2018 IL App (4th) 150896-U

NO. 4-15-0896

FILED
June 26, 2018
Carla Bender
4th District Appellate
Court, IL

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
Plaintiff-Appellee,	)	Circuit Court of
v.	)	Champaign County
REGINALD D. STARR,	)	No. 15CF329
Defendant-Appellant.	)	
	)	Honorable
	)	Thomas J. Difanis,
	)	Judge Presiding.

JUSTICE CAVANAGH delivered the judgment of the court.
Justices Knecht and DeArmond concurred in the judgment.

ORDER

¶ 1 *Held*: The evidence was sufficient to prove defendant guilty beyond a reasonable doubt of driving under the influence of alcohol despite defendant's claim that he was not under the influence of alcohol at the time he drove the vehicle. He claimed he became intoxicated *after* he arrived home.

¶ 2 Defendant, Reginald D. Starr, appeals his conviction of driving under the influence of alcohol, his fourth similar violation. The trial court sentenced him to three years in prison. Defendant challenges the sufficiency of the evidence, claiming the State did not demonstrate beyond a reasonable doubt that he was under the influence *at the time* he was driving a vehicle that was involved in an automobile accident. He contends he became intoxicated after he arrived home and before the police arrived to investigate. Viewing the evidence in the light most favorable to the prosecution, we conclude that a rational trier of fact could find, beyond a reasonable doubt, defendant guilty and thus, we affirm.

¶ 3 I. BACKGROUND

¶ 4 In March 2015, the State charged defendant with aggravated driving under the influence of alcohol, his fourth violation (625 ILCS 5/11-501(a)(2), (d)(2)(C) (West 2014)), a Class 2 felony, alleging he drove or was in actual physical control of a motor vehicle while under the influence of alcohol. The State alleged defendant committed the offense on February 21, 2015, in Champaign County and had previously committed similar offenses in 2012 in Cook County, Illinois; in 2002 in Clayton County, Georgia; and in 2008 in Fayette County, Georgia.

¶ 5 At defendant's June 2015 jury trial, the State presented the testimony of Timothy J. Brown, the driver of the other vehicle involved in the accident. Brown acknowledged that he had been previously convicted of aggravated battery and had a charge of aggravated battery pending, both in Champaign County. He said he had not been offered leniency or any plea deal related to his pending charge in exchange for his testimony in this case.

¶ 6 With regard to the incident on February 21, 2015, Brown said he went to Walmart in Urbana with his sister, Maria Brown, in his 2008 Ford F-150 pickup truck. As he was leaving the Walmart parking lot, he stopped at a three-way stop sign. He began to pass through the intersection when defendant's vehicle, a blue Cadillac, proceeded through without stopping. Brown stopped in the middle of the intersection, threw up his hands, and "probably made a gesture that was not becoming." There was no resulting collision or confrontation at that time.

¶ 7 Brown then drove on University Avenue, turned on his turn signal, and slowed down "quite a bit" to turn into Aldi's parking lot. He looked into his rearview mirror and saw headlights on a vehicle rapidly approaching. Brown warned his sister that they were likely going to be hit from behind. Defendant's vehicle hit Brown's truck from the back. Brown exited the

vehicle but defendant "came flying around" and "took off down the street." According to Brown, defendant was alone in the vehicle.

¶ 8 Brown said he got back into his truck to follow defendant. He told Maria to call the police. Brown found the Cadillac in a driveway of a nearby residence. He saw defendant exit the Cadillac and go inside the residence. Once defendant was inside, Brown drove closer to the vehicle to get the license plate number. Brown heard Maria relay to the police the residential address and the license plate number. Brown said a female exited the house and began walking toward his truck. He said he "waved her off" explaining they would let the police handle it. Brown said he pulled away from the house and parked down the street. According to Brown, four officers in four different patrol cars responded within two to three minutes.

¶ 9 On cross-examination, Brown said one police officer immediately came over to speak with him and Maria. When defense counsel asked if it "certainly could have been 10 minutes" between the time he saw defendant enter the house and then exit again, Brown answered "[i]t may have been."

¶ 10 Next, the State called Maria Brown as a witness. She first acknowledged she had a prior conviction for obstructing justice. She then testified as to the incident on February 21, 2015, generally corroborating her brother's testimony. However, in Maria's opinion, it took the police officers approximately 10 minutes to respond to the residence after her call. She said when they arrived, they "came up to our truck first." After speaking with her and her brother, the officers approached the house, and approximately 10 minutes later, Maria saw defendant exit the residence.

