2013 IL App (5th) 120029-U

NO. 5-12-0029

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Madison County.
	)	
v.	)	No. 11-DT-281
	)	
MAURICE V. RAKERS,	)	Honorable
	)	Ben L. Beyers II,
Defendant-Appellant.	)	Judge, presiding.

JUSTICE GOLDENHERSH delivered the judgment of the court.
Justices Welch and Wexstten concurred in the judgment.

ORDER

¶ 1 *Held*: Defendant failed to file a timely notice of appeal from the denial of his motion to rescind the statutory summary suspension; thus, we are without jurisdiction to hear that portion of this appeal. As to defendant's DUI conviction, we affirm.

¶ 2 Defendant, Maurice Rakers, was charged with driving under the influence (DUI) (625 ILCS 5/11-501(a) (West 2008)). He filed a motion to rescind the statutory summary suspension. The trial court conducted a hearing on defendant's motion to rescind. After the hearing, the trial court denied the motion to rescind and the suspension was sustained. A jury found defendant guilty of DUI. The trial court later sentenced defendant to 18 months' probation, fined him $2,500, ordered him to complete 400 hours of community service, and ordered him to complete treatment as per an alcohol evaluation. Defendant now attempts to appeal both his statutory summary suspension and the jury's verdict, arguing: (1) the trial court erred in denying his motion to rescind the statutory summary suspension, (2) the jury's

verdict was against the manifest weight of the evidence, (3) the field sobriety tests were not properly administered, and (4) defendant's testimony along with other witnesses' testimony was sufficient to raise reasonable doubt. After careful consideration, we find we do not have jurisdiction to consider defendant's arguments regarding the statutory summary suspension. As to defendant's DUI conviction, we affirm.

¶ 3 BACKGROUND

¶ 4 On March 19, 2011, at 9:46 p.m, Illinois State Trooper Karen Draper issued defendant a citation for DUI after she arrived on the scene of an accident involving a vehicle driven by defendant. Defendant was on his way home from a business meeting and was traveling to his home in Lebanon when the vehicle hydroplaned and traveled into the median of Highway 270 in Madison County and became impaled in mud. The first officer to arrive on the scene was Patrick Barnes, a Glen Carbon police officer. He noticed a strong smell of alcohol emanating from defendant. After Trooper Draper arrived on the scene, Barnes turned over the investigation to her. Draper conducted field sobriety tests and a portable breath test on defendant. Defendant refused the breath test at the State Police Facility.

¶ 5 Defendant pled not guilty to the DUI and filed a motion to suspend the statutory summary suspension. On April 26, 2011, the trial court conducted a hearing on defendant's motion to rescind the statutory summary suspension. After the hearing, the trial court denied defendant's motion. Defendant did not appeal the denial of his motion to rescind the statutory summary suspension.

¶ 6 A jury trial was conducted on October 17 and 18, 2011. Patrick Barnes testified he was the first to arrive on the scene of the accident involving defendant and assisted the Illinois State Police in the investigation. He said sometimes it takes "a little while" for the State Police to respond, so he responded to make sure there were no injuries or lane blockages. When he arrived on the scene he found a silver Infiniti in the median. Defendant

was standing outside of the vehicle, and a passenger was asleep in the front passenger seat.

¶ 7 Defendant admitted he was driving the vehicle. Barnes noticed a strong smell of alcohol on defendant. Barnes asked defendant for his driver's license. According to Barnes, defendant had trouble retrieving it from his wallet and fumbled around for three or four minutes until he was able to produce his license. After running the plates, Barnes determined the car was owned by the passenger, Kathy Bollman, who was defendant's girlfriend. Trooper Draper arrived on the scene 10 or 15 minutes later. Barnes told Draper that defendant smelled of alcohol and he suspected a "1055," which is a possible DUI. Trooper Draper then took over the investigation.

