2013 IL App (2d) 120446-U
No. 2-12-0446
Order filed November 22, 2013

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

VILLAGE OF MUNDELEIN,	)	Appeal from the Circuit Court
	)	of Lake County.
Plaintiff-Appellee,	)	
	)	
v.	)	Nos. 11-DT-1468
	)	11-OV-3806
	)	
OSCAR GARCIA,	)	Honorable
	)	Joseph R. Waldeck,
Defendant-Appellant.	)	Judge, Presiding.

JUSTICE BIRKETT delivered the judgment of the court.
Justices Jorgensen and Hudson concurred in the judgment.

ORDER

¶ 1 *Held*: The Village failed to prove defendant guilty of driving under the influence of alcohol where, despite proof that defendant was intoxicated after he left his vehicle, there was insufficient evidence to show that defendant was intoxicated while operating and in control of his vehicle.

¶ 2 Defendant, Oscar Garcia, appeals his conviction of driving while under the influence of alcohol (625 ILCS 5/11-501(a)(2) (West 2010)). Defendant contends that the Village of Mundelein (the Village) failed to prove the offense beyond a reasonable doubt because it failed to demonstrate the *corpus delicti* of the offense, namely, that defendant was driving his vehicle while he was under the influence of alcohol. We agree that the Village failed to prove defendant guilty of the offense beyond a reasonable doubt and reverse.

¶ 3 I. BACKGROUND

¶ 4 Defendant, Oscar Garcia, was charged with driving while under the influence of alcohol and with unlawful consumption of alcohol by a minor (Village of Mundelein, Municipal Code § 5.76.200 (2004)).[1] The cause proceeded to a bench trial on November 22, 2011.

¶ 5 At trial, four witnesses testified on behalf of the Village of Mundelein. William Earll, a public works department employee, testified that, on June 24, 2011, between 1 and 2 p.m., he was working on the property of the Santa Maria church, located on the northeast corner of Route 45 and Courtland Street in Mundelein. The church driveway was U-shaped and opened onto Route 45 at both ends, with one entrance farther from the intersection and north of the second entrance. The west side of the driveway was lined with waist-high hedges and the east side was bordered by a four-foot-wide concrete sidewalk, also lined with hedges, and the sidewalk was about an inch higher than the driveway. Earll was kneeling behind the hedgerow near the north entrance, east of the driveway, and heard tires squealing through gravel and then "grabbing the pavement." He stood up and observed that a Cadillac had entered from the driveway's north end and was driving "on the sidewalk just barely brushing the hedgerow" toward the opposite end of the driveway. There was a car parked at the center of the driveway and the Cadillac drove close to and brushed the hedge as it attempted to pass the parked car. The Cadillac's driver, identified as defendant, unable to pass, "threw [the Cadillac] into reverse" and backed toward the hedges where Earll was standing, 25 to 30 feet away. The "entire trunk" of the

[1] The Village brought additional charges against defendant; however, one charge was dismissed and defendant was acquitted on the others, and they are not relevant to our analysis.

Cadillac entered the hedges, within two feet of Earll, while the Cadillac's wheels remained on the sidewalk.[2] Though the hedges were pushed "down and back," there was no damage.

¶ 6 Earll yelled to his coworkers to call the police. He then walked to the front of the Cadillac, demanded "what are you doing?" and approached the driver's-side-window, which was halfway down. He asked defendant, "What are you doing driving like this?" to which defendant responded, "I am sorry, sir." Earll did not smell alcohol or notice any slurring in defendant's speech, but he averred that he "was not that close" and so was unable to smell defendant's breath. Earll yelled to his co-workers to see if they had contacted the police when "all of a sudden [defendant] just threw it in drive, squealed the tires, and headed north on 45." There were tire marks on the pavement where defendant's tires had "squealed." While observing defendant drive up Route 45, go east through a McDonald's parking lot, exit onto Seymour, a street one block east of Route 45, head south and turn east onto Courtland, and until he lost sight of the car, Earll did not notice anything improper about defendant's driving.

