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IN THE  
APPELLATE COURT OF ILLINOIS  
SECOND DISTRICT

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|                         |   |                               |
|-------------------------|---|-------------------------------|
| THE PEOPLE OF THE STATE | ) | Appeal from the Circuit Court |
| OF ILLINOIS,            | ) | of Boone County.              |
|                         | ) |                               |
| Plaintiff-Appellee,     | ) |                               |
|                         | ) |                               |
| v.                      | ) | No. 10-DT-275                 |
|                         | ) |                               |
| BRANDI JOHNSON,         | ) | Honorable                     |
|                         | ) | John H. Young                 |
| Defendant-Appellant.    | ) | Judge, Presiding.             |

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JUSTICE BURKE delivered the judgment of the court.  
Presiding Justice Schostok and Justice Hutchinson concurred in the judgment.

**ORDER**

¶ 1 *Held:* Defendant was proved guilty of driving under the influence of alcohol beyond a reasonable doubt.

¶ 2 Following a bench trial, defendant, Brandi Johnson, appeals her conviction of driving under the influence of alcohol (DUI). See 625 ILCS 5/11-501(a)(2) (2010). The State presented evidence that, about 2 a.m., a motorist encountered defendant walking along the side of the road, 200 to 300 yards from a red Jeep sports utility vehicle (SUV) with front-end damage. Two police officers testified that defendant failed field sobriety tests and made statements indicating that she had driven the Jeep. On appeal, defendant contends that there was insufficient evidence

to show that she was in actual physical control of a motor vehicle while under the influence of alcohol. Defendant argues that there was insufficient evidence that she had driven the Jeep. We affirm.

¶ 3

### I. BACKGROUND

¶ 4 At trial, Jon Hunt testified that, between 1:30 a.m. and 2:30 a.m. on September 4, 2010, he was driving home from work, traveling north on Beloit Road when he encountered a small Chrysler SUV, like a Jeep Liberty or Dodge Nitro. The SUV was facing south and parked on the other side of the road near Dawson Lake Road. Hunt slowed down and saw that no one was inside. After traveling 200 to 300 yards, he saw defendant walking along the side of the road. He pulled his vehicle alongside defendant and asked if she needed help. Defendant asked who he was and what he was doing.

¶ 5 Hunt did not recall anything else she said, but defendant got into his vehicle. Hunt pulled behind the SUV and activated his flashers. He and defendant got into the SUV, with Hunt behind the wheel and defendant in the passenger seat. Defendant gave him the keys. Hunt turned the key and the battery activated but the engine did not turn over. Hunt activated the SUV's flashers and suggested that defendant call a friend. They both returned to Hunt's vehicle, and the police arrived soon thereafter. None of defendant's friends came to the scene while Hunt was there.

¶ 6 Boone County sheriff's deputy Adam Stark testified that he has training in basic field sobriety tests and intoxilyzer training and is familiar with the common signs and symptoms of someone under the influence of alcohol. About 1:56 a.m. on September 4, 2010, Deputy Stark was on patrol when he encountered two vehicles with their hazard lights activated. The vehicles were parked on the shoulder along the southbound lane.

¶ 7 Deputy Stark pulled up behind the vehicles, activated his emergency lights, and notified dispatch that he believed he had encountered one motorist assisting another. Deputy Stark walked to the nearest vehicle and saw Hunt in the driver's seat and defendant in the front passenger seat.

¶ 8 Deputy Stark asked what happened, and defendant responded that "her car had died on her." Deputy Stark detected the odor of alcohol coming from the vehicle and heard defendant slur her speech. Hunt did not slur his speech or have bloodshot eyes, and the officer believed that Hunt was not under the influence of alcohol.

¶ 9 Deputy Stark asked defendant if she had insurance, and when she responded affirmatively, he asked her to walk to the other vehicle to provide proof of insurance. As defendant exited and walked to the other vehicle, Deputy Stark noticed that she had poor balance and swayed. Defendant walked to the passenger side of the vehicle, entered, and looked for an insurance card.

