

No. 1-14-2082

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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.)	Nos. YW 304233
)	YW 304236
)	
KEVIN O'DONNELL,)	Honorable
)	Noreen M. Daly,
Defendant-Appellant.)	Judge Presiding.

JUSTICE MASON delivered the judgment of the court.
Justices Lavin and Justice Hyman concurred in the judgment.

O R D E R

¶ 1 *Held:* The judgment of the trial court is affirmed where evidence established defendant guilty beyond a reasonable doubt of driving under the influence of alcohol.

¶ 2 Following a bench trial, defendant Kevin O'Donnell was convicted of driving while under the influence of alcohol and disobeying a stop sign. O'Donnell was sentenced to two years' probation with several conditions. On appeal, O'Donnell challenges the sufficiency of the evidence supporting his conviction for driving under the influence of alcohol. We affirm.

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¶ 3 The evidence at trial showed that on June 28, 2013, at about 10:30 p.m., Tinley Park police officer Laura Sanchez observed O'Donnell's vehicle roll through the stop sign at 94th Avenue and 175th Street in Tinley Park. Officer Sanchez began following O'Donnell in her marked police car and observed the driver's side front and rear tire of his vehicle cross approximately 12 inches over the double-yellow line into oncoming traffic somewhere north of 175th Street for approximately one to two seconds before he corrected the vehicle back into his lane.

¶ 4 Officer Sanchez then turned on her emergency lights and attempted to stop O'Donnell's vehicle. Instead of pulling over, O'Donnell pointed his finger out of the driver's side window and continued to drive for approximately three blocks before Officer Sanchez turned on her siren and O'Donnell finally pulled over near the intersection of 94th Avenue and 171st Street. When Officer Sanchez approached O'Donnell's vehicle and asked why he rolled through the stop sign, he replied that he never makes a complete stop at that stop sign. Sanchez also asked O'Donnell why he did not pull over immediately and he responded that he wanted to pull over in the Circle K parking lot so his girlfriend could come and pick him up because he "didn't want any trouble."

¶ 5 During this conversation, Officer Sanchez observed O'Donnell had red and watery eyes, slurred speech, and could smell the odor of alcohol coming from his mouth. When Officer Sanchez inquired about his slurred speech, O'Donnell responded that he works 90 hours per week and was tired. O'Donnell denied consuming alcohol at first, but then admitted to drinking two beers "at the Joliet races."

¶ 6 Officer Sanchez asked O'Donnell to exit his vehicle in order to perform field sobriety tests. O'Donnell exited the vehicle, but refused to perform any field sobriety tests stating that he

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doesn't work a "9 to 5 job." O'Donnell did not have any trouble exiting his vehicle. While they were standing outside the vehicle, Officer Sanchez again noticed O'Donnell's eyes were red and watery and his speech was slurred, and she could smell alcohol on his breath. Based upon her observations, Officer Sanchez concluded O'Donnell was under the influence of alcohol and did not have the ability to safely drive his vehicle. O'Donnell was arrested and placed in the back of Officer Sanchez's squad car, and a search of his vehicle was performed. No containers or alcoholic beverages were found inside the vehicle.

¶ 7 Once O'Donnell was taken into custody, he began to yell obscenities at the officer. During the transport to the police station, O'Donnell told Officer Sanchez she did not know the way to the police station and yelled, "take me to the f***ing police station now." O'Donnell also continued to raise his voice and called the officer "a f***ing liberal" and stated, "all you do is follow the rules. You don't talk." After arriving at the station, O'Donnell was read the warning to motorists and observed for a 20-minute period. O'Donnell did not exhibit any additional unusual behavior and had no trouble walking or maintaining his balance during his transfer from the squad car.

¶ 8 After the observation period, O'Donnell was asked to blow into a Breathalyzer but declined, because "he doesn't trust instruments and doesn't trust the State." O'Donnell requested Officer Sanchez to blow into the instrument instead.

