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2015 IL App (3d) 140151-U

Order filed February 13, 2015

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IN THE  
APPELLATE COURT OF ILLINOIS  
THIRD DISTRICT

A.D., 2015

THE PEOPLE OF THE STATE	)	Appeal from the Circuit Court
OF ILLINOIS,	)	of the 12th Judicial Circuit,
	)	Will County, Illinois,
Plaintiff-Appellee,	)	
	)	Appeal No. 3-14-0151
v.	)	Circuit No. 12-DT-885 and
	)	12-TR-57842
JOSE A. ESTRELLA,	)	
	)	The Honorable
Defendant-Appellant.	)	Cory D. Lund,
	)	Judge, Presiding.

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PRESIDING JUSTICE McDADE delivered the judgment of the court.  
Justices Holdridge and O'Brien concurred in the judgment.

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**ORDER**

- ¶ 1 *Held:* The trial court did not err in denying defendant's motion to quash arrest and suppress evidence because the case was not sufficiently novel to warrant deviation from case law concerning collateral estoppel and the finding was not against the manifest weight of the evidence. There was sufficient evidence to find defendant guilty of driving under the influence.
- ¶ 2 Jose Estrella, the defendant, appeals the denial of his motion to quash arrest and suppress evidence and his conviction of driving under the influence. He argues that the trial court erred in denying the motion because the novelty of the case warrants deviation from case law concerning

collateral estoppel and the denial was against the manifest weight of the evidence. He further asserts that the evidence was not sufficient to support his driving under the influence conviction. We affirm both rulings of the trial court.

¶ 3

### FACTS

¶ 4

On June 24, 2012, Estrella was ticketed and arrested by Trooper Engleking for driving under the influence. The field sobriety tests Engleking had Estrella execute and Estrella's subsequent arrest were recorded (the video) via a police car cam.

¶ 5

On July 24, Estrella filed a petition to rescind the statutory suspension of his driver's license imposed as a result of his arrest. He argued that there were no reasonable grounds for his arrest due significantly in part to his limited English that Engleking mistook for slurred speech and that led to his inability to understand the instructions and to fail the field sobriety tests. He also contended that Engleking had not properly warned him. The State's motion for a summary suspension hearing on the matter was granted. After listening to testimony from Estrella and Engleking and reviewing the video, the court granted Estrella's petition finding there were no reasonable grounds for the arrest. The matter was continued for status on October 25.

¶ 6

Estrella filed a motion to quash arrest and suppress evidence on October 19, arguing that Engleking lacked reasonable suspicion to believe Estrella had committed an offense, was about to commit an offense, or was in the process of committing an offense. He again argued that because of his limited English, Engleking mistakenly attributed his "slurred" speech and inability to pass the field sobriety tests to alcohol consumption. Both parties stipulated to the transcript from the summary suspension hearing and the video, which were tendered to the court. A hearing was held on May 16, 2013. No new evidence was presented. The trial court denied Estrella's motion and the subsequent motion to reconsider, holding that Estrella failed to prove

that there was a lack of probable cause for his objectively reasonable arrest. The court noted that though the standard of reasonableness in its criminal proceeding was the same as in Estrella's statutory suspension hearing, reasonable people could disagree.

¶ 7 The matter proceeded to a bench trial. The trial court heard testimony from Estrella and Engleking and the video was played in open court. The court found Estrella guilty of driving under the influence. Estrella's motion for rehearing was granted, but he was still found guilty of driving under the influence. This appeal timely followed.

¶ 8 The following account of the events that led to Estrella's ticketing and arrest is taken from the transcripts of the proceedings of Estrella's summary suspension hearing and his bench trial and from the video. At both proceedings, Estrella testified, in significant part, by interpreter.

¶ 9 Engleking was dispatched to the scene of a one-car accident on June 24, 2012, at about 4:00 a.m. Upon arriving to the scene, Engleking took note of one vehicle partially blocking traffic on the southbound entrance ramp from I-355 onto I-55. It appeared to have been in a crash with damage to its rear passenger side and Estrella was changing its rear passenger side tire. He also observed damage to the guardrail.

