

NOTICE

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FILED
November 3, 2016
Carla Bender
4th District Appellate
Court, IL

2016 IL App (4th) 151004-U

NOS. 4-15-1004, 4-15-1008, 4-15-1009, 4-15-1010 cons.

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from
Plaintiff-Appellee,	)	Circuit Court of
v.	)	McLean County
JOSHUA DUNN,	)	Nos. 15CF99
Defendant-Appellant.	)	15TR1410
	)	15TR3172
	)	15TR3174
)	
	)	Honorable
	)	John Casey Costigan,
	)	Judge Presiding.

JUSTICE HOLDER WHITE delivered the judgment of the court.
Presiding Justice Knecht and Justice Steigmann concurred in the judgment.

ORDER

¶ 1 *Held:* The appellate court affirmed, concluding the evidence was sufficient to prove defendant guilty of aggravated driving under the influence resulting in a fatality.

¶ 2 On January 24, 2015, defendant, Joshua Dunn, was driving his vehicle when he struck a pedestrian, Benjamin Allison. Defendant continued driving, and Allison later died as a result of his injuries. After his arrest later that day, defendant's urine tested positive for the presence of tetrahydrocannabinol (THC) metabolite, also known as cannabis.

¶ 3 In February 2015, the State indicted defendant on numerous charges, including aggravated driving under the influence (DUI) resulting in a fatality. 625 ILCS 5/11-501(a)(6), (d)(1)(F) (West 2014). Following a September 2015 bench trial, the trial court found defendant guilty and later sentenced him to six years' incarceration on the aggravated-DUI charge.

¶ 4 On appeal, defendant asserts the trial court erred by finding his use of cannabis was a proximate cause of Allison's death where the evidence failed to demonstrate defendant was impaired at the time of the accident. For the following reasons, we affirm.

¶ 5 I. BACKGROUND

¶ 6 A. The Charges

¶ 7 In February 2015, the State indicted defendant on three felony counts related to a collision resulting in the January 24, 2015, death of Benjamin Allison. Count I charged defendant with the Class 2 felony of leaving the scene of an accident resulting in a personal injury, asserting defendant left the scene without rendering aid or reporting the accident within 30 minutes. 625 ILCS 5/11-401(b) (West 2014). Count II alleged defendant committed the Class 1 felony of leaving the scene of an accident resulting in a fatality, asserting defendant left the scene without rendering aid or reporting the accident within 30 minutes. 625 ILCS 5/11-401(b) (West 2014). Count III charged defendant with the Class 2 felony of aggravated DUI involving a fatality, asserting, at the time of the accident, defendant had cannabis in his system, which was a proximate cause of Allison's death. 625 ILCS 5/11-501(a)(6), (d)(1)(F) (West 2014)

¶ 8 Defendant was also charged with numerous traffic violations related to the accident. Related to this appeal, the State charged defendant with (1) failure to exercise due care for a pedestrian (McLean County case No. 15-TR-1410), (2) failure to reduce speed to avoid an accident (McLean County case No. 15-TR-3172), (3) driving with an obstructed view (McLean County case No. 15-TR-3174), and (4) DUI (McLean County case No. 15-DT-44).

¶ 9 B. The Guilty Plea

¶ 10 In July 2015, defendant entered a plea agreement resolving some of his pending charges. First, defendant entered an open plea of guilty to count II of the indictment—leaving the scene of an accident resulting in a fatality. As part of the agreement, the State dismissed count I of the indictment. Defendant thereafter waived his right to a jury trial on count III of the indictment—the aggravated-DUI charge—and scheduled the case for a bench trial. Defendant also waived his right to jury trial in the pending traffic cases and scheduled those matters for a bench trial at the same time as the aggravated-DUI trial.

¶ 11 C. The Bench Trial

¶ 12 In September 2015, defendant's pending cases proceeded to a bench trial. Because the facts are largely undisputed for purposes of this appeal, we will summarize the evidence presented at trial.

¶ 13 On Saturday, January 24, 2014, at approximately 8:30 a.m., defendant was driving home from a friend's house when he executed a left turn onto West College Avenue in Normal, Illinois. Defendant's vehicle then struck Allison. According to an accident reconstructionist, defendant was driving at an excessive rate of speed at the time he struck Allison, who was crossing the street in the crosswalk. As a result of the accident, the windshield of defendant's vehicle was shattered and concave but remained intact. Defendant, who told police he did not see what he hit, continued driving to his apartment. He offered no explanation as to why he could not see anyone or anything he may have hit. Allison later died from injuries related to the collision.

