2017 IL App (3d) 150241-U

Order filed April 21, 2017

IN THE

APPELLATE COURT OF ILLINOIS

THIRD DISTRICT

2017

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the Circuit Court of the 12th Judicial Circuit, Will County, Illinois,
Plaintiff-Appellee,	)	
v.	)	Appeal No. 3-15-0241 Circuit No. 14-DT-71
DANIEL L. REESE,	)	Honorable Domenica A. Osterberger,
Defendant-Appellant.	)	Judge, Presiding.

JUSTICE McDADE delivered the judgment of the court.
Justices Carter and Schmidt concurred in the judgment.

ORDER

¶ 1 *Held*: Evidence was sufficient to allow a rational trier of fact to conclude beyond a reasonable doubt that defendant was guilty of driving under the influence of alcohol.

¶ 2 Defendant, Daniel L. Reese, appeals from his conviction for driving under the influence of alcohol (DUI). He contends that the evidence presented by the State at his bench trial was insufficient, and the State thus failed to prove him guilty beyond a reasonable doubt. We affirm.

¶ 3 FACTS

¶ 4 The State charged defendant by verified complaint with DUI (625 ILCS 5/11-501(a)(2) (West 2014)). On February 2, 2015, defendant proceeded on his motion to suppress. At the hearing on the motion to suppress, defendant, defendant's son, and the arresting officer each testified. The circuit court denied the motion to suppress. Defendant does not appeal that ruling.

¶ 5 Immediately following the suppression hearing, the matter proceeded to a bench trial. The trial was completely independent of the suppression hearing; the parties did not stipulate that any evidence adduced at the hearing should enter the trial record.

¶ 6 Officer Christopher Crofford of the Bolingbrook police department testified that he was on patrol on January 18, 2014. At approximately 2:19 a.m., he observed a silver Chrysler driving in the right lane of Boughton Road. He testified that Boughton is a four-lane road, with two lanes in each direction. Crofford noticed that the vehicle was "swaying within its lane." The vehicle then "departed its lane [to the] left where approximately half of the vehicle went over the center line and then quickly went back into the right lane." The vehicle did not activate its turn signal. Crofford testified that after he pulled behind the silver Chrysler, he observed the vehicle veer into the left lane two more times. He also observed the vehicle veer to the right, "nearly impacting the curb."

¶ 7 Crofford initiated a traffic stop on the silver Chrysler. He made contact with the driver of the vehicle, who he identified as defendant. Crofford observed defendant to be "a little tired, [with] red, bloodshot glassy eyes." Crofford detected the odor of an alcoholic beverage emanating from the vehicle and observed that defendant had "a little bit of slurred speech." While Crofford was speaking with defendant, the vehicle "surged forward a few feet," at which point defendant informed Crofford that he had failed to put the vehicle in park. Crofford testified

that defendant initially fumbled with his driver's license, then took approximately 30 seconds to produce his proof of insurance.

¶ 8 Defendant exited the vehicle at Crofford's request, at which time the two spoke further. Crofford detected that the odor of an alcoholic beverage was emanating specifically from defendant's breath. Defendant told Crofford that he had consumed one drink that night. Crofford then administered field sobriety tests.

¶ 9 The first test Crofford administered was the horizontal gaze nystagmus (HGN) test. Crofford testified that he observed: a lack of smooth pursuit in both eyes, nystagmus at maximum deviation in both eyes, nystagmus onset prior to 45 degrees in both eyes, and vertical nystagmus in both eyes. Crofford testified that, in total, defendant showed six clues on the HGN test, which indicated to Crofford that defendant had consumed alcohol that evening. Crofford did not recall how many clues were needed in order for one's performance on the HGN test to be categorized as a failure. However, there were only six possible clues.

¶ 10 Crofford next administered the walk-and-turn test. He did not recall asking defendant if he had any medical issues that would prevent him from performing the test. Crofford observed that defendant was unable to stand properly while he gave instructions regarding the walk-and-turn test. During the test, defendant was unable to walk heel-to-toe, stepped off the line, and used his arms for balance. Crofford testified that defendant did not pass the test, displaying four total clues. However, Crofford could not recall how many clues constitutes a failure. Crofford could not recall whether defendant performed the test on a real or imaginary line, and could not recall if the area was flat, level, or free of debris.

