2019 IL App (1st) 171123-U

No. 1-17-1123

Order filed June 28, 2019

Fifth 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. YB656966-68
	)	
DEON HUGHES,	)	Honorable
	)	Kristyna Ryan,
Defendant-Appellant.	)	Judge, presiding.

JUSTICE LAMPKIN delivered the judgment of the court.
Presiding Justice Rochford and Justice Hall concurred in the judgment.

ORDER

¶ 1 *Held*: We affirm defendant's conviction for illegal transportation of alcohol over his contention that the evidence was insufficient to prove him guilty beyond a reasonable doubt.

¶ 2 Following a bench trial, defendant Deon Hughes was convicted of driving under the influence (DUI) (625 ILCS 5/11-501(a)(2) (West 2014)), illegal transportation of alcohol (625 ILCS 5/11-502(a) (West 2014)), and disobeying a stop sign (625 ILCS 5/11-1204(b) (West 2014)). The court entered convictions for all three offenses, imposed no fines for the offenses of

illegal transportation of alcohol and disobeying a stop sign, and sentenced defendant to 24 months' conditional discharge for the DUI. On appeal, defendant contends the evidence was insufficient to sustain his conviction for illegal transportation of alcohol.[1] For the following reasons, we affirm.[2]

¶ 3 At trial, Cicero police officer Michael McMahon testified that, at approximately 2:28 a.m. on March 29, 2015, he was on patrol, driving in his squad car in a residential area near the 5100 block of West 23rd Street. McMahon was in uniform and working alone. Although it was dark out, the area was lit by streetlights. McMahon observed a light blue BMW sport utility vehicle driving in front of him. The BMW made a right-hand turn at the intersection of 23rd and 51st Avenue, but failed to stop at the stop sign. McMahon activated his emergency equipment to effectuate a traffic stop of the BMW.

¶ 4 McMahon approached the BMW and identified defendant as the driver. A second man was seated in the passenger seat. Defendant's window was completely lowered. McMahon noticed defendant's eyes were watery and bloodshot, his speech was slurred, and his breath smelled strongly of an "alcoholic beverage." Although McMahon informed defendant that he pulled him over for failing to stop at the stop sign, defendant believed he had made a complete stop. Despite being in Cicero, defendant believed he was in Chicago. When McMahon asked defendant for his driver's license and proof of insurance, defendant gave McMahon what he believed was his license but was instead his insurance card from his wallet. McMahon gave the card back and explained that it was not defendant's license. Defendant then dropped the card and

[1] Defendant does not contest his convictions for DUI and disobeying a stop sign.

[2] In adherence with the requirements of Illinois Supreme Court Rule 352(a) (eff. July 1, 2018), this appeal has been resolved without oral argument upon the entry of a separate written order.

various other cards from his wallet on the floor of the BMW. McMahon could not recall whether defendant ever provided identification.

¶ 5 McMahon asked defendant if he had diabetes or any other medical problems that could account for his slurred speech and the odor on his breath. Defendant denied having any medical conditions. He acknowledged that he drank one beer at a family party. McMahon walked back to his squad car to conduct a check of defendant's license status. As he approached his own vehicle, he noticed there was an open bottle of Don Julio tequila in the "rear passenger side" of the BMW. He determined it was open because there was liquid missing and it did not appear to be a full bottle. McMahon noticed "[i]t was not in the original seal, that it was, in fact, open." McMahon had encountered tequila in both his personal and professional lives and agreed it was "fair" to characterize it as "hard alcohol."

¶ 6 After returning to the BMW, McMahon asked defendant to exit the vehicle, and defendant agreed to participate in standardized field sobriety tests. Upon exiting his vehicle, defendant's steps were "staggered and uneven." The sidewalk was flat and free of obvious defects and debris. Defendant still smelled of alcohol once outside of his car. He had a cast on his right hand and denied that he was taking any medication.

¶ 7 McMahon was trained as a field sobriety test instructor and administered three field sobriety tests to defendant. Defendant denied having any medical conditions that would interfere with his performance of the tests. McMahon first administered the horizontal gaze nystagmus test to defendant, who exhibited six out of six clues for consumption of alcohol. McMahon next administered the one-leg stand to defendant, who exhibited three out of four clues of impairment. Finally, defendant took the walk-and-turn test and exhibited four out of eight clues of

impairment. Based on defendant's performance on the tests, he was arrested and transported to the Cicero Police Department.

¶ 8 At the station, McMahon read defendant the "Warnings to Motorists" from a preprinted form. He then observed defendant during a 20-minute observation period. Following the observation period, defendant submitted to a breathalyzer test after initially refusing. However, defendant put his mouth on the machine but did not enter a sample that could be analyzed. McMahon had the opportunity to observe people under the influence of alcohol in both his personal life and professional experience "thousands" of times. In his opinion, defendant was under the influence of alcohol and could not safely operate a motor vehicle. McMahon based his opinion on defendant's driving, statement of consumption, physical appearance, speech, performance of the field sobriety tests, and the open container of alcohol in his vehicle.

