FIRST DIVISION
FILED: August 29, 2011

No. 1-09-3140

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County.
	)	
v.	)	No. 08 MC5 006898
	)	
NICOLAS CARTAGENA,	)	Honorable
	)	Denise K. Filan,
Defendant-Appellant.	)	Judge Presiding.

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

O R D E R

¶ 1 *Held*: Where there was insufficient evidence to establish that defendant drove a motor vehicle while under the combined influence of alcohol and another drug, his conviction for that offense was reversed.

¶ 2 Following a bench trial, defendant Nicolas Cartagena was convicted of driving a motor vehicle while under the combined influence of alcohol and another drug (625 ILCS 5/11-501(a)(5) (West 2008)) and sentenced to 24 months' court supervision. On appeal he challenges the sufficiency of evidence that he was under the influence of another drug, by itself or in combination with alcohol.

¶ 3 At trial, Officer Kenn,[1] a patrolman with the Orland Park police department testified that on August 26, 2008, at 1:49 a.m. he responded to the scene of an accident at 8430 Country Club Hills in Orland Park. At a "T" intersection there the guard rail had been pushed into a backyard and a fence was knocked down. Defendant's car, with defendant still in it, was about a block away. It had sustained heavy front end damage and its airbags were deployed. Defendant got out of the car and Kenn asked him what had happened. Defendant told him that he had driven through a stop sign, across four lanes of traffic and through the guard rail into a backyard. When Kenn asked defendant if he had consumed any alcohol that night, defendant told him he had drunk 40 ounces of beer. According to Kenn, defendant's eyes were bloodshot and glassy, he was unstable while standing, and Kenn could smell the strong odor of alcohol on defendant's breath.

¶ 4 Kenn had defendant perform a series of field sobriety tests, two of which Kenn testified defendant failed. One was a walk-and-turn test and Kenn reported that defendant used his arms for balance, lost his balance several times, stepped off the line, completed an improper turn, and did not touch his heel to his toe. In total, Kenn observed seven clues of impairment, when only two were needed to fail the test. The second test failed by defendant was the one-legged-stand, which defendant was unable to complete. He used his arms for balance and put his foot down several times while attempting to complete the test. Kenn testified that he observed four clues of impairment when only two were needed to fail this test. These tests were also videotaped from Kenn's police car and that videotape was played at trial, although it has not been included in the record on appeal. When Kenn asked defendant if he thought he should be driving, defendant responded "Honest to God probably not." Defendant also stated that he had been going too fast to make the turn, causing him to run into the guard rail. Kenn arrested defendant for driving

[1]No first name was elicited at trial.

under the influence of alcohol and transported him to the Orland Park police station, where he had defendant repeat the field sobriety tests, with almost exactly the same results as the first time. Kenn also administered a breathalyzer test and then transported defendant to the hospital where blood and urine samples which defendant had agreed to give were obtained.

¶ 5 The parties stipulated to what State witnesses would testify concerning the results of these tests. Defendant's blood alcohol concentration as measured by the breathalyzer at 2:45 a.m. was .054, which was below the legal limit of .08. 625 ILCS 5/11-501(a)(2) (West 2008). Defendant's subsequent blood alcohol concentration as measured by the blood sample was .032. In addition, defendant's urine test revealed the presence of the drug Alprazolam (commonly known as Xanax) in his system. However it could not be determined when that drug was consumed or how much was present in his system. No direct testimony was presented concerning the effect of this drug on defendant in general or on his driving, either in combination with alcohol or by itself.

