

No. 1-12-0099

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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. 11 CR 3542
	)	
RAMIRO DUENAS,	)	Honorable
	)	James B. Linn,
Defendant-Appellant.	)	Judge Presiding.

JUSTICE REYES delivered the judgment of the court.
Presiding Justice Palmer and Justice McBride concurred in the judgment.

O R D E R

¶ 1 *Held:* Defendant failed to establish that the trial judge committed plain error during jury selection or that the prosecution committed plain error during rebuttal closing arguments. Defendant also failed to establish the evidence was insufficient to convict him of aggravated driving under the influence of alcohol.

¶ 2 Following a jury trial in the circuit court of Cook County, defendant Ramiro Duenas was convicted of aggravated driving under the influence of alcohol (DUI) (625 ILCS 5/11-501(a)(2), (d)(1)(G) (West 2010)) and sentenced to three years in the Illinois Department of Corrections.

On appeal, defendant contends that he was denied a fair trial, claiming: (1) the trial court interfered with the selection of jurors by "condemning" two potential jurors who indicated that they might not be fair; and (2) the State improperly referred to a police officer and a paramedic as "experts" during closing argument when they had not testified as expert witnesses. Defendant also contends that he was not proven guilty beyond a reasonable doubt because certain symptoms attributed to intoxication could have been the after effects of a vehicle accident. For the following reasons, we affirm.

¶ 3

BACKGROUND

¶ 4 The record on appeal discloses the following facts. On March 1, 2011, defendant was charged via information with aggravated DUI by driving under the influence during a period in which the defendant's driving privileges are revoked or suspended (625 ILCS 5/11-501(a)(2), (d)(1)(G) (West 2010)), aggravated DUI by driving under the influence while he or she knew or should have known that the vehicle he or she was driving was not covered by a liability insurance policy (625 ILCS 5/11-501(a)(2), (d)(1)(I) (West 2010)), and driving while his driver's license, permit or privilege to operate a motor vehicle is suspended or revoked (625 ILCS 5/6-303(c-3) (West 2010)). The charges arose from a February 18, 2011, automobile accident. The matter proceeded to a jury trial.

¶ 5 During *voir dire*, when the trial court asked potential juror Edward Odedina, a Nigerian immigrant and social worker, whether he could be fair, the following exchange took place:

"A: I will try.

Q: I don't know you like you know you. Do you think you can't be a fair man? You think you are prejudiced, can't give both sides a fair trial?

A: Because of the nature of my job.

Q: You come all the way to this country from other continent and you get citizenship, and it comes to jury service, and you are not available."

During the subsequent questioning of potential juror Scott Graham, the court inquired whether Graham could be fair, and Graham responded that he would. When the court asked whether Graham would sign a guilty verdict if the State proved defendant guilty beyond a reasonable doubt, the following exchange took place:

"A: I will so long as—

Q: Look, this doesn't have to be as complex as you might suggest it is. This is how it works. We are all American citizens. We don't know each other. The case comes in, somebody is accused of a crime. He is presumed innocent. We give—everybody does everything they can to make sure he gets a fair trial. If the Government proves a case beyond a reasonable doubt, you are on the jury, you are taking an oath to follow the law and follow the facts. I don't want to hear this business about 'I am going to find facts and not follow the law,' because if you are not going to follow the law, then that is a whole different matter. It is just very simple. It is not a murder case or anything like that, but every case here in this building is serious. I don't want to hear—you will tell me if you will not follow the law because if you decide you will not follow the law, you will make up your own rules. We can't operate like that.

Let's try again. If the Government proves this case beyond a reasonable doubt, will you sign a guilty verdict?

A: You asked me to answer honestly. I will sign a guilty verdict, yes, so long as I cannot—I'm sorry. I believe very strongly in this.

Q: You have no idea how strongly I feel about this, and you are taking this, and you are turning this upside down. I don't know who you talked to before you came here to give an answer like that to the question, but you are turning this upside down, and I don't think you get it. That is a conversation for another time. I don't have time for you right now.

A: I do apologize."

Voir dire then continued. Subsequently, in chambers, the court suggested that Odedina and Graham be removed for cause. There were no objections. Ultimately, a jury was selected and the trial commenced October 31, 2011.

¶ 6 At trial, Mai Ling Littlejohn testified that shortly after 5 a.m. on February 18, 2011, she was driving through the intersection of 51st and Halsted Streets in Chicago when there was an impact which caused her automobile to spin around and ultimately hit the pole of a bus stop. Littlejohn also testified that her traffic signal was green when she entered the intersection. She subsequently observed another vehicle, with a bumper missing, in the middle of the street. Littlejohn further testified that defendant never spoke to her after the collision.

