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2019 IL App (3d) 170753-U

Order filed January 11, 2019

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

2019

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. 3-17-0753
)	Circuit Nos. 15-DT-792 & 15-TR-42831-3
GAYLEN KUEHL,)	
Defendant-Appellant.)	Honorable Kenneth A. Zelazo, Judge, Presiding.

JUSTICE O'BRIEN delivered the judgment of the court.
Justices Carter and Holdridge concurred in the judgment.

ORDER

¶ 1 *Held:* A defendant's DUI conviction was affirmed when the circumstantial evidence taken as a whole was sufficient to find the defendant guilty beyond a reasonable doubt.

¶ 2 The defendant, Gaylen Kuehl, was found guilty following a bench trial of driving under the influence and failure to yield turning left. The defendant appealed.

¶ 3 **FACTS**

¶ 4 The defendant was charged with driving under the influence (DUI) (625 ILCS 5/11-501(a)(2) (West 2014)), failure to yield turning left (*id.* § 11-902), and illegal transportation of alcohol (*id.* § 11-502), after he was stopped by police in his driveway on the evening of June 8, 2015.

¶ 5 Officer Richard Treece, a police officer employed with Village of Bolingbrook, testified that on June 8, 2015, he observed the defendant make a left turn in front of two vehicles. Treece testified that both on-coming vehicles had to slam on their brakes to avoid hitting the defendant's vehicle. He observed the vehicles decelerating rapidly but did not recall if he heard tires screeching. Treece followed the defendant's vehicle, which had proceeded into a driveway. Treece observed the defendant sitting behind the wheel, but the defendant did not respond until Treece had knocked on the window for about 30 seconds. The defendant rolled down his window, and Treece smelled an alcoholic beverage on his breath. Treece asked for the defendant's driver's license and insurance. The defendant handed Treece his license and a business card. When the defendant stepped out of the vehicle, Treece observed that the defendant almost fell and two empty beer cans fell out of the vehicle. The defendant picked up the beer cans and threw them over the fence into his backyard. Treece testified that the defendant mentioned that he had been drinking while fishing during the day. The defendant refused to perform any field sobriety tests. He was arrested and taken to the police station. The defendant refused to provide a breath sample. Based on his observations, Treece thought that the defendant was under the influence of alcohol and was incapable of operating a vehicle safely due to his intoxication.

¶ 6 Officer Patrick Kinsella, another Village of Bolingbrook police officer, arrived on the scene after the defendant was already out of his vehicle. Kinsella testified that he observed that

the defendant's eyes looked bloodshot and glassy. Kinsella inventoried the defendant's vehicle prior to being towed, observing an open, partially empty, can of beer under the driver's seat and an open 30-pack of beer on the passenger-side floorboard with a few remaining cans. Kinsella could not testify that there was any liquid in the open can. Kinsella also assisted with booking the defendant, and he testified that the defendant's speech was slurred and that instructions needed to be repeated. However, the only example of not following instructions that Kinsella could recall was that he had to repeatedly tell the defendant to turn his body back toward the fingerprint machine because the defendant was turning to talk to Treece. Kinsella also testified that the defendant stated that he had been drinking while fishing during the day. Kinsella observed a strong odor of an alcoholic beverage. He did not observe the defendant sway or stagger, though. The video recording from the booking room shows the defendant walking, and he does not appear to be swaying or staggering. He does look over his shoulder several times during the fingerprinting process to look at Treece. There is no audio.

¶ 7 Officer Marjorie Higen testified that she arrived after Treece had made the traffic stop of the defendant's vehicle. As the defendant exited the vehicle, Higen observed two beer cans fall out of the vehicle and the defendant attempted to throw those cans away from the vehicle. She did not observe the defendant having any difficulty exiting the vehicle. She also testified that she did not recall seeing the defendant stagger or stumble, and she did not recall anything unusual with his speech or his eyes. She testified that she observed the odor of an alcoholic beverage, but she did not note in her report that she detected such an odor.