¶ 10 Deputy Stark observed a trail of fluid on the pavement that led to the front of the vehicle, where he observed major damage. The front bumper cover was missing. Deputy Stark asked if defendant had struck anything recently because the damage appeared fresh, and she responded that it had been there for a couple of weeks. Defendant produced a roadside assistance card but failed to provide proof of insurance. Deputy Stark directed defendant to return to Hunt's vehicle, and he summoned Boone County sheriff's deputy Timothy Oberholtzer, who was on patrol specifically to investigate DUIs.

¶ 11 Deputy Stark asked defendant if she had been drinking, and defendant admitted that she had consumed two drinks. Deputy Stark also asked how the vehicle had come to be at its location, and he recorded in his report that defendant offered multiple explanations. Initially,

defendant said she did not know how the vehicle arrived at that location. Then she claimed that Hunt had driven the vehicle there. After Deputy Stark asked defendant how Hunt had arrived there, defendant responded that Hunt had been dropped off. She claimed that Hunt was her boyfriend and was there to jump start her vehicle. Deputy Stark noted that he had not seen anyone else walking along the road that night and that there was no activity at the homes along the road.

¶ 12 Deputy Stark testified that Deputy Oberholtzer arrived and began administering field sobriety tests. Deputy Stark noticed that, during the walk-and-turn test, defendant had difficulty getting into the starting position and started to lose her balance. Deputy Stark stepped in to catch defendant at least twice to prevent her from falling. He opined that defendant exhibited “indicators of impairment.”

¶ 13 Deputy Stark recalled that the license plates of both vehicles were run, but he did not remember any information that was returned on the plate of defendant’s vehicle. After Deputy Stark spoke to defendant the second time, he told Hunt that he could leave, and he did so. Deputy Stark stayed at the scene to ensure the vehicle was towed. Deputy Stark did not testify to how defendant left the scene.

¶ 14 After the plate had been run, Detective Reilly of the Loves Park police department called. An officer from Loves Park arrived at the scene with a vehicle’s front bumper that had a license plate matching the one on the rear bumper of the unoccupied car.

¶ 15 On cross-examination, Deputy Stark conceded that he did not see defendant with keys in her hand. He also conceded that he did not look in the vehicle for items that would establish defendant’s ownership, such as title and registration. Deputy Stark also noted that his police report did not mention defendant falling, his observation of the sobriety tests, the arrival of the

officer with the front bumper, or the bumper's license plate matching the one on the damaged vehicle. However, on redirect examination, Deputy Stark explained that his assumption that defendant owned the vehicle was based on her statements that (1) "her car had died on her," (2) she had insurance for it, and (3) she could produce proof of that insurance.

¶ 16 Deputy Oberholtzer testified to his administration of the field sobriety tests. He testified that he had the requisite training and is certified for standard field sobriety testing and had field experience identifying alcohol impairment. About 2 a.m. on September 4, 2010, Deputy Oberholtzer was on patrol to investigate potentially impaired drivers. He was summoned to the scene to investigate two vehicles on the side of the road and one possibly impaired driver.

¶ 17 Upon arriving at the scene, Deputy Oberholtzer observed that there was a red Jeep partially parked in the roadway. Deputy Stark told him that defendant was the driver of the unoccupied Jeep and appeared to be intoxicated. The other motorist left the scene in his vehicle as Deputy Oberholtzer arrived.

¶ 18 As he approached defendant, Deputy Oberholtzer observed that she could not stand still and was losing her balance repeatedly. Deputy Oberholtzer asked defendant from where she had driven, and defendant responded that she was with a friend. Deputy Oberholtzer asked for the friend's name, and defendant simply responded that she was with a friend and did not provide a name. Deputy Oberholtzer again asked from where defendant had driven, and defendant responded that she had been at a bar with friends. During the conversation, Deputy Oberholtzer noticed that defendant had the smell of alcohol on her breath, bloodshot eyes, and slurred speech. Deputy Oberholtzer asked defendant how much alcohol she had had to drink that night, and defendant admitted consuming two drinks of vodka and tonic. Deputy Oberholtzer asked for the name of the bar and its location, and defendant stated that it was in Rockford. When Deputy

Oberholtzer asked defendant where she thought she was, defendant responded that they were on Spring Creek Road, which runs east and west, when in fact they were on Beloit Road, which runs from southeast to northwest. Deputy Oberholtzer testified that the two roads intersect three to four miles away from the scene.