¶ 9 On cross-examination, McMahon testified that defendant pulled over immediately when his emergency lights were activated. Defendant parked safely and did not strike the curb. Although he smelled an alcoholic beverage on defendant's breath, McMahon acknowledged he did not know how much alcohol defendant consumed, when he consumed it, or what exactly he had to drink. McMahon further acknowledged defendant was cooperative and was able to walk to the back of his vehicle without falling. Defendant did not sway or lean on anything for support when McMahon gave him the instructions for the field sobriety tests. McMahon clarified that he observed the open bottle of tequila on the second row of seats behind the passenger seat. It was not in the trunk area of the vehicle. The BMW did not have a separate trunk area. It had two rows of seats and a trunk area in one compartment. He acknowledged that he erred in describing the area where the bottle of tequila was found as "behind the rear passenger seat" in his report.

¶ 10 The trial court found defendant guilty of disobeying a stop sign, illegal transportation of alcohol, and DUI. Defendant filed a motion for a new trial, arguing, in relevant part, that the State failed to prove he transported an open container of alcohol because McMahon was impeached by his report, which stated the bottle of tequila was in the trunk of the vehicle. The court denied the motion.

¶ 11 At sentencing, with respect to the counts of disobeying a stop sign and illegally transporting alcohol, the court stated, "Counts 1 and 2 will be zero dollar fine and a conviction." The court then sentenced defendant to "24 months' conditional discharge, fines and costs of $2,629, significant risk treatment, one VIP panel will be completed, zero tolerance while driving, and 400 hours of independent community service."

¶ 12 On appeal, defendant contends the State failed to prove beyond a reasonable doubt that he illegally transported alcohol.

¶ 13 On a challenge to the sufficiency of the evidence, we inquire " '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 omitted.) *People v. Davison*, 233 Ill. 2d 30, 43 (2009) (quoting *Jackson v. Virginia*, 443 U.S. 307, 319 (1979)). In so doing, we draw all reasonable inferences in favor of the State (*Davison*, 233 Ill. 2d at 43), and we do not retry the defendant (*People v. Collins*, 106 Ill. 2d 237, 261 (1985)). We will not overturn a criminal conviction "unless the evidence is so improbable or unsatisfactory that it creates a reasonable doubt of the defendant's guilt." *People v. Givens*, 237 Ill. 2d 311, 334 (2010).

¶ 14 Section 11-502 of the Illinois Vehicle Code provides, in pertinent part, that "no driver may transport, carry, possess or have any alcoholic liquor within the passenger area of any motor vehicle upon a highway *** except in the original container and with the seal unbroken." 625 ILCS 5/11-502(a) (West 2014).

¶ 15 Defendant argues that the State's evidence was insufficient to show that the liquid in the tequila bottle was alcohol. Specifically, he argues there was no chemical testing done to prove there was alcohol in the bottle and no firsthand account of the contents of the bottle because Officer McMahon never closely examined the contents of the bottle.

¶ 16 After viewing the evidence in the light most favorable to the State, we find McMahon's testimony was sufficient to enable a rational trier of fact to conclude beyond a reasonable doubt that defendant illegally transported alcohol. McMahon testified when he spoke with defendant, he was slurring his words, had bloodshot, watery eyes, and smelled like an "alcoholic beverage." After defendant could not produce his license, McMahon walked back toward his squad car and observed a bottle of Don Julio tequila in the backseat of defendant's car. The bottle was not full and the seal was broken. Although McMahon did not testify that he examined the contents of the bottle, the evidence presented was sufficient to support an inference that the liquid contained in the partially full bottle of Don Julio tequila was an alcoholic liquor. See *People v. Siguenza-Brito*, 235 Ill. 2d 213, 228 (2009) (it is within the province of the trier of fact to weigh the evidence and "draw reasonable inferences therefrom").

¶ 17 Further, while the State did not introduce evidence of chemical testing of the liquid in the bottle, this does not preclude a finding of guilt. See *People v. Hood*, 343 Ill. App. 3d 1245, 1257 (2003) ("The State's failure to introduce testimony concerning a chemical analysis of the liquid

*** does not preclude a finding of guilt [of illegal transportation of alcohol.]"), *reversed in part on other grounds by People v. Hood*, 213 Ill. 2d 244 (2004). Despite defendant's contentions, we cannot say that the evidence presented was "so improbable or unsatisfactory that it creates a reasonable doubt of the defendant's guilt." *Givens*, 237 Ill. 2d at 334. Accordingly, we affirm the judgment of the circuit court of Cook County.

¶ 18 Affirmed.