

No. 1-15-0186

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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.)	No. TE032440
)	
BERNARD BUSTILLO,)	Honorable
)	Freddrenna M. Lyle,
Defendant-Appellant.)	Judge Presiding.

JUSTICE LAMPKIN delivered the judgment of the court.
Presiding Justice Reyes and Justice Gordon concurred in the judgment.

O R D E R

- ¶ 1 *Held:* Judgment affirmed over defendant's challenge to the sufficiency of the evidence to sustain his conviction for driving under the influence of alcohol.
- ¶ 2 Following a bench trial, defendant Bernard Bustillo was found guilty of driving under the influence of alcohol ("DUI") and for driving with a broken taillight. On appeal, defendant contends that the State presented insufficient evidence to prove beyond a reasonable doubt that he was driving under the influence of alcohol.

¶ 3 The records shows that the incident giving rise to the charges occurred on January 21, 2013, near the intersection of Fullerton Avenue and Cicero Avenue, in Chicago, Illinois. Defendant was charged with disobeying a red circular steady stop signal, driving with a broken or inoperable lamp, and DUI (625 ILCS 5/11-501(a)(2) (West Supp. 2013)).

¶ 4 At trial, Chicago police officer Alberto Zayas testified that on the day in question, he was parked on Fullerton facing east toward Cicero, about 75 feet from the intersection. He was wearing his uniform and his partner was in the marked police car with him. At about 2:40 a.m., he observed a white Lincoln traveling northbound on Cicero. He believed the northbound traffic light was red because he could observe the green westbound traffic light. The Lincoln briefly stopped past the white line, and then turned left through the light. Officer Zayas followed, noticed a broken taillight, and switched on his lights. The vehicle slowed without stopping, so Officer Zayas turned on the siren. The vehicle stopped in the parking lane, but was still partially in the lane of traffic. Officer Zayas exited his vehicle and approached defendant's vehicle.

¶ 5 Officer Zayas further testified that when he approached, defendant was eating a sandwich behind the steering wheel with his head down. Officer Zayas knocked on the window, defendant continued eating and did not respond, so the officer opened the vehicle door, and smelled the strong odor of alcohol. He repeatedly asked defendant to step out of the vehicle, and each time defendant stared at him with a "daze in his eyes like he didn't understand what [the officer] was saying." Defendant spoke with "slurred, mumbled speech[,] had glassy bloodshot eyes, and a strong odor of alcohol on his breath. Officer Zayas assisted defendant out of the vehicle. He believed defendant was unsteady because of the weight defendant placed on him, so he helped defendant to the police car, where his partner held defendant up. When asked if he had been

drinking, defendant said yes and told the officer that the Patriots lost, and he had "lost \$100 bucks." Officer Zayas again smelled alcohol. Defendant refused a field sobriety test, explaining that his attorney told him not to take any tests.

¶ 6 Officer Zayas additionally testified that his police vehicle smelled of alcohol after driving defendant to the station. In a holding cell, he read defendant the "warnings to motorists" and told him that refusing a sobriety test could lead to a three-year suspension of his driver's license. He explained the various field sobriety tests and what they would show. Defendant refused these tests, including the breathalyzer, stating, "fuck it, I'm just going to move out of the country."

¶ 7 Officer Zayas testified that he was trained in DUI investigation at the police academy, where he passed all the relevant exams, and had received refresher courses about once per-year since then. Furthermore, he had encountered people under the influence of alcohol over 100 times, both, as a police officer, and in his personal life. Over defendant's objection, the court permitted the officer's opinion that defendant was under the influence of alcohol at the time of his arrest. His opinion was based on his "clues, the impairment, the slurred, mumbled speech; glossy, bloodshot eyes; his strong odor of alcoholic beverage emitting from his breath; his inability to follow direction clearly and his refusal and not understanding [the officer's] directions."

¶ 8 On cross-examination, Officer Zayas testified, in relevant part, that the following facts from his direct testimony were omitted from his police report: that he repeatedly asked defendant to step out of the vehicle, defendant's difficulty understanding directions, he was unsteady, and that the officers assisted him to their vehicle and helped him stand. No alcohol was recovered from defendant's vehicle. Defendant was not swaying, staggering, or stumbling while he stood

next to the police vehicle, and although his speech was slurred, the officer understood him without difficulty.