¶ 8 Barnes witnessed Draper giving defendant field sobriety tests. He saw Draper administer the horizontal-gaze-nystagmus test, but was unable to see the results due to his distance from defendant. Barnes also observed Draper attempt to have defendant perform the walk-and-turn test. Barnes said defendant did not comply with Draper's instructions and saw defendant sway and fall off the line. Barnes then observed defendant refuse to complete the walk-and-turn test. According to Barnes, defendant was initially friendly, then became uncooperative, then angry, and ultimately sad. Barnes testified that in his experience with dealing with people under the influence, they are unable to control their emotions, which was how defendant was on the evening in question. Barnes opined that defendant was definitely under the influence of either alcohol or drugs.

¶ 9 On cross-examination, Barnes admitted his headlights were shining in the area where the horizontal-gaze-nystagmus test was performed and the surface where the walk-and-turn test was performed was wet. Barnes also admitted that about 85 to 90% of the accidents in which a person ends up in the median area are not alcohol-related.

¶ 10 Trooper Draper testified she made a video recording of defendant's arrest because as soon as she activated her lights, a camera inside her squad car recorded the events. A copy

of the videotape was played for the jury and Trooper Draper testified as to what occurred. When she arrived on the scene, Officer Barnes approached her and told her the driver was "1055," which means under the influence. Draper then positioned her car and asked Barnes to move his car so she could administer field sobriety tests. She testified defendant was "staggering" as he approached her, and as he explained the situation to her, she could smell alcohol on his breath. She said she could not understand what defendant was trying to tell her. She performed the horizontal-gaze-nystagmus test on defendant. She also attempted to perform the walk-and-turn test, but defendant was unable to follow her directions. She said the videotape played to the jury accurately depicted the incident as it occurred. She testified that after defendant was unable to perform the walk-and-turn test, she decided to arrest defendant for DUI based upon all her observations.

¶ 11 Trooper Draper then talked to Kathy Bollman and asked her if she had anything to drink or if she was capable of driving her car. Bollman told Draper she should not drive her car, so Draper prepared to have the car towed. Officer Barnes took Bollman to the Glen Carbon police department, where Bollman could get a ride home. Draper took defendant to the Madison County jail. According to Trooper Draper, defendant laughed at her and laughed "at just about anything" on the ride to the jail. At the jail, defendant refused to take a breath examination.

¶ 12 The defense called Benjamin Kunz, a general contractor, who was present at a business meeting with defendant, Kathy Bollman, and Dave Favazza on the evening of the accident. Prior to the accident, they all met at the Eagles in Edwardsville at approximately 7 p.m. Kunz testified everyone consumed one cocktail and then left to go to a restaurant where they had dinner reservations at 7:30 p.m. At the restaurant, they all consumed one glass of wine and one beer and ate a full meal. Kunz testified they all left the restaurant about 9 p.m. Kunz said he has known defendant for 10 or 12 years and in his opinion

defendant "was not under the influence or impaired by alcohol." He explained that they were at a business meeting, not a frat party. He did not have any concerns about defendant being able to safely operate a vehicle that evening, and if he did, he would have said something to defendant. On cross-examination, Kunz admitted that he did not know what defendant did prior to 7 p.m. and whether or not defendant consumed any alcohol prior to the drink he had at the Eagles.

¶ 13 Kathy Bollman testified that she is defendant's fiancée and that she and defendant have been a couple for 7½ years. She was defendant's date at the business meeting on the evening in question. She testified she worked until 2 p.m. and then spent the afternoon with defendant and neither of them consumed any alcoholic beverage prior to the drinks they consumed at the Eagles. She said everyone consumed one beer at the Eagles. She testified she had a cosmopolitan and all the men had another beer when they arrived at the restaurant. They ordered a bottle of wine with dinner, which was shared among the five diners. According to Bollman, there was a fifth person in attendance, Terry, who did "contracting stuff." She could not remember what defendant ate, but said he had a full meal, and they left the restaurant at 9 p.m. She did not believe defendant was impaired to drive and would not have let him drive her car if she thought he was impaired.

