SECOND DIVISION
May 12, 2015

No. 1-14-0117

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 617 188
	)	
DANIEL LEWIS,	)	Honorable
	)	Kerry M. Kennedy,
Defendant-Appellant.	)	Judge Presiding.

PRESIDING JUSTICE SIMON delivered the judgment of the court.
Justices Pierce and Liu concurred in the judgment.

O R D E R

¶ 1 *Held*: Evidence was sufficient to prove defendant guilty of driving under the influence of a drug or combination of drugs where defendant admitted to arresting officer that he had taken prescription drugs and that they caused his poor driving.

¶ 2 Following a bench trial, defendant Daniel Lewis was found guilty of one count of driving under the influence of a drug or combination of drugs and one count of improper lane usage. The trial court sentenced him to 24 months' supervision on both counts as well as 100 hours of community service on the count of driving under the influence. On appeal, defendant contends that the trial court erred in allowing the arresting officer to testify as to the effect of specific

drugs on defendant's ability to safely operate a vehicle. He also contends that the State failed to prove beyond a reasonable doubt that defendant was under the influence of a drug, other than alcohol, to a degree that rendered him incapable of driving safely. We affirm.

¶ 3 At trial, Palos Hills police officer Joseph Kelly testified that he was driving a marked police car in Palos Hills at around 4 a.m. on November 2, 2011. Kelly stopped at a red light when the signal for the left turn lane turned green. A black pickup truck in the lane remained stopped despite the green light. Eventually, the truck started forward and turned "swerv[ing]" into the outer turning lane. Kelly followed the vehicle. The black truck "swerve[d]" over the center line. Kelly activated his emergency lights. The truck drove four blocks before stopping. Once stopped, Kelly approached the vehicle and found defendant sitting in the driver's seat. He asked defendant where he was coming from and defendant stated "Palos Hills." When Kelly asked him to specify, defendant named a street not located in Palos Hills. Kelly asked him if he had been drinking and defendant responded that he had had two beers. Defendant's eyes were glassy and bloodshot, his breath smelled of alcohol, and he was slurring and mumbling. Kelly asked defendant to exit the truck, and defendant "stumbled" out. Kelly asked defendant to perform three field sobriety tests: the "finger to nose test," the "one leg stand test," and the "walk and turn test." Defendant failed all three tests. During the walk and turn test, defendant stumbled and tripped over his own feet. Defendant stated "that he was on prescribed medication and that the reason why his – he had the traffic violations occur was because of – the medication combined with the alcohol caused him to drive like that." He also stated that he should not be driving because the medication's instructions indicate that he should not drive. Kelly arrested defendant. Defendant initially agreed to submit to chemical testing, but changed his mind

because "the cannabis in his system would appear on it." At the police station, defendant indicated that he had taken three different medications, Lorazepam, Lamotrofone, and Seroquel, an hour before. Kelly could not initially name the medications, and had to have his memory refreshed by his case report.

¶ 4 Kelly testified that as part of his police training, he had learned that when certain medications are mixed with alcohol consumption, "it intensifies the effect of the medication. And also increases the amount of influence that person is under." Defense counsel objected to this testimony, but was overruled. The State then asked Kelly if he had an opinion as to whether defendant was under the influence of drugs. Defense counsel objected and argued that Kelly would have to be qualified as an expert to render such an opinion. The court sustained the objection. Kelly subsequently testified that defendant stated that one of the medications makes him "sleepy."

¶ 5 On cross-examination, Kelly testified that he was unfamiliar with Lorazepam and Lamotrofone. He knew of Seroquel because a family member had used it. Based on his experience, Kelly knew that when a person took that drug and drank alcohol, it increased their impairment. Defense counsel asked if Kelly believed defendant was under the influence of the drugs and Kelly stated, "Yes."

¶ 6 The State rested. Defendant rested without presenting evidence.

¶ 7 The trial court found defendant guilty of improper lane usage and driving under the influence of a drug or combination of drugs. It sentenced him to 24 months' supervision, 100 hours of community service, and other conditions. Defendant appeals.

¶ 8 Defendant makes several arguments that can be divided into two main contentions: (1) the trial court improperly allowed Kelly to opine on the effects of the medications on defendant, (2) the evidence was insufficient to prove beyond a reasonable doubt that defendant was under the influence of a drug or combination of drugs and was consequently unable to drive safely.

¶ 9 Defendant first appears to contend that Kelly was not qualified to testify as to the effects of specific drugs on defendant's ability to operate a motor vehicle. Defendant asserts that Kelly should not have been allowed to testify regarding his opinion on defendant's intoxication. He notes that Kelly could not remember the name of the drugs defendant took without referring to his notes and was only familiar with one of them.

