

NOTICE

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2012 IL App (5th) 110094-U

NO. 5-11-0094

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

NOTICE

This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

THE PEOPLE OF THE STATE OF ILLINOIS,

Plaintiff-Appellee,

v.

BRENT BULLOCK,

Defendant-Appellant.

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Appeal from the
Circuit Court of
Johnson County.

No. 05-DT-26

Honorable
Charles C. Cavaness,
Judge, presiding.

JUSTICE WEXSTTEN delivered the judgment of the court.
Justices Welch and Spomer concurred in the judgment.

ORDER

¶ 1 *Held:* The evidence presented for the jury's consideration supported its finding that the defendant was guilty of driving under the influence of alcohol.

¶ 2 A Johnson County jury found the defendant, Brent Bullock, guilty of driving under the influence of alcohol (DUI). On appeal from his conviction, the defendant argues that the State failed to prove his guilt beyond a reasonable doubt. For the reasons that follow, we affirm.

¶ 3 **FACTS**

¶ 4 In 2005, after the defendant was involved in an automobile accident in which the car that he was operating rear-ended a delivery van, the State charged him with two counts of DUI (625 ILCS 5/11-501(a)(1), (a)(2) (West 2004)). On the defendant's motion, the trial court later dismissed one of the counts, and in 2010, the cause proceeded to a jury trial on the other. At trial, the following evidence was presented for the jury's consideration.

¶ 5 Eric Blades testified that on the afternoon of April 29, 2005, at approximately 2 p.m., he was delivering a package to the Shawnee Correctional Center (the prison) in his employer's cargo van, when he was "struck in the rear by another car." When he was hit, Blades was on Illinois Route 146 directly in front of the prison, "stopped waiting to turn" with his turn signal engaged. Blades estimated that he had been waiting on oncoming traffic for "five to ten seconds" before his van was struck. Blades stated that the impact of the crash had "demolished" the car that had hit him, and his delivery van "ended up in the grass out in front of the prison." Once he "realized that [he] was okay," Blades called 9-1-1 and then saw "people coming out of the prison" to assist. Blades testified that prison personnel "took over from there," and he stood by for the police and the paramedics to arrive. Blades indicated that although "it might have been drizzling a little bit that day," he was fairly certain that the road was dry at the time of the accident.

¶ 6 Terry Kern testified that he works as a guard at the prison, and when the accident occurred, he was at the top of a guard tower near Route 146. Kern indicated that Blades' delivery van was stopped in front of the prison with its "blinker on" waiting to turn in, when the defendant's car hit it from behind. Kern further indicated that he had not witnessed the actual impact, but upon hearing a "loud bang," he quickly turned and saw that the van's back tires were "off the ground about three feet." The defendant's car was "sliding" behind the van, and the car's hood was "all mashed in." Kern testified that he immediately reported the crash, and emergency staff responded to the scene shortly thereafter.

¶ 7 Peggy Hampton, a registered nurse employed by the prison, testified that she had administered first aid to the defendant after the accident. Hampton explained that while sitting in the backseat of the defendant's car, she had checked his carotid pulse, held towels to his lacerated forehead, and talked to him until the ambulance arrived and the paramedics assumed control of the situation. Hampton testified that although she had later filed an

incident report stating that she had "smelled a faint odor of alcohol" emanating from the defendant, she had not smelled any alcohol on him, and she believed that her report had been "influenced" by what she had heard others at the scene say.

¶ 8 Wendy Bailey testified that she was one of the paramedics who had responded to the crash on the afternoon of April 29, 2005. When Bailey arrived at the scene, the defendant was behind the wheel of his car being tended to by a prison employee sitting in the backseat. Bailey testified that she had subsequently helped two other paramedics extricate the defendant from his wrecked car. Bailey testified that the defendant was conscious and talking and had a "[v]ery strong" odor of alcohol about him. Bailey further testified that she had heard the defendant admit that he had been "drinking." Bailey was with the defendant after he had been placed inside a responding ambulance, and she testified that she had smelled alcohol on him on the way to the hospital where he was subsequently treated.

¶ 9 Todd Test also testified that he was one of the paramedics who had responded to the report of the accident outside the prison. Test stated that while initially assessing the defendant, he had noticed an odor of alcohol emanating from either the defendant or his vehicle. After the defendant had been safely removed from his car, stabilized on a backboard, and placed in the back of the ambulance, Test stayed with him as they proceeded to the hospital. Test explained that inside the ambulance, he had detected an odor of alcohol that seemed to be coming from the defendant. Although the defendant was "kind of in and out of it," he was generally responsive to verbal commands and was eventually lucid enough to appropriately answer some of the questions that Test had asked him as they rode. Test testified that when he asked the defendant whether he had ingested any alcohol or drugs, the defendant had stated that he had been "drinking." Test testified that when he had initially tested the defendant's pupil reaction at the crash scene, one pupil had dilated slower than the other, but both "were responding appropriately" when he checked them again on the way to

the hospital. Test indicated that the pupils of "somebody who is drunk" will generally "respond much slower" than those of someone who is not, but slow pupil-reaction "could be the effect of an injury[,] also." Test indicated that at no time had the defendant exhibited slurred speech or glassy or bloodshot eyes.

