

No. 1-12-1533

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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 525 209
)	TT 525 210
)	
LAKEESHA BUTLER,)	Honorable
)	Deborah J. Gubin,
Defendant-Appellant.)	Judge Presiding.

JUSTICE HALL delivered the judgment of the court.
Presiding Justice ROCHFORD and Justice REYES concurred in the judgment.

O R D E R

- ¶ 1 *Held:* Judgment entered on defendant's DUI conviction affirmed over challenge to the sufficiency of the evidence to sustain it.
- ¶ 2 Defendant, Lakesha Butler, was convicted of driving under the influence of alcohol (DUI), and sentenced to 24 months' court supervision. On appeal, she challenges the sufficiency of the evidence to sustain her conviction.

¶ 3 The evidence adduced at defendant's bench trial showed that about 5:15 a.m. on August 6, 2010, Chicago police officer Carla Jackson and her partner were on duty driving a squad car near the intersection of Adams Street and Cicero Avenue in Chicago. At that time, the officer observed a man standing in the middle of the street arguing with a woman who was sitting in a dark colored van. The man waved at the officers to get their attention, and they pulled their squad car to that area. Officer Jackson exited the vehicle and observed defendant seated in the driver's seat of the van, which had visible damage to the left front end. Nearby, the officer observed a vehicle belonging to the man, and saw that it was damaged on the right rear.

¶ 4 Officer Jackson approached defendant to "ensure that she was okay[.]" and noticed that her eyes were bloodshot, her speech was slurred, and she had a moderate smell of alcohol on her breath. Officer Jackson asked defendant for her driver's license and proof of insurance, but defendant was unable to produce a driver's license. The officer then asked defendant what occurred during the accident, and as defendant explained what happened, the officer could "smell the alcoholic beverage coming from her breath." Officer Jackson asked defendant if she had been drinking, and defendant responded that she had shared a pint with a friend.

¶ 5 Officer Jackson then asked defendant to perform field sobriety tests, and defendant refused, stating that she would "just plead guilty" instead. Officer Jackson took defendant into custody and interacted with her for about 90 minutes after arriving at the police station. During that time, the officer's observations regarding the smell of alcohol on defendant, and her speech, did not change. Defendant was offered a breathalyzer test, a urine test, and a blood test, and she refused all of them. Defendant stated that she did not want to take a blood test because she did not like needles, and, although she needed to urinate, she did not want to do the urine test.

¶ 6 Officer Jackson further testified that she has observed people under the influence of alcohol over 200 times as a police officer and over 100 times in her personal life, and in her opinion, defendant was under the influence of alcohol. On cross-examination, Officer Jackson acknowledged that she was not familiar with defendant's normal speech and that she did not question her as to whether she suffered from allergies or when she had last slept. The officer also stated that she could not tell how much or when defendant had consumed alcohol from the odor on her breath.

¶ 7 Based on this evidence, the trial court found defendant guilty of DUI. In doing so, the court specifically found the officer's testimony "very, very credible" and defendant's statement that she would just plead guilty instead of submit to the tests, "most damning[.]"

¶ 8 In this court, defendant contends that the evidence was insufficient to prove her guilty of DUI beyond a reasonable doubt because the State did not prove that she drove, or was in actual physical control of the vehicle.

¶ 9 When considering a challenge to the sufficiency of the evidence, the relevant question on appeal 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. *People v. Hall*, 194 Ill. 2d 305, 330 (2000). It is the responsibility of the trier of fact to determine the weight to be given to the witnesses' testimony, their credibility and the reasonable inferences to be drawn from the evidence. *People v. Brown*, 362 Ill. App. 3d 374, 377 (2005). Although the determination of the trier of fact is not conclusive, its findings on witness credibility are entitled to great weight, and this court will reverse a conviction only where the

evidence is so unreasonable, improbable or unsatisfactory as to justify a reasonable doubt of defendant's guilt. *People v. Smith*, 185 Ill. 2d 532, 542 (1999).

¶ 10 In this case, defendant was found guilty of DUI, pursuant to section 11-501(a)(2) of the Illinois Vehicle Code (Code) (625 ILCS 5/11-501(a) (2) (West 2008)). To establish that offense, the State must prove that defendant drove or was in actual physical control of a vehicle while under the influence of alcohol.

