

2012 IL App (1st) 102553-U

FOURTH DIVISION  
AUGUST 30, 2012

No. 1-10-2553

**NOTICE:** This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

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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. TT-061-145      |
|                                      | ) |                     |
| JEREMY JOHNSON,                      | ) | Honorable           |
|                                      | ) | Jeffrey L. Warnick, |
| Defendant-Appellant.                 | ) | Judge Presiding.    |

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JUSTICE PUCINSKI delivered the judgment of the court.  
Presiding Justice Lavin and Justice Fitzgerald Smith concurred in the judgment.

**ORDER**

¶ 1 *Held:* Evidence sufficient to sustain defendant's conviction for DUI of cannabis; judgment affirmed.

¶ 2 Following a bench trial, defendant Jeremy Johnson was convicted of driving under the influence (DUI) of cannabis. Defendant was sentenced to 12 months' supervision, drug treatment, a victim impact panel, seven days of the Sheriff's Work Alternative Program, and fined \$200. On appeal, he contends that the evidence was insufficient to prove him guilty beyond a reasonable doubt of DUI of cannabis.

¶ 3 At trial, Chicago police officer Mercado testified that he has been a police officer for 23 years, and was trained at the Chicago police academy. In 2007, he was specifically trained in detecting cannabis, learned the effects that smoking cannabis has on an individual, and is familiar with its smell. Officer Mercado also related that he has made over 500 cannabis related arrests.

¶ 4 At 11 p.m. on February 7, 2009, Officer Mercado was conducting roadside safety checks with Chicago police officer Phillip Travis near 5440 West Madison Street in Chicago. The purpose of the check was to apprehend people under the influence of drugs, alcohol or both. Officer Mercado checked cars based on a numerical sequence, and selected defendant on that basis.

¶ 5 When the officer stopped defendant, he rolled down his window, and the officer explained to him that he was conducting a safety check. At that point, Officer Mercado noticed that defendant's eyes were bloodshot, and he smelled a "strong odor of cannabis smoke coming from his breath." As defendant spoke, the cannabis smell increased. Officer Mercado asked defendant to exit his vehicle, and when he stepped out of the vehicle, Officer Mercado noticed that the smell was definitely not coming from the car, but rather, from defendant.

¶ 6 Officer Mercado asked defendant if he had been smoking cannabis, and defendant responded "yes," that he had been smoking it earlier. Based on his smell, and the fact that defendant told him he had been smoking cannabis, Officer Mercado would "say [that defendant] ha[d] some [cannabis] in him;" but did not "know how much [he] had in his system." Officer Mercado explained that cannabis stays in a person's system for 30 days after they have used it, and that it is illegal to have any amount of cannabis in your system. Based on defendant's admission, the smell of cannabis and bloodshot eyes, Officer Mercado asked Officer Travis to conduct some tests on defendant. Officer Mercado also identified defendant in court noting that his eyes were not currently bloodshot.

¶ 7 Officer Travis testified that he has been on the force for 17 years and had received cannabis detection training where he learned to detect the odor of cannabis and the effects of cannabis on a person's body and their motor skills. He explained that cannabis is a depressant and reduces a person's reaction time. Officer Travis testified that he has also had periodic training regarding "standardized field sobriety test for drugs and alcohol," and arresting people under the influence of drugs. He described some of the physical characteristics of a person under the influence of cannabis as a red face, red eyes, difficulty paying attention, and a slow reaction time.

¶ 8 Officer Travis further testified that he had his most recent cannabis detection training four months ago and a year prior to the incident, and learned that cannabis stays in a person's system for at least 20 days. Officer Travis testified that he has observed people under the influence of cannabis over 100 times, and acknowledged that he has no way of knowing how much cannabis is in someone's breath. In this case, he had no way of knowing whether defendant had a 100 milligrams of cannabis in his breath at the time he was arrested, but further testified that, based on his training and experience, he did not believe it was possible to smoke cannabis without it getting into your system.

¶ 9 Officer Travis testified that defendant had a "strong aroma of cannabis coming from his breath as he spoke" to him, that he did not detect any slurred speech, but noticed that defendant's eyes were red. When Officer Travis asked defendant about the strong odor coming from his mouth, defendant admitted that he smoked a "small bag of cannabis" between 1 and 2 p.m.

¶ 10 Officer Travis further testified that defendant refused to submit to chemical testing, but agreed to do some field sobriety tests which measure a person's ability to do two or more things at a time. He explained that cannabis can cause someone to have a delayed reaction time, and an inability to focus and to follow directions.

