

No. 1-13-0031

NOTICE: This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

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. YT668 057
)	
KEITH CRAWFORD,)	Honorable
)	James N. Karahalios,
Defendant-Appellant.)	Judge Presiding.

JUSTICE HALL delivered the judgment of the court.
Justices LAMPKIN and ROCHFORD concurred in the judgment.

O R D E R

¶ 1 **Held:** In this driving under the influence (DUI) case, the State did not fail to prove beyond a reasonable doubt that defendant's impairment was caused by alcohol despite the arresting officer's inconsistent testimony regarding the use of breath testing and subsequent in-court recantation where the trial court accepted the remaining testimony of the officer as credible.

¶ 2 After a bench trial, defendant Keith Crawford was convicted of driving under the influence of alcohol and sentenced to 364 days in jail. On appeal, defendant contends solely that

the State failed to prove beyond a reasonable doubt that his impairment was caused by alcohol, and thus his conviction for driving under the influence of alcohol should be reversed.

¶ 3 At trial, Officer Alex Cruz testified that at approximately 12:48 a.m. on November 24, 2011, he was driving eastbound on Route 62 alone, approaching Barrington Road in South Barrington. Cruz noticed a red, four-door car, traveling westbound on Route 62, approaching Barrington Road. He saw the car make an illegal left-hand turn against a red arrow. As a result, Cruz pulled the car over and saw defendant in the driver's seat along with another passenger.

¶ 4 As Cruz approached defendant, he observed the interior of the car and "smelled a strong odor of an alcoholic beverage" coming from the car. He also noticed defendant had "very red and glassy eyes." After asking defendant for his driver's license, Cruz continued to observe the odor of alcohol, now, specifically "emitting from [defendant's] breath" and his "bloodshot" eyes. As defendant spoke to Cruz, defendant's speech also appeared to be "slurred." Cruz then called a back-up unit in order to conduct field sobriety tests.

¶ 5 When Cruz ordered defendant out of his car to begin the field sobriety tests, Cruz also "smelled a hint of the odor of burnt cannabis." Cruz asked defendant if he had been drinking and/or smoking to which defendant replied that he had one beer at midnight and had smoked cannabis earlier in the day. Defendant also told Cruz that he had come from a bar, although he could not remember its name. Cruz then began to administer the field sobriety tests.

¶ 6 The first test Cruz directed defendant to perform was the horizontal gaze nystagmus ("HGN") test. Cruz testified that he had initial training in field sobriety tests in 2003 and had a refresher course within the last year, which included training on the HGN test. He explained how

he had been taught to administer the test and stated he performed the test on defendant in the same manner as he had been instructed. Cruz stated that defendant's "eyes didn't follow smoothly," he saw a "distinct and sustained nystagmus at a 45[-]degree angle" and "observed onset prior to 45 degrees in both eyes." Based on Cruz's training, he opined that defendant failed the HGN test.

¶ 7 Cruz then proceeded to perform the walk-and-turn test. He told defendant not to begin the test until after he had finished explaining the instructions. Cruz told defendant to take nine heel-to-toe steps while keeping his hands at his side. After the initial nine steps, Cruz told defendant how to pivot his feet and then to take nine more heel-to-toe steps back. Twice before Cruz finished giving the instructions, defendant began to perform the test. In regard to defendant's performance on the test, Cruz stated defendant "stepped off the line, he didn't touch heel-to-toe on several steps, he turned incorrectly" and believed defendant failed the test.

¶ 8 Finally, Cruz had defendant perform one more test, the one-leg stand. On all three attempts, defendant put his foot down, which indicated to Cruz that defendant could not successfully perform the test. Subsequently, Cruz stopped the test and indicated that defendant had failed. During the administration of all three tests, Cruz noted that defendant "swayed for balance."

¶ 9 After the third test, Cruz placed defendant under arrest, deeming him unfit to drive, and transported him to the South Barrington Police Department. There, Cruz read defendant the "Warning to Motorists" and proceeded to observe defendant for 20 minutes. Cruz testified that afterward he performed a Breathalyzer test on defendant, which revealed defendant had a .105

blood-alcohol concentration. On cross-examination, Cruz re-iterated that he gave defendant the "Warning to Motorists," waited 20 minutes and then proceeded to set up the Breathalyzer machine. Cruz stated that he calibrated the machine, then asked defendant if he would submit to the test. Defendant agreed, and Cruz gave him the test. However, when defense counsel confronted Cruz with his police report, he recanted and admitted that he had not given defendant a Breathalyzer test. He explained that defendant actually did not submit to a Breathalyzer test and that he confused defendant with a defendant in another case in which he was testifying the same day. On re-direct examination, the State published the video of defendant's stop, field sobriety tests and arrest for the trial court.