¶ 10 Trooper Mike Usher of the Illinois State Police testified that after arriving at the scene of the accident, he had talked to various witnesses, including the defendant, who was in the back of the ambulance at the time. Usher testified that when he asked the defendant what had happened, the defendant had stated that he could not remember. Usher further testified that the defendant had also stated that he "had been drinking Southern Comfort whiskey" and was "drunk." While speaking with the defendant at the crash scene, Usher "smelled an extreme odor of alcoholic beverage coming from [the defendant's] breath." Before the ambulance left to take the defendant to the hospital, Usher decided to cite him for driving under the influence of alcohol.

¶ 11 Usher testified that he had later gone to the hospital, where he was advised that the defendant had a brain injury. Usher testified that the defendant had "two black eyes," and "he looked like he had been in a fight." Usher indicated that he had again spoken with the defendant about the accident and had observed him at the hospital for at least 90 minutes. Usher testified that while he was with the defendant, the defendant was "cursing" and "belligerent" and "was threatening the nurses who were trying to help him." The defendant told Usher that he "hated cops" and that "this was bullshit." The defendant's statements to Usher also included, "I'm not going to lie, I have been drinking." When asked specific questions about his alcohol consumption that day, the defendant reiterated that he had been drinking Southern Comfort. The defendant claimed that he had only had "a couple," but he acknowledged that he was under the influence of alcohol. Usher opined that the defendant was indeed under the influence of alcohol and was unfit to drive.

¶ 12 Usher testified that when he arrived at the scene of the crash, it was raining and the road was wet. Usher did not recall if there were vehicle skid marks on the road. Usher indicated that at no time had the defendant exhibited slurred speech or glassy or bloodshot eyes. Usher acknowledged that it was not illegal for a person to drink alcohol and drive so long as they are not under the influence. Usher testified that he had specialized training in the detection and apprehension of drivers impaired by alcohol and had made hundreds of DUI arrests during the course of his 14-year career.

¶ 13 Mary Sue Jenkins testified that she is the defendant's aunt and had been at the hospital when the defendant arrived by ambulance after the accident. Jenkins stated that once the defendant was "situated," she had visited him in his room. Jenkins testified that the defendant had been seriously injured and was confused and incoherent at times. Jenkins testified that she had not smelled any alcohol on the defendant while she was with him, and she was at the hospital for at least two hours. Jenkins indicated that Usher had also been present, but he just stood "over to the side" the whole time. Jenkins stated that she had not heard the defendant say that he hated cops or that he was drunk or under the influence of alcohol. Jenkins acknowledged that "a couple of times," hospital staff had the defendant's family leave the room and that during those times, Usher had been allowed to stay.

¶ 14 The defendant's mother, Frances Bullock, testified that she had also been with the defendant at the hospital following the accident. When she arrived, Jenkins and Usher were already there. Bullock stated that the defendant's condition was "quite serious," and he had been treated for a possible brain hemorrhage. Bullock testified that she had not heard the defendant say that he hated cops or that he was drunk or under the influence of alcohol. Bullock further testified that she had not smelled any alcohol on the defendant's breath. Bullock indicated that the few times that hospital staff had asked the defendant's family to step out of the room, Usher had been allowed to stay.

¶ 15 During closing arguments, the State maintained that the evidence that the defendant had "plowed into the back of a stopped van," "reeked of alcohol," and admitted that he was "drunk" established beyond a reasonable doubt that the defendant had operated his vehicle under the influence of alcohol. The State acknowledged that the defendant had been seriously injured but noted that nothing indicated that he had been "delirious" or had been "talking nonsense" after the accident. The State maintained that field sobriety tests such as the "one-leg stand" and the "horizontal gaze and nystagmus test" had not been performed "because the defendant was not in any sort of condition to do those tests." The State further maintained that "[n]ot every person who is drunk or under the influence of alcohol is going to have slurred speech" or glassy, bloodshot eyes.

¶ 16 In response, defense counsel argued that the State had failed to meet its burden of proof. Subtly criticizing Usher's police work, counsel suggested that the State's case rested largely on the "alleged confessions of an injured man who may have [had] a brain injury." Counsel emphasized that the defendant had not exhibited outward signs normally associated with intoxication, asserting that "[i]t's just common knowledge" that slurred speech is an indication that someone "has been drinking too much." Counsel further emphasized that the defendant's pupils were "okay" when they were examined in the ambulance. Suggesting that the accident in question could have happened to anyone, counsel argued that it was unfair to assume that the collision was entirely the defendant's fault. Counsel maintained that given the defendant's condition, Usher should never have approached him while he was being treated by the medical professionals at the hospital. Counsel further maintained that the defendant's family members would not come to court and "lie for him" and that it was admirable that Hampton would risk being "ridiculed" by her peers for telling the truth. Counsel argued that under the circumstances, there was "too much gray," and the State had failed to prove the defendant's guilt beyond a reasonable doubt.