¶ 7 Chicago police officer Bolden, testified that he had been a police officer for six years.¹ Officer Bolden had witnessed individuals under the influence of alcohol hundreds of times in his personal life and thousands of times during his career.

¹ Officer Bolden's first name does not appear in the record on appeal.

¶ 8 On February 11, 2011, shortly after 5:30 a.m., Officer Bolden and his partner responded to a report of a traffic accident. When Officer Bolden arrived at the scene of the accident, defendant was sitting "slumped over" in the driver's seat of an automobile with front-end damage. Officer Bolden knocked on the window with his baton and shouted, "Sir." Defendant looked up at Officer Bolden with a puzzled expression. Officer Bolden asked defendant to exit the vehicle. As defendant complied, he used the armrest, had a hard time balancing, and swayed back and forth. Defendant also swayed as he walked to a nearby ambulance, where he told Littlejohn that she was "on some bull***." At this time, Officer Bolden noticed the "very strong" odor of alcohol on defendant's breath. He also observed defendant's "glossy" eyes and heard defendant slur his words.

¶ 9 Defendant then returned to his vehicle and dozed off. Officer Bolden followed defendant, requested that he exit the vehicle, and requested that defendant produce his driver's license and proof of insurance. Defendant then asked Officer Bolden, "Who are you?" Officer Bolden did not know whether defendant was going to become combative. When defendant could not produce his driver's license and proof of insurance, Officer Bolden informed defendant that he would be taken to a police station for further processing. While transporting defendant to the police station, Officer Bolden could smell the odor of alcohol coming from rear seat of the police vehicle.

¶ 10 Officer Bolden further testified that defendant refused to submit to a Breathalyzer or field sobriety test at the police station. Officer Bolden then advised defendant of his *Miranda* rights, and defendant answered questions. Officer Bolden inquired whether defendant was under the influence of alcohol. Defendant responded that he was slightly under the influence of alcohol.

When Officer Bolden asked defendant the date, defendant gave an incorrect response. Based upon his professional and personal observation of individuals under the influence of alcohol, as well as defendant's glossy eyes, slurred speech and difficulty standing on his own, it was Bolden's opinion that defendant was under the influence of alcohol.

¶ 11 Officer Bolden additionally testified that defendant did not have a driver's license at the scene. At the police station, however, Officer Bolden was able to determine defendant had a driver's license, based on defendant's name and date of birth. The prosecution then entered into evidence a self-authenticating document from the office of the Illinois Secretary of State indicating defendant's driver's license was suspended on the date of the collision.

¶ 12 During cross-examination, Officer Bolden acknowledged that he had performed only six or seven DUI investigations during his police career. Initially, Officer Bolden could not determine whether defendant was asleep or unconscious due to the accident, so he knocked on the window of defendant's automobile and asked whether defendant was okay. He admitted that some of the behaviors exhibited by defendant, such as glossy eyes, confusion, and an inability to balance, could have been attributed to either the accident or the influence of alcohol. Defendant, however, also smelled of alcohol and was "very insulting," which Officer Bolden believed was caused by alcohol consumption. Although Officer Bolden's training indicated that field sobriety tests should not be given to an individual who has been in an automobile accident, he asked defendant to take a field sobriety test. On redirect examination, Officer Bolden testified he had inquired whether defendant was injured and defendant responded that he was "fine" and "nothing was wrong with him."

¶ 13 Lon Cogley, who had been a Chicago fire department paramedic for nine years, testified that in his career and personal life, he had observed individuals under the influence of alcohol on occasions "[t]oo numerous to count." When Cogley approached defendant at the scene of the accident, defendant declined medical treatment. Based upon his observations, which included the smell of alcohol on defendant's breath as well as defendant's glazed eyes, slightly slurred speech and relaxed demeanor, Cogley opined that defendant was inebriated. Cogley also testified that he informed the police officers that he thought defendant was inebriated.

¶ 14 During cross-examination, Cogley admitted that he only spent two minutes speaking to defendant and that the smell of alcohol does not indicate how much alcohol an individual has actually consumed. Although Cogley agreed that it was "within in the realm of possibility" that a person who had been in an automobile accident could exhibit slurred speech and glazed eyes even when there was no alcohol in that person's system, he did not believe such a situation was typical.

