

VERMONT SUPREME COURT
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Case No. 21-AP-296

Note: In the case title, an asterisk () indicates an appellant and a double asterisk (**) indicates a cross-appellant. Decisions of a three-justice panel are not to be considered as precedent before any tribunal.*

ENTRY ORDER

APRIL TERM, 2022

In re D.B., Juvenile*	}	APPEALED FROM:
	}	Superior Court, Bennington Unit,
	}	Family Division
	}	CASE NO. 21-JV-00897
		Trial Judge: Kerry Ann McDonald-Cady

In the above-entitled cause, the Clerk will enter:

Juvenile D.B. appeals from an order of the family division adjudicating him delinquent for driving a motor vehicle while under the influence of alcohol (DUI) in violation of 23 V.S.A. § 1201(a)(2). We affirm.

The court made the following findings based on the evidence presented at the November 2021 merits hearing. Around midnight one evening in June 2021, an officer of the Bennington Police Department responded to a report of a car crash near the intersection of Gore and Burgess Roads in Bennington. When he arrived at the scene, the officer found a red Ford Ranger pickup truck “submerged in trees.” No one was in the truck or in the immediate area. The officer observed that there were skid marks on an S curve in the road and the pavement was wet. Another officer who had responded to the call saw a truck pass by and recognized juvenile. Both officers went to a nearby chain-up area, where the first officer saw juvenile, juvenile’s girlfriend, and a few other individuals standing around vehicles that were running.

Juvenile’s girlfriend approached the officer and asked to speak privately. She told the officer that she was driving the Ford pickup truck when she lost control due to speed and road conditions and crashed the vehicle into the trees. She told the officer that the truck was hers and that juvenile was a passenger at the time of the crash.

The officer then spoke with juvenile. Juvenile repeatedly asked the officer what his girlfriend had said and whether she said she had been driving. He said that he was driving the truck at the time of the crash. He told the officer that he and his girlfriend had been “wheeling” at Sucker Pond and as they were returning, he lost control because of speed and the wet road.

Juvenile stated that he felt guilty for wrecking his girlfriend's truck because it meant a lot to her and he felt bad. He told the officer that his girlfriend had lied because juvenile was driving the truck at the time of the crash. Juvenile's girlfriend then came over and conceded to the officer that juvenile had been driving at the time of the crash.

While juvenile was speaking, the officer observed that his eyes were watery, and his speech was a bit mumbled. Juvenile had a lozenge in his mouth at the time. When the officer spoke to juvenile again later, after juvenile had finished the lozenge, he smelled of intoxicants. The officer asked juvenile to complete some field sobriety tests. Juvenile had difficulty maintaining his balance during the one-leg stand, swaying and putting his foot down three times. While performing the walk-and-turn, he stepped out of line five times. Based on his observations, the officer believed that juvenile was intoxicated at the time of the crash and arrested him for DUI.

At the police station, juvenile became sick and vomited. After being advised of his rights, juvenile agreed to speak to the officer. He admitted to being "slightly" under the influence of alcohol while he was driving the vehicle.

At the hearing, juvenile's girlfriend conceded that juvenile had been drinking but stated that she had been driving. She testified that she lied to the officer when she said juvenile had been driving because she was stressed out and tired and did not want to argue with juvenile.

The court found that juvenile had been driving the truck at the time of the crash and that he was under the influence of alcohol at the time, as demonstrated by the officer's observations of his watery eyes, mumbled speech, and odor, his poor performance on the field sobriety tests, and his admission to the officer that he was slightly under the influence of alcohol. The court noted that there was no evidence presented by either party to indicate that juvenile had consumed alcohol after the crash. The court concluded that juvenile's girlfriend was not credible in her testimony that she had been driving. Rather, it found that juvenile's girlfriend was attempting to protect juvenile, whom she knew had been drinking, as she admitted to the officer on the night of the crash. The court therefore entered an adjudication of delinquency.

On appeal, juvenile challenges the sufficiency of the evidence to support the court's findings that he was operating the truck under the influence of alcohol at the time of the crash. At a juvenile delinquency proceeding, the State has "the burden of establishing beyond a reasonable doubt that the child has committed a delinquent act." 33 V.S.A. § 5229(b). Here, the State alleged that juvenile had violated 23 V.S.A. § 1201(a)(2), which makes it a crime for a person to "operate, attempt to operate, or be in actual physical control of any vehicle on a highway . . . when the person is under the influence of alcohol." "In assessing the sufficiency of the evidence, this Court will uphold a judgment unless no credible evidence supports it. We review the evidence in the light most favorable to the State." *In re A.P.*, 2020 VT 86, ¶ 5, 213 Vt. 291 (quotation omitted).

