IN THE COURT OF APPEALS
FIRST APPELLATE DISTRICT OF OHIO
HAMILTON COUNTY, OHIO

STATE OF OHIO,	:	APPEAL NO. C-220570 TRIAL NO. C-22TRC-23421-A
Plaintiff-Appellee,	:	
vs.	:	*O P I N I O N.*
JEREMY FRITSCH,	:	
Defendant-Appellant.	:	

Criminal Appeal From: Hamilton County Municipal Court

Judgment Appealed From Is: Affirmed

Date of Judgment Entry on Appeal: August 2, 2023

Melissa A. Powers, Hamilton County Prosecuting Attorney, and *Sean M. Donovan*, Assistant Prosecuting Attorney, for Plaintiff-Appellee,

Raymond T. Faller, Hamilton County Public Defender, and *Krista Gieske*, Assistant Public Defender, for Defendant-Appellant.

WINKLER, Judge.

{¶1} Following a bench trial in municipal court, defendant-appellant Jeremy Fritsch was convicted of one misdemeanor count of operating a vehicle while intoxicated ("OVI") in violation of R.C. 4511.19. He has appealed that conviction, raising three assignments of error for review. For the following reasons, we affirm his conviction.

Facts and Procedural History

{¶2} Over the course of October 3, 2022, Fritsch had three encounters with Officer Joesph Stone at Delhi Township Park. These interactions culminated in Officer Stone arresting Fritsch for OVI. Fritsch and Officer Stone first interacted in the afternoon when Officer Stone responded to a complaint that Fritsch was sitting by some children and unsettling the other park-goers. Officer Stone told Fritsch to hang out somewhere else.

{¶3} The second encounter came not much later, around 9:00 p.m. Officer Stone was called to help Fritsch because he had locked himself out of his car. Fritsch had gone to a nearby house to try to borrow a phone to call for help. Officer Stone unlocked Fritsch's vehicle, but Fritsch refused to go to it, claiming he was concerned about coyotes in the park. Officer Stone testified he has never seen coyotes while patrolling Delhi Park over the previous year.

{¶4} The third encounter began just 30 minutes later. Officer Stone noticed people yelling and waving to get his attention. As he approached, Officer Stone saw those people chase Fritsch away. One of them told Officer Stone that Fritsch had stood on top of the neighbor's truck talking about coyotes. Officer Stone caught up with Fritsch and told him he had to leave the park at that time. Officer Stone asked Fritsch if he was okay to drive because,

up to that time, Officer Stone thought the interactions with Fritsch were "slightly off," though Officer Stone was not "100 percent sure at that time that [Fritsch] was intoxicated." Fritsch maintained that he was fine and then got in his car and drove off the road onto the grass.

{¶5} Officer Stone got into his police cruiser and pursued Fritsch through the grass and the adjacent Floral Paradise Park. Officer Stone activated his overhead lights and eventually his siren, but Fritsch continued driving through the grass until he reached a paved driveway abutting Floral Paradise Park. Officer Stone's body-worn camera indicated the pursuit lasted about one minute and Officer Stone estimated the pursuit covered 500 to 1,000 feet.

{¶6} At the stop, Officer Stone observed Fritsch to have bloodshot eyes and dilated pupils, but Officer Stone did not smell the odor of an alcoholic beverage. Fritsch's speech was slow and sometimes muffled, but not slurred. Officer Stone recovered a marijuana pipe from Fritsch, but did not locate any marijuana. Fritsch denied having "consumed anything." When asked what he was doing driving through the park's grass, Fritsch responded that he was leaving the park as ordered, but wanted to take a shortcut to visit his "garden." Believing him to be impaired, Officer Stone then conducted standardized field-sobriety tests on Fritsch. While administering the horizontal-gaze-nystagmus test, Officer Stone detected three out of six possible clues of impairment. On the walk-and-turn test, Officer Stone again observed three out of six possible clues of impairment. After instructing Fritsch on the one-leg-stand test, Fritsch reattempted the walk-and-turn test. Officer Stone then readministered the one-leg-stand test and Fritsch displayed two of four possible clues of

impairment. Officer Stone asked again if Fritsch had ingested anything and Fritsch again denied that he had.