¶ 15 The State rested its case. The defense rested without presenting testimony or evidence. The defense also moved for a directed verdict, which the trial court granted as to the charge of aggravated DUI based on a lack of automobile insurance, but denied as to the two remaining charges.

¶ 16 The parties presented their closing arguments. Prior to the closing arguments, the trial judge explained that closing arguments were not evidence; rather, they were the opportunity for the attorneys to explain why the jury ought to return a particular verdict.

¶ 17 The State argued that Officer Bolden and Cogley believed that defendant was under the influence of alcohol based upon certain signs, which included defendant's slurred speech, refusal

of medical treatment, and odor of alcohol. In response, the defense argued that there was "no actual physical evidence" that defendant was under the influence of alcohol and that the State's evidence was "just as consistent with someone being in a car [accident] as it is with someone who was drinking and under the influence of alcohol." The defense further argued that Officer Bolden's experience with DUI cases and "detecting" whether someone was under the influence of alcohol was "very limited" and that Cogley's testimony was not credible because he only observed defendant for two minutes. In rebuttal, the State argued that there was no question that defendant was impaired when "two experts," a police officer and a paramedic who had observed "thousands of" intoxicated individuals, testified that defendant was intoxicated and defendant admitted to Bolden that he was under the influence of alcohol.

¶ 18 Following the closing arguments, the trial court instructed the jury, including an instruction that closing arguments were made by the attorneys to discuss the facts and circumstance of the case, should be confined to the evidence and reasonable inferences based upon the evidence, and were not evidence. Additionally, the court instructed the jury that any statement or argument made by the attorneys which was not based on the evidence should be disregarded.

¶ 19 The jury deliberated and found defendant guilty of aggravated DUI by driving under the influence during a period in which the defendant's driving privileges are suspended, as well as driving while his driver's license was suspended. On December 2, 2011, defendant filed a posttrial motion for a new trial. The trial court denied defendant's posttrial motion on the same date, and proceeded to a sentencing hearing. After hearing evidence in aggravation and mitigation of the offenses, the trial court sentenced defendant to three years in the Illinois

Department of Corrections. On December 8, 2011, defendant filed a timely notice of appeal to this court.

¶ 20

ANALYSIS

¶ 21 On appeal, defendant contends that he was denied a fair trial due to the trial court's questioning and dismissal of two potential jurors and the State's comment regarding "experts" during rebuttal closing argument. Defendant also contends that he was not proven guilty beyond a reasonable doubt. We will address these contentions in turn.

¶ 22 Initially, the State contends that the issues regarding jury selection and closing arguments have been forfeited because defendant failed to object at trial or to raise these issues in a posttrial motion. See *People v. Enoch*, 122 Ill. 2d 176, 186 (1988). Defendant concedes that he did not object to the trial court's actions during jury selection or to the State's closing remark that Officer Bolden and Cogley were "experts," and failed to raise these issues in his posttrial motion for a new trial. Defendant, however, requests this court to review his claims for plain error.

¶ 23 Pursuant to the plain error doctrine, this court may address unpreserved errors "when either (1) the evidence is close, regardless of the seriousness of the error, or (2) the error is serious, regardless of the closeness of the evidence." *People v. Herron*, 215 Ill. 2d 167, 186-87 (2005). In both cases, the burden of persuasion rests with the defendant. *People v. McLaurin*, 235 Ill. 2d 478, 495 (2009). The first step in determining whether the plain error doctrine applies is to determine whether any reversible error occurred. *People v. Patterson*, 217 Ill. 2d 407, 444 (2005). Absent reversible error, there can be no plain error. *People v. Williams*, 193 Ill. 2d 306, 349 (2000). We also note the forfeiture rule "is less rigidly applied where the basis for the objection is the conduct of the trial judge." *People v. Young*, 248 Ill. App. 3d 491, 498 (1993).

With these principles in mind, we address defendant's arguments regarding the jury selection and closing argument.

