2015 IL App (1st) 123709-U

FIFTH DIVISION
MAY 29, 2015

No. 1-12-3709

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. TW 394 874
	)	
JANETTE RIVERA,	)	Honorable
	)	Susan Kennedy Sullivan,
Defendant-Appellant.	)	Judge Presiding.

JUSTICE GORDON delivered the judgment of the court.
Presiding Justice Palmer and Justice Reyes concurred in the judgment.

O R D E R

¶ 1 Held: The State presented independent corroborating evidence to support defendant's extrajudicial admissions to prove the *corpus delicti* for driving with a blood-alcohol concentration of .08 or above and driving under the influence of alcohol, among other related charges, as well as sufficient evidence to prove beyond a reasonable doubt that defendant was in actual physical control of an automobile.

¶ 2 After a bench trial, defendant Janette Rivera was convicted of driving with a blood-alcohol concentration of .08 or above, driving under the influence of alcohol, driving without a driver's license, failure to produce a driver's license and driving negligently. On appeal,

defendant contends: (1) the State failed to prove the *corpus delicti* of the driving offenses; and (2) even if the State did prove the *corpus delicti* of the driving offenses, it did not prove beyond a reasonable doubt that defendant was in actual physical control of the vehicle to support the various driving charges.

¶ 3 At trial, Robert Tiberi, Jr., a paramedic with the Chicago Fire Department, testified that around 1:57 a.m. on November 20, 2011, he responded to a motor vehicle accident near the intersection of West 47th Street and South Kedzie Avenue in Chicago. When he arrived at the scene, he observed defendant outside the vehicle, as well as police officers, his partner and some bystanders.

¶ 4 Tiberi began to treat defendant for a right collarbone injury and asked her how she obtained the injury. Defendant told Tiberi that she was the "only occupant of the vehicle" and that she did not "see" the red light. Tiberi and his partner then transported defendant to Holy Cross Hospital. Tiberi did not treat anyone else at the scene of the accident. On cross-examination, Tiberi testified that if someone was in the passenger side of the vehicle with the seatbelt on during the same vehicle crash, he opined that the person's right collarbone would be injured.

¶ 5 Officer Larry Branch, Jr., testified that he received a call of a motor vehicle crash at the corner of West 47th Street and South Kedzie Avenue. Although Branch could not recall the exact time he arrived at the scene, he thought it was approximately 4 a.m. Defendant was not at the scene. He testified that the certified title indicated the vehicle belonged to defendant and Verna Banel as co-owners. As Branch investigated the accident, he noticed ice and cups in the backseat

of the vehicle on the floor as well as a wet spot on the passenger's seat. He also noted that the vehicle, a 2010 Dodge Charger, had an odor of alcohol. Branch noticed that the damage was limited to the front of the vehicle where it had crashed into a protective railing. The damage included a smashed-in front hood and a cracked windshield with some splattered blood on the driver's side. Both front airbags–driver's side and passenger's side–had deployed. Branch then went to Holy Cross Hospital to speak with defendant.

¶ 6 At the hospital, Branch observed that defendant, who was in a hospital bed, had "bloodshot red" eyes. Defendant told Branch that she was "driving southbound on Kedzie and that she was about to a [*sic*] make a right[-]hand turn at 47th" Street when she lost control of the vehicle and crashed into the railing. Defendant also stated that prior to the accident, she had been drinking at a friend's house and had three to four shots of Hennessy. Due to defendant's injuries, Branch could not perform any field sobriety tests.

¶ 7 After medical personnel finished treating and drawing blood from defendant, Branch transported her to the police station for further questioning. Branch testified that defendant repeated her account of the accident, that she was driving the vehicle and that she had consumed alcohol prior to the accident at a friend's house. Defendant also told Branch that she was a co-owner of the vehicle. He testified that he and his partner contacted and investigated Banel, the other co-owner, and determined that she had not been involved in the vehicle crash nor was she at the hospital. Defendant told Branch that she did not have insurance on the vehicle or a valid driver's license, the latter of which was confirmed by a certified abstract obtained from the Secretary of State's office. Based on Branch's observation of defendant, specifically her

"bloodshot eyes," "slurred speech," and what he found to be an incomplete explanation of the vehicle accident, Branch opined that defendant was driving a vehicle under the influence of alcohol.

