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2015 IL App (3d) 130416-U

Order filed November 17, 2015

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IN THE  
APPELLATE COURT OF ILLINOIS  
THIRD DISTRICT

A.D., 2015

THE PEOPLE OF THE STATE OF	)	Appeal from the Circuit Court
ILLINOIS,	)	of the 12th Judicial Circuit,
	)	Will County, Illinois,
Plaintiff-Appellee,	)	
	)	Appeal No. 3-13-0416
v.	)	Circuit No. 11-CF-1361
	)	
VINCENT E. BORGIC,	)	Honorable
	)	Amy Bertani-Tomczak,
Defendant-Appellant.	)	Judge, Presiding.

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JUSTICE WRIGHT delivered the judgment of the court.  
Presiding Justice McDade and Justice Holdridge concurred in the judgment.

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**ORDER**

¶ 1 *Held:* (1) The evidence was sufficient to sustain defendant's aggravated driving under the influence conviction. (2) The trial court erred by denying defendant's motion to suppress his statement to police at the scene, but this error was harmless due to the overwhelming evidence from eyewitness accounts that were not subject to the motion to suppress.

¶ 2 The trial court found defendant, Vincent E. Borgic, guilty of two counts of aggravated driving under the influence of alcohol (aggravated DUI) (625 ILCS 5/11-501(a)(2), (d)(1)(F) (West 2010)). The court sentenced defendant to five years' imprisonment on the first count and

did not enter a sentence on the second count.<sup>1</sup> On appeal, defendant argues: (1) the evidence that he was a proximate cause of the victim's death was insufficient to sustain his aggravated DUI conviction; and (2) the trial court erred in denying his motion to suppress evidence. We affirm.

¶ 3

### FACTS

¶ 4

Defendant was charged by indictment with two counts of aggravated DUI. Before trial, defendant filed a motion to suppress his statements to the police at the scene. At the hearing on the motion to suppress, the defense called Joliet Police Officer Shawn Wascher to testify.

¶ 5

Wascher testified that on July 13, 2011, at approximately 10:45 p.m., she was instructed to bring a portable breath test machine to a location on East Washington Street. When Wascher arrived, the street was blocked in both directions by several police officers and crime scene tape circled the scene. Defendant's vehicle was parked inside the taped-off area. An officer at the scene directed Wascher to observe defendant. Wascher stated defendant had been at the scene for approximately 20 minutes before she began conversing with him.

¶ 6

According to Wascher, defendant was not free to leave the scene. After her arrival, Wascher asked defendant to walk with her to a different location so she could video and audio record her questions. Defendant refused, and Wascher "told [defendant] that he had to come with" her. Defendant eventually moved in front of a police squad car that contained recording equipment. Wascher and Officer James Hogan spoke with defendant in front of the squad car. After her conversation with defendant ended, defendant was placed under arrest.

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<sup>1</sup> The instant appeal is limited to the aggravated DUI charge in count I of the indictment as the trial court did not enter a sentence on count II. See *People v. Baldwin*, 199 Ill. 2d 1, 5 (2002) (absent a sentence, a conviction is not a final and appealable judgment).

¶ 7 The video recording of defendant's conversation with Wascher and Hogan was played for the court. At the start of the recording, several police officers and multiple squad cars are visible at the scene. Approximately five minutes and fifty seconds into the recording, Hogan and Wascher directed defendant to stand in front of a squad car. Hogan then told defendant they were going to do a field sobriety test. Defendant refused the test and said he will not answer any questions until he talked to his attorney, whom he would have to call. The video depicted defendant's slurred speech, unsteady balance, and exaggerated hand gestures.

¶ 8 The video documents that Hogan explained to defendant that he was not entitled to an attorney because he was not in custody. Defendant still refused to answer questions without an attorney. Defendant volunteered that he was a just block away from his home and he did not know what happened. Hogan suggested that defendant should tell him what happened. Defendant explained he was driving home from a bar when he hit a bump in the road, pulled over, and saw a body lying in the street. Defendant indicated he did not see the body before he felt the bump and observed the body for the first time when he stepped out of his car after pulling over to the side of the road.

¶ 9 Hogan and Wascher took turns asking questions such as where defendant had been before the accident. Defendant indicated that he was at a bar where he consumed one drink. Hogan asked if defendant consumed beer or liquor, and defendant replied that he drank liquor. During the interaction, Wascher asked defendant to stand on the center line of the road because she "can't see" defendant. Defendant refused to move without his attorney and then repeated his version of the events. Defendant also told Wascher he had been previously charged with a DUI.