¶ 11 Defendant does not contest the "influence of alcohol" element of the offense, nor can she plausibly do so given the testimony of the arresting officer as to her condition. As Officer Jackson spoke to defendant about what happened, she observed that defendant's eyes were bloodshot, her speech was slurred, and she had a moderate smell of alcohol on her breath. Defendant could not provide a driver's license, refused to submit to field sobriety, breathalyzer, blood, or urine tests, and indicated to the officer that she would "just plead guilty" instead. In addition, she admitted to the officer that she had shared a pint with a friend. These facts were sufficient to support the conclusion that defendant was then under the influence of alcohol. *People v. Weathersby*, 383 Ill. App. 3d 226, 230 (2008).

¶ 12 Defendant instead focuses on the evidence showing that she drove or was in actual physical control of the van. She claims that the only testimony on this element came from Officer Jackson, who did not see the accident or defendant driving. She also claims that there was insufficient evidence to show that an accident occurred at all, noting that the officer did not testify about the relative positions of the vehicles, the height of the damage, the type of damage, or that paint from the other vehicle had been found on defendant's van.

¶ 13 We initially note that in determining whether the State proved beyond a reasonable doubt that defendant was driving or “in actual physical control” of a motor vehicle, the observation of a defendant in the act of driving is not necessary for a DUI conviction. *People v. Lurz*, 379 Ill. App. 3d 958, 969 (2008). A conviction for DUI may be based upon circumstantial evidence, *i.e.*, proof of certain facts and circumstances from which the trier of fact may infer other connected facts which usually and reasonably follow from the human experience and is not limited to facts that may reasonably have alternative, innocent explanations. *People v. Diaz*, 377 Ill. App. 3d 339, 345 (2007).

¶ 14 In this case, Officer Jackson testified that she was flagged down by an individual who was standing in the middle of the road and arguing with defendant, who was seated in the driver's seat of a van. As the officer approached, she observed that the van had damage to the left front end, and that the other driver's vehicle, located nearby, had congruent damage to the right rear, allowing the inference that an accident had occurred between them. Officer Jackson's initial inquiry to defendant concerned her well-being, and in this process, the officer noted defendant's physical condition, the lingering smell of alcohol, and her refusal to submit to any of the sobriety tests offered. There was no indication that anyone other than defendant and the other driver were on the scene or that defendant told the officer that she was not the driver. To the contrary, she indicated her willingness to "plead guilty" instead of submitting to the sobriety tests. The totality of this evidence, and the reasonable inferences derived there from, were more than sufficient to allow the trier of fact to conclude that defendant was the driver of the van. *People v. Slinkard*, 362 Ill. App. 3d 855, 858 (2005).

¶ 15 Defendant disagrees, and further claims that the evidence was insufficient to sustain her conviction because there was no testimony that she was in possession of the keys to the van, or that the van was running when the officer arrived. Although such evidence can establish that defendant was driving or in actual physical control of a motor vehicle, the absence of such facts does not require a conclusion that defendant was not the driver. *Slinkard*, 362 Ill. App. 3d at 859. Rather, in deciding whether defendant was the driver, courts must consider the specific facts presented in each case. *Slinkard*, 362 Ill. App. 3d at 859. Here, as set forth above, we have concluded that the State established this element beyond a reasonable doubt.

¶ 16 Defendant finally presents a number of scenarios to explain away the evidence suggesting that she was the driver. Specifically, defendant contends that if there was an accident, her vehicle could have been stationary, while the other driver's vehicle backed into hers. Defendant also contends that her statement that she would "just plead guilty" is not an admission that she was driving under the influence of alcohol specifically, presumably arguing that defendant could have been intending to admit to some other, lesser crime. We note, however, that defendant's proposed hypotheses are not supported by the evidence or actual human experience, and that the trier of fact is not required to accept any possible explanation compatible with the defendant's innocence and elevate it to the status of reasonable doubt. *People v. Siguenza-Brito*, 235 Ill. 2d 213, 229 (2009); *Hall*, 194 Ill. 2d at 332.

¶ 17 For the reasons stated, we affirm the judgment of the circuit court of Cook County.

¶ 18 Affirmed.