SIXTH DIVISION
February 8, 2013

No. 1-11-2543

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.	)	08 CR 22150
	)	
DREW FORQUER,	)	Honorable
	)	Clayton J. Crane
Defendant-Appellant.	)	Judge Presiding.

JUSTICE HALL delivered the judgment of the court.
Presiding Justice Lampkin and Justice Gordon concurred in the judgment.

ORDER

HELD: The State did not fail to prove the *corpus delicti* of the offense of aggravated driving under the influence of alcohol. The State proved beyond a reasonable doubt that defendant committed the offense of reckless homicide. And the trial court's error in refusing to consider defendant's handwritten "crash statement" for the evidentiary purposes for which it was offered, amounted to harmless error.

¶ 1 This appeal arises out of a collision between a car operated by defendant Drew Forquer and

a motorcycle operated by Jeff Bondy. Bondy died from injuries received in the collision.

¶ 2 Following a bench trial, defendant was found guilty of driving under the influence of alcohol (DUI), aggravated driving under the influence of alcohol resulting in the death of another person, and reckless homicide. Defendant's motion for a new trial was denied. At defendant's sentencing hearing it was established that he had four prior DUI convictions. Defendant was sentenced to concurrent sentences of eight, seven, and seven years' imprisonment respectively.

¶ 3 On appeal, defendant contends: (1) the State failed to prove the *corpus delicti* of the offense of aggravated driving under the influence of alcohol; (2) the State failed to prove beyond a reasonable doubt that he committed the offense of reckless homicide; and (3) the trial court erred in refusing to consider his handwritten crash statement for its content, punctuation, and spelling. For the reasons that follow, we affirm. The relevant facts will be set forth in the discussion of each claim.

¶ 4 ANALYSIS

¶ 5 Defendant first contends the State failed to prove the *corpus delicti* of the offense of aggravated driving under the influence of alcohol.[1] We disagree.

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[1] Section 11-501 of the Illinois Vehicle Code provides in relevant part:

"(a) A person shall not drive or be in actual physical control of any vehicle within this State while:

(2) under the influence of alcohol;

* * *

(d)(1) Every person convicted of committing a violation of this Section shall be

¶ 6 The *corpus delicti* of an offense consists of proof that a crime was committed and that the crime was committed by the person charged. *People v. Sargent*, 239 Ill. 2d 166, 183 (2010). The *corpus delicti* of driving under the influence of alcohol consists of proof that at the time defendant allegedly committed the offense he was driving a vehicle while under the influence of alcohol. *People v. Lurz*, 379 Ill. App. 3d 958, 967 (2008).

¶ 7 Defendant claims the State failed to prove the driving element of the offense of aggravated driving under the influence of alcohol. Defendant argues that the only alleged eyewitness to the accident could not identify him in court; no evidence was introduced regarding ownership or registration of the vehicle involved in the accident; and the videotape of the accident does not show the identity of the driver of the vehicle involved in the accident.

¶ 8 Defendant acknowledges making certain admissions regarding the accident, but contends that these statements alone are insufficient to prove the driving element, since the *corpus delicti* of a charged offense cannot be proved by a defendant's confession alone. See *People v. Lambert*, 104 Ill. 2d 375, 378 (1984). Defendant also argues that the State failed to prove beyond a reasonable doubt that he was under the influence of alcohol at the time of the accident.

¶ 9 We find the State presented sufficient circumstantial evidence establishing both elements of

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guilty of aggravated driving under the influence of alcohol *** if:

(F) the person, in committing a violation of subsection (a) was involved in a motor vehicle, *** accident that resulted in the death of another person, when the violation of subsection (a) was a proximate cause of the death;" 625 ILCS 5/11-501 (West 2009).

the *corpus delicti* of driving under the influence of alcohol. A criminal conviction may be based upon circumstantial evidence, as long as it satisfies proof beyond a reasonable doubt of the charged offense. *People v. Parks*, 403 Ill. App. 3d 451, 458 (2010).

¶ 10 The circumstantial evidence presented at trial established that defendant was the driver of the Honda Accord involved in the collision. Evidence was presented that when the first responding officers arrived on the scene, defendant was standing next to the vehicle. Defendant admitted he was the driver of the vehicle and he responded to questions about whether he required medical assistance. Defendant also provided officers with his driver's license and proof of insurance.

¶ 11 At trial, Chicago Police Officers Daniel Kelly, Michael Dineen, and Donald Olsen each made independent in-court identifications of defendant as being the person on the scene involved in the accident. Officer Dineen identified defendant as the driver of the Honda Accord to whom he was directed at the scene. The defense did not object, but instead stipulated that defendant was the vehicle's driver to whom the officer spoke with at the scene.

¶ 12 In addition, during argument on his motion for a directed finding, defense counsel argued that the State had failed to establish guilt because the evidence only showed that defendant made a wide left turn. In closing argument, defense counsel acknowledged that the motorcycle was struck by defendant's vehicle as he made the left turn.