¶ 11 Urbana police officer Anthony Thomas Meneely testified that he had received specific training while in the military and as a law enforcement officer on the affects of alcohol

on individuals and on the investigation of driving-under-the-influence cases, including the administration of field sobriety tests. Meneely said, at 6:25 p.m. on February 21, 2015, while on patrol, he was dispatched to a residence for a reported hit-and-run accident. When he arrived, he spoke with the residents, Yolanda Motley and defendant, who both immediately answered the door when he knocked. Meneely thought approximately 10 minutes had elapsed between the dispatch and the knock on the door. Meneely said defendant was standing behind Motley when she opened the door. Defendant admitted to Meneely he had driven the Cadillac and struck Brown's pickup truck.

¶ 12 Meneely said he noticed, while speaking with defendant at the front door, that defendant had bloodshot eyes, slurred speech, and the odor of alcohol emanating from his breath. Before administering the field sobriety tests, Meneely asked defendant about his recent alcohol consumption. Defendant said he had two 12-ounce bottles of Bud Light beer at approximately 5 p.m. Meneely asked defendant to perform two "pre-exit tests." Defendant performed satisfactorily on one but not the other.

¶ 13 Based on "the totality of the circumstances," including defendant's physical appearance and his performance on one of the "pre-exit tests," Meneely decided to administer field sobriety tests. These were videotaped from a squad-mounted video camera. Meneely administered the horizontal gaze nystagmus test, the walk-and-turn test, and the one-legged-stand tests. According to Meneely, defendant showed signs of impairment with each test. The video was shown to the jury.

¶ 14 Meneely said after the conclusion of the field sobriety tests, he again asked defendant how much alcohol he had consumed. Defendant "stated he also had three shots of Hennessy in addition to the two beers." The prosecutor posed the following question:

"Q. Okay. At any time, did the defendant ever tell you that he drank alcohol after getting into that accident?

A. No, he did not."

Meneely opined that defendant was intoxicated and placed him under arrest for driving under the influence of alcohol. Defendant refused to submit to the Breathalyzer test.

¶ 15 On cross-examination, the following exchange occurred:

"Q. Now you then asked him again [after the field sobriety tests] about his alcohol consumption that evening?

A. Yes, sir.

Q. You asked him how many drinks he had that evening?

A. Yes, sir.

Q. He answered you that he had three shots of Hennessy in addition to the two beers he had mentioned before?

A. Yes, sir.

Q. You did not ask him if he drank any alcohol after the accident?

A. No. The same timeline was specified of 17:00 hours or 5 p.m. was completion. We didn't delve further into if there was any deviation from that timeline.

Q. You didn't ask if he drank anything prior to the accident and then after the accident?

A. I did not ask if he had drank anything after the accident. No I did not.

Q. You could have asked him permission to search the house for evidence of additional drinking; correct?

A. I could have but, at that point in time, I felt no need to enter his residence to do so."

¶ 16 At the close of the State's evidence, defendant moved for a directed verdict, raising the same claim he makes in this appeal, *i.e.*, that the State presented insufficient evidence to prove defendant was under the influence of alcohol *at the time of the accident* rather than at the time he was administered the field sobriety tests. Without discussion, the trial court denied defendant's motion.

¶ 17 Defendant's girlfriend, Yolanda Motley, testified on defendant's behalf. She said on February 21, 2015, she and defendant were preparing for her birthday party that evening. Defendant drank two beers at approximately 4:30 p.m. as they were cleaning the house. She said she did not notice him drink anything else at that time. She said at approximately 6:30 p.m., she and defendant went to Walmart. She drove. Defendant went inside the store while Motley stayed in the car. When defendant exited the store, Motley asked defendant to drive because she was experiencing muscle cramps. According to Motley, defendant showed no signs of intoxication.

¶ 18 Motley said, as they travelled toward home, the pickup truck in front of them stopped abruptly. The driver, Brown, jumped out of the pickup truck in an "outrage." Motley said she was scared and urged defendant to drive home to call the police, which he did. When they arrived home, Motley retrieved her cell phone and defendant went upstairs.

¶ 19 Motley said she initially told Meneely she had been driving at the time of the accident because she "felt bad for asking [defendant] to leave the scene of a crime, the hit[-]and [-]run." She eventually told Meneely that defendant had actually been the one driving. After defendant was arrested, Motley said she went inside the house and noticed the Hennessy bottle

had been opened when, prior to the accident, it had been sealed. She said defendant was not out of her sight the entire afternoon as they prepared for the party.