¶ 11 Officer Travis tested defendant to see if he could track a moving pen with his eyes, and observed defendant's eyes jerking, *i.e.*, nystagmus, instead of moving smoothly while following the pen. The officer observed "nystagmus" in both of defendant's eyes at the "maximum deviation." Officer Travis did not believe that someone who has nystagmus naturally due to a brain injury or some pathological condition, would show as many clues of impairment as defendant did.

¶ 12 Officer Travis also asked defendant to perform the heel-to-toe walking test. When defendant started the test, he did not walk heel to toe, but stepped off the line, and raised his arms past six inches from the side of his body. Defendant showed five of the eight possible clues of impairment that someone can show in this walking test where two are the minimum. In the one-leg-stand test, defendant placed his foot down once, raised his arms, and swayed side to side, showing three clues of impairment where two satisfy the minimum. Although the finger-to-nose test was not a standardized field sobriety test, Officer Travis had defendant perform it six times, two of which were successful. Based on his training and experience in administering these tests, Officer Travis found that defendant showed clues of impairments on all of the tests.

¶ 13 Based on his professional and personal experience, Officer Travis opined that defendant was operating his vehicle while under the influence of cannabis. His opinion was based on the strong smell of cannabis coming from defendant's breath, defendant's acknowledgment that he had smoked cannabis earlier in the afternoon, his "red face," and his performance on the field sobriety tests.

¶ 14 At the close of evidence, the court found defendant guilty of DUI of cannabis. In doing so, the court stated that the offense had a "strict liability measure," which meant that once there is sufficient evidence beyond a reasonable doubt of any presence of cannabis in defendant's breath, defendant is guilty. The court explained that whether or not defendant was impaired, the law

finds that if there is any cannabis whatsoever, there is strict liability. The court found that the police officers were qualified as experts, in that they had adequate training to render their opinions, and that the field sobriety tests reflected some impairment when combined with defendant's admission to using cannabis. Based on this admission, the officers' testimony, the strong odor, the bloodshot eyes which were evident from the photograph and seen by the police, the court concluded that there was circumstantial evidence beyond a reasonable doubt that defendant was guilty of DUI of cannabis.

¶ 15 The court subsequently denied defendant's motion for a new trial noting that there were many corroborative factors beyond his mere admission. The court also noted that the officers in this case were qualified as experts, and that this case was distinguishable from *People v. Allen*, 375 Ill. App. 3d 810 (2007), cited by defendant, and also *People v. McPeak*, 399 Ill. App. 3d 799 (2010), a more recent case, in that here, not only was there an admission and strong smell of cannabis on defendant's breath, but defendant had bloodshot eyes, there was expert testimony that he had difficulty with attention to, and failed, all the field sobriety tests, and refused the chemical and blood test.

¶ 16 On appeal, defendant maintains that the evidence was insufficient to prove him guilty beyond a reasonable doubt of DUI of cannabis. He claims that the State failed to prove that there was any amount of cannabis in his breath, blood, or urine.

¶ 17 When 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.

¶ 18 To sustain defendant's conviction for DUI of cannabis, the State was required to prove that defendant was driving his vehicle while *any amount* of drug, substance or compound was in his breath, blood or urine resulting from the unlawful use or consumption of a controlled substance. (Emphasis added.) 625 ILCS 5/11-501(a)(6) (West 2008). Section 11-501(a)(6) of the Illinois Vehicle Code (Code) does not require proof of a driver's impairment as unlawful use or consumption alone of any amount of a controlled substance before driving is sufficient for one to be guilty of the offense. *People v. Vente*, 2012 IL App (3d) 100600, ¶11; see also *People v. Martin*, 2011 IL 109102, ¶16.

¶ 19 Defendant concedes that he admitted that he used cannabis, but claims that his admission alone was insufficient to prove the *corpus delicti*. *Corpus delicti* has been defined as proof of the fact that a crime has actually been committed and that someone is criminally responsible therefor. *People v. Drake*, 131 Ill. App. 3d 466, 472 (1985). In a criminal case, an admission by defendant can be considered only if there is corroborative evidence of the *corpus delicti*. *People v. Chavez*, 285 Ill. App. 3d 45, 47 (1996). The corroborative proof of the *corpus delicti* need not be beyond a reasonable doubt; rather, the standard has been described as "some independent evidence." *Chavez*, 285 Ill. App. 3d at 47. We find that this requirement has been met here.