¶ 7 Earll's coworker, Michael Hassebroek, who was trimming trees along Route 45 just north of the church, testified that he was looking up into the trees when he heard tires squeal. He saw Earll walk toward the driver's-side window of a Cadillac stopped in the church driveway. After a "very short time," the vehicle "took off" north on Route 45. Earll yelled for Hassebroek to call the police, and Hassebroek noted the license plate number of the vehicle and watched the Cadillac pull into the McDonald's parking lot north of the church, exit south onto Seymour, and

[2] The make of the car was a 2004 Cadillac CTS, and, as can be seen on the DVD of the officer's interactions with defendant, is a car with a relatively small trunk.

turn east onto Courtland. This information was relayed, along with a description of the car, to the police over the public works department radio system.

¶ 8 Another public works employee, Roger Wickersheim, testified that he was driving east on either Noel or Courtland when he heard a coworker describe a Cadillac over the radio. Wickersheim observed a car fitting the description approach from the opposite direction and turned around to follow it for approximately three blocks. He did not notice anything unusual about defendant's driving. He observed the car pull into the parking lot of a park and watched as two passengers exited the car and walked away. He did not observe anything unusual about the way defendant parked or exited the Cadillac. After calling the police and informing them of the location of the car, Wickersheim began to head back to the public works shop. He saw a police officer pull into a skate park a few blocks away from the park where the Cadillac was parked and stopped to inform the officer of its whereabouts.

¶ 9 Mundelein police officer Michael Bush testified that, on June 24, 2011, he heard over the public works radio band that a vehicle had almost hit a worker near the driveway at the Santa Maria church. He received a dispatch of a driving complaint for a gray Cadillac that was coming from the Santa Maria church and heading toward one of the nearby parks and was being followed by a public works employee. He entered the skate park off of Courtland and did not see any vehicles. A public works employee approached him and said the vehicle was at the other park.

¶ 10 Bush drove two blocks to the second park and saw an unoccupied Cadillac in the parking lot. He walked around the vehicle and noticed some pine needles along with slight scratches on the back side of the vehicle. Bush walked through the park and asked some people if they had seen anyone exit the car. Between 5 and 15 minutes after arriving at the park, Bush observed

defendant and a female companion walking on a path about 100 yards from the parking lot. Bush approached defendant and asked whether he was the driver and owner of the Cadillac, which defendant acknowledged. Bush informed defendant that there was a report of his vehicle striking some bushes and almost hitting a public works employee and taking off from the scene. Defendant stated that he did pull into the turnaround and strike the bush, but did not realize he needed to stay on the scene after "talking to the guy."

¶ 11 Bush began walking with defendant and observed a strong odor of alcohol coming from his mouth area and from his body, and that defendant's eyes were red and glassy. As they walked toward the car, Bush asked defendant if he had been drinking, which defendant initially denied. Once they arrived at the parking lot, Bush asked defendant his age and if he had had anything to drink that day. Defendant was 18 or 19, and responded that he had not had anything to drink. Bush specifically asked whether defendant had consumed any alcohol while he was at the park or since he had exited his vehicle. Defendant responded that he had not. Bush told defendant he could smell the alcohol, and defendant admitted to drinking the night before, "having some fun with friends."

¶ 12 Bush administered field sobriety tests, which included the horizontal gaze nystagmus test[3], the one-leg-stand test, and the walk-and-turn test. While administering the horizontal gaze nystagmus test, Bush observed that defendant's eyes were glassy, bloodshot, and red, and defendant's breath smelled of alcohol. Before the one-leg-stand test, defendant told Bush that he

[3] The trial court found the results of the horizontal gaze nystagmus test inadmissible, as Bush's method of administering the test did not comply with National Highway Traffic Safety Administration standards.

had bad knees and minor arthritis. During the test, the defendant "wobbled" and "had to place his foot down on the ground a couple of times to maintain his balance." During the walk-and-turn test, defendant left gaps between his heel and toe "several times," which Bush noted audibly on the recording.[4]

¶ 13 Bush arrested defendant for driving under the influence, leaving the scene of an accident, and underage consumption of alcohol. Bush brought defendant to the Mundelein police station, where he was observed by Bush for approximately an hour during the booking process, and during which time defendant submitted to a Breathalyzer test, which measured .072. During their conversation, defendant told Bush he had begun drinking at the park from liquor he brought in a water bottle, which he threw away at the park. Defendant explained that he did not initially admit to consuming alcohol in the park because he was scared.[5]