¶ 24

Jury Selection

¶ 25 Defendant first argues that the trial court's "condemnation" of two potential jurors "chilled" the willingness of other jurors to answer honestly. "The purpose of *voir dire* is to assure the selection of an impartial panel of jurors who are free from bias or prejudice." *People v. Terrell*, 185 Ill. 2d 467, 484 (1998); see also *People v. Cloutier*, 156 Ill. 2d 483, 495-96 (1993) ("The purpose of *voir dire* is to ascertain sufficient information about prospective jurors' beliefs and opinions so as to allow removal of those *** whose minds are so closed by bias and prejudice that they cannot apply the law as instructed in accordance with their oath."). The trial court has the primary responsibility for conducting *voir dire*. *Terrell*, 185 Ill. 2d at 484. The trial court also has great latitude to decide what questions may be asked. *People v. Gregg*, 315 Ill. App. 3d 59, 65 (2000); see also Illinois Supreme Court Rule 234 (eff. May 1, 1997) (the trial court shall conduct *voir dire* by asking prospective jurors "questions it thinks appropriate touching upon their qualifications to serve as jurors in the case on trial" and "shall acquaint prospective jurors with the general duties and responsibilities of jurors"). The conduct and scope of *voir dire* examination rests within the trial court's discretion. *Terrell*, 185 Ill. 2d at 495. A reviewing court will find an abuse of discretion during *voir dire* only when the record reveals that the court's actions thwarted the selection of an impartial jury. *Cloutier*, 156 Ill. 2d at 496.

¶ 26 Defendant's argument relies upon this court's decision in *People v. Brown*, 388 Ill. App. 3d 1 (2009). In *Brown*, the trial judge excused a potential juror who said he could not be fair and impartial to the defense in a drug-related trial because of past drug-related experiences. *Id.* at 2-

3. The trial judge, however, ordered the potential juror to return the next day to get "an education as to how the system works." *Id.* at 3. The court then asked the remaining members of the panel a series of questions regarding the ability of each to decide the case fairly and no one indicated any such qualms. *Id.*

¶ 27 On appeal, Brown argued that he was denied a fair and impartial trial because the trial court's punishment of one potential juror discouraged others from responding candidly and openly. *Id.* at 4. In particular, the issue in *Brown* was whether the judge's conduct during *voir dire* constituted plain error. *Id.* at 6. While the *Brown* court questioned the prudence of the trial court to impose an "education" on the potential juror, this court concluded the exchange did not rise to the level of plain error. *Id.* at 5. The appellate court also found nothing in the record to indicate that the trial judge's treatment of the excused prospective juror "chilled" the responses of the other members of the pool such that some who might harbor partiality would be afraid to admit it and end up serving on the jury. *Id.* at 9-10. The *Brown* court further found nothing in the record to indicate that any juror seated in the case was not impartial. *Id.* at 10. Accordingly, "[w]hile 'it would have been better if some of the comments [by the trial judge] had not been made,' " this court concluded there was "no reason to forego applying the forfeiture rule." *Id.* at 10-11 (quoting *Young*, 248 Ill. App. 3d at 503).

¶ 28 In this case, when Odedina told the trial court that he would "try" to be fair, the court then asked a follow-up question in order to learn the basis upon which Odedina felt he would have trouble being fair. Similarly, when Graham indicated there may be conditions on his willingness to sign a guilty verdict, the court attempted to determine the basis for Graham's evasive answer. Contrary to defendant's argument, the trial court's actions did not frustrate the purpose of *voir*

dire. Rather, the trial court's questions indicate that it engaged these two individuals in further discussion in order to prevent anyone who could not agree to follow the requirements of jury from serving on the jury. See *Cloutier*, 156 Ill. 2d at 495-96.

¶ 29 Unlike *Brown*, there is no indication here that the trial court "punished" Odedina or Graham due to their responses during *voir dire*. Instead, the trial court merely suggested to the parties, while in chambers, that both men be stricken for cause. Similar to *Brown*, however, there is nothing in the record to support defendant's assertion that the trial court's questions to these potential jurors "chilled" the responses of the other members of the pool. We agree with the *Brown* court that where nothing in the record reveals the possibility that a jury includes a person whose prejudices have not been revealed, the fact that other potential jurors did not express any bias might simply mean that no one had such a bias. *Brown*, 388 Ill. App. 3d at 9-10. We also conclude, based on our reasoning in *Brown*, that there is no plain error and no reason to forego applying the forfeiture rule in this case. *Id.* at 10-11; see also *People v. Morales*, 2012 IL App (1st) 101911, ¶ 59 (reaffirming *Brown*); *People v. Ingram*, 409 Ill. App. 3d 1, 18-19 (finding no reason to relax the forfeiture rule and applying *Brown*).