¶ 10 Approximately 14 minutes and twenty seconds into the recording, defendant stopped talking and turned his back to Wascher. Wascher moved back into defendant's field of vision

and said “[d]o you understand that somebody got very hurt? We’re just trying to figure out what happened.” Defendant responded he was trying to figure out what happened and explained he was unsure what happened.

¶ 11 During the conversation, defendant appeared unstable. Hogan offered to call an ambulance, and defendant declined medical attention. Defendant also moved about in front of the squad car and smoked a cigarette. At one point, defendant attempted to approach his car to examine possible damage, and Hogan told him he was not allowed to walk near his car as it was in the middle of a crime scene.

¶ 12 Approximately 25 minutes into the recording, defendant walked outside of the field of view of the video camera and the audio recording cuts out. A subsequent video showed defendant sitting in the back of a squad car with the door open. Toward the end of the recording, an officer asked defendant to stand up and place his hands behind his back. Defendant was placed into handcuffs at 12:01 a.m. on the video clock.

¶ 13 Hogan testified that on July 13, 2011, at 10:45 p.m. he responded to numerous reports of an intoxicated person being struck by a vehicle in the road. When Hogan arrived at the scene, he saw the victim lying on the ground with serious injuries. Witnesses at the scene stated defendant’s vehicle and another vehicle both ran over the victim. Hogan explained Illinois law required defendant to stay at the scene because he had been involved in a motor vehicle accident involving great bodily injury or death. At this point, defendant was not in custody, but he was not free to leave. Due to the ongoing investigation, defendant was not allowed to walk unaccompanied around the scene. Defendant was not handcuffed, and was allowed to smoke a cigarette, move around, walk back and forth, and sit or stand. Hogan stated if defendant needed to leave the crime scene, which was “pretty horrific,” Hogan would have let him walk around.

¶ 14 While in front of a squad car, Hogan said to defendant “we’re going to do what’s called field sobriety tests.” Defendant refused the tests and asked to speak with an attorney. Hogan recalled defendant asked for an attorney multiple times, and Hogan repeatedly explained to defendant that he was not entitled to an attorney at that point in time because he was not in custody.

¶ 15 The parties stipulated that the first officers arrived at the scene at 10:53 p.m.

¶ 16 At the conclusion of the hearing, the trial court found the situation was indicative of a traffic stop under the reasoning of *Terry v. Ohio*, 392 U.S. 1 (1967), which allows the police to investigate. The court also found defendant was not in custody as he was allowed to walk through the cordoned off area, smoke a cigarette, and was not restrained or confronted by a large number of police officers. The court denied defendant’s motion to suppress his statements to the police at the scene.

¶ 17 The case proceeded to a bench trial. The State called Jennifer Rich to testify. On the night of July 13, 2011, Rich was driving home from work when she saw a group of people standing on Washington Street. As Rich slowed for the pedestrians, she noticed a person lying in the street. Rich pulled over and called 911. While she was on the phone, Rich saw a vehicle run over the body. The vehicle was traveling at approximately 30 miles per hour and did not slow before hitting the body. Afterwards, the vehicle stopped and the driver got out and stood at the back of the car. Rich noted the area where the incident occurred was very dark, and if she had been traveling in the opposite direction, given the lighting and large number of people standing on the side of the road, she might have hit the body too.

¶ 18 Joliet Police Officer Eric Payne received a call of a male walking in the roadway on July 13, 2011, at 10:43 p.m. Payne and Officer David Wall responded to the call and drove to

Washington Street. While en route, dispatch notified the officers that the individual was lying in the roadway. Payne and Wall arrived at the scene at 10:45 p.m. Payne saw the victim lying on his side in the westbound lanes of Washington Street. The victim was bleeding profusely from his face, had a large abrasion below his left rib cage, and a large fracture to the left side of his skull. The victim did not respond to Payne's questions and was taken from the scene by ambulance to Silver Cross Hospital.

¶ 19 The parties stipulated to the admission of a video-recorded statement given by eyewitness Ricky Harrod. Harrod stated that on the date of the incident, he was a passenger in a van driving eastbound on Washington Street. Near the Washington Street railroad crossing, a westbound vehicle swerved into the eastbound lane. After the vehicle passed the van Harrod was riding in, Harrod saw a body lying in the street. The driver of the van stopped the vehicle, and Harrod saw a gray Challenger drive over the torso of the body.

