2021 IL App (2d) 170982-U
No. 2-17-0982
Order entered January 13, 2021

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS, Plaintiff-Appellee, v. ADRIANA S. RODRIGUEZ, Defendant-Appellant.	))))))))))	Appeal from the Circuit Court of Du Page County. No. 16-DT-2618 Honorable Anthony V. Coco, Judge, Presiding.

JUSTICE McLAREN delivered the judgment of the court.
Justices Zenoff and Hudson concurred in the judgment.

ORDER

¶ 1 *Held*: The evidence was sufficient to convict the defendant of driving under the combined influence of alcohol and cannabis where the defendant's blood alcohol concentration was .032, she had THC metabolites in her urine, a police officer found her unconscious behind the wheel of her car, on the side of the road, and when she woke up, defendant slurred her words, did not know where she was, spoke in a confused manner, had an odor of cannabis coming from her, and a one-third full bottle of vodka was near her feet. The trial court is affirmed.

¶ 2 After a bench trial, the trial court found defendant, Adriana S. Rodriguez, guilty of driving under the combined influence of alcohol and drugs (DUI) (625 ILCS 5/11-501(a)(5) (West 2016)) and improper transportation of alcohol (625 ILCS 5/11-502(a) (West 2016)). The trial court

sentenced defendant to two 18-month terms of court supervision, to run concurrently. In this appeal, defendant argues that her conviction for DUI must be reversed because the State failed to establish the cause of her impairment. For the following reasons, we affirm.

¶ 3 I. BACKGROUND

¶ 4 On September 24, 2016, Aurora police officer Lee Catavu issued three traffic citations to defendant for driving under the influence of alcohol and drugs, improper transportation of alcohol, and improper parking on a roadway (*id*. § 11-1301).

¶ 5 Prior to trial, by an agreed motion entered by the court, the parties stipulated to the foundation of the defendant's Mercy Hospital medical records from September 25, 2016. The order provides "[t]hat from within the medical records, the parties stipulate that the defendant did submit to hospital [a] urine [test], in which TCH metabolites were detected. Further, *** the defendant's blood was drawn and that, after conversion, there was a blood alcohol concentration of .032 in the defendant's blood." The prosecutor wrote the agreed order entered by the court.

¶ 6 Defendant's trial was held on September 5, 2017. Officer Catavu testified as follows. On September 24, 2016, he was dispatched to the area of Butterfield and Eola Roads based on a report that a vehicle with a flat front tire was parked on the side of Butterfield with the driver inside slouched down, "so maybe part of her lower back would have been on the butt part of the seat." When Catavu arrived at the scene, defendant's car was parked eastbound on the shoulder of Butterfield Road. The car's emergency lights were not flashing. Defendant appeared to be sleeping or unconscious with the keys in the ignition and the engine off. As Catavu approached the car, fire department personnel were trying to wake defendant but were unsuccessful until they applied a "sternum rub." Defendant opened her eyes and began responding to questions but then she fell

back asleep, and "they would have to reapply a sternum rub to get her to respond again." Catavu saw a one-third full bottle of Skol vodka on the driver's-side floor.

¶ 7 Catavu testified that defendant was transported to Mercy Hospital where Catavu spoke with defendant in the emergency room. During this conversation defendant told Catavu that she had been drinking at a friend's house, she was driving home to 233 Stewart Avenue, and she had gotten a flat tire on Montgomery Road. Catavu testified that he was familiar with the area and that if defendant had continued eastbound, which was the direction her car was facing, she would have been driving farther away from her home. Catavu testified that defendant's demeanor was confused, sluggish, and she seemed like she was in a haze and it was hard for her to focus. Also, defendant was treating things very casually; for example, she asked Catavu if they were going to be friends. Catavu testified that defendant had an "odor of burnt cannabis coming from her," her speech was sluggish and slurred, and her eyes were glassy and bloodshot.

