

No. 1-13-0304

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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. YT 626 582
)	
SERGIO SANDOVAL,)	Honorable
)	Donald R. Havis,
Defendant-Appellant.)	Judge Presiding.

JUSTICE PIERCE delivered the judgment of the court.
Presiding Justice Harris and Justice Liu concurred in the judgment.

O R D E R

- ¶ 1 *Held:* The trial court erred in relying on facts not in evidence, but the error was harmless. The State presented sufficient evidence to prove defendant guilty of driving under the influence of alcohol.
- ¶ 2 Following a bench trial, defendant Sergio Sandoval was found guilty of driving under the influence of alcohol (DUI) and was sentenced to 24 months of conditional discharge, subject to additional conditions, fines, and fees. Defendant appeals his conviction, contending: (1) he was

denied due process because the trial court based its finding of guilt on evidence that was not supported by the record; and (2) the evidence was insufficient to support a guilty finding.

¶ 3 At defendant's trial, Yeemie Tiawhan testified that at about 8 p.m. on March 17, 2012, while driving with his wife and three children in the car, he stopped his vehicle and placed his hazard lights on so his wife could secure their son in his car seat. Defendant approached Tiawhan's vehicle and verbally and physically accosted him, reaching his arm into the vehicle and attempting to open Tiawhan's car door. Defendant returned to his own vehicle, Tiawhan's wife called the police, and the couple began to drive away because Tiawhan was afraid that defendant would harm them. Defendant then rear-ended Tiawhan's vehicle. The collision occurred near 8200 South Harlem Avenue in Chicago. When the police arrived, an officer told both drivers to move their vehicles off of the road and into a nearby bank parking lot to avoid blocking traffic.

¶ 4 Officer Quinton Jackson testified that he arrived at the parking lot to investigate the collision. When Jackson spoke with defendant, he smelled an odor of an alcoholic beverage on defendant's breath. Defendant admitted to Jackson that he had consumed a few beers "throughout the night" while attending a political function. Jackson then conducted standardized field sobriety tests.

¶ 5 Jackson conducted the "horizontal gaze nystagmus test" (HGN) and observed signs of nystagmus prior to 45 degrees and onset of nystagmus at maximum deviation, and determined that defendant showed signs of impairment. He explained that defendant's eyes "did track but they did show signs of nystagmus." Jackson testified that while alcohol consumption is only one of many reasons that jerking of the eye may occur, it nevertheless "leads to the conclusion that

alcohol consumption might be the cause.” Jackson also conducted the “walk and turn test” and testified that defendant showed signs of impairment because defendant did not walk heel to toe as instructed on two of the steps during the first pass and on the return pass, and he pivoted incorrectly while turning. During the “one legged stand test,” defendant showed signs of impairment because he put his foot down once, staggered backwards, stopped counting after the number eight, and it took him 40 seconds to count to 30. Jackson also had defendant perform the finger-to-nose test, which is not a standardized field sobriety test. Defendant hesitated with both hands and did not touch his nose with the correct finger as instructed by the officer.

¶ 6 Jackson placed defendant under arrest for driving under the influence of alcohol. Based on Jackson’s professional experience and defendant’s performance on the field sobriety tests, Jackson concluded that defendant was unfit to drive due to alcohol impairment. He read defendant the “Warnings to Motorist” and asked defendant to submit to a Breathalyzer test. Defendant refused the test, stating that he needed to “watch out for himself.”

¶ 7 Defendant presented his own testimony and that of and his ex-wife, Rebecca Araszewski. Defendant testified that after the vehicle collision with Tiawhan, an officer who was already on the scene, four car lengths behind him, spoke to defendant and told him to follow the officer off of the roadway, to a nearby bank. Driving his own car, defendant followed the officer for about one block to the bank parking lot. There, Officer Jackson arrived and investigated defendant for driving under the influence of alcohol. Defendant testified that he told Jackson he had a few beers, but that he had the beers earlier in the afternoon between noon and 4 p.m.; the accident occurred at 8 p.m. Defendant consumed the beers at a political event and when the event ended at 4 p.m. defendant drove to his ex-wife's house to spend time with his daughter. Defendant did

not drink while at his ex-wife's and after he left her home, the collision occurred. Defendant refused to take the Breathalyzer test because he did not trust the technology of the test.

¶ 8 Araszewski testified that defendant arrived at her house at about 4:30 p.m. and left around 7:30 p.m. While there, defendant did not consume any alcoholic beverages. Instead, he spent time with their daughter. Araszewski had known defendant for 10 years and had observed him intoxicated during that time. When he left her home, defendant did not appear intoxicated. The court then asked Araszewski where she lived and whether defendant told her where he was going when he left her home. She stated that she lived at 3604 West 116th Place and did not know where defendant was going, but "assumed that he was just going home." On redirect, Araszewski testified that defendant lived at 6153 South Major.

¶ 9 When making its findings, the trial court stated:

"The Court has heard the testimony of the witnesses here and also had a chance to ask a couple questions. The reason that the Court asked those questions is based upon the defendant's address on the driver's license stating that he lives on 116th Place, 3600-block west and he is at Harlem, at 8200, the Court was wondering why was he at that address. And when the other witness [Araszewski] stated that he lived on Major I even think I question it even more. Because if he was over east at that point, there is [sic] other ways to get back to Major besides going all the way to Harlem to get to Major, which doesn't explain the four hours, unless the four hours he was at another place and not at the witness's house."

The trial court then stated that it believed Jackson testified truthfully and precisely, that defendant failed the field sobriety tests, especially the one-legged stand test where Jackson

testified that defendant fell backwards during the test. It found defendant guilty of DUI. The trial court later denied defendant's posttrial motion to vacate the guilty finding and for a new trial and sentenced him to 24 months of conditional discharge.