¶ 20 The State next called Wascher to testify. Wascher spoke with defendant after the incident occurred. At the time, defendant appeared unsteady, his speech was slurred, and his eyes were dilated, glassy, and bloodshot. Defendant's breath also smelled of an alcoholic beverage. Defendant said he had come from a bar where he had one drink. While driving, defendant felt a bump, stopped and saw a body in the street. Defendant refused to submit to field sobriety tests. After defendant was arrested, he was transported to Silver Cross Hospital where he provided blood and urine samples. During Wascher's testimony, the State played a redacted video of Wascher's conversation with defendant at the scene.

¶ 21 Hogan testified defendant appeared to be under the influence of alcohol at the accident scene. Hogan's supervisors were unclear as to what had transpired and asked Hogan to prepare two accident reports. The first report described the accident as a hit and run, and the second

report stated defendant's vehicle hit the victim. Hogan acknowledged the area was dark and poorly lit, and some witnesses indicated another individual had struck the victim and fled.

¶ 22 Illinois State Police forensic scientist Jennifer Poltorak tested defendant's blood samples for ethanol. Defendant's blood alcohol content (BAC) was 0.206.

¶ 23 Joliet police department crime scene technician Jeffrey Fornoff photographed the underside of defendant's car. The photographs showed a red substance that appeared to be blood and human hair on the underside of the vehicle. The parties stipulated the victim's blood was found on the underside of the car.

¶ 24 Dr. Joseph Cortez treated the victim at Silver Cross Hospital. Upon arrival, the victim was unresponsive and had multiple blunt trauma injuries, contusions, broken ribs, and a scalp laceration. The victim's BAC was 0.274.<sup>2</sup> Cortez opined the victim's BAC indicated that he was highly intoxicated and would have had difficulty walking and making proper decisions. Based on the medical reports, Cortez said the victim was possibly struck by more than one vehicle. Cortez placed a chest tube and intubated the victim before transferring him to Loyola Medical Center for further care.

¶ 25 Dr. James Filkins performed an autopsy on the victim. Filkins stated that the victim had received multiple fractures to the ribs, humerus, and pelvis. Imaging studies showed swelling of the brain and contusions on the lungs. Filkins stated that the brain swelling contributed to the victim's death. Filkins concluded the victim died from multiple injuries due to a collision with a vehicle. Filkins noted the victim was struck by "at least one vehicle," but he could not rule out the possibility that the victim had been struck by two or three vehicles.

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<sup>2</sup> The parties later stipulated the victim's BAC was 0.232.

¶ 26 Joliet Police Officer James Rouse, a traffic reconstruction expert, testified he was unable to determine whether the victim was struck by one or more than one vehicle.

¶ 27 The defense called Lucenia Jones as its first witness. On the date of the incident, Jones was traveling eastbound on Washington Street. At the time, the area was very dark and Jones saw a body lying in the street near the railroad tracks. Jones thought the individual lying in the street was deceased and called 911. While waiting for the police to arrive, Jones saw a silver or gray Challenger approach the location of the body. The Challenger drove normally and did not swerve; however, it ran over the legs of the individual lying in the street. The Challenger pulled over after striking the individual. Jones also thought other vehicles had hit the body prior to the Challenger.

¶ 28 On cross-examination, Jones stated she had two prior felony convictions and she gave an officer at the scene a fake name and address. The day after the accident, Jones gave a recorded statement to Hogan. Jones told Hogan she was not sure if the body was struck by another vehicle.

¶ 29 On the evening of July 13, 2011, Terrdell Luckett was driving eastbound on Washington Street. Near the railroad tracks, Luckett saw two bartenders escort an individual he later identified as the victim out of a tavern. Approximately 10 minutes later, Luckett was driving westbound on Washington Street when he saw four cars in front of him swerve. Luckett saw the victim lying partially on the railroad tracks and partially in the street. Luckett stopped and helped the victim out of the street. Luckett thought the victim said “help me.” The victim’s speech was slurred and he smelled of alcohol. Luckett called 911, and the victim got up and walked back into the street. Luckett also recalled the area was dark, but was illuminated with streetlights.