¶ 20 Defendant also testified. He said he drank two 12-ounce Bud Light beers and ate two Lunchables as they readied the house for the party that evening. He corroborated Motley's testimony in terms of the details of the accident. When they arrived home, defendant said he went upstairs and watched from a window as Brown sat outside in his pickup truck. Defendant said he was "scared and frightened and nervous," so he got a drink "to try to calm [his] nerves." He said he took three shots of Hennessy within 15 minutes. Defendant said he refused a Breathalyzer test because he "knew [he] just completed three shots and it would have looked like that I was actually drinking at the time of the accident when I really wasn't, so I just *** denied the test. I refused it." On cross-examination, defendant said he had not told the officers he had consumed alcohol after the accident.

¶ 21 At the close of all the evidence, defendant again moved for a directed verdict on the same grounds as his prior motion. The trial court again denied the motion. After deliberating, for what the court noted was 2 1/2 hours, the jury found defendant guilty of driving under the influence. In September 2015, the court sentenced defendant to three years in prison.

¶ 22 This appeal followed.

¶ 23 II. ANALYSIS

¶ 24 In this appeal, defendant argues his conviction must be reversed because the State failed to prove he committed the offense of driving while under the influence of alcohol. 625 ILCS 5/11-501(a)(2) (West 2014). Specifically, defendant contends the State failed to prove that he was under the influence of alcohol while driving. He claims he became intoxicated upon

drinking after he arrived home but before the police arrived to investigate the accident. We affirm the trial court's judgment.

¶ 25 In a challenge to the sufficiency of the evidence, we must determine, after viewing the evidence in the light most favorable to the State, whether any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. *People v. Collins*, 106 Ill. 2d 237, 261 (1985). "[A] reviewing court will not substitute its judgment for that of the trier of fact on issues involving the weight of the evidence or the credibility of the witnesses." *People v. Brown*, 2013 IL 114196, ¶ 48. Further, a reviewing court will not substitute its judgment for the judgment of the trier of fact simply because the evidence is merely conflicting or contradictory. *People v. Downin*, 357 Ill. App. 3d 193, 202 (2005). A criminal conviction will only be reversed where the evidence is so unreasonable, improbable, or unsatisfactory as to justify a reasonable doubt of defendant's guilt. *Brown*, 2013 IL 114196, ¶ 48.

¶ 26 Merely because the trier of fact accepted certain testimony or made certain inferences based on the evidence does not guarantee the reasonableness of its decision. *People v. Smith*, 185 Ill.2d 532, 542 (1999). Due process mandates that a defendant may not be convicted of a crime unless each element constituting that crime is proved by the State beyond a reasonable doubt (*People v. Cunningham*, 212 Ill. 2d 274, 278 (2004) (quoting *In re Winship*, 397 U.S. 358, 364 (1970))), and that the burden is on the State to do so. *People v. Diaz*, 377 Ill. App. 3d 339, 345 (2007).

¶ 27 To find a defendant guilty under section 11-501(a)(2) of the Illinois Vehicle Code, the State must prove defendant (1) was in "actual physical control" of the vehicle (2) while he was under the influence of alcohol. 625 ILCS 5/11-501(a)(2) (West 2014). "It is well established that observation of a defendant in the act of driving is not an indispensable

prerequisite for a conviction." *People v. Lurz*, 379 Ill. App. 3d 958, 969 (2008). However, defendant challenges the evidence only as it relates to the second element. That is, he does not dispute that he was the one driving the vehicle at the time of the accident.

¶ 28 The State can prove the element of an offense by circumstantial evidence alone. *People v. Wheeler*, 226 Ill. 2d 92, 120 (2007); *Lurz*, 379 Ill. App. 3d at 969; *Diaz*, 377 Ill. App. 3d at 345. "Circumstantial evidence is 'proof of facts and circumstances from which the trier of fact may infer other connected facts which reasonably and usually follow according to common experience.' " *People v. McPeak*, 399 Ill. App. 3d 799, 801 (2010) (quoting *People v. Stokes*, 95 Ill. App. 3d 62, 68 (1981)). In a case based on circumstantial evidence, the trier of fact need not be satisfied beyond a reasonable doubt as to each link in the chain of circumstances if all the evidence considered collectively satisfies the trier of fact beyond a reasonable doubt that the defendant is guilty. *People v. Slinkard*, 362 Ill. App. 3d 855, 857 (2006).

¶ 29 The trier of fact need not accept the defendant's version of events among competing versions. See *People v. Villarreal*, 198 Ill. 2d 209, 231 (2001) (citing *People v. Ortiz*, 196 Ill. 2d 236, 267 (2001)). As our supreme court explained in *Wheeler*, "the trier of fact is not required to disregard inferences which flow normally from the evidence and to search out all possible explanations consistent with innocence and raise them to a level of reasonable doubt." (Internal quotation marks omitted.) *Wheeler*, 226 Ill. 2d at 117 (citing *People v. Hall*, 194 Ill. 2d 305, 332 (2009)).