¶ 6 According to Kenn, defendant admitted to him that he had smoked two pipes or "bowls" of cannabis. However the presence of cannabis was not detected by any of the tests administered to defendant at the hospital. Kenn testified that this admission by defendant was the sole basis on which he issued defendant a citation for driving while under the influence of alcohol and another drug. He had worked as a patrolman for two-and-one-half years, during which time he had observed at least 50 individuals under the influence of alcohol, although he had previously made only about 10 arrests for driving under the influence of alcohol (DUI). At the police academy he had taken classes on DUI detection for three days to one week. When the State attempted to ask Kenn if he had formed an opinion as to whether defendant was under the influence of or impaired by alcohol or drugs, the defense objected on the ground that Kenn was not qualified to testify to someone being under the influence of Alprazolam. The State withdrew this question. Kenn then testified that based on defendant's admissions, the impairment he observed in the field sobriety

tests, and his interactions with defendant, it was his opinion that defendant was "impaired" at the time he was driving.

¶ 7 The trial court found defendant not guilty of the offense of driving under the influence of alcohol, but guilty of the offense of driving under the influence of alcohol and another drug, Alprazolam. This appeal ensued.

¶ 8 Defendant challenges the sufficiency of the evidence. In evaluating this claim, we must view the evidence in the light most favorable to the State and determine whether any rational trier of fact could have found that the State proved the essential elements of the crime beyond a reasonable doubt. *People v. Evans*, 209 Ill. 2d 194, 209 (2004). However it is also our duty to carefully examine the evidence and to reverse a conviction if the evidence is so unreasonable, improbable, or unsatisfactory as to create a reasonable doubt of defendant's guilt. *People v. Smith*, 185 Ill. 2d 532, 542 (1999).

¶ 9 Defendant was convicted of driving under the combined influence of alcohol and Alprazolam. The statute at issue provides:

> "(a) A person shall not drive or be in actual physical control of any vehicle within this State while:
>
> **
>
> (5) under the combined influence of alcohol, other drug or drugs, or intoxicating compound or compounds to a degree that renders the person incapable of safely driving." 625 ILCS 5/11-501(a)(5) (West 2008).

The essence of this offense was well stated in *People v. Vanzandt*, 287 Ill. App. 3d 836, 845 (1997):

> "the person must have consumed alcohol, ingested some other drug or drugs, and be under the combined influence of both. The essence of the offense is that the alcohol and the other drug or drugs, acting together, render the person incapable of driving safely. It is axiomatic that the other drug or drugs must have some intoxicating effect, either on its own or because of being combined with alcohol."

Vanzandt, 287 Ill. App. 3d at 845. In the case at bar, neither the arresting officer nor any other witness testified that defendant was under the influence of Alprazolam when he was driving. Furthermore, for a witness to testify that someone was driving under the influence of drugs other than alcohol, there must be evidence that the witness possesses some expertise or experience in the detection of such an effect from the drug. *People v. Workman*, 312 Ill. App. 3d 305, 311-312 (2000); *People v. Jacquith*, 129 Ill. App. 3d 107, 114-115 (1984). The arresting officer in this case did not testify to any such expertise.

¶ 10 The State asserts that because Alprazolam was found in defendant's system, it is "obvious" that it was the combination of that drug and alcohol that caused his driving impairment. But the lesson of *Vanzandt* is that there must be proof of the intoxicating effect of the other drug, either by itself or in combination with alcohol. *Vanzandt*, 287 Ill. App. 3d at 845. No such proof was offered in this case as to the effect on defendant's driving of Alprazolam either individually or in combination with alcohol. This case is unlike that of *People v. Bitterman*, 142 Ill. App. 3d 1062 (1986), where defendant admitted to the arresting officer that he was under the influence of marijuana. *Bitterman*, 142 Ill. App. 3d at 1065. Defendant here admitted only to having drunk 40 ounces of beer and to the fact that he should not have been driving. He made no admissions with respect to the ingestion of Alprazolam and although the

arresting officer claimed that defendant admitted smoking two pipes of marijuana, no cannabis was detected in defendant's system by the blood and urine tests administered to him.

¶ 11 For all of these reasons, we find that the evidence was so unsatisfactory as to cause a reasonable doubt of defendant's guilt and therefore we reverse his conviction.

¶ 12 Reversed.