¶ 30 In rebuttal, the State called Wall to testify. On the night of the incident, Wall and Payne were dispatched to Washington Street around 10:45 p.m. on a report of a man walking in the street. While en route, dispatch notified the officers that the individual had possibly been hit by a car. At the scene, Wall saw the victim lying in the street and noticed defendant standing near a gray Challenger. The Challenger was positioned approximately 30 feet west of the victim. Wall maintained visual contact with defendant until the other officers arrived at the scene. He did not see defendant reenter the Challenger.

¶ 31 Geraldine Milam was driving westbound on Washington Street on the night of the incident. Near the railroad tracks, Milam noticed a body lying in the street. Milam drove around the body and called 911. Milam did not observe any injuries to the body. The area where Milam saw the body was so dark that she could not determine the gender or race of the individual.

¶ 32 After closing arguments, the court found defendant guilty of both counts of aggravated DUI. The court sentenced defendant to five years' imprisonment on the first count and did not enter a sentence on the second count. Defendant appeals.

¶ 33 ANALYSIS

¶ 34 I. Sufficiency of the Evidence

¶ 35 Defendant argues the evidence was insufficient to prove beyond a reasonable doubt that his impairment was a proximate cause of the victim's death where the victim, who was legally intoxicated, lay down in the street in a poorly lit area so that it was inevitable that he would be run over by a vehicle, and another vehicle may have run over the victim before defendant's vehicle. The State argues the evidence was sufficient to prove beyond a reasonable doubt defendant's impairment was a proximate cause of the victim's death.

¶ 36 In a challenge to the sufficiency of the evidence, we must determine, after viewing the evidence in the light most favorable to the prosecution, whether any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. *People v. Johnson*, 392 Ill. App. 3d 127, 130 (2009). The trier of fact has the responsibility to determine the credibility of witnesses and the weight to be given to their testimony, to resolve conflict in the evidence, and to draw reasonable inferences from that evidence. *Id.* We will not reverse a defendant's conviction unless the evidence is so improbable, unsatisfactory, or inconclusive that it creates a reasonable doubt of guilt. *Id.*

¶ 37 To establish a defendant's guilt of aggravated DUI the State must prove: (1) defendant was in physical control of a vehicle while under the influence of alcohol; (2) defendant was involved in a motor vehicle accident that resulted in the death of another person; and (3) the DUI violation was a proximate cause of the death. 625 ILCS 5/11-501(d)(1)(F), (a)(2) (West 2010). Under this charging scheme, impairment is an element of underlying misdemeanor DUI; therefore, the State must show that impairment was a proximate cause of the victim's death. *People v. Ikerman*, 2012 IL App (5th) 110299, ¶ 50.

¶ 38 In this appeal, defendant challenges the sufficiency of the evidence concerning whether his purported impairment caused by alcohol was the proximate cause of this particular intoxicated victim's death when the victim positioned himself on the roadway. "Proximate cause is defined as that cause which produces an injury through a natural and continuous sequence of events unbroken by any effective intervening cause." *People v. Herman*, 347 Ill. App. 3d 525, 530 (2004). The proximate cause need not be the only cause, nor the last or nearest cause. *People v. Cook*, 2011 IL App (4th) 090875, ¶ 28 (citing Illinois Pattern Jury Instructions, Criminal, No. 23.28A (4th ed. 2000)). Proximate cause " 'is established if an injury was

foreseeable as the type of harm that a reasonable person would expect to see as a likely result of his or her conduct.’ ” *Johnson*, 392 Ill. App. 3d at 131 (quoting *Hooper v. County of Cook*, 366 Ill. App. 3d 1, 7 (2006)).

¶ 39 Many of the facts in this case are not in dispute. One eyewitness had assisted the victim off the roadway and found the victim to be impaired to the point he requested help. However the victim did not remain at the side of the road, and by the time defendant approached the location on Washington Street, the victim was once again lying in the roadway. Witnesses observed several other motorists swerve to avoid striking the prone victim. However, the witnesses advised the court that as defendant approached the location where the victim was lying on the roadway, defendant did not slow down or swerve his gray Challenger to avoid striking the helpless victim. It is undisputed that the victim suffered serious head injuries and that human hair and blood was present on the undercarriage of defendant’s car. It is also undisputed that defendant’s BAC exceeded the legal limit at the time he ran over the victim.