¶ 9 On re-direct, Officer Zayas testified that he did not include every detail of the events in the police report because it was a brief summary intended to refresh the officer's recollection at trial. He testified about defendant's conduct from his memory, and under the "attitude" heading in his report, he marked that defendant was indifferent, cocky, talkative, and insulting.

¶ 10 After the State rested, the court denied defendant's motion for a directed finding and defendant rested without presenting evidence. After closing arguments, the court found defendant not guilty of driving through a red light. The court found defendant guilty of DUI and driving with a broken taillight. In so holding, the court was "mindful of all the items that the defendant's attorney [had] said that were not contained in the police reports[.]" and for the most part, did not rely upon them to establish defendant's guilt. The court noted the absence of staggering and stumbling and explained that a DUI conviction "does not require a person to be sloppy fall down drunk[.]" The court also found that defendant did not react in a reasonable manner when he met with the officers.

¶ 11 On appeal, defendant contests the sufficiency of the evidence to sustain his DUI conviction. Where, as here, defendant challenges the sufficiency of the evidence to sustain his conviction, the relevant inquiry is 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. *People v. Woods*, 214 Ill. 2d 455, 470 (2005). In a bench trial, the trial court determines the credibility of the witnesses, weighs the evidence, draws reasonable inferences therefrom, and resolves any conflicts in the evidence. *People v. Daheya*, 2013 IL App

(1st) 122333, ¶ 62. This standard reflects the superior position of the trial court to appraise witness credibility through observation of their demeanor at trial. *People v. Reed*, 80 Ill. App. 3d 771, 781-82 (1980). Accordingly, we may not overturn a conviction based on insufficient evidence unless the proof is so improbable or unsatisfactory that a reasonable doubt exists as to the defendant's guilt. *People v. Williams*, 193 Ill. 2d 306, 338 (2000).

¶ 12 To sustain defendant's conviction, the State was required to prove beyond a reasonable doubt that defendant was in actual physical control of a vehicle while under the influence of alcohol. 625 ILCS 5/11-501(a)(2) (West Supp. 2013). A driver is under the influence of alcohol when his or her mental or physical faculties are so impaired that the driver's ability to act and think clearly is diminished. *People v. Gordon*, 378 Ill. App. 3d 626, 631 (2007). The credible testimony of a police officer is sufficient to prove impairment. *People v. Eagletail*, 2014 IL App (1s) 130252, ¶ 36. In determining whether a defendant was sufficiently impaired, the trier of fact may consider an officer's observations, such as "the odor of an alcoholic beverage on the defendant's breath," his conduct, speech, or appearance. *People v. Robinson*, 368 Ill. App. 3d 963 (2006). An arrestee's refusal to submit to chemical testing is admissible in the DUI prosecution (625 ILCS 5/11-501.2(c)(1) (West 2002). Further, failure to submit to field sobriety tests or chemical testing may indicate a consciousness of guilt. *People v. Jones*, 214 Ill. 2d 187, 201-02 (2005); *People v. Saturday*, 135 Ill. App. 3d 1052, 1054 (1985).

¶ 13 The record, in relevant part, shows that the officer turned on his vehicle's lights while driving behind defendant, who did not stop until the officer engaged the sirens. Defendant parked halfway in traffic, and when the officer knocked on his window, he continued eating and did not respond. Defendant's vehicle and breath smelled like alcohol, his eyes were bloodshot and his

speech was slurred and mumbled. The officer's vehicle smelled like alcohol after driving defendant to the station. Defendant refused several field sobriety tests, and a breathalyzer. As such, defendant's conduct when he met with police officers, the smell of alcohol, and defendant's refusals to submit to sobriety tests, considered in a light most favorable to the State, are sufficient to sustain the trial court's finding of guilt beyond a reasonable doubt.

¶ 14 Defendant nevertheless contends that the trial court improperly weighed certain facts in the officer's testimony that were not included in his report, and then failed to consider potential explanations for this conduct, such as physical impairment and competence with the English language. However, when weighing the evidence, the court was not required to disregard the inferences that naturally flow from the facts, nor did it have to consider every possible explanation consistent with innocence. *People v. Bull*, Ill. 2d 179, 205 (1998). Furthermore, the court's reliance on the purportedly incredible testimony was minimal, and the testimonial evidence the officer did include in the report combined with defendant's refusal to take the sobriety tests was sufficient evidence to prove his guilt. As set forth above, the record supports the conclusion of the trial court that defendant was driving under the influence of alcohol, we therefore affirm the judgment of the circuit court of Cook County.

¶ 15 Affirmed.