¶ 14 Cora Lopez, the sole defense witness, testified that she was an investigator with the public defender's office. On November 21, 2011, she met with defendant and trial defense counsel at the Santa Maria church. She described the church driveway as narrow and acknowledged that, if one car was parked in the drive, another car would not be able to get around it. The car would have to either back out of the driveway onto Route 45, where the bushes created a blind turn into traffic, or do a three-point turn in the driveway and exit facing forward. It was not possible to turn around in the driveway without making contact with the

[4] The administration of the tests was recorded on DVD and admitted into evidence. The substance of the DVD is consistent with the description given by the parties.

[5] A DVD recording of these interactions was admitted into evidence and is consistent with the description in the briefs.

shrubs, even with a compact car like her Ford Focus. Exiting forward out of the driveway, a right turn would be into the direction of traffic and a left turn would be across two lanes of traffic.

¶ 15 The case was continued until January 17, 2012, for the court to review the evidence and make its findings. On this date, the court found defendant guilty of the charges of DUI and consumption of alcohol by a minor, and stated:

> "Considering the two incidents [at the church and at the park] separately, one might be persuaded to accept the version as offered by the defendant. However, when you combine the two and you consider the conduct and the actions of the defendant when initially encountered, his actions in abruptly leaving the scene, traveling through the parking lot of McDonald's, his encounter with the officer at the park, his performance of the administered field sobriety tests, his statements to the police in the booking room, his Breathalyzer reading of .072 within two hours of his initial encounters, and his age of 18, the court is convinced beyond a reasonable doubt that the defendant was under the influence of alcohol when observed driving by Mr. Earl, [*sic*] and that the alcohol impaired his ability to think and act with ordinary care."

¶ 16 Defendant was sentenced to an 18-month term of court supervision, community service, and various fines and costs. Defendant filed a motion to reconsider the finding of guilt on the DUI charge, which, on April 11, 2012, was heard and denied. Defendant timely appeals.

¶ 17 II. ANALYSIS

¶ 18 On appeal, defendant contends the Village failed to prove the *corpus delicti* of the offense of driving while under the influence of alcohol (625 ILCS 5/11-501(a)(2) (West 2010)).

Specifically, defendant contends that the Village failed to prove that his ability to drive was impaired, or that he was intoxicated while driving his vehicle.

¶ 19 The *corpus delicti* of an offense is simply the commission of a crime. *People v. Lara*, 2012 IL 112370, ¶ 17. Along with the defendant's identity, it is one of two propositions the State must prove beyond a reasonable doubt. *Id.* The rule requires that a defendant's admission, confession, or out-of-court statement be accompanied by independent corroborating evidence in order to prove a conviction. *Id.* That is, the statement cannot be used alone to prove the *corpus delicti*. *Id.* The rule is grounded in courts' mistrust of out-of-court confessions due to the unreliability of coerced confessions and "some individuals' tendency to confess, for various psychological reasons, to offenses that they did not commit or that did not occur." *Id.* ¶ 19. As a result, the rule comes into play where a defendant's confession is part of the proof of the *corpus delicti*. See *People v. Sargent*, 239 Ill. 2d 166, 183 (2010) ("Where a defendant's confession is part of the proof of the *corpus delicti*, the prosecution must also adduce corroborating evidence independent of the defendant's own statement. [Citation]. If a confession is not corroborated in this way, a conviction based on the confession cannot be sustained.").

¶ 20 Defendant argues that he was convicted based on his admission that he did not drink alcohol at the park, but "the only evidence presented at his trial indicating that he did not consume alcohol after his arrival at the park was his own initial claim to Bush." However, the Village was not required to prove beyond a reasonable doubt that defendant did not consume alcohol at the park. Rather, the Village was required to prove that defendant drove while he was under the influence of alcohol. Defendant attempts to transform a sufficiency-of-the-evidence issue into a *corpus delicti* claim. However, there is no indication that the trial court

based its decision solely on defendants' statements at the park. Thus, we view defendant's *corpus delicti* claim at its most basic level: whether the commission of the crime was proved beyond a reasonable doubt.

