

No. 1-09-3224

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FIFTH DIVISION
March 11, 2011

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. TP 394 646
)	
CHRISTOPHER MERCAITIS,)	The Honorable
)	Mauricio Araujo,
Defendant-Appellant.)	Judge Presiding.

JUSTICE JOSEPH GORDON delivered the judgment of the court.
Presiding Justice Fitzgerald Smith and Justice Howse
concurred in the judgment.

O R D E R

Held: Evidence sufficient to prove defendant guilty of alcohol
DUI beyond a reasonable doubt; judgment affirmed.

Defendant Christopher Mercaitis admitted to driving on a
revoked license and speeding, and following a bench trial, was
found guilty of driving under the influence of alcohol (DUI).
The court imposed no sentence on the speeding violation, but

sentenced defendant to 24 months' conditional discharge and concurrent prison terms of 5 years for the DUI and driving on a revoked license. On appeal, defendant contends that the evidence was insufficient to prove him guilty of DUI beyond a reasonable doubt.

The record shows that on June 21, 2008, Chicago police officer William Singer issued four citations to defendant for speeding, driving on a revoked license, driving without insurance and DUI. Upon proof of insurance, the State dismissed the driving without insurance charge. Defendant then admitted that he was speeding and driving on a revoked license, and the focus of the bench trial was the DUI charge.

At that trial, Officer Singer testified that at 9 p.m. on June 21, 2008, he observed defendant driving 43 miles per hour in a 30 miles per hour zone on North Avenue in Chicago. Once defendant passed him, he turned on his overhead lights, turned his siren on briefly, and drove behind defendant who turned onto Kostner Avenue. Officer Singer reactivated his siren, and followed defendant for two blocks until defendant pulled over.

Officer Singer then approached defendant on foot, and asked for his driver's license and proof of insurance. Defendant began mumbling, was incoherent and unable to form words, but was able to state that he "live[d] right over there." The officer asked defendant to exit his vehicle. Defendant had no trouble doing

so, but was unable to stand upright without leaning on his vehicle. The officer noticed an odor of alcohol about his person, and asked him if he had been drinking. Defendant did not respond. The officer repeated his request for his license and insurance, but defendant could not produce them. The officer told defendant that he believed he had been drinking, and defendant responded in mumbling and slurred speech that he had a few drinks but he "live[s] right over there."

Officer Singer testified that he took defendant into custody, and drove him to a CVS parking lot where he asked if he would perform the field sobriety tests. Defendant said that he would, but after the officer explained the first test, defendant mumbled and in slurred speech stated that he had done this before and was not going to perform the tests. Officer Singer then drove defendant to the police station and left him in a room for 15 minutes handcuffed to a bench. When the officer returned to that room, he observed that defendant had urinated on himself in his sleep. Based on his professional and personal experience, Officer Singer believed that defendant was intoxicated. As indicia, the officer cited defendant's inability "to stand without staggering," his slurred speech, and the odor of alcohol about his person.

Officer Singer acknowledged that he did not note defendant's reason for refusing to perform the field sobriety tests in his

two police reports, or that he activated his siren, or that defendant was leaning on his vehicle. However, in his handwritten report, he noted that defendant was unsteady, confused and mumbling, but did not check off the box that defendant's speech was slurred because he was mumbling more than slurring.

During cross-examination, defense counsel asked Officer Singer about the notations in his report regarding the warnings to motorists. Officer Singer stated that Officer Patrick Learnahan informed him that he had read them to defendant, and that he refused to take the breathalyzer test, but that he could not recall the time defendant was asked to take this test. The State objected to any testimony regarding the warnings to motorists as irrelevant. The objection was sustained, but when defense counsel informed the court that he was introducing the evidence to test the officer's credibility and ability to recall the time line, the court allowed this line of questioning to continue.

Defense counsel then asked Officer Learnahan about the warnings to motorists. The State again objected, but the court allowed it to continue for credibility and recalling properly.

The defense then called defendant's friend, Roberto Vasquez who testified that he worked in construction with defendant. At 6 a.m. on June 21, 2008, Vasquez started work with defendant at

the same job site. At 3:40 p.m., he left work without defendant, and went to Bobby's bar. When defendant arrived there at 5:45 p.m., he was not intoxicated. Vasquez testified that he and defendant each had four beers together, but then admitted that he did not know how many beers defendant had the entire night since he was playing pool. When they left at 8:30 p.m., defendant was not intoxicated.

Defendant testified that he did not have anything to drink until he went to Bobby's bar at 5:45 p.m. While there, he had four beers and some pizza. At 8:30 p.m. he left the bar, and when he turned right onto Kostner Avenue, he heard a brief siren. Because there was no open space to pull into, he stopped next to a parked vehicle, blocking a lane of traffic. Officer Singer came up to him, and asked for his driver's license and whether he had been drinking. Defendant told him that he did not have his license, and that he had four beers. The officer did not indicate that he could not understand him.

Defendant further testified that when the officer asked him to exit his car, he had no trouble doing so, and that he refused to perform the field sobriety tests based on prior conversations with his attorneys. He also testified that the officer lied when he stated that defendant leaned on the vehicle and that he took him to a CVS parking lot.

At the police station, he was handcuffed tightly to a bench

leaving marks on his wrists. About 45 minutes later, Officer Singer took him to another room where Officer Learnahan asked him to take a breathalyzer test without giving him the warnings to motorists. Defendant testified that he refused because attorneys have told him that the breathalyzer machine does not calibrate correctly. He did not refuse the test because he was under the influence of alcohol, nor did he feel that he was intoxicated.

