

**NOTICE:** This order was filed under Supreme Court Rule 23 and is not precedent except in the limited circumstances allowed under Rule 23(e)(1).

2023 IL App (3d) 220225-U

Order filed June 29, 2023

---

IN THE  
APPELLATE COURT OF ILLINOIS  
THIRD DISTRICT

2023

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. 3-22-0225
DAISY MENDEZ,	)	Circuit No. 19-DT-905
Defendant-Appellant.	)	Honorable Victoria R. Breslan, Judge, Presiding.

---

JUSTICE ALBRECHT delivered the judgment of the court.  
Justices Hettel and Davenport concurred in the judgment.

---

**ORDER**

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

¶ 2 Defendant, Daisy Mendez, appeals her conviction for driving while under the influence of alcohol (DUI), arguing that the evidence was insufficient to prove her guilty beyond a reasonable doubt. We affirm.

¶ 3 I. BACKGROUND

¶ 4 Defendant was charged by complaint with DUI (625 ILCS 5/11-501(a)(2) (West 2014)). The case proceeded to a six-person jury trial on July 22, 2022. At trial, Trooper Marcin Gasienica testified that he had been employed by the Illinois State Police for eight years and was trained in the detection and apprehension of individuals accused of DUI. On September 1, 2019, at approximately 6:44 a.m., Gasienica was dispatched to the scene of a single-vehicle crash on Interstate 55. Upon arriving, Gasienica observed a gray sport utility vehicle (SUV) resting sideways across two of the three available lanes of traffic. Defendant was in the driver's seat, and the keys to the SUV were in the ignition. Gasienica observed damage to the front of the vehicle and paint transfer on the guardrail that was similar in color to the gray SUV.

¶ 5 Gasienica approached the SUV and spoke to defendant. Gasienica detected a strong odor of an alcoholic beverage on defendant's breath and that her eyes were "glossy" and bloodshot. Defendant told Gasienica that two cars were racing and hit her SUV. Gasienica asked defendant where she was traveling from and going to. Defendant appeared to be confused about her direction of travel and which ramp she had used to enter Interstate 55. Gasienica relocated defendant to the back of his squad car and attempted to move her SUV off the highway. While sitting in the driver's seat of the SUV, Gasienica noticed that the seat was wet. He later discovered that defendant had urinated on the seat.

¶ 6 While in the back of Gasienica's squad car, defendant complained of having a headache. Gasienica requested an ambulance, and defendant was transported to the hospital. Gasienica continued his investigation at the hospital. He again observed a strong odor of an alcoholic beverage on defendant's breath, as well as bloodshot and glossy eyes. Gasienica testified that defendant swore at him and was rude to him. Gasienica read defendant the warning to motorist at

the hospital and explained the consequences of refusing to submit to chemical testing. Defendant refused to submit to chemical testing and to sign the warning to motorist.

¶ 7 After Gasienica's testimony concluded, the State rested, and defendant moved for a directed finding. Defendant argued that the State failed to present sufficient evidence that defendant was under the influence of alcohol at the time of the accident. The motion was denied.

¶ 8 In her case-in-chief, defendant presented Gasienica's squad car video that began just before Gasienica's arrival at the scene. The video showed Gasienica speaking to another driver when he arrived, then telling that driver that he appreciated his help and to be careful when leaving. The video next showed Gasienica approaching the driver of the SUV and asking, "What happened?" Defendant replied, "He hit me and then another one was about to hit me again." Gasienica then asked defendant to move her SUV but defendant was unable to do so. Gasienica told defendant to sit in his squad car and he attempted, unsuccessfully, to move the SUV. Upon exiting the SUV, Gasienica exclaimed, "Did I just sit on something?"

¶ 9 In the back of Gasienica's squad car, defendant told Gasienica she was coming from her parents' house. Gasienica, apparently mishearing defendant, asked her where her "friend" lived, and she replied, "Bolingbrook." Gasienica confronted defendant about her apparent confusion regarding her direction of travel, and defendant stated she did not know because her head hurt. Gasienica requested an ambulance. While waiting for the ambulance, Gasienica spoke to defendant for approximately ten minutes regarding how the accident had occurred and from where defendant was coming. After approximately seven minutes, Gasienica advised defendant that he could smell alcohol on her breath, and defendant denied drinking alcohol.