¶ 14 Later that day, while investigating the accident, police discovered defendant's vehicle and determined the damage was consistent with striking a person. Police subsequently questioned defendant, who admitted hitting an unknown object in the vicinity of West College

Avenue earlier that morning. Defendant also admitted he had smoked cannabis the previous Monday, approximately five days prior to the collision. When police questioned defendant, which was several hours after the accident, he exhibited no signs of impairment or recent cannabis use. Defendant's parents, who visited with defendant earlier in the day, also did not detect any signs of impairment or recent cannabis use. A urine test confirmed defendant had THC in his system.

¶ 15 Following the presentation of evidence, the trial court found the State proved the traffic offenses beyond a reasonable doubt. Further, the court determined defendant committed a misdemeanor DUI for driving with "any amount of a drug, substance, or compound in [his] breath, blood, or urine resulting from the unlawful use or consumption of cannabis" in violation of section 11-501(a)(6) of the Illinois Vehicle Code (Vehicle Code) (625 ILCS 5/11-501(a)(6) (West 2014)). The court noted the statute did not require the State to prove any sign of impairment; the presence of any cannabis in defendant's system was sufficient to support the conviction. However, the court withheld its ruling with respect to the aggravated-DUI charge pending further briefing from the parties on the issue of proximate cause.

¶ 16 D. Memoranda of Law

¶ 17 Also in September 2015, the State filed a memorandum of law regarding the aggravated-DUI charge alleged in count III of the indictment. The State noted defendant was charged under section 11-501(a)(6) of the Vehicle Code (625 ILCS 5/11-501(a)(6) (West 2014)), which prohibits a driver from being in actual physical control of a vehicle with any amount of cannabis in his or her system. The State asserted this subsection created a strict-liability offense, and it was therefore not required to show proof of defendant's impairment, relying on *People v. Martin*, 2011 IL 109102, 955 N.E.2d 1058.

¶ 18 Later that month, defendant filed a responsive memorandum of law. Therein, defendant asserted the State was required to demonstrate defendant's cannabis usage was both the actual and the legal cause of Allison's death. Defendant argued the State failed to demonstrate his cannabis use was the legal cause of Allison's death, as it was not reasonably foreseeable that his use of cannabis five days before the accident proximately caused Allison's death, particularly where no evidence suggests defendant was impaired or otherwise driving recklessly at the time of the accident.

¶ 19 In October 2015, after considering briefs submitted by the parties, the trial court found defendant guilty of aggravated DUI resulting in a fatality. The court, relying on *Martin*, 2011 IL 109102, 955 N.E.2d 1058, determined the State met its burden of demonstrating defendant's driving was a proximate cause in Allison's death.

¶ 20 E. Sentencing and Posttrial Proceedings

¶ 21 In October 2015, defendant filed a posttrial motion to set aside the verdict and for a new trial. Therein, defendant cited *People v. Way*, 2015 IL App (5th) 130096, 39 N.E.3d 1149, a Fifth District decision as supporting his argument that the State was required to prove his consumption of cannabis was a proximate cause of Allison's death. The following month, the trial court denied defendant's motion, finding the State presented sufficient evidence of proximate cause to sustain defendant's conviction. The court thereafter sentenced defendant to 6 years' incarceration for the offense of aggravated DUI involving a fatality (count III), to be followed by a sentence of 48 months' probation for leaving the scene of an accident involving death (count II). The misdemeanor DUI conviction merged with the felony conviction. As for the three traffic offenses, the court entered convictions and ordered defendant to pay court costs.

¶ 22 Defendant appeals numerous cases arising out of the same accident. Defendant's felony case (McLean County case No. 15-CF-99) is docketed as No. 4-15-1004. The remaining cases are related traffic cases, which are docketed as follows: (1) failure to reduce speed to avoid an accident (McLean County case No. 15-TR-3172), docketed as No. 4-15-1008; (2) failure to exercise due care for a pedestrian (McLean County case No. 15-TR-1410), docketed as No. 4-15-1009; and (3) driving with an obstructed view (McLean County case No. 15-TR-3174), docketed as No. 4-15-1010. We have consolidated these cases for review. However, as defendant raises no issues with respect to the traffic convictions, we will restrict our review to defendant's felony case (docketed as No. 4-15-1004).