¶ 10 Defendant first contends that he was denied due process of law where the trial court based its ruling on a clearly erroneous finding of fact that was not supported by the evidence, and then compounded the error by relying on his own off-the-record knowledge of city streets.

¶ 11 Defendant and his ex-wife, Rebecca Araszewski, both testified that defendant was at Araszewski's house for several hours before the accident and did not consume alcohol during that time. In rejecting this testimony, the court noted the relative geographical locations of Araszewski's house, defendant's house and the scene of the accident and stated that defendant would not have had to go to 8200 South Harlem, where the accident occurred, to get from Araszewski's house to his house. According to the court, this indicated defendant may have been somewhere other than Araszewski's house prior to the accident. The problem is that there was no testimony that defendant was going home from Araszewski's house. After she was questioned by the parties, the court asked Araszewski if defendant told her where he was going when he left her house. She answered, "No. I assumed that he was just going home." The court then asked, "So, you don't know where he was going at that point?," and Araszewski answered, "No." Defendant was not asked where he was going when he left Araszewski's house. Yet, in stating its findings, the court relied in part on its unsupported conclusion that defendant was going home.

¶ 12 Generally, a trial court's misunderstanding of or failure to accurately recall the evidence presented at trial constitutes a due process violation. See *People v. Simon*, 2011 IL App (1st)

091197, ¶91. Further, a defendant does not receive a fair trial when the trial court fails to accurately recall evidence essential to, or "the crux of," the defense. *People v. Bowie*, 36 Ill. App. 3d 177, 180 (1976). However, "[a]fter finding a due process violation, an appellate court must still consider whether the violation was harmless." *People v. Williams*, 2013 IL App (1st) 111116, ¶ 93.

¶ 13 Here, the crux of the defense was that although defendant drank a few beers earlier in the day, he spent several hours at his ex-wife's house where he did not drink alcohol and did not appear to be intoxicated. The court's comments showed that it mistakenly believed there was evidence showing defendant was on his way home, and then rejected the defense position, in part, because defendant was not taking the most direct or logical route home from Araszewski's house. If that were the last word on the matter, we would agree that defendant had been deprived of due process. However, the record shows that defendant raised this issue in his posttrial motion, and the court expressly addressed it in the hearing on the motion. The court acknowledged that Araszewski merely assumed that defendant was headed home, and explained that it initially relied on that assumption because "[p]eople just don't assume things unless they talk to people necessarily." The court then stated, "We are going to take her credibility as far as that goes," and denied the motion. While this last statement is ambiguous, the record shows that in denying the motion, the court gave other reasons for rejecting Araszewski's testimony, namely, defendant's conduct at the time of the accident and the police officer's testimony, which it found credible. The court found that it was not believable that defendant spent four hours at Araszewski's home without drinking, when he smelled of alcohol at the accident scene and failed the sobriety tests administered by the officer. Under these circumstances, defendant has not

established that the court's initial error in relying on facts not in evidence deprived him of due process of law.

¶ 14 Defendant also argues the evidence was insufficient to prove him guilty of DUI. 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.

¶ 15 To prove defendant guilty of driving under the influence pursuant to section 501(a)(2) of the Illinois Vehicle Code (625 ILCS 5/11-501(a)(2) (West 2012)), the State was required to prove that defendant drove or was in actual physical control of any vehicle while 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). 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).

¶ 16 Defendant does not dispute that he drove his vehicle. Officer Jackson testified that he smelled an odor of alcohol on defendant's breath, defendant stated he drank a few beers, and

defendant failed all three field sobriety tests administered by Jackson. Defendant also admitted at trial that he drank beers at a political event. Moreover, defendant refused to take a Breathalyzer test, which is evidence of a consciousness of guilt. *Weathersby*, 383 Ill. App. 3d at 230 (refusal to take a breath alcohol test is probative of consciousness of guilt).

¶ 17 Defendant, however, argues that his refusal to take a Breathalyzer test was not due to his consciousness of guilt, but rather was due to his distrust of the test's methodology. Defendant's argument is one of credibility that the trial court resolved in the State's favor. The trial court also found Officer Jackson to be credible, stating that he testified truthfully and precisely. It is the trier of fact's responsibility to determine witness credibility, the weight to be given to witness testimony, and to resolve inconsistencies or conflicts in the evidence. *People v. Collins*, 106 Ill. 2d 237, 161-62 (1985). We will not disturb the trial court's credibility findings here where the evidence was not so unreasonable, improbable, or unsatisfactory that it created a reasonable doubt of guilt. *Beauchamp*, 241 Ill. 2d at 8; see also *People v. Elliot*, 337 Ill. App. 3d 275, 281 (2003) (officer's testimony as to the defendant's appearance, speech, or conduct, that the officer detected the odor of an alcoholic beverage on the defendant's person, and that the defendant failed a field sobriety test is all relevant evidence of the defendant's impairment).

¶ 18 Finally, we note that defendant also disputes Jackson's conclusions regarding defendant's performance on the field sobriety tests and argues there was no evidence that he was not safely in control of his vehicle. Defendant is simply asking this court to reweigh the evidence, which is not this court's function. *Villareal*, 198 Ill.2d 209, 231 (2001). Therefore, we conclude that the State presented sufficient evidence to prove defendant guilty beyond a reasonable doubt.

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¶ 19 Based on the foregoing, we affirm the judgment of the circuit court of Cook County finding defendant guilty of driving under the influence of alcohol.

¶ 20 Affirmed.