¶ 13 The State also presented sufficient circumstantial evidence establishing that defendant was under the influence of alcohol at the time of the accident. "The State can use circumstantial evidence to prove a defendant guilty of DUI." *People v. Hostetter*, 384 Ill. App. 3d 700, 712 (2008).

¶ 14 Under Illinois law, a person with a blood alcohol content (BAC) of 0.08 is considered to be

under the influence of alcohol. See 625 ILCS 5/11-501.2(b)(3) (West 2009). Here, evidence was presented that defendant's BAC was .045 almost four hours after the incident. Expert testimony was presented estimating that at the time of the collision, defendant's BAC was between .084 and .123.

¶ 15 In addition, Officer Dineen observed defendant from a close distance and noticed that he had bloodshot, glassy eyes and that there was a strong odor of alcohol on defendant's breath even though he had a piece of candy in his mouth. The officer then asked defendant to perform three standard field sobriety tests to which defendant agreed to perform: the one-leg stand, the walk-and-turn, and the horizontal gaze nystagmus (HGN).

¶ 16 During the one-leg stand test, defendant showed two clues of impairment by putting his foot down before instructed to do so, and hopping. During the walk-and-turn test, defendant showed three clues of impairment by stepping off the line twice and using his hands to steady himself. Defendant's HGN test indicated he had been drinking alcohol. As a result, we find the State presented sufficient circumstantial evidence from which the trial court could have found beyond a reasonable doubt that defendant was under the influence of alcohol at the time of the collision.

¶ 17 Defendant next contends the State failed to prove beyond a reasonable doubt that he committed the offense of reckless homicide. Defendant maintains that "the evidence simply presented a vehicle making a slow speed left turn prior to being struck by a motorcycle." Defendant contends that the slow speed left turn was not reckless. Again, we must disagree.

¶ 18 This contention raises a sufficiency of the evidence argument. A reviewing court will not set aside a criminal conviction on the ground of insufficient evidence unless the evidence is so improbable or unsatisfactory that there remains a reasonable doubt of guilt. *People v. Byron*, 164 Ill.

2d 279, 299 (1995). When reviewing a challenge to the sufficiency of the evidence in a criminal case, the relevant inquiry is whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. *People v. Brown*, 169 Ill. 2d 132, 152 (1996).

¶ 19 A person commits reckless homicide if, while driving a motor vehicle, he unintentionally kills an individual and the acts which caused the death were performed recklessly so as to create a likelihood of death or great bodily harm to some person. 720 ILCS 5/9-3(a) (West 2000); *People v. Zator*, 209 Ill. App. 3d 322, 328 (1991). Reckless conduct occurs when an individual consciously disregards a substantial and unjustifiable risk that his acts are likely to cause death or great bodily harm to some individual and where such disregard constitutes a gross deviation from the standard of care which a reasonable person would exercise in such a situation. *Zator*, 209 Ill. App. 3d at 328.

¶ 20 The mental state of recklessness may be inferred from all of the facts and circumstances in the record. *Zator*, 209 Ill. App. 3d at 328; *People v. Watkins*, 361 Ill. App. 3d 498, 501 (2005). When recklessness has been found by the trier of fact, this determination should not be overturned unless the inference of the mental state is inherently impossible or unreasonable. *Watkins*, 361 Ill. App. 3d at 501. Improperly driving an automobile while intoxicated may constitute reckless conduct. *Zator*, 209 Ill. App. 3d at 329; *People v. Spencer*, 303 Ill. App. 3d 861, 869 (1999).

¶ 21 In this case, there was sufficient evidence to prove defendant guilty of reckless homicide beyond a reasonable doubt. The evidence, taken as a whole, establishes that defendant was reckless in causing the victim's death.

¶ 22 Evidence was presented that defendant's BAC was .045 almost four hours after the incident.

And expert testimony was presented estimating that at the time of the collision, defendant's BAC was between .084 and .123. In addition, evidence was presented that defendant's vehicle was traveling eastbound on Belmont Avenue approaching an intersection, when the vehicle crossed over into the Westbound lanes prior to entering the intersection.

¶ 23 William Lloyd testified that he was walking eastbound on Belmont when he heard a motorcycle coming westbound. Mr. Lloyd looked over at the motorcycle and saw that the rider had laid the bike down on its side to avoid hitting defendant's vehicle head on.[2] The vehicle was coming four car lengths from the intersection on the wrong side of the road. The vehicle was in the westbound lane, heading east. The vehicle went to turn, the motorcycle spun and struck the vehicle, while the rider slid under the vehicle sustaining fatal injuries. According to Mr. Lloyd, the vehicle never stopped or tried to stop before hitting the motorcyclist.

