2013 IL App (2d) 130264-U
No. 2-13-0264
Order filed December 27, 2013

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS, Plaintiff-Appellee, v. JOHN McCANN, Defendant-Appellant.	))))))))))	Appeal from the Circuit Court of Kane County. No. 11-DT-169 Honorable Thomas J. Stanfa, Judge, Presiding.

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

ORDER

¶ 1 *Held*: The State proved defendant guilty beyond a reasonable doubt of DUI and DWLS, specifically that defendant was in actual physical control of the vehicle: though outside the vehicle, defendant admitted that he had been driving, and his admission was corroborated by the evidence that the driver's seat was vacant and a passenger was in the passenger's seat; the trial court was not required to accept defendant's implausible theory that the passenger had been driving before sliding over to the passenger's seat.

¶ 2 Following a bench trial, defendant, John McCann, was convicted of driving while under the influence of alcohol (DUI) (625 ILCS 5/11-501(a)(2) (West 2010)) and driving while his driving privileges were suspended (DWLS) (625 ILCS 5/6-303(a) (West 2010)), and he was sentenced to,

among other things, 18 months of reporting court supervision. On appeal, defendant argues only that the State failed to prove beyond a reasonable doubt that he was in actual physical control of the car by which the police found him. For the reasons that follow, we affirm.

¶ 3 The facts relevant to resolving the issue raised are as follows.[1] Officer Roscher testified that, on February 10, 2011, at approximately 1:54 a.m., he was dispatched to Morgan Street in Elgin to investigate a " 'trouble with a suspect' call. " When the officer arrived on the scene, he was told that one of the parties involved in the incident left in a red Pontiac. Officer Roscher and another officer, Officer Williamson, began canvassing the area, looking for the red Pontiac.

¶ 4 Officer Williamson found a red Pontiac Grand Prix stuck in a snow bank at 1060 Birchdale, which is also in Elgin. Officer Roscher went to that location and saw the car in the snow bank with the engine running. Seated in the front passenger seat of the car was a woman named Alexandra McCann, and defendant was standing in the street next to the car. Officer Williamson confirmed this and stated that he could not recall whether defendant was in possession of the keys to the Pontiac. At that time, defendant's driving privileges were suspended.

¶ 5 Officer Roscher spoke with defendant, asking him what had happened. Defendant, who exhibited several signs of intoxication and admitted to drinking beer at the Morgan Street address, told the officer that he was on Morgan Street earlier and got into an argument. Defendant indicated that he then left that address, was driving through a turn too fast, and lost control of the car.

¶ 6 Alexandra testified that she and defendant, her brother, were at the Morgan Street address, that they got into an argument with someone else there, that someone threatened to shoot them, and that they decided to leave before they got shot. Alexandra stated that she was driving the red Pontiac

[1]The facts are contained in a bystander's report that was submitted to this court.

when they left, that she lost control of the car, and that the car ended up stuck in the snow bank. Alexandra elaborated on this point, indicating that "the car was pressed up against a snow bank."

¶ 7 Alexandra testified that, after the car hit the snow bank, "[defendant] crawled over her to get into the driver seat" and "she moved into the passenger seat so that [defendant] could then get out and push the car out of the snow bank." The keys to the car remained in the ignition while all of this happened. Alexandra further indicated that, as defendant was attempting to get the car out of the snow bank, he had "her turn the wheel while he rocked the car[.]" When the police arrived, she told them that she had been driving.

¶ 8 Defendant testified consistently with his sister. During his testimony, he confirmed that he never drove the Pontiac that night.

¶ 9 The trial court found defendant guilty of DUI and DWLS. In so finding, the court indicated that it weighed the credibility of the witnesses and found the officers more credible than defendant and his sister. This timely appeal followed.

¶ 10 On appeal, defendant argues that he was not proved guilty beyond a reasonable doubt of either DUI or DWLS. More specifically, defendant argues that the State failed to establish that he was in actual physical control of the red Pontiac.

¶ 11 "A criminal conviction will not be set aside unless the evidence is so improbable or unsatisfactory that it creates a reasonable doubt of the defendant's guilt." *People v. Collins*, 106 Ill. 2d 237, 261 (1985). In considering a challenge to the sufficiency of the evidence, it is not the function of this court to retry the defendant. *Id.* Rather, " 'the relevant question 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)). The trier of fact must assess the credibility of the witnesses and the weight of their testimony, resolve conflicts in the evidence, and draw reasonable inferences from that evidence, and this court will not substitute its judgment for that of the trier of fact on these matters. *People v. Ortiz*, 196 Ill. 2d 236, 259 (2001).