¶ 11 Crofford then administered the one-leg stand test. Crofford testified that defendant initially did not hold his foot high enough. Defendant also put his foot down at the nine-second

mark and used his arms for balance, despite being instructed not to do so. Crofford did not recall how high defendant raised his arms. Crofford determined that defendant had failed the test.

¶ 12 Crofford asked defendant how many beers he had consumed, to which defendant this time replied that he had consumed two beers. Crofford testified that based on his observations of the vehicle's motion, his contact with defendant, and the field sobriety tests, he concluded that defendant was impaired, and that he could not safely operate a motor vehicle. He concluded that defendant was under the influence of alcohol. Crofford placed defendant under arrest.

¶ 13 On cross-examination, Crofford testified that the vehicle defendant was driving was a rental. Crofford was able to understand defendant when he was speaking, and defendant did not struggle in exiting his vehicle or in walking to the area in which the field sobriety tests were performed. Crofford testified that he could not recall how many clues defendant displayed in the one-leg stand test, nor could he recall how many clues would constitute a failure.

¶ 14 During cross-examination, the defense published the video taken from Crofford's squad car. Crofford agreed that the video accurately depicted the stop, his interaction with defendant, and the arrest.[1] The defense then stipulated that defendant had declined to take a breathalyzer test, and the parties rested.

¶ 15 In closing arguments, the State characterized the squad car video as "glaring at the defendant's failure of the standardized field sobriety tests." The State also pointed out that the video supported Crofford's account of defendant's driving prior to the stop. Defense counsel, on the other hand, argued that "there is no erratic driving on the video." Counsel also pointed out that Crofford was unable to articulate how many clues would be required for a person to fail each field sobriety test.

[1]The video from Crofford's squad car has not been made a part of the record on appeal.

¶ 16 The court found defendant guilty of DUI. In delivering its verdict, the court commented:

> "Well, it certainly would have been helpful had the officer been able to articulate the number of clues that would have been indicative of a failure of the walk-and-turn or the one-leg stand. He, nonetheless, did testify that, though he does not recall the specific number of cues [*sic*], it is his recollection that the defendant did fail, and there were a number of cues that were exhibited through the presentation of the video, as well as the officer's testimony."

The court ultimately sentenced defendant to a term of 24 months' conditional discharge.

¶ 17 ANALYSIS

¶ 18 On appeal, defendant argues that the evidence presented at trial was insufficient for a rational trier of fact to conclude beyond a reasonable doubt that he was guilty of DUI. Specifically, defendant argues that Crofford's conclusions of failure on the field sobriety tests are "dubious at best" where Crofford was unable to articulate how many clues constituted a failure on each test. Defendant also points out that there was evidence that he was not impaired, such as his ability to exit his car and walk to the location where the field sobriety tests were administered without falling or stumbling.

¶ 19 When a challenge is made to the sufficiency of the evidence at trial, we review to determine whether any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. *People v. Baskerville*, 2012 IL 111056, ¶ 31; *People v. Collins*, 106 Ill. 2d 237, 261 (1985). In making this determination, we review the evidence in the light most favorable to the prosecution. *Baskerville*, 2012 IL 111056, ¶ 31.

¶ 20 It is not the purpose of a reviewing court to retry a defendant. *People v. Milka*, 211 Ill. 2d 150, 178 (2004). Instead, great deference is given to the trier of fact. See, *e.g.*, *People v. Saxon*,

374 Ill. App. 3d 409, 416-17 (2007). All reasonable inferences from the record in favor of the prosecution will be allowed. *People v. Bush*, 214 Ill. 2d 318, 326 (2005). " 'Where evidence is presented and such evidence is capable of producing conflicting inferences, it is best left to the trier of fact for proper resolution.' " *Saxon*, 374 Ill. App. 3d at 416 (quoting *People v. McDonald*, 168 Ill. 2d 420, 447 (1995)). The trier of fact is not required to accept or otherwise seek out any explanations of the evidence that are consistent with a defendant's innocence; nor is the trier of fact required to disregard any inferences that do flow from the evidence. *People v. Sutherland*, 223 Ill. 2d 187, 233 (2006); see also *Saxon*, 374 Ill. App. 3d at 416-17.

