2016 IL App (2d) 160097-U
No. 2-16-0097
Order filed November 17, 2016

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS, Plaintiff-Appellee, v. MATTHEW G. JOHNSON, Defendant-Appellant.	))))))))))	Appeal from the Circuit Court of Boone County. No. 11-DT-237 Honorable Philip J. Nicolosi, Judge, Presiding.

JUSTICE JORGENSEN delivered the judgment of the court.
Justices Hutchinson and Hudson concurred in the judgment.

ORDER

¶ 1 *Held*: Defendant's arguments that the State's comments in opening and closing statements were prejudicial and that the jury was improperly exposed to possible penalties concerning driving while under the influence, did not reflect plain error and are forfeited. The trial court did not abuse its discretion in allowing the arresting officer to testify at trial about a statement that defendant made at the scene of his arrest. Finally, the evidence was sufficient to sustain defendant's conviction. Affirmed.

¶ 2 On November 18, 2014, after a jury trial, defendant, Matthew G. Johnson, was convicted of driving under the influence of alcohol (DUI) (625 ILCS 5/11-501(a) (West 2012). The court later denied defendant's amended motion for judgment notwithstanding the verdict, a new trial,

and/or a stay pending appeal and sentenced him, in part, to 18 months' probation. Defendant appeals, arguing that: (1) the State's comments in opening and closing arguments caused prejudicial error; (2) during *voir dire*, the jurors were improperly exposed to references concerning possible penalties for DUI; (3) the trial court erred by allowing the arresting officer to testify about a statement that defendant made at the scene of his arrest; and (4) the evidence was insufficient to sustain the verdict. For the following reasons, we reject these arguments and affirm.

¶ 3 I. BACKGROUND

¶ 4 A. Motion *in Limine* to Exclude Statement

¶ 5 On September 4, 2011, defendant was issued a citation for misdemeanor DUI. Prior to trial, defendant moved *in limine* to exclude a statement that defendant made at the scene of his arrest. Specifically, Deputy Adam Starks asked defendant, "on a scale of 1 to 10, 0 being completely sober and 10 being the drunkest you've ever been, how drunk are you tonight?" Defendant answered that he was "about a four." Defendant moved to exclude the statement as extremely prejudicial with no probative value.

¶ 6 The trial court stated that it did not know why the officer asked that question, and it agreed that the question was "problematic as far as what does that really mean? It's so subjective." The court found, however, that the meaning of the statement could be argued and that defendant's response could also be interpreted to his advantage (*i.e.*, only a 4 out of 10). The court concluded that, while it did not think that it was a "great" question, the answer could be explained and, therefore, it denied defendant's motion.

¶ 7 B. *Voir Dire*

¶ 8 Jury selection commenced on November 17, 2014. During *voir dire*, the court asked the venire whether any one of them or their family members or friends had been charged with a similar DUI offense.

¶ 9 One potential juror stated that, in 1991, he had been charged with DUI. The court asked what happened in the case; specifically, did it go to trial? The juror responded:

> "JUROR: My attorney negotiated for me. There was no trial. And I ended up with community service and time in jail credited spent for a couple days and then a fine and breathalyzer in the car and probation.
>
> COURT: And do you feel that you were treated fairly throughout that process?
>
> JUROR: Yeah, I do now. When I was young, I didn't, but, yes.
>
> COURT: And would that experience affect your ability to be fair to both sides in this case?
>
> JUROR: No."

Ultimately, *defense* counsel accepted and tendered the juror to the jury.

¶ 10 Another juror responded to the court's inquiry that he was charged with a similar crime in the 1980's in Florida. The court asked whether he felt that he had been treated fairly, and the juror responded, "Oh, yeah, the government took care of it. I was serving and in the service at that time. It never went to trial." The court asked if the disposition of that situation would cause him any difficulty in being fair and impartial to both sides in the case, and the juror responded, "no." Ultimately, *defense* counsel wanted to keep this juror, but the State excused him.