¶ 8 On cross-examination, Branch testified that he observed that defendant's head was "reddish" and had "minor bruising." However, he admitted that in defendant's booking photograph taken after she was arrested, the redness to her head and minor bruising were no longer visible. He noted that he could not observe the top of defendant's head in the photograph due to her hair. He also testified that it was possible defendant's bloodshot eyes could have been a result of crying. He admitted that on his Alcohol Drug Influence Report (ADIR), he marked that defendant had been crying and failed to mark that defendant had slurred speech. In addition, he did not check any boxes–"strong, moderate or slight"–on the ADIR relating to an odor of alcohol coming from defendant.

¶ 9 Sandra Martinez, an emergency room nurse at Holy Cross Hospital, testified that she was working on November 20, 2011, and treated defendant. Martinez drew defendant's blood based on a doctor's order and treated her collarbone injury. She testified that the results from the laboratory on the blood work revealed defendant's blood serum level was 138 ethanol milligrams per deciliter or .138%. Prior to trial, the trial court granted the State's motion *in limine* to take judicial notice that when using the conversion factor set by law, a blood serum level percentage of .138 is equivalent to a blood-alcohol concentration of .116. Defendant told Martinez that "she was driving" and going a little too fast when she hit a pole as she turned a corner. Martinez was not aware of any other civilians coming to the hospital with defendant.

¶ 10 On cross-examination, Martinez testified that she did not notice any injuries, such as bruising or bleeding, to defendant's head. Martinez also noted that she only examines her patients and not any other nurse's patients. However, on redirect examination, she stated that bleeding is a type of injury that paramedics would treat prior to a patient arriving at the hospital. She also testified that defendant arrived at the hospital alone and that it is common in multi-injury vehicle crashes for the injured to arrive simultaneously.

¶ 11 Defendant testified on her own behalf, testifying that prior to the accident, she was at a friend's house located near West 45th Street and South Whipple Street in Chicago. Defendant was playing cards and drinking, and then decided to go to a bar near West 47th Street and South Sawyer Avenue with her friends. En route to the bar the vehicle crash occurred. She testified that she was not driving the vehicle at the time of the accident; rather, her friend, Phillip Medina, was driving the vehicle. Defendant said she was in the passenger's seat wearing her seatbelt.

¶ 12 After the accident, defendant called 911 to request an ambulance and said she had been involved in a vehicle accident along with Medina. Defendant then called Medina's sister, who was already at the bar, to alert her that her brother had just crashed defendant's vehicle. Defendant stated that after the crash, Medina told her "I have to go, don't say anything, you better not say anything." Thereupon, he left the scene. Defendant did not tell paramedics, the police or the nurse that Medina was the driver of the vehicle because she was afraid of both Medina and her mother, Verna Banel, as both had physically beaten her in the past.

¶ 13 In finding defendant guilty of all of the charges, the trial court found that defendant told "each of the three witnesses that she was driving," but on trial her testimony first indicated that

someone else was driving the vehicle. As a result, the trial court did not find defendant's testimony credible. The court also stated that it "consider[ed] carefully the varying [*sic*], slightly varying testimony as to the injuries" and looked at the totality of the evidence in arriving at its decision that defendant was the driver of the vehicle. In a posttrial motion to reconsider, the trial court also noted that when paramedics arrived at the scene of the vehicle crash, "defendant was on the scene," that she was also the co-owner of the vehicle and that no one else showed up at the hospital when defendant did. Defendant was subsequently sentenced to 12 months of supervision with various conditions.

¶ 14 Defendant first contends that the State failed to prove the *corpus delicti* of all the charges, because beyond defendant's admissions prior to trial, there was no other independent corroborating evidence that she was the driver of the vehicle. The State responds that the physical evidence and the testimony presented at trial corroborated defendant's admissions to various people established the *corpus delicti* of all of the charges.

