

No. 1-13-3355

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IN THE  
APPELLATE COURT OF ILLINOIS  
FIRST JUDICIAL DISTRICT

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THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County.
	)	
v.	)	No. M0502201
	)	
JAMES A. JONES,	)	Honorable
	)	Susan Sullivan Kennedy,
Defendant-Appellant.	)	Judge Presiding.

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JUSTICE PALMER delivered the judgment of the court.  
Justices McBride and Reyes concurred in the judgment.

**O R D E R**

¶ 1 *Held:* Defendant's conviction for driving under the influence (DUI) and disobeying a solid red light is affirmed where he received effective assistance of counsel, the evidence was sufficient to prove that he was guilty beyond a reasonable doubt of DUI, and the finding that he disobeyed a traffic control device was not against the manifest weight of evidence.

¶ 2 Following a bench trial, defendant James Jones was convicted of driving under the influence (DUI) pursuant 11-501(a)(2) of the Illinois Vehicle Code (625 ILCS 5/11-501(a)(2) (West 2010)), and disobeying a solid red signal in violation of 9-8-020 (c)(1) of the Municipal

Code of Chicago. Chicago Municipal Code § 9-8-020 (added July 12, 1990). He was sentenced to 24 months of conditional discharge with a variety of conditions. On appeal, defendant contends that he received ineffective assistance of counsel, the evidence was insufficient to prove that he was guilty beyond a reasonable doubt, and the finding that he disobeyed a traffic control device was against the manifest weight of evidence. We affirm.

¶ 3 Prior to trial, defense counsel unsuccessfully argued that the charges against defendant should be dismissed because the State indicated that Officer Sylshia London, the officer who wrote defendant's two tickets, would not be in court for the trial. Specifically, counsel argued that Officer London's absence violated the Sixth Amendment's confrontation clause which "gives the accused in all criminal proceedings the right to be confronted with the witness against him." The trial court denied the motion to dismiss, stating that it is the State's burden to prove its case, and that "if he can't prove it and if you want to resurrect your argument at the end of testimony, I will reconsider it but at this stage Counsel, I'm leaving the burden to the state as it should be."

¶ 4 At trial, David Bell testified that around 7 p.m. on January 10, 2010 he was driving north on Cottage Grove, with his wife as a passenger. He stopped at a red light and sat in the "turning box" to make a left turn heading west onto 76<sup>th</sup> Street. When the light turned green, Bell attempted to make his turn. He felt an impact come from a vehicle that was traveling south on Cottage Grove.

¶ 5 Jeannine Bankston testified that she was a back seat passenger in a car driven by her friend, Lashonda Johnson. As the car was stopped at the light facing west on 76<sup>th</sup> Street, Bankston and Johnson heard the loud sound of a "roaring" engine. Bankston then saw a white Avalanche traveling at 60 miles per hour drive around three vehicles already stopped at the

intersection and into a non-traffic lane on the right to get around them. The light was yellow and getting ready to turn red as defendant approached the intersection; as defendant made it to the corner of the intersection, the light had turned red. As the car driven by Bell attempted to make a left turn, defendant's white Avalanche hit him. After the crash, Bankston saw defendant jump over to the passenger seat of the car and begin talking on his cell phone. Bankston exited the car and approached the driver's side of Bell's car, where she noticed that the passenger was trapped under the dashboard. Johnson also exited the car and called for help because Bell was having difficulty breathing. Defendant then jumped out of his car, and walked over to Bankston. Bankston, who worked at a liquor store and often comes in contact with intoxicated people, testified that defendant "seemed like he was intoxicated," because he was stumbling and shuffling when he walked, slurred his speech as he spoke, and had red eyes. She also stated that defendant "didn't know that he had a gash in his hand when he was talking to me."

¶ 6 Lashonda Johnson testified that she was driving the night of the accident, and she was the first car in the intersection at 76<sup>th</sup> and Cottage Grove. As she was sitting at the intersection she heard a "growling engine" sound, and observed an accident involving "the white truck and the gold vehicle." She stated that "[t]he light was turning yellow and the white truck hit the gold car turning." On cross examination, she testified that as the crash occurred, the red light at which she had been stopped "was turning green." Following the accident, she got out of her car to make sure that everyone was okay. After she knocked on the window of the white truck, she asked the man on the passenger side of the car if he was okay, and he "waved [her] off." She identified defendant as the man she spoke to in the white car.

¶ 7 Chicago police officer John Cacciatore testified that he took photographs and measurements at the scene of the accident, but could not locate defendant. He then visited both Bell and his wife at Christ Hospital, who were both "in serious to critical shape." After speaking with Officer London while at the hospital, Cacciatore learned where to locate defendant. Defendant eventually came back to the 6<sup>th</sup> Chicago Police District station, about 1:45 a.m. on January 11, 2010. Officer Cacciatore administered a Breathalyzer test to defendant, and his blood-alcohol concentration (BAC) was .022. Defendant admitted that he had taken "a couple of shots to calm his nerves." Defendant stated that he was in the South Shore area visiting his daughter, but was unable to give Officer Cacciatore the address. He told Officer Cacciatore that somebody hit him, but he had the green signal. He stated that he went to the hospital following the crash, but did not receive treatment. Officer Cacciatore interviewed defendant's daughter, Charlene Holyfield-Jones, she told him that she and defendant had planned to meet earlier in the day, but she had not "seen him all day."