¶ 21 When a defendant challenges the sufficiency of the evidence in a criminal case, it is not the function of a reviewing court to retry the defendant. *People v. Collins*, 106 Ill. 2d 237, 261 (1985). Rather, the proper standard of review 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.' " (Emphasis in original.) *Id.* (quoting *Jackson v. Virginia*, 443 U.S. 307, 319 (1979)). When reviewing the evidence, the reviewing court will not substitute its judgment for that of the trier of fact on issues of the weight of evidence or credibility of witnesses. *People v. Phelps*, 211 Ill. 2d 1, 7 (2004). Where the evidence is so unsatisfactory as to justify a reasonable doubt of the defendant's guilt, the reviewing court may reverse a conviction. *People v. Ehlert*, 211 Ill. 2d 192, 202 (2004).

¶ 22 Defendant argues that, because the testimony of the public works employees lacks any indication that his ability to drive was impaired, and because there was no evidence to suggest that he was intoxicated before or during his drive to the park, there was no evidence that he drove under the influence of alcohol. Although a defendant may be proved guilty of driving under the influence of alcohol (DUI) based upon circumstantial evidence (*People v. Weathersby*, 383 Ill. App. 3d 226, 229 (2008)), the question here remains whether the Village presented sufficient evidence from which any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.

¶ 23 It is helpful to examine cases where the evidence against a defendant was sufficient to convict for DUI where a defendant was observed driving a vehicle and subsequently found

inebriated. Generally, in these cases, there is some indication that defendant's driving was substantially impaired, typically because a defendant was involved in an accident. *E.g.*, *People v. Schuld*, 175 Ill. App. 3d 272, 279 (1988) (DUI conviction supported by evidence that defendant was driving truck when it struck power pole, was observed exhibiting signs of intoxication 20 minutes after the accident, and had a blood alcohol concentration of .13 one hour after the accident); *People v. Call*, 176 Ill. App. 3d 571, 577-78 (1988) (DUI conviction was supported by evidence that defendant exhibited signs of intoxication when found by officer on roadside two miles from an accident involving his car and with a blood alcohol concentration of 0.15). Another type of case in which the evidence is sufficient is where the defendant is observed to be exhibiting signs of inebriation immediately after exiting the vehicle. *E.g.*, *People v. Dalton*, 7 Ill. App. 3d 442, 443-44 (1972) (although defendant contended that he had nothing to drink prior to automobile accident and had consumed whiskey in his home before police arrived, evidence was sufficient that he was observed by police in his home intoxicated within 20 minutes of the accident and where witness involved in accident observed that defendant could not talk clearly, smelled liquor on his breath, and thought that the defendant was intoxicated before defendant walked to his home).

¶ 24 These cases suggest that, where a defendant is not observed driving his vehicle by a police officer and is later found intoxicated, the evidence is sufficient if the defendant was involved in an accident. Where there is evidence of intoxication immediately after an accident, as in *Dalton*, the connection between the erratic driving (the accident) and the intoxication is sufficient. However, where the defendant's erratic driving is not connected to immediate signs of intoxication, the courts are hesitant to infer the commission of the crime, that is, that defendant was driving while intoxicated, rather than becoming intoxicated after driving. *E.g.*,

People v. Flores, 41 Ill. App. 3d 96, 100-02 (1976) (State failed to prove DUI where defendant was involved in an accident, went to a party where he allegedly consumed alcohol, and returned to his car for cigarettes and was arrested after an officer observed him exhibiting signs of intoxication).