¶ 11 C. Trial

¶ 12 The State's opening statement began with: "Safety and accountability, ladies and gentlemen. The right to safely travel our roadways to be free from a danger at the harm of those

impaired by alcohol, to hold those who disregard the law accountable for their actions." The State's opening statement concluded with: "at the end of my case I'll return to ask you to consider the safety of our community. I'll ask you to consider how driving impaired can affect not only the driver but those who may face the impaired driver of the vehicle. I'll ask you to consider the facts and apply them to the law. I'll ask you to find the defendant guilty of the charge of driving under the influence of alcohol."

¶ 13 Deputy Stark was the sole witness. Stark testified that he graduated from the police academy in 2009, after 12 weeks of training. He has received 40 hours of instructional training in the detection of impaired, intoxicated drivers. During that instruction, Stark learned how to perform field sobriety tests and he passed the examination that was issued at the completion of that training. Stark has taken two refresher training courses since departing the police academy. He agreed that the instruction did not use persons who were actually intoxicated.

¶ 14 On September 4, 2011, at approximately 1:03 a.m., Stark was on "DUI patrol," heading westbound on Route 20 near Beaver Valley and County Line roads in Boone County. His squad car was marked, but did not contain a video or audio recording system. Stark observed a blue Jeep also traveling westbound and, using an in-car radar device, clocked the Jeep as traveling 68 miles per hour in a 55-mile-per-hour zone. Stark activated his emergency lights, and the driver of the Jeep pulled over in a "normal" manner.

¶ 15 Stark approached the vehicle and spoke with defendant, the Jeep's driver. According to Stark, at first, defendant would not look at him and instead looked straight ahead. Stark smelled an odor of alcohol coming from the vehicle. When defendant eventually looked at Stark, Stark noticed that defendant's eyes appeared glassy and bloodshot. Stark informed defendant that he had stopped him due to speeding, but then he asked defendant if he had also been drinking. At

first, defendant said he had not been drinking. Stark told defendant that he smelled the odor of an alcoholic beverage coming from the vehicle. Defendant eventually stated that he had been drinking. Stark asked defendant to exit the vehicle to perform field sobriety tests. At first, defendant did not wish to exit the vehicle, but he eventually complied.

¶ 16 Stark did not notice anything unusual about defendant's speech or manner in exiting the vehicle, nor his walking or standing. Defendant "seemed a little nervous." Stark explained that he asked defendant to provide two "divided attention tests," which are tests that ask someone to perform multiple tasks at the same time. Specifically, Stark first instructed defendant on the walk-and-turn test, a test he had often administered. During the instruction phase, defendant placed his right foot down in front of his left, but "then he staggered his front foot in front of the other." During the test's execution phase, defendant did not touch his feet heel to toe during his steps and, during his pivot turn, he pivoted on both feet and lost his balance, taking about three steps back. Stark testified that one fails the test upon exhibiting two or more sets of clues; defendant exhibited four: (1) holding his foot staggered and not maintaining balance; (2) improper turn; (3) not touching heel to toe; and (4) losing balance and stepping offline three steps.

¶ 17 Stark next instructed defendant on the one-legged-stand test. Stark had administered this test more than 20 or 30 times. During the test, defendant raised his arms from the side, swayed, and put his foot down three times. Defendant exhibited three sets of clues, while only two were needed to fail the test. Although 30 seconds, the standard length of time for that test, had not yet passed, Stark stopped the test.

¶ 18 After defendant failed the two tests, Stark asked him how many drinks he had consumed. Defendant admitted to drinking two beers, then changed it to three beers, between 10:30 and 11

p.m. "I asked him on a scale of [0] to [10], [0] being complete[ly] sober and [10] being the drunkest he's ever been, where he thought he was at? He said he was at about a [4]." Stark agreed that the question was not one he was trained to ask, but he explained that it is one that he usually asks to see how the driver rates himself or herself because "everybody knows their own body better than I do." Stark placed defendant under arrest for DUI. When they arrived at the Boone County jail, Stark offered defendant a breath test, which he refused.