¶ 8 Charelene Holyfield-Jones testified that earlier on the day of the crash, she was with her father at a restaurant and he took her home after they finished eating. She denied that she had told Officer Cacciatore that she did not see her father earlier in the day. Later that evening, defendant called her from the hospital. He told her that he had been in a car accident, and asked her to come get him. After she picked him up, she drove defendant to his house and waited in the car for him for 15 minutes as he obtained his proof of insurance, and drove him to the police station. Holyfield-Jones did not know if defendant had any other drinks following the accident, but it was possible.

¶ 9 John Wetstein, a toxicology training coordinator for the Illinois State Police Forensic Sciences Command, testified that he could estimate a BAC at an earlier point using a technique called retrograde extrapolation. Based on defendant's BAC approximately six-and-a-half hours after the crash, he estimated his BAC "at the time of the crash was between .086 and .151 grams per deciliter." The calculation was based on the assumption that defendant had nothing to drink for six-and-a-half hours.

¶ 10 In closing, defense counsel maintained that the State could not prove that defendant had alcohol in his system at the time of the accident. Counsel noted that Officer London did not cite defendant for DUI after she observed him following the accident, and there was "no testimony" that would lead the court to believe that defendant was driving under the influence. He further stated that Officer London "could have and should have noticed, one if he smelled of alcohol or, two if he looked impaired but instead what the officer did was release my client from the scene and we know that from the testimony of the detective." The court found that defendant was driving while under the influence of alcohol. The court also found that defendant violated the red light ordinance, stating that "notwithstanding the slight variation in testimony, it is persuasive that there were three cars stopped, that the noise of the white truck was heard by two witnesses and the truck was said to have come around the waiting cars at a high speed." The court further noted that "the position of the cars at impact was such that Mr. Bell's car was making a safe left turn at the time of the accident." Defendant was sentenced to conditional discharge, alcohol treatment and monitoring, nine days in the Cook County Jail, 80 hours of community service, and fines on both the DUI and the red light violation.

¶ 11 On appeal, defendant first contends that he received ineffective assistance of counsel when his trial counsel chose not to call Officer London to testify.

¶ 12 A defendant under criminal prosecution has a constitutional right to effective assistance of counsel throughout the trial and review stages of his case. *Strickland v. Washington*, 466 U.S. 668 (1984). In order to demonstrate ineffective assistance, the defendant must prove both that: (1) his attorney's performance fell below an objective standard of reasonableness; and (2) this substandard performance was so prejudicial that there was a reasonable probability that, but for counsel's errors, the outcome of the proceedings would have been different. *Id.*; *People v. Edwards*, 197 Ill. 2d 239, 271(2001). To prevail, the defendant must satisfy both prongs of the *Strickland* test. *People v. Brown*, 236 Ill. 2d 175, 185 (2010).

¶ 13 Defendant's ineffective assistance of counsel claim fails because he has not shown that the outcome of the proceedings would have been different if defense counsel chose to call Officer London to testify at trial. According to the record, Officer London was the officer on the scene of the accident, and issued defendant tickets for disobeying a solid red signal and operating an uninsured vehicle. Defendant argues that testimony from Officer London, obviously trained to detect clues of alcohol impairment, would have changed the outcome of the case. Initially we note that we cannot be sure that Officer London was available to testify as a witness at defendant's trial. Providing that she was available, and defense counsel chose not call Officer London to testify, there is no indication that this would have changed the outcome of the case. Defendant merely speculates that Officer London would have corroborated defendant's statement that he only drank alcohol after the accident, and would contradict Bankston's testimony that defendant had red eyes and was stumbling and slurring his words. However, there is no

indication in the record that London would have testified favorably for defendant or in any way contradicted Bankston's eyewitness testimony. Thus, we reject defendant's purely speculative argument that Officer London's testimony would have changed the outcome of the case. Finding that defendant cannot meet the second prong of the *Strickland* test, we conclude that defendant has not proved that trial counsel was ineffective.

¶ 14 Next, defendant argues that the evidence was insufficient to prove beyond a reasonable doubt that he was guilty of driving under the influence.

¶ 15 When a defendant challenges the sufficiency of the evidence to sustain his conviction, the relevant question on review is whether, after considering the evidence in the light most favorable to the State, any rational trier of fact could have found the essential elements of the crime proven beyond a reasonable doubt. *People v. Beauchamp*, 241 Ill. 2d 1, 8 (2011). The trier of fact determines the credibility of witnesses, the weight to be given to their testimony, and the reasonable inferences to be drawn from the evidence. *People v. Collins*, 214 Ill. 2d 206, 217 (2005). A conviction will only be overturned where the evidence is so improbable, unsatisfactory, or inconclusive that it creates a reasonable doubt of defendant's guilt. *Beauchamp*, 241 Ill. 2d at 8.

