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IN THE  
APPELLATE COURT OF ILLINOIS  
SECOND DISTRICT

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VILLAGE OF ROUND LAKE,	)	Appeal from the Circuit Court
	)	of Lake County.
Plaintiff-Appellee,	)	
	)	
v.	)	No. 11-DT-1049
	)	
LUBOV BOGUSLAVSKY,	)	Honorable
	)	Joseph R. Waldeck,
Defendant-Appellant.	)	Judge, Presiding.

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PRESIDING JUSTICE BURKE delivered the judgment of the court.  
Justices Hutchinson and Birkett concurred in the judgment.

**ORDER**

¶ 1 *Held:* In DUI prosecution, the State proved beyond a reasonable doubt that defendant was unable to think and act with ordinary care as a result of the consumption of alcohol.

¶ 2 A jury found defendant, Lubov Boguslavsky, guilty of driving under the influence of alcohol (DUI) (see 625 ILCS 5/11-501(a)(2) (West 2012)), and the trial court imposed a sentence of 12 months' court supervision. On appeal, defendant challenges the sufficiency of the evidence, arguing that the State failed to prove beyond a reasonable doubt that she was unable to think and act with ordinary care as a result of the consumption of alcohol. We affirm.

¶ 3 I. BACKGROUND

¶ 4 On May 4, 2011, Round Lake police officer David Cheney issued defendant a traffic citation for DUI, and Officer Kevin Furlan assisted with the arrest. At trial, the State corroborated the officers' testimony with a dashboard recording, which contains video and audio.

¶ 5 Officer Cheney testified that, at 8:36 p.m., he observed defendant sitting alone in a minivan in a parking lot near a store called Miz Liquors. Defendant drove out of the parking lot, and Officer Cheney followed her vehicle.

¶ 6 The vehicle was stopped at a traffic light, and Officer Cheney had pulled to within 10 to 15 car lengths when the light turned green. The officer testified that, when the signal changed, the vehicle "proceeded forward a very short distance and then stopped for a moment and then turned right." Officer Cheney testified that, as the minivan turned, the passenger-side tires crossed the "fog line," a line demarcating the shoulder on the right-side curve of the intersection.

¶ 7 Officer Cheney noticed "some slight weaving" as defendant drove, and her vehicle was traveling 10 to 15 miles-per-hour slower than the posted speed limit of 55. After about a half mile, defendant entered a left turn lane where both driver's-side tires crossed the yellow median line. Defendant turned left, and Officer Cheney activated his emergency lights and spotlight. Officer Cheney followed defendant 17 seconds longer, and when she did not pull over, he activated his siren. About five seconds later, defendant activated her left turn signal but pulled to the right side of the road. The video shows a sign prohibiting left turns onto a service road at that point.

¶ 8 Officer Cheney approached the vehicle and spoke to defendant. He noticed that her eyes were glassy but not bloodshot, and her breath smelled strongly of alcohol. Defendant told the officer that she did not speak English. Officer Cheney noted that defendant had a strong accent, but he still detected lethargic speech. He asked for her driver's license, and defendant shuffled

through the cards in her wallet at least twice but could not find it. Officer Furlan arrived to assist in the traffic stop and found the license in defendant's wallet following her arrest.

¶ 9 Officer Cheney asked defendant if she had anything to drink, to which she responded that she had one shot of vodka. He asked her to exit the vehicle. Defendant complied but caught her finger in the door as she closed it.

¶ 10 Officer Cheney attempted to administer three sobriety tests, which involve "multitasking" in physical and mental performance, including following directions. The area was illuminated only by a squad car's headlights and spotlight; but the road was level, dry, and free of debris.

¶ 11 First, for the horizontal gaze nystagmus (HGN) test, Officer Cheney asked defendant to follow a pen with her eyes without moving her head. The officer explained to defendant that his demonstration of the test would hurdle any potential language barrier. Defendant could not watch the pen without moving her head back and forth, so Officer Cheney could not complete the test. Officer Cheney asked if defendant understood the directions, and she replied "pen."

¶ 12 Second, Officer Cheney instructed defendant to perform the one-legged stand test. He first asked her to stand with her feet together and her arms at her side while he explained the test, but defendant moved and stumbled during the directions. Officer Cheney told defendant she could count in any language she preferred while holding up her leg. Officer Cheney then demonstrated the test, and defendant attempted it herself. She raised her foot briefly but then put it down. She tried several times but stopped, never holding up her foot more than momentarily.

¶ 13 Third, Officer Cheney administered the walk-and-turn test. He asked defendant to stand heel to toe with arms at her side so he could give further directions, but she could not maintain the position. He then demonstrated the steps he wanted defendant to take and instructed her to walk heel to toe with her arms at her side. Defendant started walking before Officer Cheney

finished his directions, and he asked her to stop so he could finish explaining the test. Officer Cheney testified that defendant took 12 steps, never heel-to-toe as instructed, with a couple steps to the right of the line. Defendant then took 13 steps to return. Officer Cheney again asked defendant how much she had to drink, and she replied that she had two shots of vodka. Officer Cheney arrested defendant, and a search of the vehicle disclosed an empty Semkov vodka in the back seat. The evidence at trial does not indicate the size of the bottle.