Juvenile argues that the trial court improperly inferred his state of intoxication to be the same at the time of the crash as when he later spoke to the officer. He argues that the officer was unable to say how long after the accident he was dispatched to the scene, how long his search for the truck occupants took, and how long it took to locate juvenile, and that the court merely

speculated that these events happened in quick succession. He contends that the court improperly assumed that juvenile's drinking occurred before the crash. Finally, he claims that his admission to the officer that he was "slightly" under the influence of alcohol is insufficient to prove DUI.

We conclude that there was sufficient evidence to support the court's finding that juvenile was under the influence of alcohol at the time of the crash. "A person is considered to be under the influence of intoxicating liquor when he or she has lost full control over the faculties of mind and body; the measure of that loss is immaterial." State v. LeBeau, 144 Vt. 315, 318 (1984). Where the charge is not based on chemical evidence of blood alcohol content but on testimony supporting a claim of loss of control over one's faculties, a finding that the defendant was "under the influence of intoxicating liquor in the slightest degree" is sufficient to sustain a conviction under 23 V.S.A. § 1201(a)(2). State v. Stockwell, 142 Vt. 232, 235 (1982). Here, juvenile admitted to the officer that he was slightly under the influence of alcohol while he was driving. His girlfriend likewise testified that he had been drinking that evening. The fact that the vehicle juvenile was driving was off the road suggests that he was not in full control of his faculties. This inference is further supported by the officer's observations that juvenile smelled like alcohol, had watery eyes, and had difficulty balancing on one leg or walking heel-to-toe, and the fact that he vomited in the police station after his arrest. This evidence tended to suggest that juvenile was under the influence when he was operating the vehicle earlier in the evening. See State v. Richard, 2016 VT 75, ¶ 16, 202 Vt. 519 (explaining that "evidence of objective symptoms of intoxication other than a blood alcohol assessment can support a prosecution under" 23 V.S.A. § 1201(a)(2)).

While it is true that the precise amount of time between the crash and juvenile's arrest is unclear, this does not render the court's findings erroneous. Juvenile concedes that he appeared intoxicated at the time of his arrest. He admitted to the officer that he had been driving under the influence of alcohol. The court correctly noted that neither side presented any evidence that juvenile had consumed alcohol after the crash. Because "blood alcohol content decreases with time," the court could therefore reasonably infer from the officer's observations of juvenile at the chain-up area and police station that juvenile was at least as impaired at the time of the crash. State v. Giguere, 2017 VT 40, ¶ 11, 204 Vt. 483; see also State v. Warner, 151 Vt. 469, 472 (1989) (affirming conviction for DUI based on officer's observations of defendant's appearance, behavior, and odor, and circumstantial evidence indicating that defendant had driven while intoxicated).

Juvenile also claims that the court clearly erred in finding that he drove the truck, because his girlfriend told the officer that she was driving and testified similarly at the hearing. He argues that her statements are more credible than his own statements because he was impaired when he made them. In reviewing a juvenile delinquency determination, the trial court's findings "must stand if supported by credible evidence, even though there may be inconsistencies or substantial evidence to the contrary." In re A.C., 2012 VT 30, ¶ 19, 191 Vt. 615 (mem.) (quotation omitted). As in a criminal proceeding, the "credibility of witnesses is the sole province of the factfinder." State v. Wetherbee, 156 Vt. 425, 431 (1991). The court's finding that juvenile drove the truck is supported by the record, namely, juvenile's own statements to the officer as well as his girlfriend's statement at the chain-up area. Juvenile is essentially asking us to make our own assessment of credibility and reweigh the evidence on appeal, which we will

not do. In re H.T., 2020 VT 3, ¶ 34, 211 Vt. 476. We therefore decline to disturb the court's finding.

Affirmed.

BY THE COURT:

Paul L. Reiber, Chief Justice

William D. Cohen, Associate Justice

Nancy J. Waples, Superior Judge,
Specially Assigned