

2022 IL App (2d) 210503-U  
No. 2-21-0503  
Order filed September 9, 2022

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

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IN THE  
APPELLATE COURT OF ILLINOIS  
SECOND DISTRICT

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CITY OF ELMHURST,	)	Appeal from the Circuit Court
	)	of Du Page County.
Plaintiff-Appellee,	)	
	)	
v.	)	No. 18 DT 1407
	)	
JEANETTE ZAVALA,	)	Honorable
	)	Karen Masters Wilson,
Defendant-Appellant.	)	Judge, Presiding.

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JUSTICE HUTCHINSON delivered the judgment of the court.  
Justices McLaren and Hudson concurred in the judgment.

**ORDER**

¶ 1 *Held:* At defendant's trial for driving under the influence of alcohol (DUI), assuming *arguendo* that admission of her testimony that she was an alcoholic was erroneous, it was harmless where the remaining evidence proved her guilty of DUI beyond a reasonable doubt.

¶ 2 Defendant, Jeanette Zavala, appeals from the judgment of the circuit court of Du Page County finding her guilty, after a bench trial, of driving under the influence of alcohol (DUI) (Elmhurst Municipal Code, § 44.220-5/11-501(a)(2) (2002)) and disobeying a traffic signal (625 ILCS 5/11-306 (West 2018)). Defendant contends that the trial court committed reversible error

when it admitted evidence that defendant was an alcoholic. Because any error in introducing that evidence was harmless, we affirm.

¶ 3

### I. BACKGROUND

¶ 4 The following facts were established at defendant's trial. On June 22, 2018, at around 2:34 a.m., Officer Leo Elizalde of the Elmhurst Police Department was patrolling in his marked squad car. As he drove south on Poplar Street, he approached a four-way intersection with St. Charles Road controlled by a traffic light.

¶ 5 The light for southbound traffic was green, including the left turn arrow. Elizalde concluded that the northbound traffic light was red.

¶ 6 As Elizalde was about to turn left onto St. Charles Road, he saw a northbound vehicle turn right onto St. Charles Road without stopping. Because the vehicle had failed to stop for the red light, Elizalde followed it, turned on his squad car's video camera, and activated his emergency lights. The vehicle activated its right turn signal, turned onto a side street, and pulled over.

¶ 7 Defendant was the driver and only occupant. As Elizalde spoke to defendant at the driver's window, he saw that she had bloodshot and glassy eyes and her speech was slurred. In addition, Elizalde smelled the odor of an alcoholic beverage coming from the vehicle's interior.

¶ 8 Elizalde had defendant exit the vehicle. After she did so, Elizalde smelled the odor of an alcoholic beverage on her breath. Elizalde could not administer the horizontal gaze nystagmus test, because defendant would (1) not follow his pen tip with her eyes, (2) occasionally close her eyes, and (3) not follow instructions. Defendant also failed to follow his instructions for the walk-and-turn test.

¶ 9 Elizalde handcuffed defendant and placed her in the backseat of his squad car. On the drive to the police station, defendant banged the handcuffs on the window between the front and back

seats and on one of the rear side windows. After arriving at the police station, defendant “[s]till appeared to be upset, emotional, [and] uncooperative.”

¶ 10 An ambulance transported defendant to a local hospital. While there, defendant refused to submit to a breathalyzer or chemical test.

¶ 11 Elizalde had observed numerous times, in personal and professional settings, people who were under the influence of alcohol. He opined that defendant was under the influence of alcohol when he stopped her. He based his opinion on her driving, her bloodshot and glassy eyes, her slurred speech, and her “admission of drinking” (on the traffic stop video, defendant admitted that she drank one beer).

¶ 12 On cross-examination, Elizalde admitted that, after he turned on his emergency lights, defendant activated her right turn signal, turned onto a side street, and pulled over without hitting the curb. When he approached her vehicle, she lowered the window and, when asked, provided an insurance card and identification. Defendant was crying and said that she had had a miscarriage. Although defendant said that she wanted to contact Hines Veterans Hospital, Elizalde did not assist her in getting medical attention at that time.

¶ 13 When defendant exited her vehicle, she did so without stumbling or using the door. She followed Elizalde’s instructions to walk to the back of her car. As she did so, she did not stumble or lean on the car. Elizalde admitted that, when he asked defendant to do the walk-and-turn test, he did not ask her if she had any medical problems related to her knees, hips, or legs that might affect her ability to do that test.

¶ 14 The prosecution introduced portions of the traffic stop video. The video is consistent with Elizalde’s testimony. Defendant appears hysterical, verbally abuses Elizalde and his backup officer, and does not follow the directions for the field sobriety tests.

¶ 15 Defendant testified that she suffered serious hip and knee injuries while serving a tour of duty in Afghanistan. She claimed that those injuries caused her to limp. She did not testify, however, that she told Elizalde about her injuries.

¶ 16 Defendant testified that, before June 22, 2018, she had been diagnosed with posttraumatic stress disorder, military sexual trauma, and a traumatic brain injury. Because of the combination of those three health issues, the defendant had a “very hard time handling high-stress situations.” According to defendant, when in high-stress situations, she goes into “self-defense mode due to just [her] combat experience” and “what [she had] been taught.” On June 22, 2018, the combination of being pulled over, believing she was having a miscarriage, and previously fighting with her boyfriend put her “in that situation.” The situation “escalated \*\*\* very quickly[,] and she did not know “how to deal with it all at once.”