¶ 19 Stark testified that, in his professional and personal life, he had encountered hundreds of impaired persons and, prior to September 4, 2011, he had conducted around 30 DUI investigations. In Stark's opinion, defendant was under the influence of alcohol and unfit to be driving, an opinion based upon defendant's "speeding, my initial contact with him in the smelling of alcohol[,] and his field sobriety testing."

¶ 20 On cross-examination, Stark agreed that, while he was following defendant before defendant pulled over, he did not see defendant's car weaving, leaving its own lane of travel, crossing over the center line, crossing over the fog line, or leaving the roadway. He confirmed that defendant pulled over in a "normal" time frame and manner. Stark agreed that defendant was not sweating, shaking, vomiting, urinating, or disheveled, nor did defendant fall down, stumble, or grab the car for support or balance when exiting the vehicle. Defendant did not slur his words. Stark further agreed that smelling an odor of alcohol told him that the person possibly could have been drinking alcohol or possibly that there was an alcoholic beverage inside the vehicle, but it was not possible, based on the smell alone, to say what or how much someone had been drinking. Stark could not recall how far apart defendant placed his feet when failing to place them heel to toe during the walk-and-turn test. He agreed that, during that test, defendant walked a straight line; Stark could not recall the road conditions or whether defendant pivoted

near a slope when he stumbled back, but did not fall. Stark agreed that the standard time for the one-legged-stand test is 30 seconds, and that he stopped defendant's test early. Finally, Stark agreed that defendant was already under arrest when he refused to take the breath test.

¶ 21 On re-direct examination, Stark explained that he stopped the one-legged-stand test early because defendant had already put his foot down three times, swayed, and raised his arms: "then it's kind of a safety concern. I don't want [the] person to fall and hurt themselves." He summarized that he arrested defendant for DUI "based on everything that I saw, the smell, the performance on the field sobriety testing[,] and speeding."

¶ 22 The State rested. Defendant did not present any evidence. The State, as part of its closing argument, stated there was an odor of alcohol coming "off of the defendant" when he spoke to Stark and, further, that Stark noticed the smell of alcohol coming "from the defendant." Further, the State commented:

> "The defendant made choices that night, that's why we're here. He chose to consume alcohol and get behind the wheel of a car and drive it upon a roadway in our county where drivers are now at risk of being hurt or even killed; all because of the actions of the defendant. And he also chose not to provide a breath sample when given the opportunity. And from this you are allowed to infer consciousness of guilt that the defendant had consumed alcohol to the point that he was too impaired to operate the vehicle safely.
>
> You know why the defendant didn't provide a breath sample, because he knew if he blew into that breath test machine that the results would come back and show that he was impaired that night. It would show that his physical and mental faculties were compromised that night.

> Now, yesterday I talked to you all about safety and accountability. The defendant jeopardized the safety of others that night, and you're being asked to hold him accountable for his actions. In Illinois there's a name for what the defendant did that night and it's called driving under the influence of alcohol."

¶ 23 Defense counsel did not object to the above comments. In his closing argument, defense counsel noted, in part, that although defendant was speeding, the State had not established that he was driving or acting in an impaired manner. Further, counsel argued that Stark's testimony was not credible for various reasons. In addition, counsel noted that Stark asked defendant how he felt on a scale of 1 to 10, and defendant answered that he was about a 4. "He was very subjective, but he was honest. Not under the influence of alcohol, not too drunk to drive a car. He absolutely did have the ability to think and act with ordinary care."

¶ 24 In rebuttal, the State responded:

> "We as a State, we don't have to prove that the defendant was falling down drunk or throwing up or vomiting. Again, that would be a very simple case; somebody who had crashed and was throwing up and vomiting falling down drunk. We do not have to prove that. All we have to prove is that beyond a reasonable doubt that defendant was not able to think and act with ordinary care when he was operating a vehicle that night and he was not."