¶ 40 Based on these facts, we next consider whether driving over a pedestrian was a foreseeable consequence of defendant’s decision to drive home while intoxicated. The case law provides that injuring pedestrians present on or next to the roadway or colliding with another vehicle is a foreseeable result of committing the offense of DUI. *People v. Martin*, 266 Ill. App. 3d 369, 380 (1994). Rather than walking home, defendant elected to operate his motor vehicle while intoxicated, and by doing so, disregarded a very foreseeable risk that he could encounter unexpected hazards on the roadway, including the presence of pedestrians. Therefore, viewing the evidence in the light most favorable to the State, we conclude the evidence was sufficient for the fact finder to reasonably conclude defendant was the last driver to run over the pedestrian and

was the proximate cause of the serious injuries, including a gaping head injury that was bleeding profusely, which resulted in the victim's death.

¶ 41

## II. Motion to Suppress Evidence

¶ 42

Defendant also argues the trial court erred by denying his motion to suppress statements he made to the police while the conversation was being recorded by the squad car camera. Defendant contends that since he was not provided with *Miranda* warnings while detained in a custodial setting at the scene, his statement was inadmissible. The State argues defendant was not in custody at the time of his statements to the officers at the scene, or if the trial court erred, the error was harmless in light of the remaining but overwhelming evidence introduced by the State.

¶ 43

When reviewing a trial court's ruling on a motion to suppress evidence, we apply a two-part standard of review. *People v. Cosby*, 231 Ill. 2d 262, 271 (2008). We review the trial court's findings of fact for clear error, and we will reverse those findings only if they are against the manifest weight of the evidence. *Id.* We review *de novo* the trial court's ultimate legal ruling as to whether suppression is warranted. *Id.*

¶ 44

The fifth amendment of the United States Constitution, as applied to the States by the fourteenth amendment (*Malloy v. Hogan*, 378 U.S. 1, 6 (1964)), provides that "[n]o person \*\*\* shall be compelled in any criminal case to be a witness against himself." U.S. Const., amend. V. In *Miranda v. Arizona*, 384 U.S. 436, 467 (1966), the United States Supreme Court adopted prophylactic measures to protect a suspect's fifth amendment privilege against compelled self-incrimination where a suspect is subject to the "inherently compelling pressures" of custodial interrogation. The *Miranda* court defined "custodial interrogation" as "question[s] initiated by

law enforcement officers after a person has been taken into custody or otherwise deprived of his freedom of action in any significant way.” *Id.* at 444.

¶ 45 In the present case, the police-citizen encounter began while the police were investigating a traffic accident that resulted in horrific injuries that caused the death of the victim. In *Berkemer v. McCarty*, 468 U.S. 420, 439 (1984), the Supreme Court analogized a traffic stop to a “Terry stop,” which is justified not by probable cause, but by reasonable suspicion that a person has committed, is committing, or is about to commit a crime. Such a stop allows an officer to ask a detainee a “moderate number of questions” to determine his identity and obtain information confirming or dispelling the officer’s suspicions. *Id.* The detainee is not obligated to respond to the questions, and unless the detainee’s answer provides probable cause for an arrest, he must be released. *Id.* at 439-40. The *Miranda* warnings are not required unless the traffic stop limits the suspect’s freedom of movement to a “ ‘degree associated with [a] formal arrest.’ ” *Id.* at 440 (quoting *California v. Beheler*, 463 U.S. 1121, 1125 (1983) (*per curiam*)). The noncoercive aspect of an ordinary traffic stop led the Supreme Court to conclude that a person temporarily detained pursuant to such a stop is not in custody for purposes of *Miranda*. *Berkemer*, 468 U.S. at 440.

¶ 46 Our analysis in the present case is focused on the determination of whether the traffic-based encounter evolved into an in-custody interrogation. The determination of whether a person is in custody involves two inquiries. First, there must be an objectively reasonable belief that the person was not free to terminate the interrogation and leave. *Howes v. Fields*, 565 U.S. \_\_\_, 132 S. Ct. 1181, 1189-90 (2012). Second, the environment must present the “same inherently coercive pressures as the type of station house questioning at issue in *Miranda*.” *Howes*, 565 U.S. at \_\_\_, 132 S. Ct. at 1190.