¶ 19 Deputy Oberholtzer testified that he asked defendant to perform two field sobriety tests. The first test was the horizontal nystagmus gaze (HGN) test, where defendant was asked to stand with feet together and arms at her sides while following with her eyes Deputy Oberholtzer's finger as he moved it from side to side. The test checks for the smooth pursuit and equal tracking of the eye movement, which would indicate sobriety. Deputy Oberholtzer inquired about any medical issues and whether defendant understood the directions she was given, and she said she understood.

¶ 20 Deputy Oberholtzer testified defendant's eyes failed to move smoothly during the HGN test, and defendant had to be reminded not to turn her head during the test. Deputy Oberholtzer also noted nystagmus in both eyes prior to maximum deviation, where defendant's eyes began involuntarily jerking before forty-five degrees.

¶ 21 Deputy Oberholtzer then administered the walk-and-turn test, where defendant was asked to take nine heel-to-toe steps in a straight line, turn around, and take another nine heel-to-toe steps in a straight line back to the starting point. Deputy Oberholtzer asked if defendant had any medical or physical condition that would interfere with her ability to perform the test, and defendant indicated she would not be impaired to perform the test. After instructing defendant and demonstrating how to perform the starting position for the test, Deputy Oberholtzer noted that when instructed to place her right foot in front of her left foot, defendant placed her left foot in the front position, but did touch heel-to-toe. Deputy Oberholtzer observed defendant holding

that position for approximately one second before defendant lost her balance and stepped off to right to keep from falling. Once Deputy Oberholtzer had repeated his instructions, defendant asked to remove her shoes, and while leaning on Deputy Oberholtzer to maintain balance, defendant lost her balance while trying to remove her shoes. The shoes did not have high heels. Defendant then decided to leave her shoes on, and attempted to regain the position with right foot in front. However, Deputy Oberholtzer noted that again defendant had placed her left foot in front, again failed to maintain the position, and again stepped off her right foot. Deputy Oberholtzer then attempted to continue reading the instructions to defendant, but defendant then started the test, and Deputy Oberholtzer stopped her. Deputy Oberholtzer stopped the test because it appeared defendant would not be able to complete the test safely and without falling over. Deputy Oberholtzer also decided not to have defendant perform the one-leg-stand test because he did not believe she would be able to complete it safely.

¶ 22 After the tests, Deputy Oberholtzer asked defendant to rate herself from zero to ten, with zero representing no alcohol in her system and ten representing her most intoxicated state, and defendant rated herself at a two. When Deputy Oberholtzer asked defendant if she should have had someone else drive, defendant responded that she should have. Defendant appeared emotionally upset.

¶ 23 Deputy Oberholtzer testified that, based on defendant's slurred speech, the odor of alcohol, the condition of the car appearing to have been in an accident, and defendant's performance on the field sobriety tests, he determined that she was under the influence of alcohol and should not have been operating a motor vehicle. Deputy Oberholtzer took several photographs of the Jeep because it was leaking fluid and appeared to have been in an accident.

¶ 24 Deputy Oberholtzer told defendant he was placing her under arrest for DUI, and she replied that she had “screwed up.” He placed defendant in the rear seat of his squad car, administered her *Miranda* rights, and transported her to the Boone County public safety building. While en route to the jail, Deputy Oberholtzer again asked defendant which bar she had been patronizing that night. Defendant responded that she had not been at a bar, and when Deputy Oberholtzer reminded her of her earlier response, defendant said that she had been at two bars that she identified as Pearl’s and Giovanni’s. Defendant again admitted that she had consumed two alcoholic drinks that night.

¶ 25 As defendant exited the squad car, she lost her balance and fell against the vehicle. While escorting defendant into the safety building, Deputy Oberholtzer noted that defendant continued to have trouble maintaining her balance. Defendant refused to provide a breath sample. Deputy Oberholtzer received information about the damaged vehicle after the license plate was run to determine registration and ownership of the vehicle. The report showed that the vehicle was a 2006 Jeep registered to defendant.