¶ 10 After approaching Estrella and for the duration of the incident, Engleking made inquiries and gave instructions in English. He asked about the accident and whether Estrella needed any medical help. Engleking testified that Estrella stated he struck something in the roadway that caused his flat tire and he refused medical assistance. Estrella testified that he had been in a one-car crash, hitting the guardrail (he referred to it as a "ramp" at the bench trial) with his truck after making a wide turn. The collision with the guardrail caused a flat tire. He did not remember Engleking asking if he needed medical assistance. The video shows Estrella agreeing with

Engleking's prompting that hitting the guardrail caused his flat tire. It also shows Engleking asking Estrella several times if he was injured or needed medical assistance or an ambulance.

¶ 11 Engleking testified that during that exchange he observed a strong odor of alcohol on Estrella's breath, bloodshot, glassy eyes, and slurred speech. Engleking conceded at both proceedings that he noticed Estrella's speech was accented and that many things could cause bloodshot, glassy eyes including fatigue. He stated, however, that when he asked at the scene prior to conducting the field sobriety tests, Estrella said he had consumed four to five Modelos beers between 4:00 p.m. and 10:00 p.m. Estrella testified at the summary suspension hearing that he had five Modelos beers between "4:00 p.m. to 1 o'clock in the morning when the quinceanera was over." Estrella stated at the bench trial that he and his family started at about 4:00 p.m. with a quart of wine and he had five beers. On the video, Engleking asked Estrella if he had been drinking. Estrella responded that he had four or five Modelos beers between 4:00 p.m. and 10:00 p.m. Estrella also said he thought the current time was between 2:00 a.m. and 3:00 a.m.

¶ 12 Engleking then decided to administer the field sobriety tests. At trial, he noted that Estrella's odor of alcohol, his glassy eyes, his speech, and the crash indicated to him that Estrella was possibly driving under the influence.

¶ 13 Engleking first instructed Estrella to perform the horizontal gaze nystagmus (HGN) test. Estrella stated that he understood the instructions. Engleking testified that he observed six clues indicating alcohol consumption including a lack of smooth pursuit, sustained and distinct nystagmus at maximum deviation, and an onset of nystagmus prior to 45 degrees. On video Estrella displayed no balance issues, but he moved his head several times contrary to the HGN test instructions. When corrected, he agreed by saying "yes, ok" and briefly stopped moving his

head. He confirmed his understanding that he is to look at only the tip of Engleking's finger by saying "only the tip" and "[he] can see [Engleking's] finger." The video also showed Engleking asking and Estrella complying with directions to stand in certain spots and to face Engleking.

¶ 14 Engleking next demonstrated and then Estrella performed the walk and turn test. Where only two are needed, Engleking testified he observed seven clues indicating alcohol consumption. Those clues included Estrella not keeping his feet together during the instruction phase of the test; missing heel to toe and stepping off the line; he raising his arms; taking an improper number of steps (significantly more than the nine to and fro as instructed); and stopping walking. On cross-examination, Engleking stated that he was unable to identify at which step Estrella stepped from the line, raised his arms, or stopped walking. The video shows Engleking asking Estrella before the test if his shoes are comfortable. Estrella responded yes. At the summary suspension hearing, Estrella stated that he did not understand Engleking's question and that his hands and feet were stiff, thus affecting his performance during the test. At the hearing on the motion to quash arrest and suppress evidence, defense counsel stated it was a hammer toe that affected his performance. At the bench trial, Estrella again stated he did not understand Engleking's question and that earlier foot surgery affected his performance during the test.

¶ 15 The video further showed Engleking physically pointing to the foot he wanted Estrella to place on the line and Estrella again acknowledging that he understood the test instructions. It also showed Estrella stepping off the line and raising his arms on his tenth and thirty-first steps forward. It did not show if Estrella missed heel to toe.

¶ 16 Engleking finally demonstrated and Estrella performed the one-legged stand test. Where again only two are needed, Engleking stated he observed three clues indicating alcohol

consumption. He testified to and the video showed Estrella putting his foot down, swaying, and raising his arms. The video also revealed Engleking ordering, without demonstrating, and Estrella complying with instructions to keep his feet together and his hands out of his pockets during the tests.

¶ 17 At the end of the video, Engleking instructed and demonstrated a preliminary breath test for Estrella, which Estrella did not complete. Engleking again asked Estrella when he had last consumed alcohol. Estrella responded that it had been about an hour. He was then arrested and transported to the station. At the station, Engleking asked Estrella if he was under the influence and offered him a breath test. Estrella answered that he was not and he refused the breath test.