¶ 17 On cross-examination, defendant testified that she had consumed one beer before being stopped. When the prosecutor asked her if she was an alcoholic, defense counsel objected, and the trial court sustained the objection. The prosecutor then asked if the medical conditions she identified “affected” her on June 22, 2018, and she answered yes. The prosecutor then argued to the court that, since defendant was permitted to testify that her medical conditions affected her on the night of the traffic stop, the State should be permitted to inquire whether “any other conditions” might have affected her. The court ruled that, because defendant had raised her medical diagnoses as a potential defense, it would be inappropriate to limit the prosecutor’s inquiry. Thus, the court allowed the prosecutor to ask defendant if she was an alcoholic.

¶ 18 When the prosecutor inquired, the defendant answered that she was an alcoholic and had been aware of her alcoholism before June 22, 2018. The prosecutor asked if she agreed that an alcoholic is “someone that cannot control their drinking.” Defendant disagreed. She suggested

instead that an alcoholic is someone who “starts [drinking] and just can’t stop,” or “doesn’t know their limits.” Defense counsel did not ask the court to reconsider its ruling allowing the State to ask defendant whether she was an alcoholic or move to strike defendant’s testimony about being an alcoholic. Defendant admitted that her conduct toward the officers on June 22, 2018, was inappropriate.

¶ 19 During closing argument, the prosecutor noted that defendant had testified that her medical conditions had a bearing on her actions on June 22, 2018. He added that one of defendant’s conditions was that she was an alcoholic. He then stated that one of the common definitions of an alcoholic is “someone who starts drinking and can’t stop.” Defense counsel responded that, although defendant admitted to being an alcoholic, an alcoholic can drive without being under the influence

¶ 20 In ruling, the trial court initially commended defendant for her military service and expressed sympathy for her service-related diagnoses. However, the court added that those conditions did not give defendant an “unfettered card to be rude and swear and conduct herself in the way she did when [the] officers pulled her over.” The court also commended Elizalde for his professionalism toward defendant and found him credible. The court further found that defendant gave self-serving testimony regarding her hip and knee conditions and never told Elizalde that those conditions prevented her from performing the field sobriety tests. The court never mentioned defendant’s testimony that she was an alcoholic. After reviewing the evidence, the court found defendant guilty of both offenses.

¶ 21 Defendant filed a motion for a new trial, contending, among other things, that the trial court abused its discretion in allowing the prosecutor to question her about her alcoholism. After denying

that motion, the court sentenced defendant to 18 months' court supervision on each conviction. Defendant filed this timely appeal.

¶ 22

## II. ANALYSIS

¶ 23 On appeal, defendant contends that evidence of her alcoholism was not relevant and, even if it were, its prejudicial impact clearly outweighed its probative value.

¶ 24 We need not decide whether any error occurred in the admission of the evidence regarding defendant's alcoholism, because any error was not material to the outcome of the trial. In issuing its ruling, although the trial court commented on defendant's testimony regarding her service-related health issues, it never mentioned defendant's testimony that she was an alcoholic. Further, the court is presumed to have disregarded improper evidence and considered only competent evidence. See *People v. Johnson*, 327 Ill. App. 3d 203, 210 (2001). There is no indication in the record that the court did otherwise. Because the record does not show that the court relied on defendant's testimony that she was an alcoholic, that evidence did not materially impact the outcome of the trial. Thus, we need not decide whether its admission was error.

¶ 25 However, even if it was error to admit the evidence that defendant was an alcoholic, such error was harmless. The competent evidence at trial was more than sufficient to prove defendant guilty beyond a reasonable doubt of DUI.

¶ 26 A defendant can be found guilty of DUI where she was under the influence to the degree that rendered her incapable of driving safely. *People v. Phillips*, 2015 IL App (1st) 131147, ¶ 18. The State may prove this incapability entirely by circumstantial evidence. *Id.*

¶ 27 Here, defendant disregarded a traffic control light. Elizalde testified that defendant had bloodshot and glassy eyes and that her speech was slurred. She had an odor of an alcoholic beverage on her breath, which was consistent with her admission that she had drunk beer. She was

uncooperative and appeared unable to follow the instructions for the field sobriety tests. Moreover, Elizalde, whom the trial court found credible, opined that defendant was under the influence. See *Phillips*, 2015 IL App (1st) 131147, ¶ 18 (“The testimony of a single, credible police officer may alone sustain a conviction for driving under the influence of alcohol.”) Defendant’s refusal to submit to a blood-alcohol test was further evidence of her guilt, from which one could infer that defendant knew she was intoxicated. See *People v. Johnson*, 218 Ill. 2d 125, 140 (2005).

¶ 28 Although defendant points to her medical diagnoses as reasons for how she drove and behaved during the stop, she never mentioned those conditions to the officers. Nor was there evidence of how such conditions might have affected her ability to drive. Thus, the trial court was not incorrect when it characterized defendant’s reference to those conditions as self-serving. Moreover, even if those conditions impacted defendant’s driving, that fact would not have precluded a finding that she was under the influence when Elizalde stopped her. And that says nothing about defendant’s behavior after she was stopped as further indicia of impairment.

¶ 29 III. CONCLUSION

¶ 30 Like the trial court, we are sensitive to defendant’s manifest difficulties. However, given the significant competent evidence that defendant was under the influence, a trial without any reference to defendant’s alcoholism would only produce the same result. Thus, any error in admitting evidence that defendant was an alcoholic was harmless beyond a reasonable doubt. For the reasons stated, we affirm the judgment of the circuit court of Du Page County.

¶ 31 Affirmed.