¶ 10 Defendant testified that English was her second language, and she occasionally had trouble expressing or explaining herself in English. She stated that on September 1, 2019, she awoke at 5

a.m., ate breakfast, and got ready at her father's house in Cicero. She planned to meet her mother at the Weber Road exit on Interstate 55 and then follow her mother to her brother's house in Lawrence, Illinois. Defendant denied drinking alcohol before leaving the house. Defendant traveled south on Interstate 55 and was struck by a vehicle before exiting the highway. Defendant testified that she was in the middle lane and observed two black vehicles in her rear-view mirror approaching her quickly. She felt something hit her SUV, hit her head, and then her SUV was stopped on the highway. Defendant stated that one black vehicle initially stopped but left after a short while. The other black vehicle drove off. Another vehicle stopped, and the driver reassured defendant that help was on the way.

¶ 11 After resting, defendant renewed her motion for a directed finding, arguing again that no reasonable finder of fact could find her guilty of DUI. The court denied the motion. The jury found defendant guilty of DUI. Defendant appeals.

¶ 12 II. ANALYSIS

¶ 13 Defendant argues on appeal that the evidence was insufficient to prove her guilty beyond a reasonable doubt. Specifically, she contends that Gasienica's testimony was not credible and was contradicted by his squad car video and the DUI report. Defendant further contends that there are innocent explanations for the evidence suggesting defendant's intoxication. Defendant points to Gasienica's decision to request that defendant relocate her vehicle after detecting an odor of an alcoholic beverage on defendant's breath and observing that defendant had glossy and bloodshot eyes.

¶ 14 As a preliminary matter, we must disregard defendant's contention that Gasienica's testimony was inconsistent with the DUI report. The report referenced by defendant on appeal was not used during the trial, nor was it admitted into evidence. This court will not consider evidence

that is not part of the trial record or presented to the trial judge. See *People v. Blankenship*, 406 Ill. App. 3d 578, 590 (2010). Moreover, there was no mention of the report during defendant's two motions for directed finding, closing arguments, or in any posttrial motions. An appellant who fails to raise an issue before the circuit court forfeits the issue and may not raise it for the first time on appeal. *People v. Rodriguez*, 2021 IL App (1st) 200173, ¶ 58; see also *People v. Enoch*, 122 Ill. 2d 176, 186 (1988) (to preserve an issue for appellate review, a defendant must object to it at trial and raise it in a posttrial motion).

¶ 15 In deciding whether the State has proven defendant's guilt beyond a reasonable doubt, the reviewing court must determine 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." (Emphasis omitted.) *Jackson v. Virginia*, 443 U.S. 307, 319 (1979); *People v. Cooper*, 194 Ill. 2d 419, 430-31 (2000). It is not the job of the appellate court to second-guess the circuit court or to retry defendant on appeal. *People v. Villarreal*, 198 Ill. 2d 209, 231 (2001). We may not substitute our judgment for that of the circuit court and will not reverse a conviction unless the evidence is so improbable or unsatisfactory as to create a reasonable doubt of defendant's guilt. *People v. Lundy*, 334 Ill. App. 3d 819, 825 (2002).

¶ 16 To obtain a conviction for DUI, the State must prove that defendant (1) was under the influence of alcohol or had a blood alcohol concentration (BAC) of 0.08 or more and (2) was driving or in actual physical control of a vehicle. 625 ILCS 5/11-501(a)(1), (2) (West 2014). Defendant does not dispute that she was in actual physical control of a vehicle. She does dispute that she was under the influence of any substance, and no chemical testing was performed to determine the BAC of defendant. Therefore, we will consider the sufficiency of the evidence presented that defendant was under the influence of alcohol.