¶ 10 The State responds that it proved defendant guilty beyond a reasonable doubt based upon defendant's statements, and thus an expert opinion was not required. It notes that defendant admitted that he had taken prescription medications, stated they were the reason for his poor driving, and noted that one made him sleepy.

¶ 11 Whether a witness may give expert testimony is within the discretion of the trial court, and that decision will not be overturned absent an abuse of discretion. *People v. Tayborn*, 254 Ill. App. 3d 381, 389 (1993). In order to opine that a defendant is under the influence of drugs, a police officer must have "relevant skills, experience or training." *People v. Bitterman*, 142 Ill. App. 3d 1062, 1064 (1986). However, a defendant cannot object to testimony that he himself has invited. See *People v. Tolbert*, 323 Ill. App. 3d 793, 805 (2001).

¶ 12 Kelly offered no expert testimony during direct examination. The only statement approaching an opinion offered by Kelly was that he had learned during police training that alcohol intensifies "the effect of the [certain] medication[s]. And also increases the amount of

influence that person is under." On direct examination, Kelly did not offer any opinion about the specific medications in this case or about any effect on defendant. His general statement was merely foundation for an expert opinion that was subsequently barred. When the State asked Kelly if defendant was under the influence of medications, he did not answer because the trial court sustained defense counsel's objection. Kelly only offered specific opinions on the medications and defendant's intoxication in response to defense counsel's direct questions. Therefore, defendant cannot now object to the opinions that he himself invited. See *id.*

¶ 13 Defendant next contends that the State did not prove him guilty beyond a reasonable doubt of driving under the influence of a drug or combination of drugs. He asserts the only evidence of his intoxication were his own statements that he had taken medication earlier in the day. He also argues that there was no evidence presented that indicated the medication impaired defendant's driving ability and no evidence that the drugs were actually in his system.

¶ 14 The State responds that it proved defendant guilty beyond a reasonable doubt. It notes that four of defendant's statements were admitted through Kelly's testimony: defendant admitted (1) taking the medication; (2) the medication affected his driving; (3) the instructions for the medication expressly stated that he should not drive; and (4) the medication made him sleepy. The State argues that defendant's statements were further corroborated by Kelly's observations.

¶ 15 Due process requires the State to prove each element of a criminal offense beyond a reasonable doubt. *People v. Cunningham*, 212 Ill. 2d 274, 278 (2004), citing *In re Winship*, 397 U.S. 358, 364 (1970). When reviewing the sufficiency of evidence, a reviewing court must decide "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.) *Jackson v. Virginia*, 443 U.S. 307, 313 (1979); See also *Cunningham*, 212 Ill. 2d at 278. A reviewing court will not overturn a guilty verdict unless the evidence is "so improbable, unsatisfactory, or inconclusive that it creates a reasonable doubt of defendant's guilt." *People v. Collins*, 214 Ill. 2d 206, 217 (2005). Where a conviction depends on eyewitness testimony, the reviewing court may only find testimony insufficient "only where the record evidence compels the conclusion that no reasonable person could accept it beyond a reasonable doubt." *Cunningham*, 212 Ill. 2d at 279.

¶ 16 The crime of driving under the influence of a drug or combination of drugs is committed when an offender: (1) drives or is in actual control of a vehicle (2) while under the influence of any drug or combination of drugs (3) to a degree that he or she is incapable of driving safely. 625 ILCS 5/11-501(a) (4); see also *People v. Shelton*, 303 Ill. App. 3d 915, 921 (1999). In order for a trier of fact to find that a defendant was under the influence of a drug, it must find that the drug in question had "some intoxicating effect." *People v. Workman*, 312 Ill. App. 3d 305, 310 (2000). The State need not present scientific evidence of intoxication where there is circumstantial evidence provided by a credible witness. See *People v. Gordon*, 378 Ill. App. 3d 626, 638 (2007). A defendant's admission may provide direct evidence of intoxication and sustain a conviction. See *People v. Bitterman*, 142 Ill. App. 3d 1062, 1065 (1986).

¶ 17 In *Bitterman*, the defendant was convicted of driving under the combined influence of alcohol and drugs, after police officers arrested him for speeding and swerving over the road's center line. *Id.* at 1063. The defendant admitted to police officers that he was under the influence of alcohol and cannabis. *Id.* At trial, the court barred the arresting officer from opining that the *Bitterman* defendant was under the influence of cannabis. *Id.* On appeal, this court held that the

defendant's admissions, along with the officer's observations regarding the defendant's driving and staggering after arrest, were sufficient to prove him guilty beyond a reasonable doubt.