¶ 8 Catavu testified that he transported defendant to the Aurora Police Department and asked her additional questions. When Catavu asked defendant what day it was, she responded that it was Friday, when in fact, it was Sunday. Catavu asked defendant what she had been doing for the last three hours and she replied that she had been drinking vodka at a friend's house. When Catavu asked defendant if she was under the influence of alcohol and/or drugs, she replied, "I don't. I think so, but I don't think so." Defendant paused after saying, "I don't," before saying, "I think so, But I don't think so."

¶ 9 Catavu testified that he had been a police officer for 14 years and that he had undergone training in "DUI and alcohol detection," citing a 40-hour block during police academy training that covered driving under the influence and another 40-hour course he took to become a certified breath operator. Catavu acknowledged that he received no specialized training in drug detection

"outside of the initial two trainings [he] indicated." Catavu testified that during his 14 years as an officer, he had the opportunity to see people under the influence of alcohol hundreds of times and the opportunity to see people under the influence of cannabis "probably hundreds of times." Over defense counsel's objection, Catavu opined that based on his experience as a police officer, defendant was under the influence of both alcohol and THC. Catavu based his opinion on his observations of defendant, including her statements, her appearance and sluggishness, and the odor of cannabis coming from her.

¶ 10 The court then viewed portions of a video depicting the scene, including defendant's car and the bottle of vodka recovered from it.

¶ 11 During cross-examination Catavu testified as follows. Catavu did not complete the drug recognition training program or the "ARIDE" program. He received the standard police training. Catavu had never been qualified as an expert witness to testify in a court about the effects of drugs. Catavu did not ask defendant to perform any field sobriety tests specific to cannabis. He did not ask defendant to perform the Romberg balance test or check defendant's tongue for discoloration. Defendant's pupils were not dilated and Catavu's report did not state that defendant's eyes were bloodshot. Defendant told Catavu that she was confused and when he asked defendant if she was ill, she replied, "I'm not really sure. I'm being tested?," and "Test my thyroid." Catavu asked defendant if she had seen a doctor lately and she said, "yes" and provided the name, "Dr. Priscilla Wilkerson." Catavu testified that, due to his lack of training and expertise, he had no way to determine whether defendant was having a thyroid issue as opposed to being under the influence of a drug like cannabis. When Catavu asked defendant if she had been injured lately, defendant replied, "yeah," and that she had a "bad concussion." Catavu testified that he had no training to rule out the possibility that defendant was suffering from the effects of a concussion.

¶ 12 The State moved to admit defendant's Mercy Hospital medical records into evidence and counsel objected. The court asked whether there was anything other than the THC metabolites and blood alcohol content cited in the parties' stipulation that the State wanted the court to consider. The State pointed to an entry in the medical record that purported to be entered by "Maria Salazar, RN" on September 25 at 12:45 a.m., stating "pt reports smoking marijuana today." Defense counsel objected, explaining that the stipulation encompassed only the foundation for and results of the lab results, and that the nurse's note was inadmissible hearsay. The court stated that the nurse's note was not hearsay and could come in as an admission or confession. Defense counsel argued that it was hearsay because the nurse, to whom defendant allegedly made the statement, did not testify. The court overruled the objection, reasoning that the statement was relevant and admissible where defense counsel had stipulated to the foundational elements of the medical record. The court stated that the admission was "really not that earth shattering" in light of the THC or THC metabolites in defendant's system.

¶ 13 The court admitted the noted portions of the medical record, and the State rested. The court granted the defendant's motion for a directed finding on the improper parking charge and denied defendant's motion for a directed finding on to the driving under the influence and transportation open alcohol charges. The court admonished defendant of her right to testify and the defense rested without presenting any evidence.

¶ 14 The court found defendant guilty of driving under combined influence of alcohol and drugs and guilty of transportation of open alcohol. Defendant filed a motion for a new trial arguing that the nurses note contained in the hospital record was hearsay not covered by the terms of the stipulation or any statutory exception and should not have been admitted. At the hearing on the motion, the State argued that it was under the impression that the stipulation included the entire

medical record and that it would have called the nurse as a witness had it believed otherwise. The court stated that although it believed both the prosecutor and defense counsel as to what they understood the stipulation to cover, defense counsel was "most likely correct, that the nurse's note that defendant "reports smoking marijuana today" was inadmissible. The court concluded that even without the nurse's note or testimony from a drug recognition expert, the evidence was sufficient to convict defendant.