¶ 25 Further:

> "Now, ladies and gentleman, a lot of talk has been, a lot of argument has been made about Deputy Stark. And I want to remind you that Deputy Stark is not the one who's on trial here today. The defendant, sitting at the defense counsel's table is the one who's on trial. You heard from Deputy Stark and he testified honestly and credibly. He

> didn't make up any, make up anything that he didn't remember when he said, when he was asked how far the gaps were between the steps? He said, you know, I don't recall. He didn't lie and make anything up. He wasn't completely confused as to what happened, if he said he didn't remember, he said he didn't remember. But it was clear that he did remember that the defendant was not fit to operate a vehicle that night."

¶ 26 After deliberations, the jury found defendant guilty of DUI.

¶ 27 D. Posttrial Motion

¶ 28 In his posttrial motions, defendant raised numerous issues, including those raised on appeal. On August 26, 2015, the court rejected those arguments. Defendant appeals.

¶ 29 II. ANALYSIS

¶ 30 A. State's Opening and Closing Statements

¶ 31 Defendant argues first that the State caused prejudicial error where it made improper statements in opening and closing statements. These statements concern four categories. First, defendant argues that the State misrepresented its burden of proof to the jury when it asserted: "All we have to prove is that beyond a reasonable doubt that defendant was not able to think and act with ordinary care when he was operating a vehicle that night and he was not." He contends that this was error because the State was required to prove that he was driving or in actual physical control of a vehicle while under the influence of alcohol. Second, defendant argues that the State over-emphasized the public's right to travel safely in both opening and closing statements, appealing to the jurors' fears that they or their family members could be the next victim. Third, defendant contends that the State improperly referenced his failure to testify when it commented that: "a lot of argument has been made about Deputy Stark. And I want to remind you that Deputy Stark is not the one who's on trial here today. The defendant, sitting at the

defense counsel's table is the one who's on trial. You heard from Deputy Stark and he testified honestly and credibly." Fourth, defendant argues that the State misrepresented evidence when it commented that an odor of alcohol was coming "off of the defendant," when Stark testified only that he smelled alcohol coming from defendant's vehicle and, further, when it commented that the breath test would have shown that defendant as impaired and that defendant knew as much.

¶ 32 Defendant concedes that he objected to none of the foregoing comments at trial, raising them only in his posttrial motion and, therefore, the arguments are forfeited. See *People v. Johnson*, 218 Ill. 2d 125, 138 (2005) (where the defendant did not object at trial to the State's remarks during opening and closing arguments, any issue concerning the propriety of those remarks was procedurally defaulted on appeal). However, defendant requests that we review his arguments for plain error. Defendant contends that the evidence in the case was weak and the alleged errors, alone and in combination, caused substantial error and denied him a fair trial. We disagree.

¶ 33 As defendant concedes, we may review these arguments only if defendant has established plain error. See 134 Ill. 2d R. 615(a) (eff. Jan. 1, 1967). "[T]he plain-error doctrine bypasses normal forfeiture principles and allows a reviewing court to consider unpreserved error when either (1) the evidence is close, regardless of the seriousness of the error, or (2) the error is serious, regardless of the closeness of the evidence." *People v. Herron*, 215 Ill. 2d 167, 186–87 (2005). There can be no plain error where there is no error. *Johnson*, 218 Ill. 2d at 139. A defendant has the burden of persuasion under both prongs of the plain-error doctrine. *People v. Hillier*, 237 Ill. 2d 539, 545 (2010). If the defendant fails to meet his burden, the procedural default will be honored. *Id.*

¶ 34 Here, we first disagree that, in context, the State misrepresented its burden of proof to the jury when it asserted: "All we have to prove is that beyond a reasonable doubt that defendant was not able to think and act with ordinary care when he was operating a vehicle that night and he was not." This comment came in its rebuttal argument, after defendant argued that the State had not established that he drove or acted in an impaired manner. Further, although defendant contends that this comment was error because the State was required to prove that he was driving or in actual physical control of a vehicle while under the influence of alcohol, there is clearly no question that defendant was both driving and in physical control of the vehicle. The only question at trial was whether defendant was, while driving, under the influence, *i.e.*, unable to think or act with ordinary care, which is the question that the State's comment addressed. Further, there is no question that the jury received from the trial court proper instructions concerning the burden of proof and required elements to find defendant guilty of DUI, as well as an instruction that opening and closing statements were not evidence. Thus, as there is no error, this comment did not constitute plain error. *Johnson*, 218 Ill. 2d at 139.

