engine was never started and that the key was not removed from Zarate's belt loop that morning after the battery was engaged. The radio was turned on and, according to Zarate, the radio would continue to play for around 15 minutes or until the door was opened. Zarate indicated that, if the key is left in the ignition and the door is opened, the car makes a "dinging" sound as a reminder that the key is in the ignition.²

¹A picture taken that morning of Zarate, who was wearing an untucked t-shirt, shows keys hanging below the t-shirt.

²A driver's manual contained in the common-law record confirms that the radio, in addition to other battery-operated features in a Durango, will remain on even when the key is not in the ignition.

¶ 5 At around 4 a.m., Officer Jason Barnard received a call concerning suspicious people at 545 Covered Bridge Road in Elgin. Officer Barnard proceeded to that address, and, as he approached, he heard loud thumping bass music. The music was coming from the Durango.

¶ 6 Officer Barnard parked his marked squad car behind the Durango and approached the vehicle on the driver's side.³ Officer Barnard saw defendant seated in the driver's seat. She was seated with her legs folded under her, facing the center console of the vehicle. Defendant was cutting a line of a white substance that was on top of a high school textbook.⁴ Officer Barnard announced that he was a police officer and told defendant and the three other occupants of the vehicle to put their hands on the ceiling of the Durango. None of the vehicle's occupants complied. Officer Barnard then hit the driver's side window with his hand to make sure that everyone in the vehicle heard him.

¶ 7 At that point, defendant tipped over the textbook. Then, "she went over to turn the music off, and she made a motion where the steering column is consistent with turning the keys, [and] the music went off prior to her putting her hands up on the ceiling." Although Officer Barnard saw defendant reach toward the ignition and move as if to turn the ignition off, he testified that he did not see the ignition or the key and that he never recovered any keys during his investigation.

¶ 8 Officer Barnard ordered defendant to unlock the doors, and Zarate, who was seated in the front-passenger seat, unlocked the doors for her. The officer then opened the driver's door and took defendant out of the car. When the door was opened, the officer did not hear any "secondary

³Zarate testified that he believed that the officer approached the vehicle on the passenger side.

⁴Defendant testified that the substance was Adderall, for which she had a prescription, but forensic tests performed on the white substance revealed that the substance was a mixture of acetaminophen and hydrocodone.

sounds,” like the noise a vehicle will make when the door is opened while the key is in the ignition.

Zarate testified that, when Officer Barnard opened the door, the radio turned off.

¶ 9 When defendant was removed from the vehicle, Officer Barnard saw Zarate make a movement toward the ignition of the vehicle and then to his waist. Officer Barnard handcuffed defendant and escorted her away from the Durango. He proceeded in this way because he was the only officer there, the occupants of the vehicle were refusing to comply with his orders, and, when that happens, there are “a lot of unknown factors” and “officers can get hurt in situations like that and do all the time.”

¶ 10 At 4:14 a.m., Officer Chad Thompson was dispatched to 545 Covered Bridge Road. When he arrived a short time later, he saw Officer Barnard walking defendant away from the Durango. Officer Thompson approached Officer Barnard, who told him that everyone else needed to be removed from the vehicle. Officer Thompson approached the Durango and removed Zarate. Soon thereafter, the remaining two passengers were taken out of the Durango.

¶ 11 Subsequently, defendant submitted to field sobriety tests and a Breathalyzer test. These tests confirmed that defendant was intoxicated. The jury found defendant guilty, and defendant filed a posttrial motion, claiming, among other things, that the State failed to prove beyond a reasonable doubt that she was in actual physical control of the vehicle. The court denied the motion and sentenced defendant. This timely appeal followed.

¶ 12 At issue in this appeal is whether defendant was proved guilty beyond a reasonable doubt of DUI. “A criminal conviction will not be set aside unless the evidence is so improbable or unsatisfactory that it creates a reasonable doubt of the defendant’s guilt.” *People v. Collins*, 106 Ill. 2d 237, 261 (1985). In considering a challenge to the sufficiency of the evidence, it is not the

function of this court to retry the defendant. *Id.* Rather, “ ‘the relevant question 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.’ ”(Emphasis in original.) *Id.* (quoting *Jackson v. Virginia*, 443 U.S. 307, 319 (1979)). The trier of fact must assess the credibility of the witnesses and the weight of their testimony, resolve conflicts in the evidence, and draw reasonable inferences from that evidence, and this court will not substitute its judgment for that of the trier of fact on these matters. *People v. Ortiz*, 196 Ill. 2d 236, 259 (2001).