{¶7} At the time of the incident, Officer Stone was an eight-year veteran of the Delhi Township Police Department. Based on his observations, his training and his experience, Officer Stone concluded that Fritsch was impaired and arrested him for OVI.

{¶8} After the arrest, Officer Stone and another officer who had just arrived on the scene searched Fritsch's vehicle. Inside, Officer Stone found a rolled up sticky note with residue on it tucked in the driver's side visor. Laboratory testing later identified the residue as methamphetamine. Fritsch denied any knowledge of the sticky note. After searching the vehicle, Officer Stone transported Fritsch to a nearby police station and interviewed him. Officer Stone testified that Fritch admitted to drinking "a couple beers" and that he began drinking the day before and stopped a few hours earlier. Officer Stone further testified that Fritsch admitted that he was under the influence of alcohol at that time. Officer Stone asked Fritsch to submit to a urine test because he believed he had drugs in his system. But Fritsch refused, citing an inability to use the restroom at the time. Officer Stone testified that he believed Fritsch was under the influence of alcohol or drugs and that he should not be driving. Fritsch was charged with possession of drug paraphernalia, OVI, and failure to maintain reasonable control. Officer Stone sent the sticky note with the residue to the Hamilton County Crime Lab for analysis.

{¶9} Before trial, the drug-paraphernalia charge was dismissed by the state. At trial, Hamilton County Crime Lab analyst Laura Kimble was called to testify. Defense counsel objected to her testimony as irrelevant. Defense

counsel argued that because the drug-paraphernalia charge had been dismissed and Officer Stone had not testified to methamphetamine use as the basis for OVI, all evidence about the sticky note was irrelevant. The trial court overruled the objection and permitted the analyst to testify that she found methamphetamine residue on the sticky note and admitted her laboratory report detailing those findings. The trial court convicted Fritsch of the OVI charge but acquitted him of the failure-to-maintain-reasonable-control charge. The court sentenced Fritsch to eight days, with credit for eight days already served, suspended his license for one year and placed him on a six-month period of community control. Fritsch now appeals, raising three assignments of error.

Admission of the Analyst's Testimony and Report

{¶10} In Fritsch's first assignment of error, he argues the trial court erred in permitting the analyst to testify about the methamphetamine residue on the sticky note and admitting the analyst's report. A trial court's decision to admit or exclude evidence is reviewed for an abuse of discretion. *State v. Morris*, 132 Ohio St.3d 337, 2012-Ohio-2407, 972 N.E.2d 528, ¶ 19. An abuse of discretion connotes a judgment that is unreasonable, arbitrary, or unconscionable. *Blakemore v. Blakemore*, 5 Ohio St.3d 217, 219, 450 N.E.2d 1140 (1983). "[A]s the [Ohio] Supreme Court recently clarified, 'courts lack the discretion to make errors of law.' " *State v. Austin*, 1st Dist. Hamilton Nos. C-210140 and C-210141, 2021-Ohio-3608, ¶ 5, quoting *Johnson v. Abdullah*, 166 Ohio St.3d 427, 2021-Ohio-3304, 187 N.E.3d 463, ¶ 39. But an error in an evidentiary ruling does not warrant reversal when the error does

not affect the substantial rights of the complaining party. Evid.R. 103(A); *State v. Griffin*, 1st Dist. Hamilton No. C-020084, 2003-Ohio-3196, ¶ 13.

{¶11} Fritsch objected to the testimony of the lab analyst under Evid.R. 403, arguing that the test of the residue on the sticky note in Fritsch's car is more unfairly prejudicial than probative after the drug-paraphernalia charge was dismissed. Generally, all relevant evidence is admissible. *Morris* at ¶ 11, quoting Evid.R. 402. Evid.R. 403 provides exceptions to this general principle and provides circumstances for the exclusion of relevant evidence. *Id.*, citing Evid.R. 403. Evidence is relevant when it has "any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." Evid.R. 401. Relevant evidence is admissible unless its probative value is substantially outweighed by the danger of unfair prejudice, of confusion of the issues, or of misleading the jury. *State v. Brown*, 2d Dist. Montgomery No. 24541, 2012-Ohio-1848, ¶ 31, citing Evid.R. 402; Evid.R. 403(A).