¶ 35 Second, defendant notes that the State emphasized the public's right to travel safely in both opening and closing statements, and he further notes it can be error to appeal to jurors' fears that they or their family members could be the next victim. See *People v. Crossno*, 93 Ill. App. 3d 808, 824 (1981) ("While a prosecutor may dwell upon the evil of crime and exhort the jury to fearlessly administer the law [citation], he should refrain from making inflammatory appeals to the fears of the jury."); see also *People v. Frazier*, 107 Ill. App. 3d 1096, 1101-02 (1982) (finding improper, in a rape case, the State's comments to the jury that their "sisters, wives, daughters" might someday be in a position where they could be raped). However, unlike in *Crossno* and *Frazier*, the State here did not state that the jurors or their family members could be

the next victim. Rather, these comments focused more on the "evil of the crime" (as distinguished in *Crossno*) than appealing to the jurors' fears, and, therefore, we conclude they were not error.

¶ 36 Nevertheless, because the State emphasized this concept both in opening and closing arguments and the comments arguably *bordered* on impropriety, we note that, even if we were to assume that the remarks were improper, reversal is not required; we then must consider whether they were sufficiently prejudicial so as to require reversal. *Johnson*, 218 Ill. 2d at 141. To do so, we must consider the remarks in the context of the State's argument as a whole and reverse only if defendant has met his burden of persuasion that they were so prejudicial that justice was denied or the jury's verdict might have resulted from the error. *Id.* We conclude that defendant did not meet that burden here. As discussed later in this decision, the evidence against defendant was not close. Viewing the comments in the context of the trial evidence and arguments as a whole, we are not persuaded that the alleged error was serious or that the verdict resulted from the State's comments.

¶ 37 Third, we reject defendant's argument that the State improperly referenced his failure to testify when it commented that: "a lot of argument has been made about Deputy Stark. And I want to remind you that Deputy Stark is not the one who's on trial here today. The defendant, sitting at the defense counsel's table is the one who's on trial. You heard from Deputy Stark and he testified honestly and credibly." This comment clearly responds to defendant's attacks on Stark's credibility. To construe the comments as improperly referencing defendant's failure to testify is an unreasonable stretch. Therefore, again, as there is no error, this comment did not constitute plain error. *Id*. at 139.

¶ 38 Fourth, defendant is correct that the State incorrectly recounted the evidence when it commented that an odor of alcohol was coming "off of the defendant," as Stark testified only that he smelled alcohol coming from defendant's vehicle. Defendant asserts that the State also erred when it commented that the breath test would have shown that defendant was impaired and that defendant did not take the test because he knew as much. Again, here, the State's comment that the odor was coming off of defendant, as opposed to from his vehicle, was not a serious error, nor are we concerned that the jury's verdict resulted from that comment. We note that the court instructed the jury that opening and closing statements are not evidence. Further, the State's comment about the breath test was not error. Generally speaking, "evidence of a person's refusal to take a test designed to determine the person's blood-alcohol content is admissible and may be used to argue the defendant's consciousness of guilt." *Id.* at 140.

¶ 39 We note that defendant argued that the comments, alone and in combination, denied him of a fair trial. We disagree. As noted above, defendant has failed to persuade us that the verdict would not have been the same had the allegedly improper remarks been omitted, nor that they were so prejudicial that justice was denied. We are not convinced that the jury verdict was affected by the alleged errors and, therefore, reversal is not warranted.