¶ 14 It was raining on the drive home. She stated she had been awake since 5:30 a.m. and said she was reclined in her seat when she felt the car "kind of hydroplane." When she looked up, a semitruck was going by them and they "just kind of slid off into the ditch." Bollman said they ended up in the median and were stuck in the mud and could not get the car to move. She estimated that Officer Barnes appeared on the scene approximately 10 minutes after the car got stuck in the mud. She said the accident was the result of the weather and in no way due to defendant. She testified defendant was not under the influence of alcohol.

¶ 15 On cross-examination, Bollman testified she did not consider herself to be under the influence either and only asked defendant to drive her vehicle because she was tired. She said it was an hour-long drive home and she entrusted defendant to drive her vehicle. The prosecutor showed Bollman a portion of the video recorded by Trooper Draper. Bollman admitted she had the opportunity to tell the police defendant was not under the influence, but chose not to say anything because she "was pretty shook up still." She said Trooper Draper asked her if she was in the same condition as defendant and she said she probably was. Bollman said if defendant was being arrested, she was not going to take the chance of being arrested herself.

¶ 16 Defendant testified on his own behalf. He testified that he did not consume any alcoholic beverages prior to his business meeting on the night in question. Once at the Eagles, he drank a Budweiser beer. The group then went to a restaurant for their 7:30 dinner reservation. He drove Kathy Bollman's new car to the restaurant. He testified it was the first time he drove the car. Upon arriving at the restaurant, he ordered another Budweiser and drank it. He testified someone ordered a bottle of wine with dinner and the four of them shared the bottle. He could not remember what he ate for dinner, but assumed it was a steak and salad because that is what he typically orders when he goes out for dinner. He said he usually does not eat a large steak and estimated he probably ate an eight-ounce steak. Defendant testified he is 5 feet 11½ inches and weighs approximately 210 pounds.

¶ 17 Defendant testified the meeting and dinner concluded at approximately 9 p.m. and the group dispersed. He did not feel that he was impaired and there was no doubt in his mind that he was capable of driving a car. He drove Kathy's car, and "[i]t was pouring down rain." He also testified that it was extremely windy and he thought there might be a tornado. He was eastbound on Interstate 270 on his way home to Lebanon and was behind a semitruck and tried to pass it. He saw an opening and tried to go around the semi, but then it appeared

the semi was coming over into his lane. The car defendant was driving hydroplaned and "blew off into the ditch." By "ditch," defendant meant the median. He did not believe the accident had anything to do with the alcohol he consumed. He said both he and Kathy were "shook up" after the incident. They waited approximately five minutes for the rain to subside. He said cars were flying by, but they were not in any danger. After about five minutes, the rain subsided, so he put the car in gear, but the car was stuck. Defendant walked around the car and realized they were not going anywhere, so he sat back down in the car and waited for somebody to arrive. They were in the process of looking on a cell phone in order to find a tow truck when a Glen Carbon police officer arrived on the scene.

¶ 18 Defendant testified Officer Barnes came up to the car and asked if they were okay. Defendant said he was reclining in the car when Officer Barnes arrived, but stepped out of the car to retrieve his license. Defendant did not think he had difficulty retrieving his license as Officer Barnes testified. In his opinion he had no more difficulty than he normally does when trying to retrieve any type of credit card from his wallet. After he gave Officer Barnes his license, Barnes told him to get back into the car. Defendant said Barnes did not ask if he had been drinking.

¶ 19 When Trooper Draper arrived she accused him of having a strong odor of alcohol and asked him to perform field sobriety tests. He said the headlights from Officer Barnes's car were shining directly upon him and then the trooper asked him to remove his glasses, at which time she waved her finger in front of him, which he now knew was the horizontal-gaze-nystagmus test, but at the time he was unaware what she was doing. She then wanted him to do a heel-to-toe walk. He said when he tried to perform it, she would yell at him and tell him to stop and start over and he thought, "[S]crew this, I ain't getting anywhere with this." He testified the surface on which he was asked to perform the test was wet, the wind was blowing, and there was a lot of traffic noise, so he became frustrated. He believed

Trooper Draper already made up her mind he was drunk and he "can't work with anybody that's going to sit there and scream at [him]." He told her that he "had a couple of beers at the Eagles" and went out to dinner. He refused to perform any more field sobriety tests because the trooper was yelling at him, he could not get along with her, and he felt her mind was already made up that he was intoxicated.