{¶12} Here, the analyst's testimony and report are probative of whether Fritsch operated a vehicle while "under the influence of alcohol, a drug of abuse, or a combination of them." *See* R.C. 4511.19. The analyst's testimony and report both establish that the rolled sticky note found tucked under the sun visor of Fritsch's car had methamphetamine residue on it. While the drug-paraphernalia charge had been dismissed, methamphetamine is a drug of abuse, thus the evidence was relevant to whether Fritsch operated a vehicle under the influence of a combination of alcohol and a drug of abuse. While the sticky note with methamphetamine residue does not—standing alone—conclusively establish Fritsch consumed methamphetamine on that day, it is

evidence of constructive possession. *See State v. Johnson*, 1st Dist. Hamilton No. C-170354, 2019-Ohio-3877, ¶ 49, quoting *State v. Fry*, 4th Dist. Jackson No. 03CA26, 2004-Ohio-5747, ¶ 41 (" 'when one is the driver of a car in which drugs are within easy access of the driver, constructive possession may be established.' "). In turn, possession of a sticky note with methamphetamine residue on it in Fritsch's car is circumstantial evidence of ingestion of a drug of abuse in the same way that having empty bottles or cans of alcoholic beverages in a car is evidence the driver consumed alcohol. This evidence is also not substantially outweighed by the danger of unfair prejudice. The trial court did not expressly cite the methamphetamine evidence when rendering its guilty verdict, limiting any potential prejudicial effect on the verdict.

{¶13} Fritsch also argues that the analyst's testimony and report are inadmissible as prior-bad-acts evidence. This is a different argument than the grounds objected on at trial and thus appellate review is limited only to plain error. *See* Evid.R. 103(A) and (D); *State v. Tibbetts*, 92 Ohio St.3d 146, 161, 749 N.E.2d 226 (2001). Prior-bad-acts evidence may be admitted "when those acts form part of the 'immediate background of the alleged act,' as part of the res gestae of the charged crime." *State v. Mincey*, 1st Dist. Hamilton No. C-220061, 2023-Ohio-472, ¶ 19, citing *State v. David*, 1st Dist. Hamilton No. C-210227, 2021-Ohio-4004, ¶ 16. The trial court did not commit plain error when it admitted evidence that the defendant may have possessed drugs prior to being stopped for OVI as the defendant's use of drugs was part of the immediate background of an OVI for a combination of alcohol and a drug of abuse.

{¶14} Even if we were to assume that the trial court erred in admitting the analyst's testimony and report, any error in the admission was harmless beyond a reasonable doubt. *See* Crim.R. 52(A); *see also State v. Morris*, 141 Ohio St.3d 399, 2014-Ohio-5052, 24 N.E.3d 1153, ¶ 29. The trial court, as factfinder, did not mention either the analyst's testimony or the report when announcing the finding of guilt. Thus, even if we excised the disputed evidence and looked at the remaining evidence, we may rely, just as the trial court did, on the totality of Fritsch's overall erratic behavior and driving, Officer Stone's observations and opinion of Fritsch, the results of the standard field-sobriety tests, and Fritsch's admissions of drinking to find Fritsch guilty of OVI. *See Morris* at ¶ 29 (laying out harmless error analysis).

{¶15} Because the analyst's testimony and report are relevant and were not substantially outweighed by the danger of unfair prejudice nor were improper prior-bad-acts evidence, we overrule Fritsch's first assignment of error.