¶ 16 To prove defendant guilty of DUI in this case, the State was required to prove beyond a reasonable doubt 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). DUI convictions may be based solely on circumstantial evidence or the credible testimony of the arresting officer. *People v. Love*, 2013 IL App (3d) 120113, ¶ 35.

¶ 17 A rational trier of fact could have found beyond a reasonable doubt that defendant was intoxicated. According to evidence presented at trial, defendant was identified by two eyewitnesses as the driver of the car that struck the victim's car. Bankston, who had worked in a liquor store for eight years, testified that defendant appeared to be intoxicated noting that he did not realize that he was injured in the crash, was stumbling and shuffling, had very red eyes and slurred speech. Several hours following the crash, defendant was given a Breathalyzer test and Wetstein's extrapolation estimated that defendant's BAC was over the legal limit at the time of the crash. Although defendant told Officer Cacciatore that he "took a couple of shots" prior to coming to the police station; the trial court clearly believed that defendant was intoxicated at the time of the crash. Based on eyewitness and expert testimony, we find that a rational trier of fact could have found that defendant was the driver of the car and was intoxicated at the time of the crash.

¶ 18 Defendant argues that the Breathalyzer test after the accident shows a low BAC of .022, and corroborates his story that he only drank after the accident. However, the court implicitly rejected defendant's claim that he drank after the accident. Instead, it chose to believe the expert witness who opined that, providing that defendant had nothing else to drink following the accident; his estimated BAC at the time of the crash was over the legal limit. Additionally, defendant argues that the circumstantial evidence surrounding Officer London is enough to corroborate the evidence that defendant only drank after the accident, not before. We disagree. As stated above, we will not speculate what Officer London would have testified to at trial regarding whether defendant appeared to be intoxicated at the time of the accident. Although Officer London did not cite defendant for a DUI at the time of the accident or testify at trial, we

find that the State presented sufficient circumstantial evidence to show that defendant was driving under the influence at the time of the accident. Considering the evidence in the light most favorable to the State, and finding nothing in this record that contradicts the trial court's findings, we do not find that the evidence is so improbable, unsatisfactory, or inconclusive that it creates a reasonable doubt of defendant's guilt. *Beauchamp*, 241 Ill. 2d at 8.

¶ 19 Finally, defendant contends that the trial court's finding that defendant disobeyed a solid red signal was against the manifest weight of the evidence.

¶ 20 Section 9-8-020 of the Chicago Municipal Code governs traffic signal controls and provides that traffic facing a steady red signal must stop at a clearly marked stop line or, if none, then before entering the intersection and must remain standing until an indication to proceed is shown. Chicago Municipal Code § 9-8-020(c) (added July 12, 1990).

¶ 21 The burden of proof in cases involving municipal ordinances is preponderance of the evidence. *Village of Beckmeyer v. Wheelan*, 212 Ill. App. 3d 287, 290 (1991). Where the State needs only to establish a violation by preponderance of the evidence, the determination by the trial court will be reversed only when it is contrary to the manifest weight of the evidence. *People v. Drake*, 131 Ill. App. 3d 466, 471(1985). A determination will be found to be against the manifest weight of the evidence only if the opposite conclusion is clearly evident or the determination is unreasonable, arbitrary, or not based on the evidence presented. *In re D.F.*, 201 Ill. 2d 476, 498, (2002).

¶ 22 We find that although there was varying testimony regarding the color of the light at the time of the accident, the trial court's finding that defendant disobeyed a solid red signal was not against the manifest weight of the evidence. First, David Bell testified that before he made a left

turn into the intersection, the light was green. Although Bell did not use the phrase "protected green arrow" or similar language, the context suggests that is what he meant and reasonably indicates that defendant had a red light at the time of the accident. Second, Bankston testified that she observed defendant's truck traveling at 60 miles per hour drive around three vehicles already stopped at the intersection. As the truck approached the intersection, she stated that "the light was getting ready to turn red," and that by the time defendant made it to the intersection, the light was red. Finally, Johnson-McDaniel initially testified that the light was yellow as the accident occurred, but on cross-examination stated that the light "was turning green." The court noted the variation in testimony, but found by the preponderance of the evidence that defendant failed to stop at a red light. The court cited witness testimony that defendant drove around three cars already stopped at the light, the growling engine sounds heard by both witnesses, and the position of impact at the time of the accident. We find that this was not against the manifest weight of evidence. In other words, it is not clearly evident from the record that the trial court erred by finding that defendant had a red light at the time of the accident. See *In re D.F.*, 201 Ill. 2d 4 at 498.

¶ 23 For the foregoing reasons, we affirm the judgment of the Circuit court of Cook County.

¶ 24 Affirmed.