¶ 15 Due process mandates that a defendant may not be convicted of a crime unless each element constituting that crime is proven by the State beyond a reasonable doubt (*People v. Cunningham*, 212 Ill. 2d 274, 278 (2004) (quoting *In re Winship*, 397 U.S. 358, 364 (1970))), and that the burden is on the State to do so. *People v. Diaz*, 377 Ill. App. 3d 339, 345 (2007). When assessing the sufficiency of the evidence or if the *corpus delicti* has been established in a criminal case, the reviewing court must view the evidence in the light most favorable to the prosecution and then decide if any rational trier of fact could find all the elements of the crime proven beyond a reasonable doubt. *People v. Baskerville*, 2012 IL 111056, ¶ 31. All reasonable

inferences must be allowed in favor of the prosecution. *People v. Givens*, 237 Ill. 2d 311, 334 (2010). We will not overturn a conviction unless the evidence is "so improbable or unsatisfactory that it creates" a reasonable doubt of guilt. *Givens*, 237 Ill. 2d at 334. Finally, while we must carefully examine the evidence before us, we must give the proper deference to the trial court which observed the witnesses testify (*People v. Smith*, 185 Ill. 2d 532, 541 (1999)) because it was in the superior position to assess the credibility of witnesses, resolve inconsistencies in their testimony, determine the weight to assign to the testimony, and draw reasonable inferences therefrom. *People v. Vaughn*, 2011 IL App (1st) 092834, ¶ 24.

¶ 16 For traffic violations of municipal ordinances (here, the negligent driving charge), the burden of proof is not beyond a reasonable doubt, but rather by a preponderance of the evidence (see *In re Stephenson*, 67 Ill. 2d 544, 557 (1977); *City of Rockford v. Custer*, 404 Ill. App. 3d 197, 198 (2010)), which means that the evidence must be more probably true than not. *In re Juan M.*, 2012 IL App (1st) 113096, ¶ 49.

¶ 17 In order to prove a defendant guilty of a crime, the State must prove beyond a reasonable doubt that (1) a crime occurred, known as the *corpus delicti*, and (2) that the crime was committed by the defendant. *People v. Sargent*, 239 Ill. 2d 166, 183 (2010). "The *corpus delicti* of an offense is simply the commission of a crime." *People v. Lara*, 2012 IL 112370, ¶ 17. However, a defendant's out-of-court admissions alone cannot prove the *corpus delicti*. *Lara*, 2012 IL 112370, ¶ 17; *Sargent*, 239 Ill. 2d at 183. A defendant's extrajudicial admissions must also be accompanied by "independent corroborating evidence." *Lara*, 2012 IL 112370, ¶ 17. The corroborating evidence itself need not prove the defendant guilty beyond a reasonable doubt for

the crime charged, but it must "tend[] to show the crime did occur." *Sargent*, 239 Ill. 2d at 183. The corroborating evidence also need not "precisely align" with the admissions on every element charged or on any particular element. *Lara*, 2012 IL 112370, ¶ 51.

¶ 18 Defendant argues that the only evidence connecting her to driving the vehicle were her extrajudicial admissions to Tiberi, Branch and Martinez. She notes that there was no physical evidence that "tended to show [defendant] was the driver" nor were there any eyewitnesses who observed her driving the vehicle or exiting the vehicle after the crash.

¶ 19 This court finds instructive and analogous *People v. Chavez*, 285 Ill. App. 3d 45 (1996). There, the only evidence presented at trial by the State was the testimony of a police officer. The officer observed the aftermath of a motor vehicle accident, but did not observe anyone in or near the vehicle or any evidence of alcohol in or near the vehicle. The officer also had no idea when the accident occurred. *Chavez*, 285 Ill. App. 3d at 46. Hours later at the county jail, the officer met and talked with the defendant who admitted he was the driver of the crashed vehicle and had consumed multiple alcoholic beverages prior to driving. The officer also observed that the defendant had glassy, bloodshot eyes, slurred speech and an odor of alcohol on his breath. *Chavez*, 285 Ill. App. 3d at 46.

¶ 20 The defendant argued there was no corroborating evidence beyond his admission to the officer, and thus the *corpus delicti* had not been proven as to both elements of the driving under the influence of alcohol charge. *Chavez*, 285 Ill. App. 3d at 45. The appellate court found that there was independent corroborating evidence to support the defendant's admission to the officer for both elements. The court relied primarily on the defendant's injury being consistent with that

from a motor vehicle accident to corroborate his admission that he was driving the vehicle. *Chavez*, 285 Ill. App. 3d at 49. As well, the court noted that crashing a vehicle is something likely to happen when the driver of the vehicle is under the influence of alcohol. *Chavez*, 285 Ill. App. 3d at 49.