¶ 18 MOTION TO QUASH ARREST AND SUPPRESS EVIDENCE

¶ 19 Estrella argues that the novelty of this case required the application of collateral estoppel in conjunction with his motion to quash arrest and suppress evidence. He also asserts that the trial court's denial of that motion was against the manifest weight of the stipulated evidence provided at the hearing. The State contends that this case is not novel and that there is no reason to deviate from the case law which holds that collateral estoppel is inapplicable between a statutory summary suspicion hearing and a charge of driving under the influence prosecution. It also argues that the trial court's factual findings are not against the manifest weight of the evidence.

¶ 20 With regard to collateral estoppel, the supreme court's holding in *People v. Moore*, 138 Ill. 2d 162 (1990), is dispositive. In *Moore*, the court held that application of the doctrine of collateral estoppel -- as argued here by Estrella -- would frustrate the legislative purpose of a statutory summary suspension proceeding. (*Moore*, 138 Ill. 2d at \_\_\_\_).

¶ 21 The doctrine of collateral estoppel bars relitigation of an issue “ ‘when a party or someone in privity with a party participates in two separate and consecutive cases arising on *different* causes of action and some controlling fact or question material to the determination of both causes has been adjudicated against that party in the former suit by a court of competent jurisdiction.’ (Emphasis in original)” *Id.* at 166 (quoting *Housing Authority v. Young Men’s Christian Association*, 101 Ill. 2d 246, 252 (1984)). All of these elements are present in this case. The State argued against Estrella’s petition to rescind the statutory suspension of his driver’s license at the statutory summary suspension hearing and lost. The court found that there were no reasonable grounds for Estrella’s arrest. In Estrella’s subsequent motion to quash arrest and suppress evidence, the material question again was whether there were reasonable grounds for his arrest.

¶ 22 In *Moore*, however, the supreme court held that even if a case appears to contain all of the elements warranting the application of the doctrine of collateral estoppel "the results of a statutory summary suspension hearing cannot act as a bar to litigating the same issues in the criminal DUI proceedings." *Id.* at 166. Statutory summary proceedings are limited in scope, are to be swift, and allow for the reliability of a sworn police report in lieu of a testifying officer as would be necessary in a criminal proceeding. *Id.* Extending these proceedings beyond those attributes would thwart its legislative purpose. *Id.*

¶ 23 Moreover, the "novelty" asserted by Estrella is the same difference in the nature proceedings of the two that the *Moore* court noted would be unworkable even on a case-by-case basis. "[T]he State would likely find it necessary to treat the suspension hearing as an integral part of the criminal trial rather than merely an administrative device\*\*\*\*" *Id.* It would be

frustrating to the legislative intent of a swift process. Thus, collateral estoppel is inapplicable in this matter.

¶ 24 Moving now to Estrella's second point of contention, we find the trial court's denial of his motion to quash arrest and suppress evidence was not against the manifest weight of the evidence. "A judicial finding is not against the manifest weight of the evidence unless from the record an opposite conclusion is clearly evident." *People v. Bafia*, 112 Ill. App. 3d 710, 712 (1983). However, "a reviewing court remains free to undertake its own assessment of the facts in relation to the issues presented and may draw its own conclusions when deciding what relief should be granted." *People v. Lee*, 214 Ill. 2d 476, 484 (2005). The ultimate question of whether to quash and suppress is reviewed *de novo*. *Id.* at 484.

¶ 25 A defendant moving to quash an arrest and suppress evidence must make a *prima facie* case that the police lacked probable cause. *People v. Brexton*, 343 Ill. App. 3d 322, 326 (2003). Probable cause exists where a reasonable and prudent man, having the same knowledge possessed by the arresting officer, would believe the person to be arrested is guilty of the crime. *People v. Moncrief*, 131 Ill. App. 2d 770, 772 (1971) (citing *People v. Hightower*, 20 Ill. 2d 361, 366 (1960)). "If the evidence would support the showing of probable cause, then the denial of the motion to quash and suppress could be approved." *Id.*

¶ 26 The court found that Estrella failed to establish that Engleking lacked probable cause for his arrest because there were reasonable grounds for Engleking to believe Estrella was driving under the influence. The evidence presented at trial included the stipulated transcript from the summary suspension hearing and the video.