¶ 23 II. ANALYSIS

¶ 24 On appeal, defendant asserts the trial court erred by finding his use of cannabis was a proximate cause of Allison's death where the evidence fails to demonstrate defendant was impaired at the time of the accident. Defendant challenges only his conviction with respect to count III of the felony case (aggravated DUI resulting in a fatality); thus, we will not address defendant's conviction regarding count II (leaving the scene of an accident).

¶ 25 Where a defendant alleges the evidence presented at trial was insufficient to sustain a conviction, we review the case to determine whether, after viewing the evidence in the light most favorable to the State, any rational trier of fact could have found the essential elements of the offense beyond a reasonable doubt. *Martin*, 2011 IL 109102, ¶ 15, 955 N.E.2d 1058. "We view the evidence in the light most favorable to the prosecution, and allow all reasonable inferences from that evidence to be drawn in favor of the prosecution." *Id.* However, to the extent defendant is challenging the statutory construction of the aggravated-DUI statute, our review is *de novo*. *Id.* ¶ 20.

¶ 26 With respect to the charge of aggravated DUI resulting in a fatality, defendant was convicted under section 11-501(d)(1)(F) of the Vehicle Code (625 ILCS 5/11-501(d)(1)(F) (West 2014)), which, in turn, was based on defendant's violation of section 11-501(a)(6) of the Vehicle Code (625 ILCS 5/11-501 (a)(6) (West 2014)).

¶ 27 Under section 11-501(a)(6) of the Vehicle Code, "A person shall not drive or be in actual physical control of any vehicle within this State while *** there is any amount of a drug, substance, or compound in the person's breath, blood, or urine resulting from the unlawful use or consumption of cannabis listed in the Cannabis Control Act." 625 ILCS 5/11-501 (a)(6) (West 2014). Following a bench trial, the trial court found defendant guilty of this provision, as defendant's urine tested positive for the presence of cannabis. Defendant does not challenge this portion of his conviction, which was charged as a misdemeanor DUI (McLean County case No. 15-DT-44). However, section 11-501(d)(1)(F) provides the State with the ability to elevate the misdemeanor charge to a felony.

¶ 28 Under section 11-501(d)(1)(F) of the Vehicle Code:

"Every person convicted of committing a violation of this Section shall be guilty of aggravated driving under the influence of alcohol, other drug or drugs, or intoxicating compound or compounds, or any combination thereof if *** the person, in committing a violation of subsection (a), was involved in a motor vehicle, snowmobile, all-terrain vehicle, or watercraft accident that resulted in the death of another person, when the violation of subsection (a) was a proximate cause of the death." 625 ILCS 5/11-501(d)(1)(F) (West 2014).

There is no question defendant committed a violation of subsection (a) as required to sustain a conviction under subsection (d)(1)(F), as the laboratory tests unequivocally showed the presence of THC in defendant's urine. Thus, the question before this court is whether, under subsection (d)(1)(F), the State was required to prove defendant's prior use of cannabis proximately caused Allison's death.

¶ 29 The supreme court, in *Martin*, discussed whether the State was required to demonstrate impairment where a defendant has been charged with violating subsection (a)(6) of the Vehicle Code. See *Martin*, 2011 IL 109102, 955 N.E.2d 1058. In *Martin*, the defendant was driving a motor vehicle when he swerved into oncoming traffic and caused an accident that resulted in the death of two people. *Id.* ¶ 3. Laboratory tests later revealed the defendant had small amounts of methamphetamine in his urine at the time of the accident. *Id.* The defendant admitted he had previously used a methamphetamine—specifically, the street drug known as crystal meth—but he had not used the drug the evening of the accident. *Id.* ¶ 5. A jury later convicted the defendant of aggravated DUI resulting in two fatalities. *Id.* ¶ 8.