¶ 21 Section 11-501(a)(2) of the Illinois Vehicle Code holds that "[a] person shall not drive *** any vehicle within this State while" under the influence of alcohol. 625 ILCS 5/11-501(a)(2) (West 2014). One is under the influence of alcohol where, as a result of consuming alcohol, his faculties are so impaired as to reduce his ability to think or act with ordinary care. *E.g.*, *People v. Hires*, 396 Ill. App. 3d 315, 318 (2009). Defendant does not dispute that the State sufficiently proved that he was driving a vehicle; he only asserts that the State failed to prove that he was under the influence of alcohol.

¶ 22 In the present case, the State presented ample evidence to sustain a conviction for DUI. Foremost, Crofford testified that defendant's vehicle, after swaying in its own lane, veered into the adjacent lane on three occasions. The vehicle also veered to the right, nearly hitting the curb. See, *e.g.*, *id*. at 319 (erratic driving is probative of impairment). Moreover, Crofford testified that defendant slurred his words when speaking, his eyes appeared glassy and bloodshot, and the odor of an alcoholic beverage emanated from his breath. See *People v. Morris*, 2014 IL App (1st) 130152, ¶ 20 (alcohol on breath and glassy or bloodshot eyes are relevant in proving impairment); *People v. Robinson*, 349 Ill. App. 3d 622, 632 (2004). Finally, though no less

importantly, defendant admitted to Crofford that he had consumed alcohol that night—first admitting to drinking one beer, then admitting it had been two beers. Reviewing this evidence in the light most favorable to the prosecution, we conclude that it would allow a rational trier of fact to conclude beyond a reasonable doubt that defendant was under the influence of alcohol.

¶ 23 Defendant contends that "significant contrary evidence undermined" the above evidence of his guilt. That is, he argues that certain examples of his conduct that do not indicate impairment essentially negate any evidence indicating his impairment. Specifically, defendant notes that he had no trouble providing his license to Crofford, that he gave understandable responses to Crofford, and that he did not stumble or fall when exiting his vehicle or when walking to the location where the field sobriety tests were conducted. Defendant's argument is nothing more than an invitation for this court to reweigh the trial evidence. We decline to do so. See *People v. Buscher*, 221 Ill. App. 3d 143, 145-46 (1991) ("When reviewing a conviction based upon a challenge to the sufficiency of the evidence, it is not the function of the reviewing court to reweigh the evidence and substitute its own judgment for that of the trial court."). Moreover, we would note that the circuit court, as the trier of fact in this case, was under no obligation to accept or otherwise seek out any explanations of the evidence that would be consistent with defendant's innocence. *Sutherland*, 223 Ill. 2d at 233.

¶ 24 Finally, we address defendant's contention that Crofford's conclusions regarding the field sobriety tests were unreliable. Initially, we note that sufficient evidence was presented by the State, independent of any consideration of defendant's performance on the field sobriety tests. See *supra* ¶ 22; see also *People v. Briseno*, 343 Ill. App. 3d 953, 962 (2003) (finding evidence sufficient for DUI conviction "[w]ithout taking into consideration the results of the field sobriety tests[.]"). Further, while improper administration of field sobriety tests will render the results less

reliable, the actual observations that gave rise to the officer's conclusions still carry probative weight. *People v. Day*, 2016 IL App (3d) 150852, ¶ 30.

¶ 25 Here, the State argued in closing arguments that the squad car video made clear that defendant failed the field sobriety tests. Indeed, the circuit court commented that "there were a number of cues that were exhibited through the presentation of the video" that would indicate impairment. That video has not been provided in the record on appeal. It is the defendant's burden to provide a sufficiently complete record of the proceedings in the circuit court to support his claims of error. *Foutch v. O'Bryant*, 99 Ill. 2d 389, 391 (1984). "Any doubts which may arise from the incompleteness of the record will be resolved against the appellant." *Id*. at 392. Given defendant's failure to provide the videotape evidence, we must defer to the circuit court's finding that "there were a number of cues [of impairment] that were exhibited through the presentation of the video."

¶ 26 CONCLUSION

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

¶ 28 Affirmed.