¶ 21 Here, the independent corroborating evidence is more persuasive than that in *Chavez.* Defendant was at the scene of the accident near the vehicle. Defendant was the only person treated for injuries at the scene, the only person from the crash brought to the hospital and defendant sustained a significant collarbone injury. Finally, defendant was the co-owner of the vehicle that crashed. See *People v. Slinkard*, 362 Ill. App. 3d 855, 858 (2005) ("[W]here *** the owner is standing near the vehicle after an accident, the trier of fact reasonably may infer that the owner of the vehicle was its driver."); *Chavez*, 285 Ill. App. 3d at 49 (defendant appearing at police station with an injury consistent from motor vehicle accident is corroboration of "defendant's stated admission to [police] that he had been driving that vehicle").

¶ 22 While defendant cites *corpus delicti* cases from four different foreign jurisdictions (Alaska, California, Florida and Texas), she does not cite to any Illinois authority, for which there are relevant and similar cases. See, *e.g.*, *Lurz*, 379 Ill. App. 3d 958; *Chavez*, 285 Ill. App. 3d 45; *People v. Foster*, 138 Ill. App. 3d 44 (1985); *People v. Jendrzejak*, 98 Ill. App. 2d 313 (1968). As such, we need not consider foreign case law when we have relevant, on-point authority from our own courts. See *People v. Rivera*, 227 Ill. 2d 1, 15 (2007) (stating when a court determines that an issue can be resolved based on its own precedent, there is no need to review other jurisdictions' cases), *aff'd sub nom. Rivera v. Illinois*, 556 U.S. 148 (2009).

¶ 23 Accordingly, we cannot say that no rational trier of fact could have found that the evidence presented by the State at trial tends to show that the crime occurred (*Sargent*, 239 Ill. 2d at 183), and that there is independent corroborating evidence to support defendant's admissions to prove the *corpus delicti* of the offenses.

¶ 24 After resolving defendant's first argument as to the issue of *corpus delicti*, we now analyze whether after considering all of the evidence, including defendant's admissions, in the light most favorable to the State, a rational trier of fact could have found defendant was in "actual physical control" of the vehicle to support the conviction of driving with a blood-alcohol concentration of .08 or more and driving under the influence of alcohol.

¶ 25 To find a defendant guilty under section 11-501(a)(1) of the Illinois Vehicle Code, the State must prove defendant (1) was in "actual physical control" of the vehicle and (2) her blood-alcohol concentration was .08 or more based upon the definition set forth in section 11-501.2 of the Illinois Vehicle Code. 625 ILCS 5/11-501(a)(1) (West 2010). To find a defendant guilty under section 11-501(a)(2) of the Illinois Vehicle Code, the State must prove defendant (1) was in "actual physical control" of the vehicle and (2) she was under the influence of alcohol. 625 ILCS 5/11-501(a)(2) (West 2010). While defendant was also charged with driving without a valid license (see 625 ILCS 5/6-101 (West 2010)), and negligent driving (see Chicago Municipal Code § 9-40-140 (amended May 9, 2007)), the crux of those charges relate to the issue of defendant driving the vehicle and can be analyzed under the same analysis as the two alcohol-related driving offenses.

¶ 26 Defendant does not dispute that her blood-alcohol concentration was above .08 as required to meet the second element in section 11-501(a)(1) of the Illinois Vehicle Code or that she was under the influence of alcohol to meet the second element in section 11-501(a)(2) of the Illinois Vehicle Code. Her only contention is in regard to the "actual physical control" element in both sections of the Illinois Vehicle Code and accordingly, the requirement of driving must be proven to sustain charges for driving without a valid license and negligent driving.

¶ 27 To prove that a defendant was in "actual physical control" of the vehicle, there is no requirement that the State provide witnesses who observed the defendant driving the vehicle. *People v. Lurz*, 379 Ill. App. 3d 958, 969 (2008). Furthermore, circumstantial evidence alone may prove "actual physical control" of the vehicle. *Lurz*, 379 Ill. App. 3d at 969. Our courts view each fact pattern on a case-by-case basis to determine if an individual was in "actual physical control" of a vehicle. *People v. Kiertowicz*, 2013 IL App (1st) 123271, ¶ 21.

