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2011 IL App (3d) 091058-U

Order filed August 10, 2011

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

A.D., 2011

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the Circuit Court
)	of the 12th Judicial Circuit,
Plaintiff-Appellee,)	Will County, Illinois,
)	
v.)	Appeal No. 3-09-1058
)	Circuit No. 09-CF-1240
)	
DEXTER L. BAILEY,)	Honorable
)	Daniel J. Rozak,
Defendant-Appellant.)	Judge, Presiding.

JUSTICE McDADE delivered the judgment of the court.
Presiding Justice Carter and Justice Holdridge concurred in the judgment.

ORDER

¶ 1 *Held:* Defense counsel did not provide objectively unreasonable assistance for failing to object to the presentation of evidence demonstrating that the defendant's driver's license was revoked at the time of the offense. The evidence was relevant in proving an element of the charged offense, and the prejudice to the defendant was sufficiently minimal.

¶ 2 After a jury trial, the defendant, Dexter L. Bailey, was convicted of aggravated battery (720 ILCS 5/12-4(b)(18) (West 2008)) and aggravated driving while under the influence of alcohol (DUI) (625 ILCS 5/11-501(a)(2), (d)(1)(H) (West 2008)). He was sentenced to

concurrent terms of 20 and 3 years, respectively. On appeal, the defendant alleges that his trial counsel was ineffective for failing to object to the admission of evidence demonstrating that his driver's license was revoked at the time of the offense. We affirm.

¶ 3

FACTS

¶ 4 On May 31, 2009, Michael Newenhouse was driving northbound on Cottage Grove Avenue when he saw a dark sports utility vehicle (SUV) driving in the wrong lane of a two-lane road. Newenhouse had to pull over in order to avoid a collision with the SUV. After the SUV passed by, Newenhouse turned around and drove to a nearby location where he had someone call the police. The SUV pulled into the parking lot of the same location.

¶ 5 Two police officers, Robert Krainik and Joseph Rodd, arrived on the scene. The officers approached the vehicle, and noticed that the defendant was passed out. Krainik removed a bottle of gin from the defendant's lap. The officers decided to try and wake the defendant, and Rodd shook the defendant. Once the defendant awoke, he reached for the center console in his SUV. Rodd grabbed the defendant by the wrist because he was afraid for his safety.

¶ 6 Krainik informed the defendant that he was under arrest, and the two officers pulled him from the vehicle. As Krainik attempted to handcuff the defendant, the defendant grabbed Krainik's ring finger and twisted it, causing it to dislocate. The defendant was eventually handcuffed and placed in Rodd's car. An empty bottle of vodka was also found in the defendant's vehicle.

¶ 7 Prior to trial, defense counsel made an oral motion *in limine* to bar the State from introducing evidence that the defendant's license was revoked based upon a prior DUI. The State responded that it anticipated submitting a certified copy of defendant's driving record to show

that his license was revoked on the date of the offense. The trial court granted the motion so as to prevent the State from mentioning the specific reason as to why the defendant's license was revoked.

¶ 8 During the defendant's trial, Krainik viewed a certified abstract of the defendant's driving record and testified that, according to the abstract, the defendant's license was revoked at the time of the incident. At the close of the State's case, the State moved to admit a copy of the driving abstract. Defense counsel objected to the admission of the abstract because the defendant had a lengthy driving record, and she argued that the abstract was more prejudicial than probative. The trial court admitted the abstract in its entirety, but only allowed the last page, which showed that the defendant's license was revoked on May 31, 2009, to be given to the jury.

¶ 9 The State also mentioned the defendant's revoked license in its closing argument. The State argued,

"[w]e heard the officer on the stand, we showed him the Secretary of State record for the defendant. The defendant had a revoked driver's license at the time. Therefore, he did not have a valid license or any other reason to drive. Like listed under the statute, if you're revoked, you're not valid, you don't have permission to drive. Done, over. We have proven that beyond a reasonable doubt."

¶ 10 The jury found the defendant guilty of both counts. The defendant appealed.

¶ 11 ANALYSIS

¶ 12 On appeal, the defendant alleges that his trial counsel was ineffective for failing to object to evidence demonstrating that his license was revoked at the time of the offense. He argues that, by allowing this evidence in at trial, there was a significant danger that the jury found him guilty

simply because he was a bad person deserving of punishment. *People v. McGee*, 286 Ill. App. 3d 786 (1997). We review *de novo*. *Strickland v. Washington*, 466 U.S. 668 (1984).

