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2017 IL App (3d) 150158-U

Order filed November 3, 2017

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IN THE  
APPELLATE COURT OF ILLINOIS  
THIRD DISTRICT

2017

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the Circuit Court of the 12th Judicial Circuit, Will County, Illinois,
Plaintiff-Appellee,	)	
v.	)	Appeal No. 3-15-0158
NICHOLAS F. BRUNZELLE,	)	Circuit No. 11-DT-813
Defendant-Appellant.	)	Honorable Amy M. Bertani-Tomczak, Judge, Presiding.

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JUSTICE WRIGHT delivered the judgment of the court.  
Justices McDade and O'Brien concurred in the judgment.

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**ORDER**

- ¶ 1 *Held:* The State failed to prove defendant guilty beyond a reasonable doubt of driving under the influence of alcohol.
- ¶ 2 Defendant, Nicholas F. Brunzelle, appeals his conviction for driving under the influence of alcohol (DUI), arguing that the State failed to prove him guilty beyond a reasonable doubt.
- We reverse.



The parties also stipulated that defendant would testify “[t]hat at the time of the traffic stop on June 4, 2011, that he became angry with the police officers involved in the traffic stop who he felt were harassing him.”

¶ 6 The police reports introduced pursuant to the parties’ stipulation showed that the incident occurred at 9:09 p.m. on June 4, 2011. Officer Block’s narrative stated that Block observed defendant driving without activating his headlights and that defendant’s muffler made a loud noise. Block observed a vehicle flash its headlights at defendant’s vehicle, but defendant still did not activate his headlights. Block initiated a traffic stop, and defendant pulled into a parking lot.

¶ 7 When Block made contact with defendant, he detected a moderate odor of an alcoholic beverage on defendant. Defendant slurred his words and had red, bloodshot, glassed-over eyes. Block told defendant his headlights were not activated. Defendant replied, “ ‘Oh sorry, they weren’t working.’ ” Defendant then flipped the switch to activate his headlights. One headlight turned on, but the other was not working. Defendant told Block that he had drunk alcoholic beverages earlier that evening, but he was not intoxicated. Defendant refused to perform field sobriety tests but said he would take a portable breath test (PBT). Defendant was belligerent and argumentative throughout the encounter. Block learned that defendant had called the Bolingbrook police department to complain about the duration of the stop.

¶ 8 Block asked defendant to exit his vehicle, but defendant did not hear him because he was on the phone with the police department. Block asked again, and defendant said “he would not do any ‘foofy’ walks.” Block asked defendant if he would take a PBT as he agreed to do earlier, and defendant said no. Block called a towing company to tow defendant’s vehicle due to the loud muffler. Block again asked defendant to exit his vehicle, but defendant did not hear because he

was on the phone. Block asked another time and opened the door to defendant's vehicle.

Defendant then exited the vehicle.

¶ 9 Block's report stated that defendant had problems with dexterity when he exited the vehicle, as he dropped his phone multiple times. Defendant made derogatory statements to the officers, using profanity. Block conducted an inventory search of defendant's vehicle because he had arranged for the vehicle to be towed. While he was conducting the search, Block saw other officers place defendant in handcuffs "for resisting/obstructing." Defendant then kicked out the driver's side back window of the squad car. Glass from the vehicle hit Officer Moritz. An officer then sprayed defendant with pepper spray. The officers removed defendant from the squad car to clean the glass out of the car. Radaker then attempted to place defendant back in the vehicle, and defendant spat on Radaker's leg. The officers transported defendant to the police station. Two hours and fourteen minutes after the traffic stop began, defendant gave a breath sample showing that he had an alcohol level of 0.078.

¶ 10 A narrative written by Officer Witt stated that Witt noticed a strong odor of an alcoholic beverage on defendant's breath during the traffic stop. Witt also noted that defendant's eyes were bloodshot and glassy. Witt's report stated that after the officers ordered defendant to keep his hands on the squad car while they searched his vehicle, defendant removed his right hand from the car. Witt told defendant to keep his hands on the car for officer safety. Defendant replied, " 'what the fuck you gonna do to me jag-off if I do that again.' " Defendant removed his right hand from the squad car and "turned aggressively" toward Witt. Witt feared that defendant would batter him, and he "grabbed [defendant's] right wrist and placed it into a controlled wrist lock and was able to control [defendant] to the hood of the squad car." Moritz then assisted Witt in placing handcuffs on defendant. After the officers transported defendant to the police station,

defendant stated: “ ‘[M]an I fucked up. I still hate you guys but if there is anything I can do like pay for the window. I can bring money tomorrow. Man I am sorry I am just in a bad place and when you told me to keep my hand on the car I wanted to see what you would do if I took it off. You [knew] I wasn’t going to do anything.’ ” When defendant learned the results of the breathalyzer test at the police station, defendant stated “ ‘that stupid shit is wrong I hardly drank anything. Fuck your stupid machine, I ain’t drunk.’ ”

¶ 11 The video recording of the traffic stop does not contain an audio recording of the encounter. The video recording shows defendant parking his vehicle and an officer approaching the vehicle. Defendant sat in his vehicle for approximately 35 minutes after the officer initially made contact. More officers arrived, and defendant exited the vehicle. Defendant stood with his hands on his vehicle while an officer patted him down. Defendant then walked to a squad car and put his hands on the squad car. He dropped his phone once while attempting to place it in his pocket. One officer searched defendant’s vehicle. Defendant appeared angry and gesticulated at the other officers. Approximately five minutes after defendant exited the vehicle, the officers restrained him. The officers led defendant away such that he could no longer be viewed on the camera.