¶ 20 The record shows that when defendant was stopped for a routine check by Officers Mercado and Travis, he admitted that he smoked a bag of cannabis nine hours earlier. The testimony of the officers regarding the strong odor of cannabis on defendant's breath, and his red face and eyes was strong corroboration of defendant's admitted use of cannabis. In addition, defendant failed the field sobriety tests administered by Officer Travis who observed that defendant could not balance, and did not follow directions, *i.e.*, did not walk heel to toe in the

walking test. He also observed that defendant's eyes were bloodshot and exhibited nystagmus. This independent corroborative proof with defendant's admission, was sufficient to allow the trial court to find that defendant was guilty of DUI of cannabis beyond a reasonable doubt. *People v. Hires*, 396 Ill. App. 3d 315, 318 (2009). Furthermore, defendant's refusal to take the chemical test was probative of the issue of his illegal consumption. *People v. Garriott*, 253 Ill. App. 3d 1048, 1052 (1993).

¶ 21 In reaching this conclusion, we have considered *Allen*, *McPeak*, and *People v. Foltz*, 403 Ill. App. 3d 419 (2010), cited by defendant, and find them distinguishable. In *Allen*, defendant's admission that he smoked cannabis the night before was found insufficient to prove that he had cannabis in his breath or blood because the State did not put on evidence that there was any amount of illegal drug in his breath or blood or urine at the time he was arrested as a result of smoking cannabis the night before. *Allen*, 375 Ill. App. 3d at 816. The Third District in *Allen*, specifically stated that "[t]he statute does not criminalize having breath that smells like burnt cannabis," and that the officer's testimony that it was impossible to tell whether defendant had 0 or 100 milligrams of cannabis in his breath or blood was fatal to the State's case. *Allen*, 375 Ill. App. 3d at 816.

¶ 22 Here, in addition to the cannabis odor on defendant's breath and his admission, the officers testified that defendant's eyes were bloodshot, that his face was red, and that he could not follow directions or perform the field sobriety tests. In addition, Officer Travis, contrary to defendant's contention, did not testify that there was no way of knowing if there was 0 or 100 milligrams of cannabis in defendant's breath, but, rather, testified that he had no way of knowing how much was in defendant's breath and that he did not believe that it was possible that someone could smoke cannabis without getting it in their system. Moreover, and in stark contrast to *Allen*,

the police testified that cannabis remained in a person 20 to 30 days after smoking it, and the trial court found them to be qualified experts in this field.

¶ 23 In *McPeak*, 399 Ill. App. 3d at 803, defendant admitted to smoking "two hits" of cannabis an hour ago, but there was no evidence presented of whether consuming that amount would result in it being left in his breath, blood, or urine, that defendant was impaired, or that there was any odor of cannabis on defendant's breath, as opposed to his person. Here, by contrast, Officer Travis testified that it would be impossible that defendant would not have any amount of cannabis in his system where he smoked a bag of cannabis nine hours prior to his arrest, his breath smelled strongly of cannabis, and he was impaired in that he could not pass the field sobriety tests, and also did not follow directions in attempting to perform them.

¶ 24 In *Foltz*, 403 Ill. App. 3d at 425-26, defendant's conviction for DUI of drugs was reversed on appeal where the only evidence of drug use was provided by the arresting officer, who had less than two years' experience as a policeman, no training in drug recognition, and was conducting his first arrest for DUI of drugs, and testified that he smelled the odor of burnt cannabis in defendant's vehicle. Here, by contrast, the officers had over 17 years' experience as police officers, were trained in drug detection, and considered experts by the court, and detected physical manifestations of drug use on defendant's person, and observed his impairment in his inability to perform the field sobriety tests or follow directions.

¶ 25 We agree with the trial court that this case is more akin to *People v. Briseno*, 343 Ill. App. 3d 953 (2003). In that case, the officer smelled cannabis on defendant's breath and in his vehicle, defendant admitted that he had smoked marijuana just before driving, his speech was slurred, his pupils were dilated, and his motor skills were slower than average. *Briseno*, 343 Ill. App. 3d at 962. The court, in *Briseno*, noted that the evidence in its case, without even considering the results of the field sobriety tests which defendant maintained were evidence of his obesity, was



sufficient to prove defendant guilty beyond a reasonable doubt of DUI of cannabis. Here, as well, even without considering the results of the field sobriety tests, the State's evidence, as set forth above, was more than sufficient to prove defendant guilty of DUI of cannabis beyond a reasonable doubt. The State was required to prove that defendant operated a motor vehicle while "any amount" of the cannabis was in his breath resulting from the unlawful use of drugs. *People v. Martin*, 2011 IL 109102, ¶16. The State did so here through defendant's admission to smoking a bag of cannabis just hours earlier, and the expert and circumstantial evidence which corroborated that fact and his commission of the charged offense.

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

¶ 27 Affirmed.