¶ 14 Officer Cheney admitted on cross-examination that, several times during the instructions of the three tests, defendant said that she did not understand what the officer was asking her to do. She also mentioned that she was tired from working outside that day. Officer Cheney testified that he struggled to get defendant to do what he wanted her to do. He also admitted that, although he demonstrated each test, he did not issue every direction required by the one-legged stand and walk-and-turn tests because he was “a little bit out of practice.”

¶ 15 During the booking process, defendant was upset, angry, and uncooperative. As Officer Cheney transported defendant to the booking location, defendant cried and blamed him for the arrest, speaking in both English and Russian. When Officer Cheney requested that she take off jewelry to be inventoried, she said she would throw it at him. She also raised her hand as if to hit Officer Cheney, but she did not actually hit him. She also yelled at the officers while Officer Furlan instructed her on the use of the Breathalyzer.

¶ 16 Officer Furlan testified that he directed defendant to blow into the Breathalyzer, but she breathed very weakly for each sample. None of the samples yielded a reading. At the station, Officer Furlan observed that defendant’s eyes were glassy.

¶ 17 Based on their observations that evening, Officers Cheney and Furlan testified that defendant was intoxicated. Both officers had experience with DUIs. At the time of defendant’s

arrest, Officer Cheney had made 15 DUI arrests and observed 30 to 40 more. Officer Furlan had also made about 15 DUI arrests, and assisted in about 20 more.

¶ 18 Dr. Elena Edwards, defendant's physician, testified for the defense. Dr. Edwards testified that she has seen defendant about three to four times per year since July 2009 and speaks to her only in Russian. In January 2010, defendant came to Dr. Edwards complaining of lower back pain radiating to her right leg. Dr. Edwards described her pain as "chronic" and opined that the pain might be the result of sciatic nerve damage, which could affect defendant's ability to walk. Dr. Edwards admitted that defendant did not discuss the condition in subsequent visits. Two months before the arrest, defendant denied experiencing any pain. Officer Cheney testified that, before booking, defendant did not complain of any pain or chronic physical impairment.

¶ 19 On August 2, 2012, the jury found defendant guilty of DUI. She was sentenced to 12 months' court supervision, ordered to attend alcohol counseling, and issued several fines. She filed a motion to modify the sentence with regard to certain fines, and the sentence was modified on January 15, 2013. Notice of appeal was timely filed that same day.

¶ 20

## II. ANALYSIS

¶ 21 Defendant argues that her conviction for DUI must be reversed because the State failed to prove her guilty beyond a reasonable doubt. Defendant was convicted of a violation of section 11-501(a)(2) of the Vehicle Code, which provides that "[a] person shall not drive or be in actual physical control of any vehicle within this State while \*\*\* under the influence of alcohol." 625 ILCS 5/11-501(a)(2) (West 2012). A defendant is under the influence when, as a result of consuming alcohol or any other intoxicating substance, " 'his mental or physical faculties are so impaired as to reduce his ability to think and act with ordinary care.' " *People v. Gordon*, 378

Ill. App. 3d 626, 631 (2007) (quoting Illinois Pattern Jury Instructions, Criminal, No. 23.29 (4th ed. 2000)). The trial court instructed the jury according to this well-settled principle.

¶ 22 To convict a defendant of DUI, the State must prove beyond a reasonable doubt that the defendant was under the influence of alcohol to the point where he could not drive safely. *People v. Weathersby*, 383 Ill. App. 3d 226, 229 (2008); *Gordon*, 378 Ill. App. 3d at 631-32. The State may use circumstantial evidence to prove a defendant guilty of DUI. *People v. Diaz*, 377 Ill. App. 3d 339, 345 (2007).

¶ 23 “When reviewing the sufficiency of the evidence, ‘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.) *People v. Bishop*, 218 Ill. 2d 232, 249 (2006) (quoting *Jackson v. Virginia*, 443 U.S. 307, 319 (1979)); *People v. Collins*, 106 Ill. 2d 237, 261 (1985). “Testimony may be found insufficient under the *Jackson* standard, but only where the record evidence compels the conclusion that no reasonable person could accept it beyond a reasonable doubt.” *People v. Cunningham*, 212 Ill. 2d 274, 280 (2004).