¶ 26 On cross-examination, Deputy Oberholtzer testified that he did not ask defendant if the Jeep was hers, did not enter the Jeep to check for indicia of ownership, and did not ask defendant if she had been driving that vehicle that day. Deputy Oberholtzer also testified that defendant did not admit driving that day, and he did not see defendant enter that vehicle. Further, Deputy Oberholtzer conceded that his request to dispatch and the results for determining the ownership of the vehicle were not mentioned in his report.

¶ 27 On November 4, 2013, the trial court found defendant guilty and entered a memorandum of decision. First, the court found that defendant was under the influence of alcohol, based on the officers’ testimony that defendant admitted consuming alcohol, they detected an odor of



alcohol, she slurred her speech, and she exhibited poor balance and almost fell. The court noted that Deputy Oberholtzer opined that defendant was impaired.

¶ 28 Second, the court identified as the central issue whether defendant was driving or in actual physical control of the vehicle while under the influence. The court conceded that none of the witnesses saw her drive and that neither officer saw her with keys. However, Deputy Stark testified that defendant said that “her car died on her.” Also, Hunt saw defendant 200 to 300 yards from the damaged vehicle, which was in a rural part of Boone County. Hunt testified that defendant gave him the keys, and he unsuccessfully attempted to start it. The officers also testified to a trail of fluid from the vehicle. The court found that the Jeep, despite its damage, still qualified as a vehicle under the statute and that defendant was in actual physical control of it while under the influence.

¶ 29 Defendant filed a motion for judgment notwithstanding the verdict or a new trial, and the motion was denied. The court imposed a 12-month term of probation and ordered her to pay the appropriate fines and fees. Defendant timely appeals.

¶ 30

## II. ANALYSIS

¶ 31 Defendant argues that her DUI conviction must be reversed because the State failed to prove that she was in actual physical control of a motor vehicle while under the influence of alcohol. In a challenge to the evidence supporting a criminal conviction, a reviewing court does not retry the defendant. *People v. Smith*, 185 Ill. 2d 532, 541 (1999). “When reviewing the sufficiency of the evidence, ‘the relevant question 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.’ (Emphasis in original.)” *People v. Bishop*, 218 Ill. 2d 232, 249 (2006) (quoting *Jackson v. Virginia*, 443 U.S. 307, 319 (1979)); *People v.*

*Collins*, 106 Ill. 2d 237, 261 (1985). “Testimony may be found insufficient under the *Jackson* standard, but only where the record evidence compels the conclusion that no reasonable person could accept it beyond a reasonable doubt.” *People v. Cunningham*, 212 Ill. 2d 274, 280 (2004). Our duty is to carefully examine the evidence while giving due consideration to the fact that the court saw and heard the witnesses. The testimony of a single witness, if it is positive and the witness is credible, is sufficient to convict. *Smith*, 185 Ill. 2d at 541. The credibility of a witness is within the province of the trier of fact, whose finding on such matters is entitled to great weight, but the determination is not conclusive. We will reverse a conviction where the evidence is so unreasonable, improbable, or unsatisfactory that it creates a reasonable doubt of the defendant’s guilt. *Smith*, 185 Ill. 2d at 542.

¶ 32 Defendant was convicted of a violation of section 11-501(a)(2) of the Illinois Vehicle Code (Vehicle Code), which provides that a “person shall not drive or be in actual physical control of any vehicle within this State while \*\*\* under the influence of alcohol.” See 625 ILCS 5/11-501(a)(2)(2010). A conviction does not require proof that the accused was observed driving, and courts have found that a car being moved from the place where a defendant was drinking to the place where it was parked can create an inference sufficient to establish guilt beyond a reasonable doubt. See, e.g., *People v. Jendrzewak*, 98 Ill. App. 2d 313, 319 (1968).

¶ 33 Defendant emphasizes that no one saw her drive, none of her personal effects were recovered from the vehicle, and the State did not produce the dispatch report confirming her ownership of the vehicle. The absence of direct evidence does not compel reversal because overwhelming circumstantial evidence shows that defendant was in actual physical control of the vehicle while under the influence of alcohol.