¶ 18 In the present case, there is no dispute that defendant was driving a vehicle. Defendant's own statements showed that he was under the influence of an intoxicating drug or combination of drugs. He admitted that he took the drugs an hour prior to his arrest, that the drugs made him sleepy, and that he was not supposed to drive while using them. Moreover, defendant explained that his medication was responsible for his poor driving. Thus, defendant's statements provided direct evidence that he was under the influence of the drugs, and that they had an intoxicating effect upon him. Kelly's prior observations that defendant stumbled out of his vehicle and failed three field sobriety tests, corroborated that defendant was in an intoxicated state. Taking all the evidence in the light most favorable to the prosecution, a reasonable fact finder could find beyond a reasonable doubt that defendant was under the intoxicating influence of a drug or combination of drugs and was unable to drive safely.

¶ 19 Defendant analogizes his case to *Workman*, 312 Ill. App 3d 305, and *People v. Vanzandt*, 287 Ill. App. 3d 836 (1997). The appellate court in each case found that the State failed to prove the defendant was under the influence of a drug beyond a reasonable doubt, where the arresting officer lacked necessary experience to render an opinion on the effects of the drug in question. *Workman*, 312 Ill. App. 3d at 311-12; *Vanzandt*, 287 Ill. App. 3d at 845. The appellate court in each case distinguished the facts before it from *Bitterman*, noting that in the case before it the defendant had not admitted to being under the influence. *Workman*, 312 Ill. App. 3d at 311 ("[D]efendant has not admitted to taking the drug and being under the influence."); *Vanzandt*, 287 Ill. App. 3d at 845 ("Unlike the defendant in *Bitterman*, however, [the defendant] never

admitted to 'being under the influence' of insulin.") In the present case, defendant did admit to being under the influence of his prescribed medication. Thus, we find *Workman* and *Vanzandt* distinguishable, and follow the logic of *Bitterman*.

¶ 20 Defendant also analogizes his case to *People v. Vente*, 2012 IL App (3d) 100600. Defendant notes that the trial court in that case found the defendant not guilty of driving under the influence of a drug or combination of drugs. *Id.* at ¶ 7. On appeal, the reviewing court considered only the defendant's conviction under subsection 11-501(a) (6) of the Vehicle Code, (625 ILCS 5/11-501(a)(6) (West 2012)), which criminalizes driving with any amount of certain controlled substances present in one's breath, blood, or urine regardless of impairment. *Vente*, 2012 IL App (3d) 100600, ¶ 11. The decisions of a circuit court have no precedential value. *Delgado v. Board of Election Commissioners of City of Chicago*, 224 Ill. 2d 481, 488 (2007). The reviewing court in *Vente* did not consider the offense at issue in the present case, but instead focused on the distinct elements of subsection 11-501(a) (6). See *Vente*, 2012 IL App (3d) 100600, ¶ 11. We therefore find *Vente* inapposite to defendant's appeal.

¶ 21 Defendant also argues that subsection 11-501(a) (4) of the Vehicle Code, (625 ILCS 5/11-501(a) (4) (West 2012)), requires the State to prove beyond a reasonable doubt "that the drugs, and the drugs *alone*, caused any impaired driving." (Emphasis in original.) He argues that any observations Kelly made regarding alcohol were therefore irrelevant and could not support the defendant's conviction under subsection 11-501(a) (4).

¶ 22 We review issues of statutory construction *de novo*. *People v. Donoho*, 204 Ill. 2d 159, 172 (2003). Subsection 11-501(a) states:

"A person shall not drive or be in actual physical control of any vehicle within this State while:

***

(2) under the influence of alcohol;

***

(4) under the influence of any other drug or combination of drugs to a degree that renders the person incapable of safely driving;

(5) under the combined influence of alcohol, other drug or drugs, or intoxicating compound or compounds to a degree that renders the person incapable of safely driving."

A reviewing court's aim in statutory construction is to give effect to the legislature's intent by according unambiguous language its plain and ordinary meaning. *People v. Smith*, 345 Ill. App. 3d 179, 184-85 (2004).

¶ 23 Defendant cites no case law supporting his reading of subsection 11-501(a) (4). His assertion that intoxication must be proven by drugs and drugs alone is not supported by the plain language of the statute, which does not contain the word "alone." Additional evidence indicating that a defendant has also consumed alcohol does not invalidate evidence that he was impaired by prescription drugs. See *Vanzandt*, 287 Ill. App. 3d at 844 (suggesting defendant could be simultaneously charged and convicted of driving under the influence of alcohol, drugs, and a combination of the two.) As we have already discussed, a rational fact finder, taking the evidence in the light most favorable to the State, could find defendant guilty beyond a reasonable doubt of driving under the influence of a drug or combination of drugs.

¶ 24 For the foregoing reasons, we find that the evidence presented at trial sufficiently proved defendant guilty of driving under the influence of a drug or combination of drugs beyond a reasonable doubt. Accordingly, we affirm the judgment of the circuit court of Cook County.

¶ 25 Affirmed.