¶ 30 On appeal, the supreme court considered whether subsection (d)(1)(F) of the Vehicle Code required the State to demonstrate the defendant's driving was a proximate cause of the fatality, or whether the statute required evidence that the defendant's use of an illegal drug proximately caused the fatality. *Id.* ¶ 20. In addressing this issue, the *Martin* court noted that four of the six statutory DUI provisions required the State to demonstrate the defendant was impaired at the time of his or her arrest. *Id.* ¶ 26 (citing 625 ILCS 5/11-501(a)(2), (3), (4), (5) (West 2008)). However, the other two provisions, including subsection (a)(6), which is at issue in both *Martin* and the present case, do not require the State to demonstrate impairment to sustain a DUI conviction. *Id.* (citing 625 ILCS 5/11-501(a)(6) (West 2008)). The *Martin* court

considered the legislature's intent behind subsection (a)(6) and determined, "The flat prohibition against driving with any amount of a controlled substance in one's system was considered necessary because there is no standard that one can come up with by which, unlike alcohol in the bloodstream, one can determine whether one is *** driving under the influence." (Internal quotation marks omitted.) *Id.* ¶ 22 (quoting *People v. Fate*, 159 Ill. 2d 267, 269-70, 636 N.E.2d 549, 550 (1994)). Accordingly, the court concluded section 11-501(a)(6) provided for "strict liability" based on the presence of any of the enumerated illegal substances in that subsection, which includes both cannabis and methamphetamine. *Id.* ¶ 26 (citing 625 ILCS 5/11-501(a)(6) (West 2008)).

¶ 31 In other words, the State was not required to prove the defendant was impaired at the time of his arrest to sustain a DUI conviction under subsection (a)(6). *Id.* Rather, "[a] driver with controlled substances in his body violates section 11-501(a)(6) simply by driving." *Id.* The State is therefore required to demonstrate "a causal link only between the physical act of driving and another person's death." *Id.* Because the defendant's driving—swerving into oncoming traffic—caused the accident which led to two fatalities, the supreme court upheld the defendant's conviction for aggravated DUI resulting in a fatality. *Id.* ¶ 28. Based on this reasoning in *Martin*, we conclude the State was not required to prove impairment, but only that defendant's physical act of driving resulted in Allison's death.

¶ 32 Defendant asserts *Martin* is distinguishable from the present case. First, defendant argues his case involved the consumption of cannabis, whereas the *Martin* case involved the consumption of methamphetamine. We find this distinction irrelevant, as a conviction under section 11-501(a)(6) of the Vehicle Code pertains both to the illegal usage of cannabis and methamphetamine. 625 ILCS 5/11-501(a)(6) (West 2014).

¶ 33 Second, defendant asserts *Martin* is distinguishable because the record did not indicate when the *Martin* defendant last used methamphetamine whereas, in this case, the record shows defendant last smoked cannabis five days before the accident. Again, we find this distinction irrelevant. As the *Martin* court noted, subsection (a)(6) contains a flat prohibition against driving with any amount of illegal substances in one's system. *Martin*, 2011 IL 109102, ¶ 22, 955 N.E.2d 1058 (quoting *Fate*, 159 Ill. 2d at 269-70, 636 N.E.2d at 550). Thus, the amount of illegal substance in a person's system, when the person last consumed the illegal substance, and whether that amount resulted in impairment is irrelevant to our inquiry.

¶ 34 Third, defendant argues the *Martin* court did not address what evidence was necessary to demonstrate proximate cause. While the *Martin* court does not expressly provide for the type of evidence the State must present regarding proximate cause, it does provide us with some guidance. The *Martin* court stated, "section 11-501(d)(1)(F) requires a causal link only between the physical act of driving and another person's death." *Id.* ¶ 26. In other words, the State would need only to prove defendant's violation of subsection (a)(6) resulted in Allison's death. In *Martin*, the court found sufficient evidence of proximate cause where, with the presence of methamphetamine in his urine, the defendant's driving—the act of swerving into oncoming traffic—resulted in two fatalities. *Id.*

¶ 35 Defendant asserts *Way*, 2015 IL App (5th) 130096, 39 N.E.3d 1149, *appeal allowed*, 48 N.E.3d 676 (Ill. 2016), provides more specific guidance regarding proximate-cause evidence. In *Way*, the defendant was charged with operating her vehicle while she had cannabis in her system and subsequently causing a traffic accident. *Id.* ¶ 3. The record demonstrated the defendant, like defendant in the present case, had not used cannabis the night of the accident but admitted to using on a prior occasion. *Id.* ¶¶ 3, 7. The defendant's son, a passenger in the