¶ 34 Our conclusion is supported by *People v. Lurz*, 379 Ill. App. 3d 958 (2008), where an officer found the defendant walking along a rural road, and his truck was a half mile away with no one else in the area. *Lurz*, 379 Ill. App. 3d at 962. The defendant told the officer that he was walking to a friend's house because his truck had run out of gas. *Lurz*, 379 Ill. App. 3d at 962. The defendant testified that he had used a designated driver, but the officer testified that the defendant admitted to driving the truck and that the truck's passenger seat was covered with papers and a sweatshirt. *Lurz*, 379 Ill. App. 3d at 962-63. We affirmed the defendant's conviction based on the defendant's admission to driving and the corroborating circumstantial evidence of the defendant driving the truck when it ran out of gas.

¶ 35 Our conclusion is also supported by *Jendrzejak*, where the defendant was shown to be driving by circumstantial evidence that he was found standing along a road near a vehicle that was stuck in a ditch. *Jendrzejak*, 98 Ill. App. 2d at 315. The police determined that the defendant was under the influence of alcohol, and the arresting officer testified that the defendant said he was the owner and driver of the vehicle. *Jendrzejak*, 98 Ill. App. 2d at 315. The defendant testified that his wife had been driving and that he had awoken to find the car in the ditch. *Jendrzejak*, 98 Ill. App. 2d at 316. The defendant testified that he and his wife quarreled, and she left him standing by the side of the road, but he never denied telling the officer he was the driver of the vehicle. *Jendrzejak*, 98 Ill. App. 2d at 316. The appellate court found that the conclusion that the defendant was the driver of the vehicle was supported by this evidence and strengthened by the officer's testimony that defendant told him he drove the vehicle that night.

¶ 36 In this case, the State introduced ample evidence that defendant was under the influence of alcohol. The officers testified that defendant admitted consuming alcohol, admitted being at two bars in Rockford earlier that night, and conceded at the scene that she should not drive. The

officers detected an odor of alcohol, she slurred her speech, and she exhibited poor balance and almost fell more than once. Deputy Oberholtzer opined that defendant was impaired.

¶ 37 The State also introduced circumstantial evidence that defendant was in actual physical control of the vehicle. Hunt first saw defendant while she was walking 200 to 300 yards from the vehicle. Although none of the witnesses saw defendant drive and neither officer saw her with keys, Hunt testified that defendant gave him a key that matched the ignition switch of the unoccupied vehicle. The vehicle, which did not start, had recent front-end damage, was missing its front bumper, and was leaking fluid. An officer brought a bumper with a license plate that matched the plate on the rear of the vehicle.

¶ 38 Defendant told Deputy Stark that “her car died on her,” and she gave inconsistent explanations as to how the vehicle came its location. Deputy Oberholtzer asked defendant where she had driven from, and defendant responded that she was with a friend, and later indicated that she had driven from a bar in Rockford. Defendant told the police that she had insurance on the vehicle, and when asked to produce it, she walked to the front passenger side and searched the vehicle.

¶ 39 Any rational trier of fact could infer from defendants’ statements and the circumstantial evidence that defendant was in actual physical control of a motor vehicle while under the influence of alcohol. The evidence supports the inference that she consumed alcohol at a bar, drove away in her vehicle, and became involved in a collision in which the vehicle’s engine was damaged and the front bumper fell off. Defendant continued driving until the damage caused the vehicle to become inoperable, at which point Hunt encountered her walking on the side of the road. When considering all of the evidence in the light most favorable to the prosecution, we

conclude that a rational trier of fact could have found the essential elements of DUI beyond a reasonable doubt. See *Cunningham*, 212 Ill. 2d at 278.

¶ 40

### III. CONCLUSION

¶ 41 For the reasons stated, we affirm defendant's conviction of DUI. As part of our judgment, we grant the State's request that defendant be assessed the State's attorney fee of \$50 under section 4-2002(a) of the Counties Code (55 ILCS 5/4-2002(a) (West 2014)) for the cost of this appeal. See *People v. Nicholls*, 71 Ill. 2d 166, 179 (1978).

¶ 42 Affirmed.