¶ 30 "To prove intoxication, the evidence must establish that the putatively intoxicated person not only consumed alcoholic liquor, but also displayed some form of unusual behavior, or there must be opinion evidence, from which the trier of fact may reasonably conclude that the subject person was intoxicated at the critical time." *Wade v. City of Chicago Heights*, 216 Ill.

App. 3d 418, 429 (1991). A slight impairment that leads to a slight reduction in a motorist's ability to drive is sufficient to support a conviction. See *Mills v. Edgar*, 178 Ill. App. 3d 1054, 1057 (1989) ("An Illinois pattern jury instruction defines the term 'under the influence of intoxicating liquor' as follows: 'A person is under the influence of intoxicating liquor when as a result of drinking any amount of intoxicating liquor his mental and/or physical faculties are *so impaired* as to *reduce* his ability to think and act *with ordinary care*.' (Emphases added.) Illinois Pattern Jury Instructions, Criminal, No. 23.05, at 530 (2d ed. 1981)."). Now see Illinois Pattern Jury Instructions, Criminal, No. 23.29 (approved April 4, 2014).

¶ 31 Defendant makes a plausible argument. He claims he did not become intoxicated until he drank three shots of Hennessy between the time he arrived home after the accident and the time he was administered the field sobriety tests. (We note the statute does not define or employ the term "intoxicated" nor is the concept of being "under the influence" statutorily equated with being "intoxicated." See *Wade*, 216 Ill. App. 3d at 434.) Defendant insists he was not intoxicated (or under the influence of alcohol) at the time of the accident.

¶ 32 Defendant did not volunteer, nor did Meneely ask for, information regarding the timing of defendant's consumption of the shots. It could very well have been that defendant arrived home and quickly drank three shots before speaking with Meneely. The State presented no evidence regarding the possibility of how quickly one can experience or manifest signs related to the use of alcohol. Meneely said he noticed such signs when speaking with defendant at his residence, within minutes of defendant's reported consumption of the alcohol.

¶ 33 For this court to reverse defendant's conviction based upon defendant's explanation, we would be required to make a credibility determination notably different from that made by the jury. We decline to do so because, as our common law dictates, a reviewing

court does not ordinarily substitute its judgment for that of the trier of fact unless the reasonableness of a credibility or evidentiary determination is called into question. See *Smith*, 185 Ill. 2d at 542.

¶ 34 Another plausible explanation can be derived partly from defendant's own admission. He admittedly drank alcohol prior to driving to Walmart with Motley. Regardless of the timing of his three reported shots of Hennessy, he undeniably drank at least two beers before getting behind the wheel of the car. Meneely testified he detected an odor of alcohol, slurred speech, and poor performance on the administered "pre-exit" and field sobriety tests. Meneely's testimony and defendant's admission, coupled with the fact that defendant reportedly failed to stop at a stop sign and failed to stop in time to avoid impact with Brown's pickup truck, could have led a reasonable jury to conclude that the amount of alcohol defendant consumed (with or without the shots of Hennessy), impaired his judgment or reduced his ability to drive. See *Mills*, 178 Ill. App. 3d at 1057 (even a slight impairment is sufficient to support a conviction). See also *People v. Dalton*, 7 Ill. App. 3d 442, 443-44 (1972) (where there is evidence of intoxication immediately after an accident, the connection between the accident and the intoxication is sufficient). *Cf. People v. Wells*, 103 Ill. App. 2d 128, 131 (1968) (there was no evidence that the defendant had anything to drink before the accident).

¶ 35 When considering these two plausible alternatives regarding the timing of defendant's consumption of the three shots of Hennessy, we give deference to the trier of fact. That is, where more than one equally plausible interpretation can be made from the facts, the credibility determination of the trier of fact will be sustained. *People v. Chapman*, 22 Ill. 2d 521, 525 (1961); *Mache v. Mache*, 218 Ill. App. 3d 1069, 1075 (1991). As stated, this court will not overturn the trier of fact on questions involving the weight or credibility of testimony unless the

evidence is "so palpably contrary to the verdict or so unreasonable, improbable or unsatisfactory as to create a reasonable doubt of [the defendant's] guilt." *People v. Abdullah*, 220 Ill. App. 3d 687, 693 (1991). Because we find the evidence was not unreasonably contrary to the jury's verdict, we affirm defendant's conviction.

¶ 36 III. CONCLUSION

¶ 37 For the reasons stated, we affirm the trial court's judgment. As part of our judgment, we award the State its $50 statutory assessment against defendant as costs of this appeal.

¶ 38 Affirmed.