¶ 15 Defendant filed a motion for a new trial which the trial court denied. On December 5, 2017, the trial court sentenced defendant to two 18-month terms of court supervision to run concurrently. On December 19, 2017, defendant filed an amended notice of appeal.

¶ 16 II. ANALYSIS

¶ 17 Defendant argues that the evidence was insufficient to prove beyond a reasonable doubt that she was guilty of driving under the combined influence of alcohol and cannabis because the State failed to establish the cause of her impairment.

¶ 18 The standard of review on a challenge to the sufficiency of the evidence 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 crime beyond a reasonable doubt. *People v. Wheeler*, 226 Ill. 2d 92, 114 (2007). This standard is applicable in all criminal cases regardless whether the evidence is direct or circumstantial. *People v. Herring*, 324 Ill.App.3d 458, 460 (2001). The trier of fact is responsible for assessing the credibility of the witnesses, weighing the testimony, and drawing reasonable inferences from the evidence. *People v. Hutchinson*, 2013 IL App (1st) 102332 ¶ 27; *People v. Ortiz*, 196 Ill. 2d 236, 259 (2001). When considering the sufficiency of the evidence, it is not the reviewing court's duty to retry the defendant. *People v. Beauchamp*, 241 Ill. 2d 1, 8 (2011); *People v. Collins*, 106 Ill. 2d 237, 261 (1985). The State must prove each element

of an offense beyond a reasonable doubt. *People v. Siguenza-Brito*, 235 Ill. 2d 213, 224 (2009). A reviewing court will only reverse a criminal conviction when the evidence is so improbable or unsatisfactory that there remains a reasonable doubt as to the defendant's guilt. *Beauchamp*, 241 Ill. 2d at 8; *People v. Collins*, 214 Ill. 2d 206, 217 (2005).

¶ 19 Here, the State charged defendant with DUI under section 11-501(a)(5) of the Code. Thus, the State was required to prove that defendant was in actual physical control of the car while "under the combined influence of alcohol, other drug or drugs, or intoxicating compound or compounds to a degree that render[ed her] incapable of safely driving." 625 ILCS 6/11-501(a)(5). Defendant does not dispute that she exercised control over her car or that she was incapable of driving safely. Rather, at issue is defendant's contention that the State failed to prove the cause of her impairment.

¶ 20 "Circumstantial evidence alone may suffice to prove a defendant guilty of DUI." *People v. Morris*, 2014 IL App (1st) 130512, ¶ 19. When the arresting officer provides credible testimony "[s]cientific proof of intoxication is unnecessary to sustain a conviction for driving under the influence." *People v. Gordon*, 378 Ill. App. 3d 626, 632 (2007). Intoxication is a question of fact, which is the trier of fact's responsibility to resolve[.]" *People v. Hires*, 396 Ill. App. 3d 315, 318 (2009). Further, "[t]he opinion of a qualified police officer that an individual was under the influence of a drug or drugs is by its nature circumstantial evidence, since it depends on that officer's drawing an inference of drug intoxication from the facts he observed personally." *People v. Bitterman*, 142 Ill. App. 3d 1062, 1065 (1986). Thus, a conviction for driving under the influence can be supported solely by the credible testimony of the arresting officer. *Gordon*, 378 Ill. App. 3d at 632. In addition, a defendant's admissions can provide direct evidence of intoxication to sustain a conviction. *People v. Ciborowski*, 2016 IL App (1st) 143352, ¶ 110.

¶ 21 Here, defendant admitted to Officer Catavu that she was under the influence of alcohol and/or drugs. Further, Catavu observed defendant unconscious or sleeping and slouched down in the driver's seat of her car. When defendant finally woke up, she had difficulty staying awake and needed medical intervention to remain so. Defendant had a one-third full bottle of vodka near her feet in her car, she had an odor of burnt cannabis emanating from her body, her speech was slurred and sluggish, and her eyes were bloodshot and glassy. Defendant did not know where she was, where she had been driving, or which day of the week it was. Considering all this evidence in the light most favorable to the prosecution, a reasonable factfinder could find beyond a reasonable doubt that defendant was driving under the combined influence of alcohol and cannabis to a degree that she was incapable of driving safely.