¶ 30 Rebuttal Argument

¶ 31 Defendant next contends that he was denied a fair trial by the State's characterization of its witnesses as "experts" in its rebuttal argument when neither testified as an expert witness. "A prosecutor has wide latitude in making a closing argument and is permitted to comment on the evidence and any fair, reasonable inferences it yields." *People v. Glasper*, 234 Ill. 2d 173, 204 (2009). "Closing arguments must be reviewed in their entirety, and the challenged remarks must be viewed in context." *People v. Caffey*, 205 Ill. 2d 52, 131 (2001). Comments made during

rebuttal argument are not improper if they were invited by the defense. See *People v. Giraud*, 2011 IL App (1st) 091261, ¶ 43, *aff'd*, 2012 IL 113116. The State "may fairly comment on defense counsel's characterizations of the evidence and may respond in rebuttal to statements of defense counsel that noticeably invite a response." *People v. Willis*, 2013 IL App (1st) 110233, ¶ 110. Moreover, improper arguments can be corrected by proper jury instructions, which carry more weight than counsel's arguments. See *People v. Willis*, 409 Ill. App. 3d 804, 814 (2011). Improper closing arguments constitute reversible error only when they result in substantial prejudice against a defendant "to the extent that it is impossible to determine whether the jury's verdict was caused by the comments or the evidence." *Caffey*, 205 Ill. 2d at 131.

¶ 32 Initially, the State acknowledges an apparent conflict in our supreme court's rulings regarding the proper standard of review, but argues that the ultimate result is the same because no error occurred. In *People v. Wheeler*, 226 Ill. 2d 92, 121 (2007), our supreme court applied a *de novo* standard of review, but in *People v. Blue*, 189 Ill. 2d 99, 128 (2000), the court applied an abuse of discretion standard. In this case, however, we need not resolve this issue, as our conclusion is the same under either standard. See *People v. Crawford*, 2013 IL App (1st) 100310, ¶ 139; *People v. Hayes*, 409 Ill. App. 3d 612, 624 (2011).

¶ 33 Defendant contends that the State's rebuttal argument, during which the State argued that there was no question that defendant was intoxicated when "two experts" who had observed thousands of intoxicated individuals in the course of their personal and professional lives concluded that he was intoxicated, deprived him of a fair trial. Defendant argues the comment could have tipped the scales in favor of a finding of guilt because the jury may have ascribed an

"aura of reliability and trustworthiness" to an expert's conclusion. See *People v. Safford*, 392 Ill. App. 3d 212, 226 (2009).

¶ 34 The prosecution's reference to Officer Bolden and Cogley as "experts" was inaccurate, but the comment does not constitute reversible error. The *Safford* court discussed the "aura of reliability and trustworthiness" given expert opinions in the context of noting the importance of informing the jury of the underlying reasons explaining an expert opinion. *Id.* In this case, the comment characterizing Officer Bolden and Cogley as "experts" sought to remind the jury of the experience of these witnesses, in direct response to the defense arguments that Officer Bolden had very limited experience in "detecting" whether someone was under the influence of alcohol and that Cogley's testimony was not believable because he only observed defendant for a few minutes. *Willis*, 2013 IL App (1st) 110233, ¶ 110. Unlike *Safford*, the jury was simply reminded of the underlying reasons for the opinion testimony.² The transcript contains no indication that the prosecution asserted Officer Bolden and Cogley were "expert witnesses" in the legal sense, as the prosecution did not claim these witnesses based their opinions that defendant was intoxicated upon "scientific, technical, or other specialized knowledge." See Ill. R. Evid. 702 (eff. Jan.1, 2011) (a witness qualified as an expert may testify in the form of an opinion or otherwise when specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue). Had the State not referred to Officer Bolden and Cogley as experts, the jury nevertheless would have properly considered the experience of these

² See *People v. Bowman*, 357 Ill. App. 3d 290, 299-300 (2005) (lay witnesses "may express their opinion on the question of intoxication, if their opinion is based on their personal observation of and experience with intoxication").

witnesses as the basis for their opinions. Accordingly, the remark did not result in substantial prejudice to defendant such that it is impossible to determine whether the jury's verdict was caused by the comments or the evidence. See *Caffey*, 205 Ill. 2d at 131. Thus, the remark does not constitute reversible error.

¶ 35 In addition, the trial court here admonished the jury prior to closing arguments that what the lawyers say is not evidence and should not be considered as such. The trial court also instructed the jury following the arguments that closing arguments are not evidence, and directed them to disregard any statement or argument made by an attorney which was not based on the evidence. Thus, any error in the State's argument was cured by the trial court's actions. See *Willis*, 409 Ill. App. 3d at 814. In short, defendant has failed to show reversible error on this point and thus cannot show plain error. *Williams*, 193 Ill. 2d at 349.