¶ 13 In order to demonstrate ineffective assistance of counsel, a defendant must show that his counsel's performance was so deficient that it fell below an objective standard of reasonableness, and the defendant was prejudiced by his counsel's deficient performance. *Strickland*, 466 U.S. 668. The failure to satisfy either prong of the *Strickland* test precludes a finding of ineffective assistance of counsel. *People v. Caballero*, 126 Ill. 2d 248 (1989).

¶ 14 The defendant argues that counsel should have objected in this case because the State did not have to prove that his license was revoked as an element of aggravated DUI, only that he did not possess a valid driver's license at the time of the offense. In essence, he argues that counsel should have objected because the revocation evidence was more prejudicial than probative. We disagree.

¶ 15 The statute the defendant was prosecuted under stated that a defendant committed aggravated DUI if "the person committed the violation while he or she did not possess a driver's license or permit or a restricted driving permit or a judicial driving permit or a monitoring device driving permit[.]" 625 ILCS 5/11-501(d)(1)(H) (West 2008). The State must prove every element of the offense beyond a reasonable doubt. *People v. Young*, 312 Ill. App. 3d 428 (2000).

In the instant case, the State had to prove beyond a reasonable doubt that the defendant did not have a valid driver's license, and so the fact that the defendant's license was revoked was highly relevant to the State's case. See *People v. Musitief*, 201 Ill. App. 3d 872 (1990) (evidence of other crimes is admissible if admitted for any other purpose other than to show defendant's propensity to commit criminal behavior). In contrast, in the cases cited by the defendant, *People*

v. Barnes, 182 Ill. App. 3d 75 (1989) and *People v. Limon*, 405 Ill. App. 3d 770 (2010), the prejudicial evidence at issue was entirely irrelevant to the charged criminal conduct.

¶ 16 Nonetheless, even probative evidence will be inadmissible if the prejudicial nature of the evidence outweighs its probative value. *Musitief*, 201 Ill. App. 3d 872. Erroneously admitting evidence of other crimes carries a high risk of prejudice in that it overpersuades the trier of fact. *People v. Robinson*, 368 Ill. App. 3d 963 (2006). This is particularly true when the evidence of other crimes is similar to that of the charged offense. *Id.*

¶ 17 However, the record demonstrates that both defense counsel and the trial court attempted to limit the prejudicial nature of the revocation evidence. Defense counsel moved *in limine* to bar the State from arguing that the defendant's license was revoked because of a prior DUI. Defense counsel also objected to the admission of the defendant's driving abstract because it contained an extensive traffic history. The trial court admitted the entire abstract as a self-authenticating document, but only allowed the final page to be shown to the jury. The trial court further barred the State from exploring the reason why the defendant's license was revoked, unless that issue was raised by the defense. Therefore, the prejudice to the defendant was sufficiently minimized. *Cf. Robinson*, 368 Ill. App. 3d 963 (holding that defendant was prejudiced when the State introduced driving abstract showing two prior DUIs where a prior DUI was not an element of aggravated DUI).

¶ 18 The defendant further argues that the revocation evidence prejudiced him because the State continually referred to the evidence, and there was no limiting instruction informing the jurors that they were only to consider the evidence for a specific purpose. Our review of the record shows that the State mentioned the defendant's prior revocation during Krainik's testimony

and briefly during closing argument in order to argue that the defendant did not have a valid driver's license. In addition, while a limiting instruction would have further limited the prejudicial effect of the revocation evidence, the failure to include a limiting instruction does not "increase our assessment of its possible prejudicial effect." *Musitief*, 201 Ill. App. 3d at 878.

¶ 19 Accordingly, we do not find that the revocation evidence was more prejudicial than probative, and therefore defense counsel was not objectively unreasonable for failing to object to it. Since we find that counsel acted in a reasonable manner, we do not need to consider the prejudice prong under *Strickland*.

¶ 20 CONCLUSION

¶ 21 For the foregoing reasons, the judgment of the circuit court of Will County is affirmed.

¶ 22 Affirmed.