¶ 17 The jury ultimately returned a verdict finding the defendant guilty of DUI. The trial court subsequently sentenced him to a two-year term of probation and ordered that he complete an inpatient alcohol treatment program. Following the trial court's denial of his motion for a new trial, the defendant filed a timely notice of appeal.

¶ 18 ANALYSIS

¶ 19 Recasting much of what his attorney argued at trial, the defendant asserts that we should reverse his DUI conviction, because the State's evidence was "weak." The State counters that applying the relevant standard of review, the evidence was more than sufficient to sustain the jury's verdict.

¶ 20 When reviewing the sufficiency of the evidence supporting a criminal conviction, "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 offense beyond a reasonable doubt." *People v. White*, 221 Ill. 2d 1, 8 (2006). When establishing guilt, the prosecution is not required to exclude every reasonable hypothesis of innocence, and the trier of fact need not be satisfied beyond a reasonable doubt as to each link in the chain of circumstances. *People v. Rush*, 294 Ill. App. 3d 334, 337 (1998). It is sufficient if all of the evidence taken together convinces the trier of fact that the defendant is guilty beyond a reasonable doubt. *People v. Campbell*, 146 Ill. 2d 363, 380 (1992). As a court of review, it is not our function to retry the defendant, and we will not substitute our judgment for that of the trier of fact. *People v. Collins*, 214 Ill. 2d 206, 217 (2005).

¶ 21 Here, to find the defendant guilty as charged, the jury had to find that he drove a vehicle and that he did so while under the influence of alcohol. 625 ILCS 5/11-501(a)(2) (West 2004). "A person is under the influence of alcohol when, as a result of drinking any amount of alcohol, his mental or physical faculties are so impaired as to reduce his ability to think and act with ordinary care." Illinois Pattern Jury Instructions, Criminal, No. 23.29 (4th

ed. 2000). "Thus, a slight impairment which leads to a slight reduction in the motorist's ability to drive is sufficient to support a conviction." *Mills v. Edgar*, 178 Ill. App. 3d 1054, 1057 (1989).

¶ 22 Under Illinois law, a criminal conviction may be based solely on a defendant's confession, provided there is " 'some evidence, exclusive of the confession, tending to show that a crime did occur and that the defendant committed it.' " *People v. Pecoraro*, 144 Ill. 2d 1, 10 (1991) (quoting *People v. Neal*, 111 Ill. 2d 180, 194 (1985)); see also *People v. Perfecto*, 26 Ill. 2d 228, 229 (1962). Additionally, "[a] DUI conviction may be sustained based solely on the testimony of the arresting officer, if credible." *People v. Janik*, 127 Ill. 2d 390, 402 (1989). "Relevant evidence of the defendant's mental and physical impairment includes but is not limited to testimony by an officer as to the defendant's appearance, speech, or conduct, testimony that the officer detected the odor of an alcoholic beverage on the defendant's breath, and testimony that the defendant failed a field sobriety test." *People v. Robinson*, 368 Ill. App. 3d 963, 983 (2006).

¶ 23 Here, viewing the evidence adduced at trial in the light most favorable to the State, the evidence of the defendant's guilt was more than sufficient to support his DUI conviction. Test and Bailey both testified that they smelled alcohol on the defendant after the accident and that the defendant had admitted that he had been "drinking." Usher indicated that the defendant had smelled of alcohol and had paradoxically exhibited both belligerent and cooperative behavior at the hospital. Usher further indicated that based on his observations and experience dealing with intoxicated persons, he believed that the defendant was under the influence of alcohol at the time of the accident. It is undisputed that the defendant rear-ended a delivery van that was stopped and waiting to turn with its "blinker on," and the jury could have reasonably concluded that the defendant's impairment contributed to the accident. The defendant acknowledged that he had been drinking whiskey and was "drunk." That there

was no evidence that the defendant had slurred speech or glassy or bloodshot eyes does not negate the evidence otherwise establishing his guilt, nor does it make the evidence of his intoxication "closely balanced." *People v. Schaefer*, 398 Ill. App. 3d 963, 968 (2010).

¶ 24 As a reviewing court, "we cannot second guess the jury's credibility determinations and the weight it gave to the various witnesses' testimony" (*People v. Watt*, 244 Ill. App. 3d 103, 124 (1993)), and as the trial court stated below when denying the defendant's motion for a new trial, "In this case[,] the jury determined the facts." Having reviewed the record on appeal, we cannot conclude that the evidence presented for the jury's consideration was "so unreasonable, improbable, or unsatisfactory that it creates a reasonable doubt of the defendant's guilt" (*People v. McDonald*, 168 Ill. 2d 420, 444 (1995)), and we accordingly reject the defendant's contention that the State failed to meet its burden of proof.

¶ 25 CONCLUSION

¶ 26 For the foregoing reasons, the defendant's conviction is hereby affirmed.

¶ 27 Affirmed.