¶ 8 The trial court found the defendant not guilty of illegal transportation of alcohol, since Kinsella testified that he could not be certain that there was any liquid in the open cans. It found the defendant guilty of failure to yield turning left. The court also found that while there was "not

complete and total comprehensive circumstantial evidence on every component to prove the defendant's guilt" of DUI, there was sufficient evidence to prove his guilt beyond a reasonable doubt. The court considered the defendant's judgment call of turning left in front of two vehicles, the testimony that the defendant almost fell while exiting the vehicle, and the presence of the open beer cans. The court also considered the testimony that the defendant had an odor of an alcoholic beverage, although the court acknowledged that testimony was inconsistent. The court denied the defendant's motion to reconsider or, alternatively, for a new trial. The court sentenced the defendant to conditional discharge, 240 hours of community service, and other fines and conditions.

¶ 9

ANALYSIS

¶ 10

The defendant argues that the State failed to prove each element of the offense of driving under the influence and failure to yield turning left beyond a reasonable doubt. The State contends that it proved both beyond a reasonable doubt.

¶ 11

When reviewing the sufficiency of the evidence in a criminal action, courts of review view the evidence in the light most favorable to the State and affirm if 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). Reversal is only warranted when the evidence is so improbable or unsatisfactory that it leaves a reasonable doubt as to the defendant's guilt. *People v. Flowers*, 306 Ill. App. 3d 259, 266 (1999). Additionally, it is important to note that "we review the trial court's judgment, not its reasoning, and we may affirm on any grounds in the record, regardless of whether the trial court relied on those grounds or whether the trial court's reasoning was correct." *People v. Ringland*, 2015 IL App (3d) 130523, ¶ 33 (quoting *Suchy v. City of Geneva*, 2014 IL App (2d) 130367, ¶ 19).

¶ 12 Section 11-902 of the Illinois Vehicle Code provides that the driver of a vehicle intending to turn left within an intersection shall yield the right-of-way to any vehicle approaching from the opposite direction, but may proceed after a safe interval. 625 ILCS 5/11-902 (West 2014). Officer Treece testified that he observed the defendant make a left-hand turn in front of two vehicles and that those two vehicles had to stop by slamming on their brakes to avoid hitting the defendant's vehicle. The court found that the testimony of the officer that the other two vehicles had to make sudden stops to avoid the defendant's vehicle was sufficient to prove the defendant guilty of failure to yield turning left beyond a reasonable doubt. Viewing the evidence in the light most favorable to the State, we find that a rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt and affirm the failure to yield turning left conviction.

¶ 13 Section 11-501(a)(2) of the Illinois Vehicle Code prohibits individuals from driving any vehicle within the State while under the influence of alcohol. *Id.* § 11-501(a)(2). A driver is under the influence of alcohol when he is rendered incapable of driving safely by the alcohol, a factual question that may be proven by circumstantial evidence. *People v. Love*, 2013 IL App (3d) 120113, ¶¶ 34-35. A defendant's refusal to take the tests designed to determine intoxication, like a Breathalyzer and field sobriety tests, is admissible as evidence as the defendant's consciousness of guilt. *People v. Johnson*, 218 Ill. 2d 125, 140 (2005). The trial court found that the evidence was sufficient to prove the defendant guilty of DUI beyond a reasonable doubt.

¶ 14 The defendant argues that the trial court's finding that the defendant was not guilty of the offense of illegal transportation of alcohol was inconsistent with the finding that the defendant was guilty of DUI. Specifically, the defendant points to the fact that the court found that the State failed to prove the open beer cans had any liquid left in them, but found the presence of the cans

circumstantial evidence of intoxication. The State argues that the two findings are not mutually exclusive and, therefore, are not in conflict. We agree with the State that the findings are not in conflict since it is not necessary to show the defendant transported open alcohol or consumed the alcohol while driving in order to prove defendant guilty of DUI beyond a reasonable doubt.

¶ 15 We find that the evidence presented in this case was sufficient to prove the defendant guilty of DUI beyond a reasonable doubt.

¶ 16 CONCLUSION

¶ 17 The judgment of the circuit court of Will County is affirmed.

¶ 18 Affirmed.