¶ 22 Defendant argues that medical chemical testing did not establish that alcohol and cannabis caused her impairment. Defendant contends that because her blood alcohol concentration (BAC) was .032, this created a presumption that she was not alcohol impaired (see 655 ILCS 5/11-501.2(b)(1) (West 2016) (where evidence shows that the person had a blood-or breath-alcohol concentration "of 0.05 or less, it shall be presumed that the person was not under the influence of alcohol"). Defendant also contends that although she tested positive for TCH metabolites, this did not prove recent cannabis use or that cannabis caused her impairment. However, the State was not required to provide scientific proof of defendant's intoxication. See *Ciborowski*, 2016 IL App (1st) 143352, ¶ 110. Further, defendant ignores that, a conviction of driving under the combined influence of alcohol and any other drug or drugs under section 11-501(a)(5) did not require the State to prove that defendant had enough alcohol in her system to render her incapable of driving safely. See *People v. Vanzandt*, 287 Ill. App. 3d 836, 844 (1997). Similarly, the State was not required to prove that defendant had sufficient drugs in her system to render her incapable of

driving safely. See *id*. Rather, the State had to prove only that there was some alcohol present and some other drug or drugs present and that the combined influence of the two rendered her incapable of driving safely. See 626 ILCS 5/11-501(a)(5) (West 2016). See also *Vanzandt*, 287 Ill. App. 3d at 844. "The essence of the offense is that the alcohol and the other drug or drugs, acting together, render the person incapable of driving safely." *Id*. at 845. Thus, even if the alcohol or cannabis did not independently render her incapable of driving, there was sufficient evidence that their combined effect rendered her incapable of driving safely. See *id*. at 844.

¶ 23 Defendant also contends that the court should have given little weight to Catavu's opinion that cannabis contributed to her impairment because Catavu lacked specialized training, failed to conduct cannabis-specific sobriety tests, and admitted his inability to distinguish signs of cannabis impairment from other medical conditions. With regard to drugs, "the testimony of police officers that a defendant was under the influence of drugs would be sufficient, provided that the officers had relevant skills, experience, *or* training to render such an opinion." (Emphasis added). *Vanzandt*, 287 Ill. App. 3d at 845. Also, a defendant's admission may provide direct evidence of intoxication and sustain a conviction. See *Bitterman*, 142 Ill. App. 3d at 1065. Here, the trial court determined that Officer Catavu had sufficient experience to render his opinion that defendant was under the influence of a combination of alcohol and marijuana. Further, defendant admitted to being under the influence of drugs and/or alcohol. Thus, taken together, the evidence supported the trial court's finding of guilt beyond a reasonable doubt.

¶ 24 Defendant cites *People v. Workman*, 312 Ill. App. 3d. 305 (2000), to support her argument. In *Workman*, we reversed the defendant's conviction of driving under the influence of a drug, *i.e.*, lorazepam. We reasoned that the evidence was insufficient because the only evidence supporting the conviction was testimony from an officer who had no knowledge "about lorazepam, its nature,

or its effects on a driver." *Id*. at 311. In contrast, here Catavu testified that he had observed hundreds of people under the influence of cannabis. Thus, *Workman* is distinguishable from this case.

¶ 25 Defendant also cites a case from our sister state, *State v. Stark*, 157 Idaho 29 (2013), to support her argument. We initially note that decisions of our sister states are not binding but such decisions may be persuasive authority. *People v. Reyes*, 202 IL App (2d) 170379, ¶ 63. In *Stark*, defendant was convicted of driving under the influence of a drug or intoxicating substance. *Id*. at 30. At trial the evidence established the defendant was impaired based on his erratic driving and poor performance on three field sobriety tests as observed by the arresting officer. *Id*. A breath test did not detect the presence of alcohol. *Id*. However, a blood draw revealed the presence of THC in the defendant. *Id*. The defendant testified that he struggled with the field sobriety tests because he was dehydrated, hot, hungry, and agitated at the time and that he suffered from various conditions including a brain aneurysm, paranoid schizophrenia, and bipolar disorder. *Id*. Further, five days before his arrest, the defendant had been released from an eight-week hospital stay. *Id*. The defendant testified that, at the hospital, he had been medicated with a "cocktail of drugs" five days before his arrest. *Id*. at 32. After his arrest the defendant was involuntarily committed to a psychiatric hospital. *Id*. Although the trial court found that the State had not proved that the was under the influence of marijuana, the trial court found the defendant guilty.