¶ 25 As the trial court noted, the incident at the church alone is insufficient to prove that defendant was driving under the influence. Viewing the evidence in the light most favorable to the Village, the evidence shows that defendant turned into a driveway that he was unable to pull all the way through, backed his car up quickly in a tight space, partially into the bushes, and respectfully apologized to a man that confronted him about the manner in which he backed up his car. This evidence, viewed as an indication of defendant's possible impairment, was refuted by Lopez's uncontradicted testimony and the similarly uncontradicted testimony of the public works employees who did not see any observe unusual driving or other signs of impairment. See *id.* at 101 ("[t]he positive testimony of a witness, uncontradicted and unimpeached either by other positive testimony or by circumstantial evidence, intrinsic or extrinsic, cannot be disregarded but must control the decision, unless it is inherently improbable"). Defendant was not involved in an accident[6] (*cf. People v. Chavez*, 285 Ill. App. 3d 45, 46, 49 (1996) (defendant's admission that he had consumed two drinks and four or five beers before driving and had overturned his vehicle was sufficiently corroborated to satisfy *corpus delicti* where, three hours after his car was discovered overturned by police, defendant appeared at police station with a leg injury and exhibiting signs of intoxication)), nor did he exhibit signs of intoxication when Earll spoke with him, and none of the

[6] We note that defendant was not required to remain at the church, and the trial court found defendant not guilty on a charge of leaving the scene of an accident.

public works employees observed anything unusual about his driving or anything that indicated to them that defendant was impaired, other than perhaps the fact that his car left tire marks as it pulled away. See *People v. Schultz*, 10 Ill. App. 3d 602, 603-04 (1973) (although defendant admitted to consuming alcohol when officer questioned her regarding her car accident, the evidence was insufficient that she was driving under the influence where, prior to the accident, her coworker did not observe her driving erratically or exhibiting any signs of intoxication, and she did not remember telling the officer anything); but *cf. People v. Knott*, 189 Ill. App. 3d 790, 792-93, 796 (1989) (evidence was sufficient to convict defendant of DUI although there was evidence she had consumed alcohol after driving where two witnesses observed her driving "in a drunken manner" and that she had trouble standing upon exiting her vehicle). Defendant drove to a public park. On the way there, he was followed for approximately three blocks by another witness who did not notice any unusual driving or indication that the driver was impaired. Defendant arrived at the park, exited his vehicle, and walked into the park, accompanied by a friend. There was no evidence that defendant exhibited signs of intoxication immediately after exiting his vehicle. *Cf. People v. Dever*, 26 Ill. App. 3d 213, 215 (1975) (evidence sufficient where defendant was drinking immediately prior to an accident that he caused, was observed to be intoxicated by the other driver immediately after the accident, was extremely intoxicated 45 minutes after the accident when discovered by officers at his home). Up until this point, there is nothing to indicate that defendant was driving his vehicle while under the influence of alcohol.[7]

[7] Although we upheld a DUI conviction in *People v. Lurz*, 379 Ill. App. 3d 958, 967 (2008), where the defendant was neither observed intoxicated immediately after driving nor involved in an accident, *Lurz* involved a true *corpus delicti* question regarding whether a

¶ 26 The Village argues that defendant's condition at the park—his red, glassy, bloodshot eyes—could not have "manifested themselves in that condition after such a recent ingestion of alcohol" and that, because the effects of alcohol while defendant was in the booking room appeared to be wearing off, this is "consistent with having consumed alcohol over a longer period of time prior to driving." Noticeably, this evidence is absent from the record and was not presented at trial, and we therefore decline to consider it. By arguing unsupported contentions, the Village only further highlights the lack of evidence presented at trial even when viewed in a light most favorable to it. Defendant was not involved in an accident and any evidence indicating impaired driving was rebutted by uncontradicted testimony. Even if defendant's manner of driving could be considered erratic, it was not connected to immediate signs of intoxication after driving or any observations of intoxication while he was driving. The evidence here is so unsatisfactory as to justify a reasonable doubt of the defendant's guilt. Because the evidence was insufficient to prove defendant guilty of driving while under the influence of alcohol (625 ILCS 5/11-501(a)(2) (West 2010)), his conviction must be reversed.

¶ 27 Because we find the evidence insufficient, and this issue is completely dispositive, we need not consider defendant's remaining contentions on appeal.

¶ 28 III. CONCLUSION

¶ 29 For the foregoing reasons, the judgment of the circuit court of Lake County is reversed.

¶ 30 Reversed.

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confession was sufficiently corroborated, which undermines its applicability to this case.