¶ 28 Defendant first argues that because there was blood on the cracked windshield on the driver's side of the vehicle, defendant could not have been the driver because the evidence did not indicate she suffered any lacerations.

¶ 29 As the State notes, there was evidence that defendant suffered from a head injury that could have caused blood on the windshield. Branch testified that when he spoke with defendant her head was "reddish" and had "minor bruising." While those injuries were not apparent in defendant's booking photograph or to Martinez at the hospital, the photograph was taken hours after the accident and the top of defendant's head was obscured by her hair. Furthermore, Martinez treated defendant after paramedics treated her. A reasonable inference can be drawn

that defendant had some bleeding immediately after the accident, but that the bleeding was controlled by the paramedics before she arrived at the hospital.

¶ 30 Defendant also argues that both airbags of the vehicle had deployed, demonstrating that there was another person in the vehicle with defendant, thus corroborating her version of the events. Defendant asks us to take judicial notice that "since 2006, cars are required to have advanced air bags that can turn off if the seat is empty" citing to Code of Federal Regulations (49 C.F.R. § 571.208, S21.3 (2014)). This argument is not a proper argument to be heard by a reviewing court. See *People v. Boykin*, 2013 IL App (1st) 112696, ¶ 9 ("We will not, however, take judicial notice of critical evidentiary material that was not presented to and not considered by the fact finder during its deliberations."). Evidence of the Code of Federal Regulations and its airbag requirements was not brought to the attention of the trial court, and we cannot consider it on review. See *People v. Wigman*, 2012 IL App (2d) 100736, ¶ 36 (stating reviewing courts will not take cognizance of arguments in parties' briefs that are not properly supported by the record before the trial court). Moreover, to the extent it requires particular knowledge, this argument is one that should have been brought before the trial court and may have required an expert witness. Finally, during the State's case-in-chief, during defendant's argument for a directing finding, and in her closing argument, the fact that both airbags had deployed was elucidated before the trial court. The court considered this evidence and still found beyond a reasonable doubt that defendant was in actual physical control of the vehicle. As a reviewing court, we give great deference to a trial court's finding of fact, (see *Smith*, 185 Ill. 2d at 541), and find no basis to depart from that standard here.

¶ 31 Defendant argues that her right collarbone injury could have been consistent with sitting in the passenger's seat. However, there was no evidence that the same injury was not consistent with driving the vehicle.

¶ 32 Finally, because the *corpus delicti* of the offenses has been proven, we are allowed to consider defendant's extrajudicial admissions to driving the vehicle. She made four admissions: one to Tiberi, a paramedic; two to Branch, a police officer (one at the hospital and one at the police station); and one to Martinez, an emergency room nurse. The trial court found that these admissions in addition to the evidence of her injuries, her presence near the vehicle after the accident and her co-ownership of the vehicle all established beyond a reasonable doubt her guilt as to the offenses charged. The circumstantial evidence was enough to determine that defendant was in "actual physical control" of the vehicle despite no witnesses placing her in the vehicle at the time of the accident. See *Lurz*, 379 Ill. App. 3d at 969.

¶ 33 Since the evidence must be viewed in the light most favorable to the State with all reasonable inferences therefrom in favor of the State, we cannot say that no rational trier of fact could have found defendant in actual physical control of the vehicle to support her conviction for driving with a blood-alcohol concentration of .08 or above, driving under the influence of alcohol and not having a valid driver's license. We believe there was sufficient evidence to find defendant guilty beyond a reasonable doubt of the crimes charged, thus, we can also find that there was sufficient evidence to prove by a preponderance of the evidence that defendant was the driver of the vehicle to support her negligent driving charge, driving without a driver's license, and failure to produce a driver's license. See *People v. Reyes*, 328 Ill. App. 3d 918, 929 (2002)

(stating where evidence demonstrates proof beyond a reasonable doubt, it naturally follows that the evidence also demonstrates proof by a preponderance of the evidence). Accordingly, the judgment of the circuit court of Cook County is affirmed.

¶ 34 Affirmed.