defendant's vehicle, reported the defendant lost consciousness just before the accident. *Id.* ¶ 3. The State filed a motion *in limine* to prevent the defendant from introducing evidence demonstrating an unforeseeable reason outside of her cannabis use—low blood pressure—resulted in the defendant losing consciousness and subsequently caused the accident. *Id.* ¶¶ 4, 8. The trial court granted the State's motion *in limine*, finding subsection (a)(6) of the Vehicle Code created a strict-liability offense for those who drive with any illegal substance in their systems and subsequently cause an injury. *Id.* ¶ 6. Following a stipulated bench trial, the court found the defendant guilty after determining (1) the State was not required to demonstrate impairment and (2) sufficient evidence existed to find the defendant guilty. *Id.* ¶ 8.

¶ 36 On appeal, the defendant argued she was denied her right to present a defense at trial because the trial court prohibited her from contesting the "proximate cause" element of her aggravated-DUI charge. *Id.* ¶ 12. The Fifth District agreed, concluding that although the State was not required to prove impairment, the State was required to prove the defendant's driving was a proximate cause of the accident rather than an alternative cause, such as a medical ailment. *Id.* ¶ 19. Because the defendant was prevented from introducing evidence that the sole legal cause of the accident was an unforeseeable medical incident unrelated to her driving, the *Way* court reversed the defendant's conviction and remanded for a new trial so the defendant could present her evidence regarding proximate cause. *Id.* ¶¶ 20, 23.

¶ 37 We find *Way* distinguishable from the present case. In *Way*, the defendant was prevented from presenting any evidence that the accident was proximately caused by an unforeseeable factor other than her driving. *Id.* ¶ 6. Here, the record provides no alternative reason for the accident outside of defendant's driving. Defendant admitted to police he was driving in the vicinity of West College Avenue when he struck "something" of such a size and

force that his windshield was shattered and indented. During his interview with police, defendant offered no alternative reason for why his vehicle struck Allison; rather, he responded he simply did not know he had struck a person.

¶ 38 On the other hand, the State offered evidence demonstrating Allison was properly walking within a crosswalk when defendant executed a left-hand turn at an excessive rate of speed and struck him. Although defendant cross-examined the State's expert and disputed that Allison was in the crosswalk at the time of the accident and that defendant was driving at an excessive rate of speed, the trial court was within its discretion to believe the State's witnesses, as it is for the trier of fact to determine the credibility of the witnesses. *People v. Kirchner*, 2012 IL App (2d) 110255, ¶ 11, 973 N.E.2d 444. The record therefore supports the court's finding that defendant's driving was a proximate cause of the accident and subsequent fatality.

¶ 39 Defendant also points to *People v. Johnson*, 392 Ill. App. 3d 127, 924 N.E.2d 1019 (2009), to demonstrate the State failed to prove proximate cause. In *Johnson*, the defendant was convicted of aggravated DUI resulting in a fatality where (1) he was driving with cannabinoid metabolites and alcohol in his blood and (2) the trial court determined the defendant's actions were a proximate cause of the fatality. *Id.* at 129-30, 924 N.E.2d at 1021. Although the case predates the supreme court's decision in *Martin*, the *Johnson* court's holding is not at odds with *Martin*. In *Johnson*, this court determined that by running a yellow light, driving erratically, and speeding with cannabinoid metabolites in his blood, defendant's violation constituted a proximate cause of the fatality sufficient to sustain the defendant's conviction. *Id.* at 131-32, 924 N.E.2d at 1023. This is consistent with the supreme court's holding in *Martin*, which requires the State to prove the defendant's act of driving was the proximate cause of the accident. *Martin*, 2011 IL 109102, ¶ 26, 955 N.E.2d 1058. Similarly, the evidence in this case

supports the trial court's finding that while with the presence of THC in his urine, defendant's driving—making a left-hand turn at an excessive rate of speed and striking Allison in the crosswalk—was the legal cause of Allison's death.

¶ 40 Accordingly, we conclude defendant has failed to demonstrate no rational trier of fact could have found him guilty of each of the elements of aggravated DUI resulting in a fatality.

¶ 41 III. CONCLUSION

¶ 42 For the foregoing reasons, we affirm the trial court's judgment. As part of our judgment, we grant the State its \$75 statutory assessment against defendant as costs of this appeal. 55 ILCS 5/4-2002 (West 2014).

¶ 43 Affirmed.