Defendant further testified that he was handcuffed to the bench a second time and dozed off. When he awoke, he asked to use the washroom, but was ignored. He stood up, and tried to move around so that he would not urinate on himself, but was unsuccessful.

As relevant here, the trial court found defendant guilty of DUI. In doing so, the court noted that the officer "had some sloppy bookkeeping," but testified that defendant refused to take the field sobriety and breathalyzer tests. The court explained that based on case law he can take that as "circumstantial evidence of consciousness of guilt." The court noted that defendant stated that he had four beers, but that the time line regarding the beers was unclear, and although defendant's friend said he was not inebriated, he also had consumed at least four beers. The court further noted that defendant was only handcuffed by one hand, but, instead of getting up to urinate, he urinated on himself. After reviewing the trial testimony and the

evidence presented, the court found defendant guilty of DUI.

Defendant now challenges that ruling on appeal. He maintains that the evidence was unsatisfactory to establish that he was intoxicated beyond a reasonable doubt.

When a defendant challenges the sufficiency of the evidence to sustain his conviction, our duty is to determine whether all of the evidence, direct and circumstantial, when viewed in the light most favorable to the prosecution, would cause a rational trier of fact to conclude that the essential elements of the offense have been proven beyond a reasonable doubt. *People v. Wiley*, 165 Ill. 2d 259, 297 (1995). A criminal conviction will be reversed only if the evidence is so unsatisfactory or improbable that it leaves a reasonable doubt of defendant's guilt. *Wiley*, 165 Ill. 2d at 297. For the reasons that follow, we do not find this to be such a case.

The record shows that Officer Singer observed defendant speeding, and activated his siren, but that defendant did not pull over until he had driven two more blocks. When the officer asked defendant for his driver's license and insurance, defendant began to mumble incoherently. Officer Singer asked defendant to exit his vehicle, and although he had no trouble getting out, he could not stand upright without leaning on the vehicle. Officer Singer also noticed an odor of alcohol coming from defendant, and told him he believed he was intoxicated. Defendant mumbled that

he had consumed a few drinks. Defendant refused to perform field sobriety tests as requested by the officer, and also refused to take a breathalyzer test at the station. While he was handcuffed to a bench at the station, he urinated on himself in his sleep. This testimony, standing alone, was sufficient to allow the trial court to find that defendant was found guilty of DUI beyond a reasonable doubt. *People v. Hires*, 396 Ill. App. 3d 315, 318 (2009); *People v. Matthews*, 304 Ill. App. 3d 514, 517-18 (1999).

Defendant, however, claims that his story was more plausible, and that the court failed to make any credibility or factual determinations or recognize that the officer was impeached by his "sloppy bookkeeping." We note that the trial court was not required to believe defendant's self-serving testimony (*People v. Moreira*, 378 Ill. App. 3d 120, 130 (2007)), or that of his friend (*People v. Young*, 269 Ill. App. 3d 120, 123-24 (1994)), over Officer Singer's testimony which the court clearly found credible regarding the elements of the charged offense. In announcing its decision, the trial court observed that the officer's bookkeeping was "sloppy," and was thus aware of the deficiencies in the officer's reports (*People v. Scott*, 152 Ill. App. 3d 868, 872 (1987)), but clearly found them insufficient to call into question the totality of the officer's testimony regarding defendant's condition as relevant to the offense of DUI (*People v. Reed*, 80 Ill. App. 3d 771, 781-82

(1980)). The matters raised by defendant fall within the purview of the trial court, which is charged with determining credibility (*People v. Campbell*, 146 Ill 2d. 363, 375 (1992)), and the minor variations cited do not compel this court to upset that determination or to find the evidence so unsatisfactory as to raise a reasonable doubt as to defendant's guilt (*Scott*, 152 Ill. App. 3d at 872).

Defendant further claims that the trial court raised the circumstantial evidence of his refusal to take the field sobriety and breathalyzer tests from an inference to a presumption where it did not consider his reasons for refusing the tests. The record shows that, in announcing its decision, the court referred to the totality of the evidence presented, including the "circumstantial evidence" that he refused to take the sobriety tests. Such evidence was probative of the issue of his intoxication (*People v. Garriott*, 253 Ill. App. 3d 1048, 1052 (1993)), and properly considered as such. Although defendant testified to an alternative reason for refusing the tests, the court, as trier of fact, was not persuaded that it was credible or that it cast doubt on the evidence of his condition as testified to by the State's witnesses.

Defendant also claims that since the officers allegedly did not consider it important enough to file the law enforcement sworn report and warnings to motorists within the required time

period, it is more likely true that no one read him the warnings, and thus, one has to believe that he was telling the truth regarding his reasons for refusing the breathalyzer test. No rationale is provided for this gigantic leap from the operative fact of the officers' tardy filing to his conclusion that it demonstrated his credibility on the subject, and we find none. Moreover, the officers' record keeping is without consequence where the evidence adduced at trial amply demonstrated that defendant was intoxicated and proven guilty at trial.

Defendant, nonetheless, argues that Officer Singer handcuffed him tightly to a bench because he refused to take the field sobriety tests, and that the trial court's logic in finding him guilty was questionable where it stated that defendant urinated on himself instead of getting up and urinating in a corner. These collateral matters do not alter the ultimate determination of the trial court that the evidence established beyond a reasonable doubt that defendant was driving under the influence of alcohol prior to his arrival at the station.

In light of the foregoing, we affirm the judgment of the circuit court of Cook County.

Affirmed.