Sufficiency of the Evidence

{¶16} In Fritsch's second assignment of error, he argues the evidence was legally insufficient to support his conviction. A challenge to the sufficiency of the evidence supporting a conviction requires a court to determine whether the state has met its burden of production at trial. *State v. Thompkins*, 78 Ohio St.3d 380, 390, 678 N.E.2d 541 (1997) (Cook, J., concurring). The relevant inquiry, when reviewing the sufficiency of the evidence, is whether, after viewing the evidence in a light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the offense proved beyond a reasonable doubt. *State v. Jenks*, 61 Ohio St.3d 259, 574 N.E.2d 492

(1991), paragraph two of the syllabus; *State v. Ojile*, 1st Dist. Hamilton Nos. C-110677 and C-110678, 2012-Ohio-6015, ¶ 48.

{¶17} Fritsch was convicted of a misdemeanor OVI under R.C. 4511.19(A)(1)(a), which forbids a person from operating any vehicle while "at the time of the operation, * * * [t]he person is under the influence of alcohol, a drug of abuse, or a combination of them." To sustain a conviction for OVI, the state must prove that the defendant ingested alcohol or a drug of abuse and that either substance impaired the defendant's subsequent driving. *See State v. Bowden*, 1st Dist. Hamilton No. C-190396, 2020-Ohio-4556, ¶ 11, quoting *State v. Richardson*, 150 Ohio St.3d 554, 2016-Ohio-8448, 84 N.E.3d 993, ¶ 14. Fritsch does not contest that marijuana and methamphetamine qualify as drugs of abuse. *See* R.C. 4511.181(E) and 4506.01(M).

{¶18} The state provided sufficient evidence that Fritsch consumed a combination of alcohol and a drug of abuse. Officer Stone had stopped Fritsch, Stone observed Fritsch had bloodshot eyes and dilated pupils, though Fritsch's speech was not slurred, and Officer Stone did not smell the odor of an alcoholic beverage. Fritsch admitted to being under the influence of alcohol and drinking "a couple beers," starting the day before and stopping a few hours prior to the incident. Officer Stone found a marijuana pipe on Fritsch's person and a sticky note containing methamphetamine residue in Fritsch's car. This physical evidence together with Fritsch's statements provided context to Fritsch refusing to climb down from the hood of another person's vehicle because he was afraid of coyotes and Fritsch driving through the grass of the park. Fritsch's statements of having ingested alcohol, together with his outlandish behavior and the drug paraphernalia found on Fritsch, was

sufficient to convince a rational trier of fact that Fritsch consumed alcohol, a drug of abuse, or a combination of both beyond a reasonable doubt.

{¶19} Turning to the second part of an OVI charge, the totality of the evidence, if believed, is more than sufficient to establish Fritsch's impaired driving. Fritsch's erratic driving through the grass of the park was the first indication of his impairment. *See Bowden* at ¶ 13, citing *Richardson* at ¶ 18 (both noting a defendant's erratic driving is evidence of impairment). Fritsch's driving provided context to Officer Stone's earlier strange interactions with Fritsch. Based on that evidence of impairment, Officer Stone had Fritch perform standard field-sobriety tests, where Fritch demonstrated approximately half of the possible clues of impairment on each test. *See id.*, citing *Richardson* at ¶ 18 (both noting a defendant's poor performance on the walk-and-turn and one-leg-stand tests as evidence of impairment by narcotics). Fritsch's refusal to submit to a urine test further weighs against him. *State v. Cohen*, 1st Dist. Hamilton No. C-220354, 2023-Ohio-1643, ¶ 14, citing *State v. Leasure*, 2015-Ohio-5327, 43 N.E.3d 477, ¶ 20 (4th Dist.), and *City of Maumee v. Anistik*, 69 Ohio St.3d 339, 632 N.E.2d 497 (1994), syllabus (holding a defendant's refusal to submit to a chemical test may be considered when evaluating whether a defendant was under the influence of alcohol); *see Bowden* at ¶ 13, citing *State v. Cauthon*, 5th Dist. Fairfield No. 18-CA-41, 2019-Ohio-1809, ¶ 19 (both finding sufficient evidence supported defendant's OVI conviction, in part, where a defendant refused a drug test). This evidence, when taken together and viewed in the light most favorable to the state, sufficiently establishes Fritsch's impaired driving.