¶ 24 Michael E. O'Hern, a police officer for the Village of Tinley Park, testified for the State as an expert in the field of accident reconstruction. Mr. O'Hern reviewed each of the reports prepared concerning the collision, he reviewed video footage of the collision, and he personally visited the

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[2] "Laying a bike down" is a defensive maneuver some motorcyclists use to avoid colliding with other vehicles. See T. Harris, *Zen and the Art of Motorcycle-Injury Litigation*, 88 Ill. B.J. 409, 410 (2000) ("[s]ome riders lay their motorcycles down prior to collision to provide a buffer between the automobile and their body"); *Katzenberger v. State*, 43 Ill. Ct. Cl. 218 (1991) (rider lays motorcycle down on highway to avoid colliding with truck attempting to execute an improper U-turn); *Loyd v. State Automobile Property & Casualty Co.*, 265 S.W.3d 901, 903 (2008) (rider lays motorcycle down in an attempt to avoid colliding with boat trailer).

crash site to conduct an inspection before preparing his own report. During his testimony, Mr. O'Hern described the contents of the videotape footage of the collision.

¶ 25 Mr. O'Hern testified that the videotape showed a Honda traveling eastbound on Belmont Avenue approaching an intersection and a Harley Davidson traveling westbound approaching the same intersection. The Honda crosses over into the westbound lanes prior to entering the intersection. The motorcycle lays down on it's side prior to impact. The Honda did not attempt to stop prior to impact. The collision could not be seen on the videotape due to a parked car obstructing the view. After the collision, the Honda was pushed in a northeasterly direction and the motorcycle was pushed in a southwesterly direction from the point of impact.

¶ 26 Mr. O'Hern testified that based upon his experience as a police officer, he determined that defendant violated multiple traffic statutes and that defendant was the cause of the collision. Mr. O'Hern further testified that regardless of the speed the Honda was traveling, his opinion as to how the crash occurred would not change. Therefore, viewing the evidence in a light most favorable to the State, we hold that a rational trier of fact could have found that the State proved the elements of reckless homicide beyond a reasonable doubt.

¶ 27 Defendant finally argues the trial court erred in refusing to consider his handwritten "crash statement" for its content, punctuation, and spelling, and for his ability to write on a straight line. In this regard, defendant maintains that his handwritten "crash statement" was relevant evidence to rebut suggestion that his mental faculties were impaired due to the influence of alcohol. We agree with defendant, but find the trial court's error was harmless.

¶ 28 As a general rule, evidence is admissible if it is relevant. *People v. Bryant*, 391 Ill. App. 3d

228, 244 (2009). Evidence is relevant if it tends to make the existence of any fact of consequence more or less probable than it would have been without the evidence. *Id.*

¶ 29 A trial court has the discretion to determine whether evidence is relevant and admissible, and a reviewing court will not disturb such a determination absent a clear abuse of that discretion. *People v. Morgan*, 197 Ill. 2d 404, 455 (2001). An abuse of discretion will be found only where the trial court's decision is arbitrary, fanciful or unreasonable, or where no reasonable person would take the view adopted by the court. *People v. Illgen*, 145 Ill. 2d 353, 364 (1991).

¶ 30 We believe the trial court abused its discretion in refusing to consider defendant's handwritten "crash statement" for the evidentiary purposes for which it was offered. Although we cannot conclude that defendant's ability to write multiple sentences, spell correctly, and write sentences in a straight line were dispositive of whether he was under the influence of alcohol at the time of the accident, we find this evidence was relevant to that issue. See, *e.g.*, *State v. Sanders*, 130 Ohio App. 3d 789, 795, 721 N.E.2d 433, 437 (1998) (finding that defendant's ability to neatly and legibly sign her name on police form shortly after her arrest for DUI gave rise to an inference that her motor skills were not alcohol-impaired and therefore a sample of the signature was relevant and admissible at trial to refute the state trooper's testimony that her motor skills were alcohol-impaired). Nevertheless, we find that the trial court's error was harmless, since our review of the record fails to demonstrate that the result would have been different if the court had considered the "crash statement."

¶ 31 The exclusion of admissible evidence is subject to a harmless error analysis. *People v. Sipp*, 378 Ill. App. 3d 157, 171 (2007). We will not reverse a conviction based upon the exclusion of

admissible evidence unless the evidence could have reasonably affected the verdict. *Id*.

¶ 32 Our review of the record indicates that defendant wrote the "crash statement" almost two hours after the accident occurred. It is common knowledge that the level of alcohol in the blood and alcohol's effect on a person's behavior dissipate over time as a result of a person's natural bodily functions. See, *e.g.*, *Callahan v. Sellers*, 806 P.2d 1176, 1178-79 (Or. Ct. App. 1991); *Schmerber v. State of California*, 384 U.S. 757, 770-71 (1966). As a result, it is questionable whether defendant's ability to write multiple sentences, spell correctly, and write sentences in a straight line, hours after an accident has occurred, are accurate measures of how the alcohol affected his ability to drive his vehicle at the time of the accident. In *Sanders*, unlike the case at bar, defendant's writing sample was given approximately twenty-seven minutes after she was stopped by the state trooper. *Sanders*, 130 Ohio App. 3d at 795, 721 N.E.2d at 437. Therefore, we cannot conclude that the trial court's failure to consider the "crash statement" for the evidentiary purposes for which it was offered, could have reasonably affected the verdict.

¶ 33 For the foregoing reasons, we affirm the judgment of the circuit court of Cook County.

¶ 34 Affirmed.