

No. 1-13-2607

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. TB-524-446
)	
ALFREDO ALVAREZ,)	Honorable
)	Paul S. Pavlus,
Defendant-Appellant.)	Judge Presiding.

JUSTICE LIU delivered the judgment of the court.
Justices Neville and Pierce concurred in the judgment.

O R D E R

¶ 1 *Held:* We affirm defendant's conviction of driving under the influence of alcohol where the evidence showed that defendant disobeyed a stop sign, had an odor of alcohol on his breath, had bloodshot eyes and slurred speech, failed three field sobriety tests, and admitted to consuming alcohol.

¶ 2 Following a bench trial, defendant Alfredo Alvarez was convicted of driving under the influence of alcohol (DUI) and sentenced to 24 months of conditional discharge. On appeal, defendant contends that the State failed to prove him guilty beyond a reasonable doubt. We affirm.

¶ 3 At trial, Officer Jim Kurth testified that he and his partner were driving southbound on Central Avenue towards Belden Avenue in Chicago at approximately 7:30 p.m. on January 17, 2012. A Blazer traveling eastbound on Belden turned left onto Central without pausing at a stop sign, almost striking another car that was driving southbound on Central. Kurth performed a U-turn and curbed the Blazer.

¶ 4 Kurth observed that the driver, defendant, had a strong odor of alcohol on his breath, slightly slurred speech, and bloodshot eyes. Speaking in Spanish and "broken" English, defendant stated that he had consumed one or two beers during the day. Kurth called for assistance and Officer Michael Tomaso arrived on the scene. Defendant was then transported to the police station, where an officer fluent in Spanish served as an interpreter between defendant and Tomaso.

¶ 5 Tomaso testified that he conducted multiple field sobriety tests at the station and that defendant had bloodshot eyes and smelled of alcohol. Tomaso first administered a horizontal gaze nystagmus (HGN) test, which tests for six different indicia of impairment. Defendant displayed all six indicia. Tomaso next conducted the walk-and-turn test. Defendant began the test before the instructions were completed, took too many steps, and lost his balance. According to Tomaso, defendant displayed five of nine indicia of impairment under this test. Tomaso then administered the one-leg-stand test, which tests for five indicia of impairment. During the test, defendant lost his balance and displayed all five indicia. Tomaso could not recall whether defendant mentioned a leg injury while taking the tests.

¶ 6 With defendant's consent, Tomaso twice administered a breath test. Neither breath sample was sufficient to determine defendant's breath alcohol content. Tomaso offered to take defendant to a hospital for blood and urine testing but defendant refused.

¶ 7 Defendant testified that he drank two beers at 2 p.m. on the day of the incident. Defendant stated that he made a complete stop at the intersection of Belden and Central and denied almost hitting another vehicle while making his left turn. According to defendant, Officers Kurth and Tomaso were in the same patrol car that curbed him and no other officers arrived on the scene. Defendant testified that Tomaso told him to hop during the field sobriety tests but that a leg injury prevented defendant from complying. Defendant also denied that he was asked to take blood or urine tests.

¶ 8 Officer Cynthia Rivera testified as a rebuttal witness for the State. Rivera provided Spanish interpretation for defendant at the police station and was present for each field sobriety test. Rivera denied that Tomaso administered a hopping test. She also testified that defendant refused to consent to blood and urine testing.

¶ 9 At the close of trial, the court found that Officers Kurth and Tomaso testified credibly. The court stated that "[t]here was ample evidence to show that this individual on that night was impaired to reduce his ability to think or act in ordinary care by the bad driving and by the tests and by all the physical observations that not only Officer Kurth made, but also Officer Tomaso." The court found defendant guilty of driving under the influence of alcohol and sentenced him to 24 months of conditional discharge.

¶ 10 On appeal, defendant contends that the evidence failed to establish that he drove under the influence of alcohol. Defendant argues that the State's evidence, namely, defendant's failure

to obey a stop sign, the officers' observations about his condition, and the field sobriety testing, is insufficient to sustain a conviction beyond a reasonable doubt.