¶ 17 Intoxication is a question of fact and may be proven in several ways. *People v. Hires*, 396 Ill. App. 3d 315, 318 (2009). Relevant evidence of a defendant’s mental and physical impairment includes, but is not limited to, testimony by an officer as to defendant’s appearance, speech, or conduct, and testimony that the officer detected the odor of an alcoholic beverage on defendant’s breath. *People v. Elliott*, 337 Ill. App. 3d 275, 281 (2003). Circumstantial evidence may also be used to establish a defendant’s guilt. *People v. Diaz*, 377 Ill. App. 3d 339, 345 (2007). Further, a defendant’s refusal to submit to chemical testing may be used to show a consciousness of guilt. *People v. Garriott*, 253 Ill. App. 3d 1048, 1052 (1993). “The testimony of a single officer is sufficient to sustain a conviction of DUI.” *People v. Jophlin*, 2018 IL App (4th) 150802, ¶ 48. “[T]he testimony of a single witness must be positive and credible to convict, but contradiction by defendant does not diminish the weight of the testimony.” *Id.*

¶ 18 In this case, the State provided evidence that defendant (1) had been involved in a motor vehicle accident, (2) had an odor of an alcoholic beverage on her breath, (3) had glossy and bloodshot eyes, (4) had urinated in her SUV, (5) was confused about both her direction of travel and the circumstances of the accident, and (6) was verbally abusive toward the arresting officer. Viewed in the light most favorable to the State, these facts together are sufficient to prove defendant’s guilt beyond a reasonable doubt. See, e.g., *People v. Love*, 2013 IL App (3d) 120113, ¶¶ 36-37 (defendant found guilty based on an officer’s testimony that she detected an odor of an alcoholic beverage on defendant’s breath, defendant had red and bloodshot eyes, and defendant displayed confusion following a traffic accident wherein defendant ran her car off the road); *People v. Bostelman*, 325 Ill. App. 3d 22, 34-35 (2001) (defendant found guilty based on the odor of an alcoholic beverage on defendant’s breath, his glassy and bloodshot eyes, his confusion at the police station, and his refusal to submit to chemical testing).

¶ 19 In coming to this conclusion, we reject defendant’s contention that Gasienica’s testimony should be rendered wholly incredible because the squad car video reveals that Gasienica spoke to defendant upon arriving at the scene of the accident and then requested that defendant drive her SUV off the highway. We find that the video does not materially contradict Gasienica’s testimony about detecting an odor of an alcoholic beverage on defendant’s breath. Significantly, the video provides no indications about when Gasienica first detected the odor of an alcoholic beverage on the defendant’s breath, and Gasienica himself provided no testimony about when he first detected the odor. The video reveals that Gasienica did not confront defendant about the odor until after he conversed with her in the back of his squad car.

¶ 20 It is therefore plausible that Gasienica did not detect the odor of an alcoholic beverage until he spoke to defendant in the enclosed space of his squad car (approximately three minutes after asking her to move her vehicle). “On appeal, we will not substitute our judgment for that of a trier of fact in cases where the facts could lead to either of two inferences, unless the inference accepted by the fact finder is inherently impossible or unreasonable.” *People v. Lemke*, 349 Ill. App. 3d 391, 398 (2004). Additionally, “[i]t is the province of the jury to weigh the evidence, assess the witnesses’ credibility, resolve any conflict in the evidence, and draw reasonable inferences and conclusions from the evidence,” and we accord great deference to the jury’s decision whether to believe specific testimony. *People v. Tatera*, 2018 IL App (2d) 160207, ¶ 23.

¶ 21 We further reject defendant’s argument that there are potentially innocent or lawful explanations for the evidence presented by the State. As noted above, the credibility of the witnesses and the weight of the evidence are for the trier of fact to assess. *People v. Janik*, 127 Ill. 2d 390, 401 (1989). We do not find the jury’s reliance on Gasienica’s testimony, its assessments about the credibility of the witnesses, or its interpretations of the evidence inherently impossible

or unreasonable, nor do we find that the inferences drawn from the evidence were unreasonable.

We therefore find that the State proved defendant guilty beyond a reasonable doubt of DUI.

¶ 22

### III. CONCLUSION

¶ 23

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

¶ 24

Affirmed.