¶ 9 The trial court found O'Donnell guilty of driving while under the influence and disobeying a stop sign, finding that despite the lack of scientific evidence of his level of intoxication, the State proved him guilty beyond a reasonable doubt given his driving infractions, unusual and belligerent behavior and responses to questions, admission to drinking, and the

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officer's observations, coupled with O'Donnell's refusal to submit to chemical or field sobriety tests as indicating consciousness of guilt.

¶ 10 During sentencing, the State presented evidence of O'Donnell's three prior convictions for driving under the influence, including one in Florida in 1999 and two from New York in 2000 and 2002. O'Donnell had no prior convictions in Illinois. The trial court sentenced O'Donnell for driving under the influence as previously described and advised him that if he violated the terms of his probation and consumed alcohol he would be sentenced to 364 days' imprisonment. No sentence was imposed for the stop sign violation.

¶ 11 On appeal, O'Donnell challenges the sufficiency of the evidence to establish his guilt beyond a reasonable doubt of driving under the influence of alcohol because the State's only witness failed to obtain evidence sufficient to prove he was intoxicated or exhibiting impaired driving ability.

¶ 12 When a defendant challenges the sufficiency of the evidence to sustain his conviction, the relevant question on review is whether, after considering the evidence in the light most favorable to the State, any rational trier of fact could have found the essential elements of the crime proven beyond a reasonable doubt. *People v. Beauchamp*, 241 Ill. 2d 1, 8 (2011); *People v. Collins*, 106 Ill. 2d 237, 261 (1985). The State bears the burden of proving each element of the charged offense beyond a reasonable doubt and a conviction will only be overturned where the evidence is so improbable, unsatisfactory, or inconclusive that it creates a reasonable doubt of defendant's guilt. *People v. Diaz*, 377 Ill. App. 3d 339, 345 (2007); *Beauchamp*, 241 Ill. 2d at 8.

¶ 13 Section 11-501(a)(2) of the Illinois Vehicle Code provides that a person may not drive or be in actual physical control of a vehicle 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, defendant's mental or physical faculties are so impaired as to render him unable to " 'think or 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)). A defendant is guilty of driving under the influence if the prosecution proves that defendant was under the influence of a drug or alcohol to a degree that rendered him incapable of driving safely. *Gordon*, 378 Ill. App. 3d at 631-32.

¶ 14 Circumstantial evidence may be used to support a conviction for driving while under the influence of alcohol. *People v. Toler*, 32 Ill. App. 3d 793, 799 (1975). Likewise, the credible testimony of the arresting officer by itself can sustain a conviction for driving under the influence. *People v. Janik*, 127 Ill. 2d 390, 402 (1989). Testimony that defendant exhibited altered speech, staggered walking, poor balance, bloodshot eyes, unusual behavior, or failed to adequately perform field sobriety tests is relevant evidence of the influence of alcohol. See *Diaz*, 377 Ill. App. 3d at 345; see also *People v. Love*, 2013 IL App (3d) 120113, ¶ 36. Defendant's refusal to submit to field sobriety tests or chemical testing can also be used as circumstantial evidence of defendant's consciousness of guilt. *People v. Johnson*, 218 Ill. 2d 125, 140 (2005); *People v. Roberts*, 115 Ill. App. 3d 384, 387 (1983) (holding that refusal to take a possibly incriminating test, such as a field sobriety test, is evidence of defendant's consciousness of guilt).

¶ 15 There is no dispute that O'Donnell was driving his vehicle at the time of the offense. O'Donnell contends only that Officer Sanchez's testimony was insufficient to sustain his conviction. He argues that because no objective testing was completed to establish his level of intoxication and no facts were obtained to determine if the beers he admitted to drinking were

already eliminated from his system, the evidence was insufficient to establish intoxication.

O'Donnell also argues that the only driving infraction for which he was found guilty was disobeying a stop sign, which was habitual, and not indicative of driving impairment due to intoxication.