¶ 20 On cross-examination, defendant testified that it was possible that if he drank four or five beers he would feel like he was under the influence of alcohol, but not when he only drank three beers. Defendant agreed that he did not have any injuries or disabilities which would have prohibited him from performing the field sobriety tests. That portion of the tape where defendant attempted to perform field sobriety tests was then played for the jury. Defendant denied that he ever started the heel-to-toe test before Trooper Draper told him to begin, but after watching the tape, he admitted it showed that he started the test before she told him to begin.

¶ 21 After hearing all the evidence, the jury returned a verdict of guilty. Defendant filed a posttrial motion, which the trial court denied. Defendant then filed the instant appeal.

¶ 22 ANALYSIS

¶ 23 I. STATUTORY SUMMARY SUSPENSION

¶ 24 The first argument raised by defendant is that the trial court erred in denying his motion to rescind the statutory summary suspension. The State replies that this court lacks jurisdiction to hear that portion of defendant's appeal because defendant failed to file a timely notice of appeal from the trial court's denial of his motion to rescind his statutory summary suspension. We agree with the State.

¶ 25 A suspension hearing is an administrative device to stop impaired drivers from driving, while a criminal action for DUI is designed to convict and punish a defendant for DUI. *People v. Dvorak*, 276 Ill. App. 3d 544, 552, 658 N.E.2d 869, 876 (1995). A statutory

summary suspension hearing is civil in nature and, therefore, separate and distinct from a criminal action for DUI, and both are governed by separate rules of appellate procedure. *People v. O'Connor*, 313 Ill. App. 3d 134, 728 N.E.2d 1175 (2000). A trial court's order denying a petition to rescind a statutory summary suspension is a final order disposing of a separate and distinct proceeding and must be appealed within the 30-day time limit of Supreme Court Rule 303(a)(1) (eff. June 4, 2008). *O'Connor*, 313 Ill. App. 3d at 136, 728 N.E.2d at 1177.

¶ 26 In the instant case, the trial court denied defendant's motion to rescind the statutory summary suspension on April 26, 2011. Defendant did not file a notice of appeal from the denial of the motion. Defendant filed his notice of appeal on January 17, 2012, after the trial court denied his posttrial motion following the jury's verdict in the DUI case. Defendant's notice of appeal was filed well outside of the 30-day time limit of Supreme Court Rule 303(a)(1). Therefore, we agree with the State that we lack jurisdiction to consider the trial court's order denying defendant's motion to rescind the statutory summary suspension. However, because defendant's notice of appeal was filed within 30 days of the trial court's final judgment in the criminal proceeding, we have jurisdiction to review defendant's DUI conviction. See Supreme Court Rule 606(b) (eff. Nov. 20, 2009).

¶ 27 II. DUI CONVICTION

¶ 28 With regard to his DUI conviction, defendant first contends the jury's verdict was against the manifest weight of the evidence. We disagree.

¶ 29 In determining whether defendant's conviction is against the manifest weight of the evidence, we look at the evidence in the light most favorable to the prosecution to determine whether any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. *People v. Hall*, 194 Ill. 2d 305, 330, 743 N.E.2d 521, 536 (2000). This standard recognizes that it is the responsibility of the trier of fact to determine the credibility

of the witnesses and the weight to be given their testimony, to resolve any inconsistencies and conflicts in the evidence, and to draw reasonable inferences therefrom. *People v. Sutherland*, 223 Ill. 2d 187, 242, 860 N.E.2d 178, 217 (2006). A reviewing court will not overturn the decision of the trier of fact unless the evidence is so unreasonable, improbable, or unsatisfactory as to justify a reasonable doubt of defendant's guilt. *People v. Campbell*, 146 Ill. 2d 363, 375, 586 N.E.2d 1261, 1266 (1992).