¶ 40 B. Jury's Exposure to DUI Penalties

¶ 41 Defendant argues next that the jury was improperly exposed to references of possible penalties for DUI. He notes that one juror explained that, in 1991, he was charged with driving under the influence, but he negotiated a plea for community service, a fine, probation, a breathalyzer in his car, and credit for time served. A second juror said that he had been charged with DUI in Florida, but the government took care of it, the case did not go to trial, and he believed that he was treated fairly. Defendant asserts that, as a result of its exposure to this

commentary, there was a risk that the jury would think that the sentence defendant would receive would be fairly light and, therefore, that it need not be concerned about finding defendant guilty. Again, defendant requests that we consider this issue for plain error, conceding that he did not raise this objection at trial and raised it only in his posttrial motion. We reject defendant's argument.

¶ 42 During *voir dire,* the trial court asked the potential jurors if they or their family members had ever been the subject of similar charges. As the purpose of *voir dire* is to select fair and impartial jurors (see *People v. Love,* 222 Ill. App. 3d 428, 431 (1991)), this question was clearly reasonable. Again, although defendant concedes that he did not object to the question or answers at trial, we note that defendant did not merely fail to act; he actually affirmatively accepted and tendered one of the jurors and expressed that he wished to accept the other. We understand that defendant's objection on appeal is that the exposure of possible penalties to the jury as a whole was prejudicial, as opposed to him challenging the propriety of empaneling any one juror. However, even in that framework, we find important that the court's question and resulting answers did not delve into the possible sentence that *defendant* would face if convicted. Indeed, in *Crossno*, the case defendant cites for support on appeal, both the prosecution and the defense argued against conviction for the included offense of involuntary manslaughter. *Crossno*, 93 Ill. App. 3d at 823. In his rebuttal closing argument, the prosecuting attorney stated, "If you want to slap him on the wrist find him guilty of involuntary manslaughter." *Id.* The appellate court noted that "[i]t is elemental that counsel may not inform the jury of the severity of the sentence to which the accused is subject." *Id.* Here, neither counsel, the court, nor the jurors discussed or informed the jury of the severity of the sentence to which defendant was subject. Rather, potential jurors informed the court of the resolution of cases to which *they* were subjected. We

do not find the circumstances error and, therefore, defendant has not met his burden of establishing plain error. *Johnson*, 218 Ill. 2d at 139.

¶ 43 C. Defendant's Statement

¶ 44 Defendant's next argument is that the court erred by allowing Stark to testify, over objection, that he was a "4 out of 10." He argues that the statement was prejudicial because "there was no evidence that the defendant was an expert in intoxication and [Stark] was not trained to ask that question but did so because he personally felt that people know their own bodies better than [Stark] does."

¶ 45 This issue was preserved, as defendant moved *in limine* to exclude the statement and included the issue in his posttrial motion. *People v. Denson*, 2014 IL 116231, ¶¶ 10-20. Therefore, we need only consider whether the court abused its discretion in allowing the testimony. *People v. Lerma*, 2016 IL 118496, ¶ 23. An abuse of discretion occurs only when the court's decision is arbitrary, fanciful, or unreasonable. *Id.*

¶ 46 Here, we cannot find that the court's decision to allow Stark's testimony constituted an abuse of discretion. As the court noted, the statement is problematic in that it is "so subjective," yet we agree that the statement could both be explained at trial and, in fact, could be argued in defendant's favor, *i.e.*, he was *only* a 4 out of 10. In fact, defense counsel did broach this line of argument when, in his closing statement, he recounted that defendant said he was about a "four" and "He was very subjective, but he was honest. Not under the influence of alcohol, not too drunk to drive a car. He absolutely did have the ability to think and act with ordinary care."