¶ 11 The standard of review on a challenge to the sufficiency of the evidence is whether, after reviewing 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. Brown*, 2013 IL 114196, ¶ 48. The trier of fact assesses the credibility of the witnesses, determines the appropriate weight of the testimony, and resolves conflicts or inconsistencies in the evidence. *People v. Siguenza-Brito*, 235 Ill. 2d 213, 224-25 (2009). The reviewing court neither retries the defendant nor substitutes its judgment for that of the trier of fact. *People v. Beauchamp*, 241 Ill. 2d 1, 8 (2011); *Siguenza-Brito*, 235 Ill. 2d at 224-25. The trier of fact need not "be satisfied beyond a reasonable doubt as to each link in the chain of circumstances." *People v. Jackson*, 232 Ill. 2d 246, 281 (2009). Rather, "it is sufficient if all of the evidence taken together satisfies the trier of fact beyond a reasonable doubt of the defendant's guilt." *Id.* A defendant's criminal conviction will be reversed only if the evidence is so improbable or unsatisfactory that there remains a reasonable doubt of the defendant's guilt. *Siguenza-Brito*, 235 Ill. 2d at 225.

¶ 12 To sustain a conviction for driving under the influence of alcohol, the State must prove that (1) the defendant was in actual physical control of a vehicle, and (2) was under the influence of alcohol at the time. 625 ILCS 5/11-501(a)(2) (West 2012); *City of Naperville v. Watson*, 175 Ill. 2d 399, 401 (1997); *People v. Eagletail*, 2014 IL App 130252, ¶ 36. Proof of intoxication requires more than evidence that the defendant consumed some alcohol. *People v. Shackles*, 44 Ill. App. 3d 1024, 1330 (1977). The State must prove that "the defendant's ability to operate a

motor vehicle was impaired by the consumption of alcohol." *Eagletail*, 2014 IL App 130252, ¶ 36.

¶ 13 A DUI conviction may be sustained based solely on the credible testimony of the arresting officer. *People v. Janik*, 127 Ill. 2d 390, 402 (1989). The State need not present chemical evidence of intoxication. *Id.* at 403 (sustaining a DUI conviction without an accurate blood test); *People v. Diaz*, 377 Ill. App. 3d 339, 344-45 (2007) (sustaining a DUI conviction without a breath test). A conviction for driving under the influence of alcohol may be based on circumstantial evidence, or proof of facts and circumstances from which the fact finder may infer other connected facts which usually and reasonably follow from human experience. *Eagletail*, 2014 IL App 130252, ¶¶ 36, 38 (inferring intoxication based on defendant smelling of alcohol, admitting to drinking, and failing three sobriety tests); *Diaz*, 377 Ill. App. 3d at 345 (inferring intoxication based on defendant mumbling, smelling of alcohol, and stumbling).

¶ 14 We find the evidence was sufficient to support defendant's conviction of DUI. Officer Kurth testified that he stopped defendant after defendant disobeyed a stop sign and Kurth then noticed that defendant had a strong odor of alcohol on his breath, slightly slurred speech, and bloodshot eyes. Defendant admitted he had consumed beer that day. Officer Tomaso testified that he administered three field sobriety tests, all of which defendant failed. In addition, Officers Tomaso and Rivera testified that defendant refused to submit to blood and urine testing. In its ruling, the court expressly found that Kurth and Tomaso testified credibly. Given this evidence, combined with the court's credibility determinations, we cannot say the evidence was so improbable or unsatisfactory as to raise a reasonable doubt of defendant's guilt. *Diaz*, 377 Ill. App. 3d at 344-45 (2007) (sustaining a DUI conviction without a breath test); *People v. Sanders*,

176 Ill. App. 3d 467, 468-69 (1988) (sustaining conviction where defendant admitted to drinking alcohol, had slurred speech and bloodshot eyes, and emitted an odor of alcohol); *People v.*

Nunes, 143 Ill. App. 3d 1072, 1075-76 (1986) (sustaining conviction where defendant admitted to drinking alcohol, emitted a strong odor of alcohol, had bloodshot eyes and impaired speech, and failed an HGN test).

¶ 15 Notably, defendant improperly attempts to rely on certain studies and articles regarding findings of intoxication and the use of field sobriety tests. Such sources do not qualify as relevant authority on appeal and will not be considered. See, *e.g.*, *Vulcan Materials Co. v. Bee Construction*, 96 Ill. 2d 159, 166 (1983); *People v. Magee*, 374 Ill. App. 3d 1024, 1029-30 (2007); *People v. Heaton*, 266 Ill. App. 3d 469, 476-78 (1994); *People v. Mehlberg*, 249 Ill. App. 3d 499, 531-32 (1993).

¶ 16 For all the foregoing reasons, we affirm the judgment of the trial court.

¶ 17 Affirmed.