¶ 13 To prove defendant guilty of DUI, the State was required to prove that defendant was in actual physical control of the Durango. 625 ILCS 5/11-501(a)(1), (a)(2) (West 2010). “A person need not drive to be in actual physical control of a vehicle, nor is the person’s intent to put the car in motion relevant to determining actual physical control.” *People v. Watson*, 175 Ill. 2d 399, 402 (1997). Rather, “[t]he issue of actual physical control is determined on a case-by-case basis giving consideration to factors such as whether the motorist is positioned in the driver’s seat of the vehicle, has possession of the ignition key and has the physical capability of starting the engine and moving the vehicle.” *Id.*

¶ 14 Evidence indicating that a defendant was in actual physical control of a vehicle may be direct or circumstantial. See *People v. Niemiro*, 256 Ill. App. 3d 904, 910 (1993). Circumstantial evidence is “proof of facts and circumstances from which the trier of fact may infer other connected facts which reasonably and usually follow according to common experience.” *People v. Stokes*, 95 Ill. App. 3d 62, 68 (1981). A criminal conviction may be based on circumstantial evidence as long as it satisfies proof beyond a reasonable doubt of the charged offense. *People v. Hall*, 194 Ill. 2d 305, 330 (2000). In a case based on circumstantial evidence, the trier of fact need not be satisfied beyond

a reasonable doubt as to each link in the chain of circumstances if all the evidence taken together satisfies the trier of fact beyond a reasonable doubt that the defendant is guilty. *Id.* When faced with both direct and circumstantial evidence, the trier of fact should not credit one type of evidence over the other based solely on the type of evidence it is. *People v. Francis*, 362 Ill. 247, 250 (1935). Rather, “[t]here is no legal distinction between direct and circumstantial evidence, so far as their weight and effect are concerned.” *Id.*

¶ 15 Here, the evidence revealed that defendant was seated in the driver’s seat when Officer Barnard arrived. Officer Barnard testified that, after defendant was made aware of his presence outside of the Durango, she reached toward the ignition, moved as if to turn off the ignition, and, when she did this, the radio that was playing very loudly turned off. Officer Barnard also testified that, after defendant was removed from the vehicle, Zarate reached over to the ignition and then to the area around his waistband. Pictures taken of Zarate reveal that there were keys hanging down from Zarate’s waist area. From this circumstantial evidence, a rational trier of fact could conclude that the key to the Durango was in the ignition when Officer Barnard approached and that, as such, defendant was in actual physical control of the vehicle.

¶ 16 Defendant claims that she was not proved guilty beyond a reasonable doubt because Officer Barnard’s testimony was incredible. Specifically, defendant claims that Officer Barnard, who testified that he was concerned about his safety, would have reacted if Zarate reached for the ignition and then to his waist after defendant was removed from the car. Because of this, defendant argues that her testimony and Zarate’s, which indicated that the key was not in the ignition, should have been credited. We disagree.

¶ 17 “[T]he testimony of a single witness, if positive and credible, is sufficient to convict, even though it is contradicted by the defendant.” *People v. Siguenza-Brito*, 235 Ill. 2d 213, 228 (2009). The mere fact that the evidence is contradictory or that a defendant argues that a witness was incredible is not a basis to reverse the defendant’s conviction. *Id.* Moreover, even if a defendant presents a version of events that supports his or her innocence, the trier of fact is not required to accept the defendant’s explanation, no matter how many witnesses may support it, and raise it to the level of reasonable doubt. *Id.* at 229.

¶ 18 The issue defendant advances squarely presents a question of credibility, with Officer Barnard relaying one version of the events with regard to whether the key was in the ignition and defendant and Zarate relaying a different one. It was for the jury to resolve the discrepancies in these witnesses’ testimony. *Id.* After reviewing the entire record in a light most favorable to the State, we determine that Officer Barnard’s testimony was sufficient to prove defendant’s guilt beyond a reasonable doubt. *Id.* at 230.

¶ 19 For these reasons, the judgment of the circuit court of Kane County is affirmed.

¶ 20 Affirmed.