¶ 24 Our role is not to retry the defendant, but to examine the record without substituting our judgment for that of the trier of fact on the weight of the evidence, witness credibility, and conflicting testimony. See *Cunningham*, 212 Ill. 2d 274, 279 (2004); *People v. Kotlarz*, 193 Ill. 2d 272, 298 (2000); *Weathersby*, 383 Ill. App. 3d at 229. Our duty is to carefully examine the evidence while giving due consideration to the fact that the court and jury saw and heard the witnesses. The testimony of a single witness, such as the arresting officer, is sufficient to convict if the testimony is positive and the witness is credible. *People v. Smith*, 185 Ill. 2d 532, 541 (1999); *People v. Janik*, 127 Ill. 2d 390, 402-03 (1989) (arresting officer’s testimony about the

defendant's odor of alcohol, watery eyes, and poor performance on the field-sobriety tests supported DUI conviction). The credibility of a witness is within the province of the trier of fact, and the finding of the jury on such matters is entitled to great weight, but the jury's determination is not conclusive. We will reverse a conviction only where the evidence is so unreasonable, improbable, or unsatisfactory as to create a reasonable doubt of the defendant's guilt. *Smith*, 185 Ill. 2d at 542.

¶ 25 Defendant argues that the State failed to prove beyond a reasonable doubt that she failed to act with "ordinary care" while operating her vehicle. Defendant argues that (1) her driving was unremarkable, (2) the sobriety tests were "largely meaningless" because she received inadequate instructions in a language she did not understand, and (3) her unsteadiness during the tests can be attributed to a reduced range of motion caused by chronic sciatic nerve damage in her back and leg. At trial, the jury had the opportunity to hear from Officers Cheney and Furlan, as well as Dr. Edwards. The jury also viewed and listened to the recording from Officer Cheney's dashboard camera, which showed defendant's driving, the traffic stop, and the three sobriety tests performed. We conclude that the evidence is not so insufficient that a reasonable person could not find that defendant was under the influence of alcohol and unable to act with ordinary care while operating her vehicle.

¶ 26 First, defendant claims that the State failed to prove her guilty beyond a reasonable doubt because her driving was "unremarkable." A jury may convict a motorist of DUI even if he does not commit a traffic violation. *People v. Sturgess*, 364 Ill. App. 3d 107, 115 (2006). However, in this case, the jury heard Officer Cheney's testimony about the vehicle's "slight weaving" and crossing of the fog line and the yellow line in the left turn lane. In finding defendant guilty, the jury implicitly credited Officer Cheney's testimony as well as the dashboard video recording of

defendant's driving, which corroborates the officer's observations. We note that defendant does not challenge the traffic stop as improper, and she concedes that her driving over the lines "technically qualify[ied] as violations."

¶ 27 Second, defendant argues that the sobriety tests were "largely meaningless" because Officer Cheney gave incomplete instructions and defendant could not comprehend the instructions he actually provided. The jury reasonably could conclude from the evidence that, although Russian is defendant's first language, she could speak and comprehend English well enough to communicate with the officers. Officer Cheney testified that defendant spoke in both Russian and English. He also told her that, during the one-legged stand test, she could count aloud in Russian if she preferred. Moreover, the officers demonstrated the tests themselves to supplement their verbal directions, and defendant still could not perform the physical tests or submit to the Breathalyzer analysis as instructed. The jury was free to weigh Officer Cheney's testimony and consider the video of defendant attempting to complete the tests.

¶ 28 Even disregarding defendant's driving and performance on the sobriety tests, the State presented substantial circumstantial evidence that defendant was under the influence of alcohol. Both officers testified that defendant had glassy eyes, an odor of alcohol, lethargic and slurred speech, and an empty vodka bottle in her vehicle. DUI convictions can be based solely on circumstantial evidence of this type. See *Weathersby*, 383 Ill. App. 3d at 229-30 (DUI conviction affirmed based on officer's testimony about glassy eyes, thick-tongued speech, and odor of alcohol on his breath); *Diaz*, 377 Ill. App. 3d 339, 345 (2007) (DUI conviction affirmed based on officer's testimony about bloodshot eyes, "mumbled" speech, alcohol odor, and a balance problem); *People v. Mathews*, 304 Ill. App. 3d 514, 516 (1999) (DUI conviction

affirmed based on officer's testimony about appearance of intoxication, odor of alcohol, speech, balance, and walking problems).

¶ 29 Third, the jury was in the best position to assess the credibility of Dr. Edwards regarding defendant's medical condition and determine how it might affect her performance during the physical tests. The jury could have reasonably found Dr. Edwards credible but nevertheless determined that defendant could not complete the tests because she was under the influence of alcohol.

¶ 30 "Examining the trial evidence in the light most favorable to the State, we believe a rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." See *People v. Jordan*, 218 Ill. 2d 255, 270 (2006). Because a reasonable fact finder could have found that defendant was driving under the influence of alcohol, the evidence was sufficient to sustain the DUI conviction.

¶ 31

### III. CONCLUSION

¶ 32 For the preceding reasons, the judgment of the circuit court of Lake County is affirmed.

¶ 33 Affirmed.