¶ 47 Defendant's argument that he was not an expert in intoxication must fail. Defendant did not need to be an expert to rank his *own* level of intoxication, and he was obviously not being asked to render an opinion of someone else's intoxication. In sum, the court's decision to allow

Stark's testimony was not arbitrary, fanciful, or unreasonable. Although the question was subjective, it was the jury's role to resolve any possibly conflicting meanings in defendant's answer and to decide what weight, if any, to give to his answer. See, *e.g.*, *People v. Washington*, 2012 IL 110283, ¶ 60.

¶ 48 D. Sufficiency of the Evidence

¶ 49 Defendant's final argument is that the evidence was insufficient to establish beyond a reasonable doubt that he drove while impaired. He asserts that Stark had only 40 hours of training concerning DUI investigations and that none of the training involved "actual intoxicated individuals." Further, defendant argues that the fact that Stark was assigned to DUI patrol the night of his arrest raises the inference that he was specifically looking to cite people for that offense. Moreover, defendant asserts that Stark could not recall specifics about the conditions of the arrest, such as: what the lighting was like; what the traffic was like; how far away defendant was when he first noticed his vehicle; how long he followed defendant before pulling him over; whether there was a slope or debris on the paved area where defendant took the field sobriety tests; and where the speed limit was posted. These deficiencies, defendant argues, render unpersuasive Stark's opinion as to defendant's impairment.

¶ 50 In addition, defendant notes that there was no evidence of impairment in his driving (*i.e.*, he was not weaving or crossing lines and he pulled over normally, etc.), nor was he slurring words, shaking, vomiting, or disheveled. Defendant notes that, although he refused to take a breath test, he did so after he was already under arrest for DUI. Defendant contends that the field sobriety tests were faulty because Stark ended the one-legged-stand test early, and the alleged errors during the walk-and-turn test lacked detail and only showed, at best, a possibility of impairment. Finally, defendant argues that, although his eyes were described as bloodshot and

glassy, it was 1 a.m. when the incident occurred and, further, that Stark conceded that the smell of alcohol coming from the vehicle could tell him only that the person in the vehicle had been drinking or that there was an alcoholic beverage in the vehicle, *not* how much someone had consumed.

¶ 51 Where, as here, a defendant alleges that the State's evidence was insufficient to sustain a conviction, the relevant question for the reviewing court is whether, after viewing the evidence in the light most favorable to the State, any rational trier of fact could have found the elements of the crime beyond a reasonable doubt. *People v. Campbell*, 146 Ill. 2d 363, 374 (1992). This standard recognizes the responsibility of the trier of fact to resolve conflicts in the testimony, to weigh the evidence, and to draw reasonable inferences therefrom. *Id.* at 375. Accordingly, we will not substitute our judgment for that of the trier of fact on questions involving the weight of the evidence or the credibility of the witnesses, and we will not reverse a conviction unless the evidence is so unreasonable, improbable, or unsatisfactory that it creates a reasonable doubt of the defendant's guilt. *Id.*

¶ 52 Here, to the extent that there existed weaknesses in Stark's testimony, training, or his ability to recall details about the event, they were for the jury to weigh and resolve. *Id.* We consider only, in a light most favorable to the State, whether the evidence was sufficient for the jury to find, beyond a reasonable doubt, that defendant drove while impaired. There clearly existed sufficient evidence from which the jury could reasonably find impairment, given evidence that: defendant was speeding; he had bloodshot and glassy eyes; there was an odor of alcohol emanating from the vehicle; defendant's admission that he had three beers in one-half

hour around one hour prior to being pulled over; defendant's performance on the field sobriety tests;[1] and his refusal to take a breath test. In sum, we reject defendant's sufficiency argument.

¶ 53 III. CONCLUSION

¶ 54 For the reasons stated, we affirm the judgment of the circuit court of Boone County.

¶ 55 Affirmed.

[1] Defendant's argument that the one-legged-stand test is invalid because Stark stopped it before 30 seconds had passed might make sense if defendant had shown no clues of impairment before Stark stopped the test. As it is, defendant had already failed the test when Stark stopped it. Accordingly, defendant's argument is unavailing.