¶ 27 We find that at the hearing on the motion to suppress, as well as here on appeal, Estrella only argued alternative explanations and not a clearly evident opposite conclusion for the factors



Engleking believed indicated Estrella was driving under the influence of alcohol. Estrella primarily argues that his limited ability to speak and comprehend English and his resultant failure of the field sobriety tests were mistaken for indicators of alcohol consumption. Estrella contends that his ability to correctly answer Engleking's questions regarding the crash and his physical condition at the accident scene – that escalated from stiffness at the summary suspension hearing to a hammer toe during the motion hearing – was inhibited due to a language barrier. He further asserts that he did not comprehend the instructions given during the field sobriety tests coupled with the repeated questions of whether he understood them. He answered Engleking affirmatively because he felt pressured to do so. He asserts that this language barrier was even conceded by Engleking.

¶ 28 This language barrier argument that Estrella claims yielded the erroneous indications of alcohol consumption fails. Though Estrella professes to have been unable to understand sufficient English to correctly explain the crash or his purported foot problems, the video clearly showed Estrella appropriately answering Engleking's questions about the crash, whether he had been drinking, how many beers had he consumed and at what time he drank them, what time of the day Estrella thought it was, and whether his shoes were comfortable. The video did not show Estrella demonstrating any issues with his feet or hands at any time.

¶ 29 Estrella also performed the field sobriety tests after Engleking gave and demonstrated the instructions. He responded appropriately when Engleking attempted to correct his performance during all of the tests, not only with the corrected behavior, if only momentarily, but also by affirming statements representing an understanding. Moreover, each test had more than the minimum clues needed to indicate alcohol consumption. Specifically, Engleking observed seven clues during the walk and turn test when only two were needed. Though disputed by Estrella,

the video visibly shows three of those clues: he failed to keep his feet together during the instructions for the test, he stepped off the line, and he raised his arms. They are sufficient to constitute failure of that test and they had nothing to do with Estrella's ability to comprehend English inasmuch as Estrella plainly stated he was doing his best to perform as Engleking demonstrated. Even during the one-legged stand test where only two clues are needed, the video showed all of the three clues Engleking said indicated alcohol consumption. Absent the clue of putting his foot down, which as Estrella argues was simply him mimicking Engleking's demonstration, Estrella still swayed and raised his arms, actions Engleking did not do.

¶ 30 The video further showed Engleking ordering several ancillary directives that Estrella complied with without a demonstration. Engleking told Estrella to keep his hands at his side and at one point to remove his hands from his pockets. Engleking also ordered Estrella to put his feet together prior to the one-legged stand test. Estrella promptly made all of these adjustments. Though Engleking did acknowledge that there was some language issue, he noted that it was minor.

¶ 31 Other explanations allegedly undercutting Engleking's belief that Estrella was driving impaired also fail. Estrella contends that his eyes were bloodshot and glassy due to fatigue and that the odor of alcohol was from earlier consumption. However, these are only explanations conflicting with Engleking's conclusion and the trial court's finding that these factors were indicators that Estrella was driving under the influence. There is no evidence making these alternate explanations "clearly evidence." A reviewing court will not substitute its judgment for that of the trier of fact when evidence is merely conflicting. *People v. Nunes*, 143 Ill. App. 3d 1072, 1076 (1986).

¶ 32 Estrella's last assertion is that despite his alleged failure of the tests, which again he attributes to language issues, there were strong indicators of his sobriety. He did not sway or use anything for support that would indicate alcohol consumption. The trial court, however, did not find those factors persuasive. When viewed in conjunction with the other factors supporting Engleking's belief that Estrella was driving under the influence, neither do we. The trial court's finding that Engleking had probable cause for Estrella's arrest was not against the manifest weight of the evidence.

¶ 33 **DRIVING UNDER THE INFLUENCE**

¶ 34 Estrella's final argument is that the State did not prove beyond a reasonable doubt that he was guilty of driving under the influence of alcohol under section 11-501(a)(2). (625 ILCS 5/11-501(a)(2) (West 2012)) The State, however, maintains that its argument and submitted evidence was sufficient to prove the crime charged beyond a reasonable doubt.