¶ 30 Whether or not the defendant was intoxicated is a question of fact for the jury. *People v. Janik*, 127 Ill. 2d 390, 401, 537 N.E.2d 756, 761 (1989). A DUI conviction may be sustained solely on the testimony of the arresting officer, if credible. *Janik*, 127 Ill. 2d at 402, 537 N.E.2d at 761. In the instant case, defendant admitted he drank alcohol on the evening in question. In fact, all the defense witnesses admitted defendant consumed alcohol. Defendant admitted to drinking three drinks. While defendant and his friends testified he was not impaired, the police who responded to the scene of the accident believed otherwise.

¶ 31 Defendant was arrested after the car he was driving slid off the highway and ended up stuck in mud in the median. Both police officers who responded to the scene testified they smelled alcohol on defendant. According to Officer Barnes, defendant had trouble extracting his license from his wallet. Trooper Draper testified defendant was "staggering" as he approached her. He did not follow directions and either failed or refused to complete the field sobriety tests administered by Trooper Draper. Both Barnes and Draper opined that defendant was intoxicated.

¶ 32 However, the jury was given more evidence to consider than just the responding officers' testimony. They were also shown a videotape of the events. While defendant denied ever starting the heel-to-toe test before Trooper Draper told him to begin, he was impeached by the videotape. After watching the tape, defendant admitted that he started the test early. The jurors were able to view the events of the evening and reach their own

conclusion about defendant's level of intoxication.

¶ 33 Weighing the evidence in the light most favorable to the prosecution, we cannot say it was so unreasonable, improbable, or unsatisfactory to raise a reasonable doubt of defendant's guilt. Here, not one, but two police officers testified defendant was under the influence. Moreover, the jury watched a videotape of the events as they unfolded on the night in question. Under these circumstances, defendant's conviction is not against the manifest weight of the evidence.

¶ 34 Defendant next contends the field sobriety tests were not properly administered. Defendant asserts the field sobriety tests were not administered in compliance with National Highway Transportation Safety Act requirements, and Trooper Draper did not have a comprehensive knowledge of the horizontal-gaze-nystagmus test. However, for the following reasons, we agree with the State that there is no evidence that Trooper Draper did not properly administer field sobriety tests.

¶ 35 First, Trooper Draper testified she administered the tests as she had been taught during specialized DUI courses. Second, Officer Barnes testified the tests were properly administered. While defense counsel attempted to discredit Officer Barnes, he failed to offer any meaningful evidence and merely cross-examined Officer Barnes with self-serving questions as to the proper manner in which to administer the tests. Third, defense counsel's cross-examination was based upon an unidentified treatise which was never offered into evidence. Fourth, the defense failed to present any expert testimony regarding the proper method of administering field sobriety tests and did not ask the trial court to take judicial notice of the unidentified book. Finally, even assuming *arguendo* that the horizontal-gaze-nystagmus test and the heel-to-toe test were improperly administered, there is sufficient evidence in the record to support defendant's conviction, including the videotape which allowed the jury to observe defendant's actions on the night in question and the testimony of

Officer Barnes and Trooper Draper, both of whom testified as to defendant's intoxication.

¶ 36 Defendant's last argument is that his testimony, along with the testimony of the other defense witnesses who were with him on the night in question, was sufficient to raise a reasonable doubt of his guilt. We disagree.

¶ 37 As previously discussed, the testimony of the arresting officer, if credible, is sufficient evidence on which to base a conviction for DUI. *Janik*, 127 Ill. 2d at 402, 537 N.E.2d at 761 Here, not only the arresting officer, but also another officer who responded to the scene testified that defendant was under the influence. There was also a videotape of the arrest which allowed the jury to witness defendant's actions on the night in question. The jury simply found the police officers more credible than defendant, his fiancée, and his business associates. Defendant has failed to convince us that there is a reasonable doubt as to his guilt.

¶ 38 CONCLUSION

¶ 39 For the foregoing reasons, the portion of defendant's appeal challenging the trial court's ruling on the motion to rescind his statutory summary suspension is dismissed for lack of jurisdiction. The judgment of the circuit court of Madison County in defendant's criminal DUI case is affirmed.

¶ 40 Dismissed in part and affirmed in part.