¶ 16 First, the disposition of O'Donnell's traffic violations has no bearing on his guilt or innocence with regard to the crime of driving under the influence of alcohol. See *People v. Sturgess*, 364 Ill. App. 3d 107, 115 (2006). The elements of the offense only require that an individual drive a vehicle – with or without incident – while intoxicated. See 625 ILCS 5/11-501(a)(2); *Id.* at 115. Because O'Donnell does not dispute that he was operating his vehicle the night of the offense, whether he habitually rolled through that particular stop sign or was found guilty of improper lane usage is not dispositive. Rather, this evidence, along with the officer's other testimony, makes the degree of intoxication required to sustain a conviction for driving under the influence more or less probable. See *People v. Greenberg*, 79 Ill. App. 2d 288, 293 (1967) (evidence that defendant was speeding at the time of the arrest considered by reviewing court as one of multiple factors supporting conviction for driving under the influence of alcohol); see also *People v. Timmsen*, 2014 IL App (3d) 120481, ¶ 24 ("The defendant did not violate any traffic laws or drive erratically (which might have suggested that he was intoxicated)").

¶ 17 Moreover, ample evidence was presented to support the inference O'Donnell was intoxicated at the time of the offense. Officer Sanchez's unimpeached testimony established that O'Donnell slurred his speech, had red and watery eyes, and his breath smelled of alcohol. Her testimony also established that O'Donnell gave unusual responses to the officer's questioning (e.g., that he did not work a "9 to 5 job" and that he did not stop immediately because he

anticipated that he would need to call his girlfriend to drive him home), became belligerent once taken into custody, and inexplicably pointed his finger out of his driver's side window when the officer first attempted to pull him over, all indicative of impaired judgment. This evidence, especially when coupled with O'Donnell's admission to drinking "two beers," provides abundant support to conclude he was intoxicated, even though a timeframe or exact amount of alcohol consumed was not obtained.

¶ 18 In addition, although no chemical testing was performed to objectively establish O'Donnell's level of intoxication, it is well-established that chemical testing is not necessary to sustain a conviction for driving under the influence of alcohol. See *People v. Morris*, 2014 IL App (1st) 130512, ¶ 20; see also *Janik*, 127 Ill. 2d at 390; *Gordon*, 378 Ill. App. 3d at 632; *Diaz*, 377 Ill. App. 3d at 345. Furthermore, O'Donnell refused both field sobriety tests and chemical testing which was properly considered by the trial court as consciousness of guilt. See *Johnson*, 218 Ill. 2d at 140; *Roberts*, 115 Ill. App. 3d at 387. Therefore, because we can find no reason to question the trial court's determination of Officer Sanchez's credibility, it is obvious that a rational trier of fact could have found defendant guilty of driving under the influence of alcohol.

¶ 19 O'Donnell then asserts, without citation to the record, reasoned legal argument or authority, that the trial judge was prejudiced against him because the judge was female and O'Donnell verbally abused a female officer. He also summarily argues, again without citation to authority, that the trial court's finding that his refusal to participate in field sobriety tests or chemical testing indicated consciousness of guilt violated three separate "amendments:" the right to "[refuse] a search without a warrant, [be] a witness against yourself, and the right to not speak without counsel present." Having failed to develop these arguments "with citation of authorities

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and the pages of the record relied on," these issues are forfeited. Illinois Supreme Court Rule 341(h)(7) (eff. Feb. 6, 2013). Further, insofar as O'Donnell argues that the court's finding violated his fourth and fifth amendment rights, Illinois has long recognized the law of implied consent. 625 ILCS 5/11-501.1(a) (West 2012). And O'Donnell had no constitutional right to refuse chemical testing, or any right to consult with an attorney prior to submitting to such testing. *South Dakota v. Neville*, 459 U.S. 553, 564 (1983); see *People v. Gaddi*, 145 Ill. App. 3d 227 (1986).

¶ 20 For the foregoing reasons, we affirm the judgment of the trial court of Cook County.

¶ 21 Affirmed.