¶ 36 Reasonable Doubt

¶ 37 Lastly, defendant contends that he was not proven guilty beyond a reasonable doubt because the symptoms Officer Bolden and Cogley relied upon to conclude that he was under the influence of alcohol could have resulted from the car accident. He further argues that absent the results of a Breathalyzer or field sobriety test, the testimony of the State's witnesses was insufficient to prove him guilty.

¶ 38 In assessing the sufficiency of the evidence, this court must determine whether any rational trier of fact, after viewing the evidence in the light most favorable to the prosecution, could have found the elements of the offense proved beyond a reasonable doubt. *People v. Baskerville*, 2012 IL 111056, ¶ 31. "Under this standard, all reasonable inferences from the evidence must be allowed in favor of the State." *Id.* As the trier of fact, the jury is responsible

for resolving conflicts in the testimony and weighing the evidence. See *People v. Jackson*, 232 Ill. 2d 246, 281 (2009). This court is prohibited from substituting its judgment for that of the fact finder on issues involving witness credibility and the weight of the evidence. *Id.* at 280-81. In weighing the evidence, the fact finder is not required to disregard the inferences that naturally flow from the evidence, nor must it search for any possible explanation consistent with a defendant's innocence and raise it to the level of reasonable doubt. *Id.* at 281. A criminal conviction will not be reversed based upon insufficient evidence unless the evidence is so improbable or unsatisfactory that it creates a reasonable doubt as to the defendant's guilt. *People v. Givens*, 237 Ill. 2d 311, 334 (2010).

¶ 39 In order to sustain a conviction for DUI, the State must prove beyond a reasonable doubt that the defendant drove a vehicle while under the influence of alcohol. 625 ILCS 5/11-501(a)(2) (West 2010). In order to sustain defendant's conviction for aggravated DUI, the State must prove beyond a reasonable doubt that the defendant drove a vehicle while under the influence of alcohol during a period in which the defendant's driving privileges were suspended. See 625 ILCS 5/11-501(d)(1)(G) (West 2010). In this case, the only element at issue is whether defendant was under the influence of alcohol. Whether defendant was intoxicated was a question of fact for the jury. *People v. Janik*, 127 Ill. 2d 390, 401 (1989). A DUI conviction may be sustained based solely on the testimony of the arresting officer, if credible. *Id.* at 402.

¶ 40 In this case, Officer Bolden testified that he believed defendant was intoxicated because defendant used the armrest to exit his car, had a hard time balancing, swayed when walking, smelled of alcohol, slurred his words, and exhibited glossy eyes. Cogley testified consistently

with Officer Bolden regarding defendant's slurred speech and the smell of alcohol on defendant's breath. Additionally, defendant admitted that he was slightly under the influence of alcohol.

¶ 41 Defendant argues that the symptoms the State's witnesses attributed to intoxication could also have been the results of the car accident. Although both witnesses acknowledged that some of the behaviors exhibited by defendant could have been attributed to either a car accident or intoxication, these witnesses, who had observed individuals under the influence of alcohol on numerous occasions, concluded that defendant was intoxicated. The jury found Officer Bolden and Cogley to be credible and rejected defendant's theory of the case, as evidenced by its verdict. This court will not substitute our judgment for that of the jury on this issue. See *Jackson*, 232 Ill. 2d at 280-81.

¶ 42 Defendant also argues there was insufficient evidence of his intoxication because no Breathalyzer or field sobriety tests were administered. Officer Bolden testified that defendant refused to submit to a Breathalyzer or field sobriety test at the police station. Evidence of the refusal to take a potentially incriminating test can indicate consciousness of guilt. See *People v. Weathersby*, 383 Ill. App. 3d 226, 230 (2008)(refusal to submit to a Breathalyzer test); *People v. Edwards*, 241 Ill. App. 3d 839, 843 (1993) (refusal to submit to blood alcohol test); *People v. Roberts*, 115 Ill. App. 3d 384, 387 (1983)(refusal to submit to field sobriety test). Defendant's argument therefore fails in this case.

¶ 43 In short, given the trial testimony, this court cannot say that no rational trier of fact could have found defendant was under the influence of alcohol. See *Janik*, 127 Ill. 2d at 401. Accordingly, a rational jury, after viewing the evidence in the light most favorable to the

prosecution, could have found defendant guilty beyond a reasonable doubt. See *Baskerville*, 2012 IL 111056, at ¶ 31. Thus, we affirm defendant's conviction.

¶ 44

CONCLUSION

¶ 45 For all of the aforementioned reasons, we affirm the judgment of the circuit court of Cook County.

¶ 46 Affirmed.