2016 IL App (3d) 150782-U

Order filed August 16, 2016

IN THE

APPELLATE COURT OF ILLINOIS

THIRD DISTRICT

2016

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. 3-15-0782 Circuit No. 14-CF-1478
NICHOLAS XENOS,	)	Honorable Sarah F. Jones,
Defendant-Appellant.	)	Judge, Presiding.

JUSTICE CARTER delivered the judgment of the court.
Presiding Justice O'Brien and Justice Schmidt concurred in the judgment.

ORDER

¶ 1 *Held*: The evidence was sufficient to find defendant guilty of driving under the influence of alcohol.

¶ 2 Defendant, Nicholas Xenos, appeals his conviction for aggravated driving under the influence of alcohol (DUI) and guilty verdicts for aggravated driving under the influence of cannabis and aggravated driving under the combined influence of alcohol and cannabis. Defendant appeals, arguing that the evidence was insufficient to sustain a conviction on any of the three counts. We affirm.

¶ 3 FACTS

¶ 4 Defendant was charged with DUI (625 ILCS 5/11-501(a)(2) (West 2008)), aggravated driving under the influence of cannabis (625 ILCS 5/11-501(a)(4) (West 2008)), and aggravated driving under the combined influence of alcohol and drugs (625 ILCS 5/11-501(a)(5) (West 2008)). The parties agreed to proceed by way of a stipulated bench trial. The stipulated evidence included eight paragraphs of agreed facts, a police report of the incident, the Illinois traffic crash report, and the dash camera video recording from the squad car.

¶ 5 The stipulated evidence stated that Illinois State Trooper Jeremy Kunken would testify that on March 22, 2014, he was on duty. Kunken and Sergeant Jeffrey Liskh were called to the scene of a two-vehicle accident at approximately 1:16 a.m. Defendant was proceeding through an intersection and was hit by a sports utility vehicle (SUV) that failed to stop at the red light. Kunken noticed defendant's car in the intersection and the SUV in a yard to the west of the intersection. The video and audio equipment in Kunken's squad car were on and working at the time. Kunken approached defendant and detected a strong odor of alcohol emanating from his breath. Defendant said he was coming from a friend's house and, when asked if he had anything to drink, admitted to having “a few earlier.” He stated that he had his last drink “around 9:30, maybe 10:00 at the latest.”

¶ 6 Kunken asked defendant to perform standard field sobriety tests, and he agreed. Kunken first administered the horizontal gaze nystagmus (HGN) test. Defendant showed four “clues” of impairment: “lack of smooth pursuit, distinct and sustained nystagmus at maximum deviation.” While administering the test, Kunken again noted the strong odor of alcohol on defendant’s breath. Kunken next administered the walk and turn test. Defendant again showed four clues: “started before instructions were finished, stopped walking to balance, missed heel-toe on first

and second nine steps, stepped off line on first and second nine steps." Lastly, defendant performed the one-leg stand test. Kunken noticed three clues: "left leg raised-swayed while balancing, put foot down 2 times, hopped."

¶ 7 Liskh informed Kunken that defendant's car smelled like cannabis and asked defendant when he last smoked cannabis. Defendant stated that "he smoked earlier." Kunken asked defendant if he had any cannabis on him, and defendant stated that he had a bag in his right pocket. Kunken then located a plastic bag of a green leafy substance.

¶ 8 Kunken believed, "based upon his training and experience, the defendant was under the influence of alcohol, under the influence of cannabis and under the influence of the combined effects of alcohol and cannabis." Defendant was placed under arrest. At 3:02 a.m. Kunken, a fully licensed breathalyzer operator, administered a breathalyzer test to defendant, the result of which was a 0.068.

¶ 9 Angela Nealand, forensic scientist with the Illinois State Police, would testify that she tested the green leafy substance found on defendant and determined that it was cannabis and weighed approximately 0.1 grams.

¶ 10 The court reviewed the stipulated evidence and found defendant guilty of all three counts. Defendant filed a motion for a new trial, which was denied. Defendant was sentenced, by an agreed sentence, to 24 months of reporting probation and 10 days in the Will County adult detention facility on the DUI conviction.

¶ 11 ANALYSIS

¶ 12 On appeal, defendant argues that the evidence was insufficient to sustain a guilty verdict on each of the three counts. When considering a challenge to the sufficiency of the evidence, the reviewing court 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 offense beyond a reasonable doubt. *People v. Collins,* 106 Ill. 2d 237, 261 (1985). It is not the function of this court to retry the defendant, nor will this court substitute its judgment for that of the trier of fact on questions involving the weight of the evidence, the credibility of the witnesses, or the reasonable inferences to be drawn from the evidence. *Id.* at 261-62; *People v. Winfield,* 113 Ill. App. 3d 818, 826 (1983).

¶ 13 To sustain a conviction for DUI, the State must have proven beyond a reasonable doubt that defendant drove or was in physical control of a vehicle while under the influence of alcohol (625 ILCS 5/11-501(a)(2) (West 2008)).

¶ 14 Here, the evidence presented at trial showed that defendant: (1) had a strong odor of alcohol emanating from his breath; (2) admitted to having a few drinks earlier; (3) showed four clues of impairment on the HGN test; (4) showed four clues of impairment on the walk and turn test; (5) showed three clues of impairment on the one-leg stand test; and (6) had a breathalyzer test result of 0.068 approximately two hours after the accident. Taking the evidence in the light most favorable to the State, we hold a rational trier of fact could have found the essential elements of DUI beyond a reasonable doubt.

¶ 15 In coming to this conclusion, we reject defendant's attempt to parcel out the video recording in an effort to show he was not impaired. Viewing the video recording in its entirety, we find it corroborates the remaining evidence of defendant's guilt on the DUI charge.

¶ 16 As we uphold the DUI conviction for which defendant was sentenced, we do not reach defendant’s arguments regarding the other two counts for which he was found guilty. In doing so, we note that defendant specifically asks that we reverse his “convictions” for the other two counts, but a judgment of conviction was never entered on either of the two counts as a sentence

was not imposed. See *People v. Cruz*, 196 Ill. App. 3d 1047, 1052 (1990) ("In the absence of a judgment formerly entered or sentence imposed, there is no 'conviction.' " (citing Ill. Rev. Stat. 1985, ch. 38, par 2-5)). "The final judgment in a criminal case is the sentence, and, in the absence of the imposition of a sentence, an appeal cannot be entertained." *People v. Caballero*, 102 Ill. 2d 23, 51 (1984). As no sentence was imposed on the counts of aggravated driving under the influence of cannabis and aggravated driving under the combined influence of alcohol and drugs, there are no final judgments with regard to those offenses, and they are not properly before this court. *Id.*

¶ 17 CONCLUSION

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

¶ 19 Affirmed.