¶ 12 A CD containing photographs of the broken window, shattered glass, and scrapes on the arm of a person (presumably Officer Moritz) were introduced into evidence.

¶ 13 The court found defendant guilty of DUI based on “evidence of [defendant] driving at night without his lights on and not noticing his lights [were not] on, the attitude, his admission to drinking some alcohol, the odor, and his behavior.” The court noted that it had viewed the video recording and read the reports and stipulations. The court sentenced defendant to 24 months’ conditional discharge based on the agreement of the parties.

ANALYSIS

¶ 14

¶ 15 Defendant argues that the stipulated evidence was insufficient to prove him guilty of DUI beyond a reasonable doubt. The State disagrees and requests this court to affirm defendant’s conviction.

¶ 16

When a defendant challenges 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. Collins*, 106 Ill. 2d 237, 261 (1985) (quoting *Jackson v. Virginia*, 443 U.S. 307, 319 (1979)). “A criminal conviction will not be set aside unless the evidence is so improbable or unsatisfactory that it creates a reasonable doubt of the defendant’s guilt.” *Id.* “Under this standard, the reviewing court does not retry the defendant, and the trier of fact remains responsible for making determinations regarding the credibility of witnesses, the weight to be given their testimony, and the reasonable inferences to be drawn from the evidence.” *People v. Ross*, 229 Ill. 2d 255, 272 (2008).

¶ 17

In order to prove defendant guilty of DUI, the State was required to establish that defendant drove or was in actual physical control of a vehicle while under the influence of alcohol. 625 ILCS 5/11-501(a)(2) (West 2010). “ ‘[U]nder the influence of alcohol’ means under the influence to a degree that renders the driver incapable of driving safely.” *People v. Love*, 2013 IL App (3d) 120113, ¶ 34 (quoting *People v. Weathersby*, 383 Ill. App. 3d 226, 229 (2008)). “ ‘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.’ ” *People v. Gordon*, 378 Ill. App. 3d 626, 631 (2007) (quoting Illinois Pattern Jury Instructions, Criminal No. 23.29 (4th ed. 2000)).

¶ 18 Here, the video recording of the traffic stop showed that defendant drove within the proper lanes without weaving, properly signaled his turns, and pulled into a parking lot after the police officer initiated a stop. There was no evidence that defendant was speeding. While Block's report stated that defendant's vehicle had a loud muffler and defendant drove at night without activating his headlights, these violations are not necessarily indicative of intoxication. For example, defendant explained to Block that he was driving without his headlights illuminated because they did not work. When defendant attempted to illuminate his headlights, only one turned on. Also, although defendant admitted that he had consumed alcohol the evening of his arrest, he stated that he was not intoxicated. This assertion was supported by the breathalyzer result of 0.078. The video recording of the encounter shows defendant dropped his phone only once while trying to place it in his pocket.

¶ 19 The trial court inferred that defendant's belligerent attitude resulted from alcohol intoxication. We recognize the trial court to be "in the best position to judge the witnesses' credibility, determine the weight to be accorded their testimony, decide the inferences to be drawn from the evidence, and resolve any conflicts in the evidence" since "the trial court has heard the testimony, seen the witnesses, and had the opportunity to observe their demeanor." *People v. Frazier*, 248 Ill. App. 3d 6, 13 (1993). However, the trial court did not have an opportunity to observe the demeanor of each witness because the matter was presented as a stipulated bench trial. Defendant's poor behavior toward the police is undisputed and included combative language, spitting on Radaker, and kicking the window of the squad car. Poor judgment can result from many circumstances, including the consumption of alcohol at levels below the point of intoxication.

¶ 20 Here, defendant was stopped for relatively minor traffic infractions. Initially, defendant was somewhat cooperative with the officers, offering to take a PBT. After he had been detained in his car for over a half an hour, defendant became belligerent. The parties stipulated that defendant would testify that he was angry during the encounter because he believed that the police were harassing him.

¶ 21 The police reports indicated that Block and Witt smelled an alcoholic beverage on defendant's breath, and defendant had red, bloodshot, glassed-over eyes. While these observations are relevant to show intoxication, standing alone these facts are not sufficient. See *People v. Day*, 2016 IL App (3d) 150852, ¶ 38 (holding that the fact that the defendant consumed alcohol and had glassy and bloodshot eyes, without more, did not rise to the level of probable cause to believe the defendant committed the offense of DUI). We emphasize that the State was required to prove "that the defendant's ability to operate a motor vehicle was actually impaired by his consumption of alcohol." *People v. Nunes*, 143 Ill. App. 3d 1072, 1075 (1986). The record/stipulated evidence does not satisfy this burden.<sup>1</sup>

¶ 22 CONCLUSION

¶ 23 For the foregoing reasons, we reverse the trial court's judgment.

¶ 24 Reversed.

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<sup>1</sup>We find the State's cited authority, *People v. Hires*, 396 Ill. App. 3d 315 (2009), to be distinguishable. Unlike in the instant case, the *Hires* defendant swerved over the center line while driving, which indicated that his ability to drive was impaired. *Id.* at 319. The *Hires* defendant also failed two field sobriety tests, nearly fell to the ground while exiting his vehicle, and refused to submit to breathalyzer testing at the police station. *Id.* We also note that while the *Hires* court mentioned the defendant's belligerent behavior when it gave the factual background of the case, it did not explicitly rely on this behavior in finding that the evidence was sufficient to prove the defendant guilty of DUI. See *id.*