¶ 12 To prove defendant guilty of DUI and DWLS, the State was required to prove that defendant was in actual physical control of the Pontiac. 625 ILCS 5/11-501(a)(1) (West 2010), 303(a) (West 2010). "A person need not drive to be in actual physical control of a vehicle, nor is the person's intent to put the car in motion relevant to a determination of actual physical control." *City of Naperville v. Watson*, 175 Ill. 2d 399, 402 (1997). Rather, the issue of actual physical control is determined on a case-by-case basis in light of the unique facts presented in each case. See *People v. Slinkard*, 362 Ill. App. 3d 855, 859-60 (2005).

¶ 13 Evidence indicating that a defendant was in actual physical control of a vehicle may be direct or circumstantial. See *People v. Niemiro*, 256 Ill. App. 3d 904, 910 (1993). Circumstantial evidence is "proof of facts and circumstances from which the trier of fact may infer other connected facts which reasonably and usually follow according to common experience." *People v. Stokes*, 95 Ill. App. 3d 62, 68 (1981). A criminal conviction may be based on circumstantial evidence as long as it satisfies proof beyond a reasonable doubt of the charged offense. *People v. Hall*, 194 Ill. 2d 305, 330 (2000). In a case based on circumstantial evidence, the trier of fact need not be satisfied beyond a reasonable doubt as to each link in the chain of circumstances if all the evidence taken together satisfies the trier of fact beyond a reasonable doubt that the defendant is guilty. *Id.* When faced with both direct and circumstantial evidence, the trier of fact should not credit one type of evidence over the other based solely on the type of evidence it is. *People v. Francis*, 362 Ill. 247, 250 (1935).

Rather, "[t]here is no legal distinction between direct and circumstantial evidence, so far as their weight and effect are concerned." *Id.*

¶ 14 Here, the facts and reasonable inferences from those facts establish that defendant was in actual physical control of the Pontiac. First, defendant admitted to Officer Roscher that he was driving the car when it got stuck in the snow bank. Although, as defendant indicates in his brief, this alone was not sufficient to establish that defendant was in actual physical control of the car (see *People v. Lurz*, 379 Ill. App. 3d 958, 968-69 (2008)), that confession in conjunction with the other evidence supported such a conclusion. Specifically, as Alexandra indicated, the passenger side of the car was pushed up against the snow bank so that no one could exit from that side of the car. Indeed, if exiting from the passenger side was an option, defendant could have exited from that side instead of crawling over his sister in order to exit from the driver's side. Seated in the front passenger seat was defendant's sister. According to Alexandra, the driver's seat was empty, because defendant exited the car from the driver's seat. The logical inference to draw from this evidence was that defendant was driving the car and that he exited the car from the driver's seat once the car got stuck in the snow bank. The court was not required to accept defendant's strained theory that his sister was driving, that he was seated in the front passenger seat while she was driving, and that, when the car got stuck in the snow bank, he crawled over his sister and got out of the car while his sister moved into the passenger seat and turned the steering wheel from that position in an effort to help defendant get the car out of the snow bank.

¶ 15 Defendant argues that, because the car was inoperable, and thus defendant posed no danger to anyone, this court must find that he was not in actual physical control of the Pontiac. We disagree. Putting aside the policy argument defendant makes, we observe that the facts presented in this case

indicated that the car was indeed operable. That is, the evidence showed that the engine was running and that defendant was in the process of trying to extricate the car from the snow bank so that it could be driven.

¶ 16 Finally, defendant claims that his convictions must be reversed because "[t]he bystander's report does not indicate any reason why the judge discredited [defendant's and his sister's] testimony." Because of that, defendant contends that this court must accept the evidence he presented as true, as "[his] testimony, along with that of his sister, was not improbable or contradicted in its material parts and it was actually corroborated by all the evidence that was presented." We disagree.

¶ 17 Assuming that the trial court did not give any reasons for discrediting defendant's evidence (*People v. Majka*, 365 Ill. App. 3d 362, 368 (2006)), we cannot conclude that the court's failure to do so requires us to reverse defendant's convictions. Rather, we note that, when the trial court does not express factual findings, we, as a reviewing court, must presume that the trial court resolved all issues and controverted facts in favor of the prevailing party, which, here, is the State. See *People v. Lagle*, 200 Ill. App. 3d 948, 954 (1990). "Thus, we must take questions of testimonial credibility as resolved in favor of the [State], and must draw from the evidence all reasonable inferences in support of the judgment." *Id.* In doing so, "[we] will neither presume that error occurred in the trial court nor assume that the trial court misunderstood the applicable law." *Id.* at 955. Here, despite defendant's protestations, his evidence was implausible, and we may presume that the court properly discredited it as such. See *People v. Hart*, 214 Ill. 2d 490, 520 (2005).

¶ 18 For these reasons, the judgment of the circuit court of Kane County is affirmed.

¶ 19 Affirmed.