2018 IL App (1st) 150187-U
No. 1-15-0187
Order filed January 9, 2018

Second Division

IN THE

APPELLATE COURT OF ILLINOIS

FIRST DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County.
	)	
v.	)	No. TB-749-118
	)	
ROY ROBISON,	)	Honorable
	)	Linda J. Pauel,
Defendant-Appellant,	)	Judge, presiding.

JUSTICE HYMAN delivered the judgment of the court.
Presiding Justice Neville and Justice Pucinski concurred in the judgment.

ORDER

¶ 1 *Held*: We affirm defendant's conviction for driving under the influence of drugs where the evidence at trial showed beyond a reasonable doubt that he was driving when he crashed and had cannabis in his urine.

¶ 2 At a bench trial, Defendant Roy Robison was convicted of driving under the influence of drugs (cannabis). Robison contends that the State did not prove him guilty beyond a reasonable doubt because it did not specifically establish that he had some amount of chemical substance in his body that could be capable of causing impairment at the time of the accident. We affirm. Illinois Supreme Court precedents hold that the law does not require the State to prove that the

defendant was driving while impaired, only that the defendant was driving while having an illegal substance in his or her system.

¶ 3 Pertinent Facts

¶ 4 At trial, the parties stipulated that, if called, Chicago police officer Aiken would testify that on September 13, 2013, at about 7:00 a.m., he responded to a call of a traffic accident. On arriving, Aiken saw Robison in the driver's seat of a Subaru Outback, the keys in the ignition, and the front end, as well as a nearby fence, damaged. Robison, who appeared confused and had watery eyes, told Aiken that he was driving, struck the fence, and hit his head.

¶ 5 Robison was transported to the emergency room at Northwestern Memorial Hospital. There, Robison was administered a standard field sobriety test and showed no signs of impairment. Robison was also administered a urine test. Officer Aiken received the results of the test which showed the presence of cannabinoids in Robison's urine. Robison was later charged with striking fixed property, failing to keep in a lane, and negligent driving and issued traffic tickets for each offense. Also, Robison was charged with driving while under the influence of alcohol, other drug or drugs, intoxicating compound or compounds or a combination in violation of section 11-501(a)(4) and (a)(6) of the Illinois Vehicle Code (625 ILCS 5/11-501(a)(4), (a)(6) (West 2012)).

¶ 6 Carrie Kraeger, a licensed physician's assistant employed by Northwestern Hospital, testified that when Robison arrived for treatment, she saw no visible signs of injury, and noticed that he smelled of alcohol. Kraeger ordered a urine test as part of Robison's regular medical treatment. Once the urine sample was collected, it was sealed, labeled, and sent to the laboratory for analysis. Robison was not given any medication before the collection of the urine sample.

Kraeger received the results of the urine test via the computerized medical record. The results showed that Robison tested positive for cannabinoids. Based on her education and training, according to Kraeger, cannabinoids are found in cannabis, also known as marijuana. Alcohol detection can be accomplished through a blood test; Robison refused to have his blood drawn.

¶ 7 On cross-examination, Kraeger testified that she did not see Robison provide the urine sample nor did she see the sample that was sent for testing. Kraeger observed that Robison had a steady gait, was not slurring his speech, and was not clinically intoxicated. Kraeger admitted that although she was not a doctor, the medical reports listed her as the doctor who ordered certain medical tests. She acknowledged that this was an error. Based on her knowledge, cannabis can stay in the blood for about 50 days.

¶ 8 The State admitted a portion of the transcripts from Robison's summary suspension hearing, and rested its case in chief.

¶ 9 Robison presented a motion for directed finding. After hearing arguments, the trial court granted Robison's motion as to count one, striking fixed property; count two, failing to keep in a lane; and count three, negligent driving, but denied the motion as to the driving under the influence charges under section 11-501(a)(4) and (a)(6) of the Code. Robison did not present any evidence and rested.

¶ 10 After hearing closing arguments, the trial court convicted Robison of driving under the influence of a drug in violation of section 11-501(a)(6) of the Code. In announcing the decision, the trial court noted that Kraeger's testimony, combined with the stipulation of Officer Aiken and the results of Robison's urine test, established beyond a reasonable doubt that Robison was driving the vehicle while under the influence of cannabinoids. The trial court found Robison not

guilty of violating secion 11-501(a)(4) where the State failed to prove that he was driving recklessly. The trial court denied Robison's motions for a new trial and arrest in judgment.

¶ 11 Robison was sentenced to 24 months' conditional discharge, significant victim impact panel, 9 urine drops, 18 months' electronic home monitoring (later modified to 300 days) and 40 days of Sheriff's Work Alternative Program.

¶ 12 Analysis

¶ 13 Robison contends that the State failed to prove him guilty beyond a reasonable doubt by having not specifically established that, at the time of the accident, he had some amount of chemical substance in his body that might cause impairment.