{¶20} There was also sufficient evidence, when viewed in the light most favorable to the state, linking the above evidence of Fritsch's impairment to the evidence Fritsch consumed alcohol, a drug of abuse, or a combination of both. The Ohio Supreme Court has held that an experienced and well-trained police officer's lay opinion is evidence connecting impairment to a drug of abuse. *Richardson*, 150 Ohio St.3d 554, 2016-Ohio-8448, 84 N.E.3d 993, at ¶ 19. The state does not need to prove definitively what precise combination of alcohol or drugs of abuse caused the impairment. *Bowden*, 1st Dist. Hamilton No. C-190396, 2020-Ohio-4556, at ¶ 16. Here, Fritsch exhibited some clues on field-sobriety tests, behaved bizarrely, admitted to consuming alcohol, and was found with drug paraphernalia and drug residue. Based on those facts, Officer Stone—an experienced and trained police officer who had interacted with Fritsch multiple times that night—opined that Fritsch was under the influence of alcohol or drugs. Viewing that evidence in the light most favorable to the state, a rational finder of fact could find a nexus between Fritsch's impairment and a combination of alcohol and a drug of abuse. *See id.* (finding sufficient evidence where the defendant drove erratically, performed poorly on the field-sobriety tests, the officer testified that the defendant was "appreciably impaired" consistent with marijuana consumption, and there was circumstantial evidence of marijuana consumption though the officer never testified that marijuana caused the defendant's impairment).

{¶21} Viewing the totality of all the evidence against Fritsch in the light most favorable to the state, there was sufficient evidence for a rational finder of fact to find all the elements of OVI proven beyond a reasonable doubt. Accordingly, we overrule Fritsch's second assignment of error.

Manifest Weight of the Evidence

{¶22} In Fritsch's third assignment of error, he argues that his conviction is against the manifest weight of the evidence. In contrast to a challenge to the sufficiency of evidence, in a challenge that a conviction is against the manifest weight of the evidence, an appellate court determines whether the state has appropriately carried its burden of persuasion. *Thompkins*, 78 Ohio St.3d at 390, 678 N.E.2d 541 (Cook, J., concurring). In reviewing the manifest weight of the evidence, an appellate court must review "the entire record, weigh the evidence and all reasonable inferences, consider the credibility of the witnesses and determine whether, in resolving conflicts in the evidence, the [trier of fact] clearly lost its way and created such a manifest miscarriage of justice that the conviction must be reversed and a new trial ordered." *State v. Bailey*, 1st Dist. Hamilton No. C-140129, 2015-Ohio-2997, ¶ 59, quoting *Thompkins* at 387.

{¶23} Fritsch argues that all this evidence is not indicative of impairment from alcohol or a drug of abuse but of mental-health issues. When conflicting explanations are presented at trial, a conviction is not against the manifest weight of the evidence simply because the trier of fact accepts one explanation over another. *See State v. McDaniel*, 2021-Ohio-724, 168 N.E.3d 910, ¶ 25 (1st Dist.), quoting *State v. Robinson*, 12th Dist. Butler No. CA2018-08-163, 2019-Ohio-3144, ¶ 29.

{¶24} There is nothing in the record to suggest that the trial court lost its way when it found Fritsch guilty. *See State v. Peters*, 9th Dist. Wayne No. 08CA0009, 2008-Ohio-6940, ¶ 13 (concluding that OVI conviction based on a drug of abuse was not against the manifest weight of the evidence when the

defendant admitted taking a drug of abuse on the day she was stopped and exhibited several physiological factors that evidenced impairment). Rather, based on Fritsch's own admission of drinking and being under the influence, his bizarre behavior and performance on field-sobriety tests, and Officer Stone's physiological observations of Fritsch and opinion Fritsch was intoxicated, we hold that the trial court did not patently lose its way and create a manifest miscarriage of justice. This is not an exceptional case where the evidence weighs heavily against conviction. Thus, we overrule Fritsch's third assignment of error.

Conclusion

{¶25} Having overruled the assignments of error, we affirm the judgment of the trial court.

Judgment affirmed.

ZAYAS, **P.J.**, and **BOCK**, **J.**, concur.

Please note:

The court has recorded its own entry on this date.