¶ 47

To determine whether a police-citizen encounter has limited a suspects freedom of movement to the degree associated with an in-custody interrogation, courts consider the following factors: (1) the location, time, length, mood and mode of the questioning; (2) the number of police officers present during the interrogation; (3) the presence or absence of family and friends of the individual; (4) any indicia of a formal arrest procedure, such as the show of weapons or force, physical restraint, booking or fingerprinting; (5) the manner by which the individual arrived at the place of questioning; and (6) the age, intelligence, and mental makeup of the accused. *People v. Braggs*, 209 Ill. 2d 492, 506 (2003). After weighing these factors, the court must make an objective determination as to whether, under the evidence presented, “a reasonable person, innocent of any crime,” would have believed that he could terminate the encounter and was free to leave. *Id.*

¶ 48

After reviewing the video recording of defendant’s interaction with the police officers, we conclude that the situation exceeded the temporary noncoercive detention of a *Terry* stop. Notably, defendant was under police supervision much longer than the time required for an ordinary traffic stop. Defendant was at the scene for approximately 20 minutes before Wascher arrived. After Wascher came to the scene, the video depicted her and Hogan restricting defendant’s freedom of movement to the area in front of the squad car that was equipped with the video recording equipment. This restriction lasted for the next 25 minutes. At one point, when defendant wished to examine his car, Hogan prevented defendant from moving toward the crime scene. Thereafter, defendant was seated in a squad car but was not arrested until more than one hour after the incident occurred. For the entire hour, defendant was not free to move about without a police escort.

¶ 49 The crux of the issue in the case at bar is not whether defendant should have been given his *Miranda* warnings. We note defendant was well aware that he had a right to refuse to answer questions before speaking to his lawyer. In spite of the absence of *Miranda* warnings, defendant unequivocally stated he was refusing to answer questions or take field sobriety tests until he spoke to his attorney. Thus, the issue is whether the police were required to cease questioning because the situation had become custodial when defendant asserted his right to counsel.

¶ 50 After careful review of the events depicted on the video recording, we conclude the unique circumstance of this case reveal defendant was in custody and would not answer any more questions before he spoke to his attorney. At that point, the officers should have ceased questioning and defendant's verbal *responses* to the questions posed by the officers should have been suppressed by the trial court. The video recording included critical information about defendant's balance and demeanor prior to his decision to assert his right to counsel which could have been considered by the court as evidence of impairment. However, defendant's admissions that he did not see the body before feeling the bump and that he had been consuming alcohol were not admissible.

¶ 51 Having concluded the trial court erred in denying defendant's motion to suppress evidence, we must determine whether the erroneous admission of defendant's answers to the officers' queries at the scene constituted harmless error. *People v. Rivera*, 304 Ill. App. 3d 124, 129 (1999). In a harmless error analysis, the State has the burden of proving beyond a reasonable doubt that the result of the trial would have been the same without the error. *People v. Nitz*, 219 Ill. 2d 400, 410 (2006).

¶ 52 On the video, defendant told the officers he felt a “bump” and immediately pulled his car over to investigate what had caused him to feel this unexpected “bump.” Defendant also told the officer’s he did not see the man in the street until he got out of his car.

¶ 53 Without defendant’s statement, the eyewitness accounts provided the court with the same information. For example, Rich, an eyewitness, told the court defendant’s vehicle was moving at approximately 30 miles per hour. A second eyewitness, Jones, stated defendant did not swerve or slow down as he approached the victim’s location at this speed. Thus, Jones’ testimony supports the view that defendant did not see the body in the street before driving over the victim. Further, the parties stipulated that blood photographed on the underside of defendant’s vehicle matched the victim. Thus, although defendant admitted feeling a “bump,” the court learned from eyewitness accounts that defendant’s car ran over the person in the road.

¶ 54 Defendant also told the officers he had one drink of liquor before driving home from the bar. The trial court received evidence that a blood test revealed defendant’s BAC level was more than twice the legal limit. 625 ILCS 5/11-501(a)(1) (West 2010). Moreover, other witnesses advised the court that some other vehicles were able to react to the victim on the roadway and swerved to miss the body. Thus, this evidence established that defendant was impaired at the time of the incident.

¶ 55 Any statements defendant made to the police were duplicated by the eyewitness accounts of the accident or the medical tests verifying that defendant was legally under the influence of alcohol at the time of the collision with the victim. Therefore, even without defendant’s statements to the officers after defendant asserted his right to counsel, the State’s evidence was overwhelming. Consequently, we conclude the erroneous admission of defendant’s statements to the police was harmless beyond a reasonable doubt.



¶ 56

## CONCLUSION

¶ 57

The judgment of the circuit court of Will County is affirmed.

¶ 58

Affirmed.