¶ 10 After the State's case-in-chief, defendant made a motion for a directed finding on all three counts: (1) driving under the influence of alcohol; (2) driving under the influence of intoxicating compounds; and (3) disregarding a traffic control light. The trial court granted defendant's motion only as to the count of driving under the influence of intoxicating compounds.

¶ 11 The trial court subsequently found defendant guilty of both driving under the influence of alcohol and disregarding a traffic control light. In finding defendant guilty of driving under the influence of alcohol, the trial court noted that the officer detected "a strong odor of alcohol." Furthermore, the court found significant that defendant "admitted that he had one beer at midnight" and "that he was coming from a bar." The court also noted defendant started the walk-and-turn test early two times. The court stated that defendant's "pitiful" performance on the one-leg stand test was the defendant's "biggest stumbling block." Based upon the video and the

officer's testimony, the court found the defendant guilty of driving under the influence of alcohol. Defendant was subsequently sentenced to 364 days in jail.

¶ 12 Defendant filed a posttrial motion for a new trial and reconsideration of his sentence, arguing that there was no specific finding beyond a reasonable doubt that defendant's failed field sobriety tests was because of alcohol as opposed to the cannabis he admitted to smoking earlier that same day and that Cruz was an incredible witness. In regard to the motion to reconsider defendant's sentence, defendant argued that he should have received supervision, for which he was eligible, because defendant had led a law-abiding life for 10 years prior to his conviction for driving under the influence of alcohol. The trial court denied the motion stating that it "found that the officer's testimony was credible" and the video of the defendant's field sobriety tests was the "most damning" piece of evidence.

¶ 13 On appeal, defendant solely contends that the evidence was insufficient to prove beyond a reasonable doubt that his impairment was caused by alcohol, and thus he cannot be convicted of driving under the influence of alcohol. Specifically, defendant argues that Cruz's testimony was "riddled with inconsistencies and contradictions," pointing directly to his mistaken testimony regarding defendant submitting to a Breathalyzer test. As a result, defendant argues that Cruz is an unreliable and incredible witness on everything to which he testified. Defendant also argues that while the video played at trial of defendant performing field sobriety tests demonstrates an impairment, it does not show that the impairment was specifically caused by alcohol as the law requires.

¶ 14 The State responds arguing that the trial court heard the evidence, saw Cruz testify and made a credibility determination in its favor, which the trial court is in the best position to do. The State also argues that the video played at trial of defendant corroborated Cruz's testimony and that the trial court considered all of the evidence. Thus, the State concludes a rational trier of fact could have found that Cruz's credible testimony of the evidence, including defendant's admission to drinking alcohol around midnight, his slurred speech, glassy and bloodshot eyes, and three failed sobriety tests, was sufficient to prove beyond a reasonable doubt that his impairment was caused by alcohol and therefore, he was guilty of driving under the influence of alcohol.

¶ 15 Due process mandates that a defendant may not be convicted of a crime unless each element constituting that crime is proven 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 burden is on the State. *People v. Diaz*, 377 Ill. App. 3d 339, 345 (2007). When assessing the sufficiency of the evidence 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" reasonable doubt of guilt. *Id.* Finally, while we must carefully examine the evidence before us, we must give the proper deference to the trial court who saw 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, determine the weight to assign the testimony, and draw reasonable inferences therefrom." *People v. Vaughn*, 2011 IL App (1st) 092834, ¶ 24.

¶ 16 In order to convict a defendant of driving under the influence of alcohol, the State must prove: (1) the defendant was in actual physical control of a vehicle, and (2) he was under the influence of alcohol at that time. *Diaz*, 377 Ill. App. 3d at 344; see 625 ILCS 5/11-501(a)(2) (West 2010). Being under the influence of alcohol requires that a person's mental or physical faculties are so impaired, as a result of any amount of alcohol, to diminish his ability to act and think with ordinary care. *People v. Gordon*, 378 Ill. App. 3d 626, 631 (2007). The defendant need be under the influence only to a degree to render him incapable of driving safely. *Id.* at 631-32. This determination is a question for the trier of fact to resolve based upon its assessment of witness credibility and the evidence presented at trial. *People v. Morris*, 2014 IL App (1st) 130512, ¶ 20.

¶ 17 In presenting evidence sufficient to convict a defendant of driving under the influence of alcohol, the State need not present scientific evidence such as a Breathalyzer or blood test, (*Diaz*, 377 Ill. App. 3d at 344-45); rather, the testimony of a sole, credible police officer is sufficient. *People v. Janik*, 127 Ill. 2d 390, 402 (1989). Evidence, such as a "defendant's breath smelled of alcohol" and that his eyes were "glassy and bloodshot" is relevant in convicting a defendant. *Morris*, 2014 IL App (1st) 130512, ¶ 20. Other relevant non-scientific evidence includes a defendant's speech, failed sobriety tests, (*People v. Robinson*, 368 Ill. App. 3d 963, 983 (2006)), or his refusal to submit to a Breathalyzer test (*People v. Johnson*, 218 Ill. 2d 125, 140 (2005)).