¶ 26 The defendant's conviction was reversed on appeal. The court of appeals stated that there was no question the defendant's driving was impaired, but there was insufficient evidence to prove that the impairment was caused by drugs or some other intoxicating substance. *Id*. at 32. The court of appeals reasoned:

> "The State presented no evidence suggesting that [the defendant's] behavior was consistent with the symptoms of marijuana use. Although the State proved that [the defendant] was impaired, and that he had used marijuana at some point in the past, the evidence presented by the State was insufficient to prove that [the defendant's] impairment was caused by [his] past marijuana use." *Id*.

Here, there was evidence of defendant's recent cannabis use; the odor of burnt cannabis coming from her body as testified to by Officer Catavu. Further, there was no testimony or other evidence in this case that defendant had recently taken a cocktail of medications. Thus, *Stark* is neither precedential nor persuasive here.

¶ 27 Defendant also argues that Catavu's testimony that he smelled burnt cannabis coming from defendant should have carried little weight. Defendant cites *People v. Foltz*, 403 Ill. App. 3d 419 (2010), to support her argument.

¶ 28 In *Foltz*, the appellate court reversed the defendant's conviction for aggravated driving under the combined influence of alcohol and drugs. The only evidence presented at trial was the testimony of a police officer who smelled the odor of burnt cannabis in the defendant's car. *Id*. at 421. The police officer had less than two years' experience and, prior to the arrest of the defendant, he had never arrested anyone for driving under the combined influence of alcohol and drugs or driving under the influence of drugs. *Id*. at 422. The defendant refused to submit to blood and urine tests. *Id*. at 422. In reversing the defendant's conviction, the appellate court reasoned that the officer did not have enough experience to opine that the defendant was under the combined influence of cannabis and alcohol. *Id*. at 425. The court also noted that there was no evidence that the defendant had "slurred speech, dilated pupils, glassy eyes, bloodshot eyes, trouble walking, or trouble getting out of his vehicle, nor did he admit to recently smoking cannabis." *Id*. at 426. Thus,

the smell of burnt cannabis coming from the defendant's car, alone, was insufficient to prove that he had smoked cannabis that evening or that cannabis was in his breath, blood, or urine at the time of his arrest. *Id*.

¶ 29 In contrast to *Foltz*, here, Officer Catavu had 14 years' experience as a police officer and had seen people under the influence of cannabis hundreds of times. Further, directly contrary to the facts in *Foltz*, defendant in this case was found on the side of the road, unconscious and slouched down in the driver's seat of her car. Upon waking with medical intervention, defendant's speech was slurred and sluggish, her eyes were bloodshot and glassy, and she did not know where she was, where she had been driving, or which day of the week it was. Also, defendant had THC metabolite in her body. Thus, *Foltz* is distinguishable from this case.

¶ 30 Lastly, defendant argues that the State relied on a nurse's note in defendant's medical record (stipulated as admissible for purposes of the toxicology results only) indicating that defendant told the nurse that she had smoked marijuana that day. However, the admission of this evidence was harmless error because there is no reasonable probability that the finding would have been different had the hearsay been excluded. See *People v. Oehrke*, 369 Ill. App. 3d 63, 71 (2006). The record is clear that the trial court did not rely on the nurse's note in finding defendant guilty of driving under the combined influence of alcohol and the offense. Thus, the error was harmless.

¶ 31 III. CONCLUSION

¶ 32 The judgment of the circuit court of Du Page County is affirmed.

¶ 33 Affirmed.