¶ 35 In a challenge to the adequacy of the evidence, a reviewing court considers " '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) *People v. Collins*, 106 Ill. 2d 237, 261 (1985) (quoting *Jackson v. Virginia*, 443 U.S. 307, 319 (1979)). " 'Once a defendant has been found guilty of the crime charged, the factfinder's role as weigher of the evidence is preserved through a legal conclusion that upon judicial review *all of the evidence* is to be considered in the light most favorable to the prosecution.' " (Emphasis in original.) *Collins*, 106 Ill. 2d at 261 (quoting *Jackson*, 443 U.S. at 319). Viewing the evidence in a light most favorable to the prosecution, we affirm the trial court's finding that the State met its burden of proving that Estrella was driving under the influence of alcohol.

¶ 36 The essential elements of section 11-501(a)(2) for this case are (a) whether the defendant was driving or in actual physical control of a motor vehicle and (b) whether the defendant, while driving or in actual physical control of a motor vehicle, was under the influence of alcohol. 625 ILCS 5/11-501(a)(2) (West 2012) "A person is under the influence of alcohol when, as a result of drinking any amount of alcohol, his mental or physical faculties are so impaired as to reduce his ability to think and act with ordinary care." Illinois Pattern Jury Instructions, Criminal, No. 23.29 (4th ed. Supp. 2009) Determining whether a person is under the influence of alcohol is a question for the trier of fact to resolve by assessing the credibility of the witnesses and the sufficiency of the evidence. *People v. Janik*, 127 Ill. 2d 390, 401 (1989).

¶ 37 Estrella concedes he was driving or was otherwise in actual physical control of his motor vehicle at the time of the incident. He also admits to having been involved in a one-vehicle crash after making a wide turn and hitting the guardrail, causing a flat tire. He testified he had consumed wine and five beers beginning at 4:00 p.m. The video showed Estrella stating he had four or five beers between 4:00 p.m. and 10:00 p.m., then later saying his last drink had been an hour prior to the incident. Though compelling, neither drinking nor the mere use of alcohol, standing alone, can be equated with intoxication or can justify characterizing a person impaired. *People v. Shackles*, 44 Ill. App. 3d 1024, 1026 (1977).

¶ 38 Relevant factors indicative of impairment include evidence that a defendant's breath smelled of alcohol, that his eyes were glassy and bloodshot, and that he failed field sobriety tests. *People v. Elliott*, 337 Ill. App. 3d 275, 281 (2003); *People v. Wiebler*, 266 Ill. App. 3d 336, 340 (1994). Refusing to submit to a breath test is also relevant evidence because it evinces a consciousness of guilt. 625 ILCS 5/11-501.2(c)(1) (West 2012); *People v. Garriott*, 253 Ill. App. 3d 1048, 1052 (1993).

¶ 39 Engleking testified that Estrella had a strong odor of alcohol, had bloodshot glassy eyes, and failed to perform the field sobriety tests correctly. He also failed to properly perform the breathalyzer tests at the scene. Estrella also later refused a breath test at the station. The trial court was privy to this information, the video, and the point by point counter argument presented by Estrella, which included an alternative explanation for nearly each piece of evidence indicating intoxication. He now claims factors such as the late hour, a physical problem with his feet -- that seems to have intensified from stiffness to post surgical impairment between hearings -- and the minor language barrier as the explanation for his inadequacy during the field sobriety tests. Yet, as previously stated, where evidence is merely conflicting, we will not substitute our judgment for that of the trial court. See *Nunes*, 143 Ill. App. 3d at 1076. It clearly did not afford any weight to Estrella's proffered explanations for the alcohol consumption indicators. Moreover, Estrella failed all three field sobriety tests with more clues of alcohol consumption indicators than needed or than were refuted by his alternative explanations. The trial court also did not find his testimony regarding his limited English and inability to understand Engleking's questions or instructions credible. We have taken the State's evidence as true. We have not reassessed witness credibility or reweighed their testimony. Thus, the evidence was sufficient to prove Estrella was driving under the influence.

¶ 40 CONCLUSION

¶ 41 We affirm Estrella's conviction and sentence.

¶ 42 Affirmed.