¶ 18 Here, defendant does not attempt to argue that the first element of driving under the influence of alcohol – defendant being in actual physical control of a vehicle – was not proven beyond a reasonable doubt. Rather, defendant solely contends that there was insufficient evidence at trial to prove the second element, that his impairment was caused by alcohol because the video published at trial does not show his impairment was caused by alcohol and Cruz's testimony was incredible.

¶ 19 Defendant admits that "the State offered sufficient evidence to prove that [defendant] was impaired" when he was stopped by Cruz, conceding that the video showed defendant's impairment. However, defendant argues that the video does not show that his impairment was caused specifically by alcohol as opposed to other such causes such as "fatigue, infection, or the ingestion of a drug other than alcohol." We have reviewed the video evidence published at trial. We find that it generally corroborates Cruz's in-court testimony and reflects defendant's impairment. The only question remaining is if a rational trier of fact could have found defendant was impaired by alcohol beyond a reasonable doubt in light of Cruz's erroneous testimony regarding the Breathalyzer test.

¶ 20 On direct examination, Cruz testified that he administered a Breathalyzer test to defendant, which revealed defendant had a .105 blood-alcohol concentration. On cross-examination, Cruz gave explicit details about his preparation of the machine and ultimately giving defendant the Breathalyzer test. However, when Cruz was confronted with his own police report, which indicated defendant did not submit to a Breathalyzer test, Cruz recanted and

admitted he had not given defendant the test. Rather, Cruz explained he confused defendant with a defendant in another case in which he was testifying the same day.

¶ 21 While defense counsel unarguably successfully impeached Cruz's testimony with his inconsistency regarding the Breathalyzer test, this fact does not leave his testimony "riddled with inconsistencies and contradictions," as the defense argues. Rather, it was a single inconsistency and contradiction. The trial court, which observed Cruz testify, found him to be a credible witness despite the error in his testimony. It is well established that the trier of fact should be the one to weigh witness testimony and any inconsistencies therein to make a credibility determination. See *Smith*, 185 Ill. 2d at 541; *Vaughn*, 2011 IL App (1st) 092834, ¶ 24; see also *People v. Fox*, 337 Ill. App. 3d 477, 481 (2003) ("Where the record demonstrates that the trier of fact was made aware of the inconsistencies in the testimony of a witness, a reviewing court will not substitute its judgment for that of the trier of fact."). Furthermore, the element of impairment being caused by alcohol is a factual finding, reserved for the trial court. See *Morris*, 2014 IL App (1st) 130512, ¶ 20.

¶ 22 Defendant argues that where a witness' testimony is "riddled with inconsistencies," it is impossible for a trier of fact to accept any part of it. As stated above, Cruz's testimony is not riddled with inconsistencies. He made one mistake, and the trial court did not believe the mistake completely undermined his credibility as a witness. This court cannot substitute its own judgment of the credibility of Cruz's testimony for that of the trial court. See *People v. Baugh*, 358 Ill. App. 3d 718, 737 (2005) (stating "[d]efendant's argument regarding the sufficiency of the

evidence is unpersuasive because the weaknesses in the evidence that defendant cite[d] on appeal were all presented to, and rejected by, the [trier of fact]").

¶ 23 Because the trial court found Cruz's testimony to be credible, when viewing the evidence in the light most favorable to the State, we conclude there was sufficient evidence to show that defendant's impairment was caused by alcohol. At trial, Cruz stated he smelled alcohol coming from defendant's breath, defendant admitted to Cruz that he had a beer around midnight and had just left a bar. Furthermore, Cruz stated defendant's eyes were "bloodshot," his speech was "slurred" and he believed based on his years of experience that defendant had failed all three field sobriety tests. Finally, defendant refused to submit to a Breathalyzer test at the police station. This evidence led Cruz to conclude that defendant was incapable of driving safely and a rational trier of fact could determine that all of the above evidence was sufficient beyond a reasonable doubt to support Cruz's opinion and prove defendant's impairment was caused by alcohol. See *Johnson*, 218 Ill. 2d at 140 (refusal to submit to Breathalyzer test admissible evidence of consciousness of guilt); *Morris*, 2014 IL App (1st) 130512, ¶ 20 (smell of alcohol on breath, and glassy and bloodshot eyes evidence of impairment from alcohol); *Robinson*, 368 Ill. App. 3d at 983 (slurred speech and failing field sobriety tests evidence of impairment from alcohol).

¶ 24 Because a rational trier of fact could have determined there was sufficient evidence to prove beyond a reasonable doubt that alcohol caused defendant's impairment, we affirm defendant's conviction for driving under the influence of alcohol.

¶ 25 Affirmed.