¶ 14 The due process clause of the fourteenth amendment protects defendants against conviction in state courts except on proof beyond a reasonable doubt of every fact necessary to constitute the charged crime. *People v. Brown*, 2013 IL 114196, ¶ 48; *Jackson v. Virginia*, 443 U.S. 307, 315-16 (1979). When determining the sufficiency of the evidence, we view the evidence in a light most favorable to the prosecution and determine whether any rational trier of fact could have found that the essential elements of the crime were proven beyond a reasonable doubt. *People v. Wheeler*, 226 Ill. 2d 92, 114 (2007). " 'We will not reverse a conviction unless the evidence is so improbable, unsatisfactory, or inconclusive that it creates a reasonable doubt of defendant's guilt.' " *People v. Lloyd*, 2013 IL 113510, ¶ 42 (quoting *People v. Collins*, 214 Ill. 2d 206, 217 (2005)).

¶ 15 To sustain Robison's conviction under section 11-501(a)(6), the State must prove beyond a reasonable doubt that Robison was driving or in actual control of a vehicle and that there was any amount of a drug, substance, or compound in his breath, blood, other bodily substance, or

urine resulting from the unlawful use or consumption of a controlled substance listed in the Illinois Controlled Substance Act, an intoxicating compound listed in the Intoxicating Compounds Act, or methamphetamine as listed in the Methamphetamine Control and Community Protection Act.

¶ 16 After viewing the evidence in the light most favorable to the State, we find that a rational trier of fact could conclude that Robison was driving while he had cannabis in his system and, therefore, was guilty of the charged offense beyond a reasonable doubt. The record shows that Robison was alone in the driver's seat of a vehicle that had just collided with a fence. Robison, who was confused and had watery eyes, admitted to Officer Aiken that he was driving and crashed into the fence. At the hospital, a routine urine test confirmed he had cannabinoids or cannabis in his system. This evidence, and the reasonable inferences from it, suffices to support the conviction.

¶ 17 Nevertheless, Robison argues that section 11-501(a)(6) requires the State to prove that the substance found in his urine was of an impairing nature. Robison claims that, if the State is not required to prove that the substance was of an impairing nature, section 11-501 (a)(6) has the potential of creating an unconstitutional prohibition against a person driving weeks after its consuming an illegal substance simply because the substance remains in his or her system regardless of whether it was capable of causing impairment. In support of this argument, Robison relies on *State ex rel. Montgomery v. Harris*, 234 Ariz. 343 (2014), which held that, since the Arizona legislature intended to prevent impaired driving, the State must show that the metabolite present in the blood or urine sample was of an impairing nature. Robison also refers to findings

of "legal scholars" regarding the difficulty in determining when the ingestion of the drug occurred and what level of impairment the metabolites had on individual's ability to drive.

¶ 18 Recently, 625 ILCS 5/11-501 (West 2010) was amended and no longer imposes a zero-tolerance ban on driving with cannabis in the driver's system. Pub. Act 99-697 (eff. July 29, 2016). The Act now prohibits driving with either 5 or more of delta-9-THC per milliliter of whole blood or 10 nanograms or more of delta-9-THC per milliliter of other bodily substance, as measured within two hours of driving. *People v. Way*, 2017 IL 120023, ¶ 20 n.1.

¶ 19 Contrary to Robison's argument, however, section 11-501(a)(6) requires only that the State prove that Robison was driving and had some controlled substance in his blood or urine. The statute does not require that the substance be of an impairing nature nor does it require that the State prove impairment. Our supreme court has consistently reaffirmed this interpretation of the driving under the influence statute. In *People v. Fate*, 159 Ill. 2d 267, 270 (1994), the court held that the statute created an absolute bar against driving a motor vehicle following the illegal consumption of cannabis or controlled substances. The supreme court reasoned that "given the vast number of contraband drugs and the difficulties measuring the concentration of these drugs with precision from blood and urine samples and the variation in impairment from drug to drug and person to person, the statute constitutes a reasonable exercise of police power in the interest of safe streets and highways." *Id.* at 271. The supreme court referred to the legislative intent that the legislation provided a "flat prohibition against driving with any amount of a controlled substance in one's system" as " '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.' " *Id.* at 270.

¶ 20 More recently, our supreme court addressed the requirements of section 11-501 (a)(6) in *People v. Martin*, 2011 IL 109102, and *People v. Way*, 2017 IL 120023.

¶ 21 In *Martin*, the defendant was found guilty of aggravated driving under the influence of methamphetamine based on a violation of section 11-501 (a)(6). The Supreme Court noted that the legislative intent in enacting this section was to create a strict liability offense requiring no proof of impairment. *Id.* ¶ 26. Because possession of a controlled substance is unlawful *per se*, the State must establish simply that the defendant used or consumed a controlled substance before driving. *Id.* ¶ 16.

¶ 22 Similarly, in *Way*, the defendant was charged with aggravated DUI based on a violation of section 11-501 (a)(6). The Supreme court reaffirmed its decision in *Martin*, holding that under section 11-501 (a)(6), the State was not required to prove that the defendant was driving while impaired, only that the defendant was driving while he or she had an illegal substance in his or her system. *Id.* ¶ 28. Hence, a driver with controlled substances in his or her body violates section 11-501 (a)(6) simply by driving. *Martin*, 2011 IL. 109102, ¶ 26; *Way*, 2017 IL. 120023, ¶ 28. The State proved beyond a reasonable doubt that Robison violated section 11-501(a)(6).

¶ 23 Affirmed.