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2011 IL App (3d) 100049-U

Order filed October 12, 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 10th Judicial Circuit, Peoria County, Illinois
Plaintiff-Appellee,)	
v.)	Appeal No. 3--10--0049
CHARLES D. GUNTER,)	Civil No. 09--CF--181
Defendant-Appellant.)	Honorable Mark E. Gilles, Judge, Presiding.

JUSTICE SCHMIDT delivered the judgment of the court.
Justices Lytton and McDade concurred in the judgment.

ORDER

- ¶ 1 *Held:* The State proved the *corpus delicti* of driving with a revoked license. The conviction is affirmed. Defendant is granted an additional day of presentence credit and the portion of the trial court's order requiring defendant to submit a DNA sample and pay a DNA assessment is vacated.
- ¶ 2 A jury convicted defendant, Charles Gunter, of driving with a revoked license. The trial

court sentenced defendant to four years' imprisonment. He raises three issues on appeal: first, whether the State failed to prove the *corpus delicti* of the offense; second, whether he is entitled to seven additional days of credit against his sentence; third, whether the trial court erred in requiring defendant to pay a DNA assessment where he has previously submitted a DNA sample. We affirm the conviction, grant defendant credit for an additional day of presentence custody, and vacate the portion of the trial court's order requiring defendant to submit a DNA sample and pay the corresponding DNA Assessment.

¶ 3

FACTS

¶ 4 The State charged defendant with driving while his license was revoked in connection with an accident that occurred on November 23, 2008. At trial, the State's only witness was Officer Jason Leigh. Leigh testified that he responded to the accident scene within minutes of receiving the call concerning the incident. The accident occurred on the 1000 block of South Folkers Avenue, a two-lane road. Leigh saw a small Kia sedan parked about 10 feet behind a Cadillac Escalade. Defendant was standing in front of the Kia; two other men, Barry Dorsey and Lamont Simms, were standing behind the Escalade, no one else was present. The Kia's passenger seat and floor in front of the passenger seat were filled with files and paperwork that would have prevented anyone from sitting in the passenger seat.

¶ 5 Leigh noted that he asked the defendant what happened and defendant initially responded that "he wasn't driving." Defendant repeated this claim four or five times. After confirming that defendant was not the registered owner of the Kia, and that the registered owner was not present,

Leigh asked defendant who owned the Kia. Defendant replied that he had been driving his friend's car.

¶ 6 Leigh could not recall whether the keys to the Kia were in the car or in defendant's possession, but he did know that when the Kia was towed, he had the keys to the car. The State admitted into evidence a driver's license abstract showing that defendant's license was revoked at the time of the accident.

¶ 7 The State rested after Leigh's testimony. Defendant moved for a directed verdict, arguing that the State failed to prove the *corpus delicti*. The trial court denied the motion. Defendant did not present any evidence. The jury found defendant guilty.

¶ 8 The trial court denied defendant's motion for a new trial. At the sentencing hearing, the State and defendant told the court that there were no additions or corrections that needed to be made to the presentence investigation report (PSI). The PSI indicated that defendant had previously submitted a DNA sample to the state database, and that he was in custody, among other times, from February 25, 2009, through March 3, 2009. The trial court sentenced defendant to four years' imprisonment and ordered him, among other things, to submit to mandatory DNA testing and pay a \$200 DNA assessment. The trial court did not grant him presentence credit for the days from February 25, 2009, through March 3, 2009. The trial court denied defendant's motion to reconsider sentence.

¶ 9 ANALYSIS

¶ 10 1. *Corpus Delicti*

¶ 11 Defendant argues that the State failed to prove him guilty beyond a reasonable doubt of driving while his license was revoked. Specifically, he argues that the only evidence of his guilt is his confession, and that the *corpus delicti* rule prohibits a finding of guilt based solely on an out of court confession. The State argues that the *corpus delicti* rule does not apply to the identification of the guilty party, and that even if the rule does apply in this matter, it has been satisfied.

¶ 12 A claim that the evidence used to obtain a conviction violates the *corpus delicti* rule is a claim that the State failed to prove the defendant guilty beyond a reasonable doubt. See *People v. Sargent*, 239 Ill. 2d 166, 182 (2010); *People v. Richmond*, 341 Ill. App. 3d 39, 44-45 (2003). As such, we will only overturn the guilty verdict if “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 in original.) *People v. Collins*, 106 Ill. 2d 237, 261 (1985).

¶ 13 In Illinois, proof of an offense requires proving two propositions or facts: “(1) that a crime occurred, *i.e.*, the *corpus delicti*; and (2) that the crime was committed by the person charged. [Citations.]” *People v. Sargent*, 239 Ill. 2d at 183. Each proposition or fact must be proved beyond a reasonable doubt. *Id.* “[P]roof of the *corpus delicti* may not rest exclusively on a defendant’s extrajudicial confession, admission, or other statement. [Citation.] Where a defendant’s confession is part of the proof of the *corpus delicti*, the prosecution must also adduce corroborating evidence independent of the defendant’s own statement. [Citation.]” *Id.* If the

State fails to present corroborating evidence along with the defendant's confession, the conviction must be overturned. *Id.* The corroborating evidence does not have to prove the existence of the crime beyond a reasonable doubt. The corroboration rule requires only "that there be some evidence, independent of the confession, tending to show the crime did occur[.]" *Id.* Once the confession is corroborated, the corroborating evidence and confession may both be considered to determine "whether the crime, and the fact the defendant committed it, have been proved beyond a reasonable doubt." *Id.*

¶ 14 To convict defendant, the State was required to prove: (1) that defendant "[drove] or was in actual physical control of a motor vehicle on any highway;" and (2) that defendant's license was revoked or suspended at that time. 625 ILCS 5/6-303(a) (West 2010). Thus, the *corpus delicti* in this case is that someone drove a car on a highway while their license was either suspended or revoked. This cannot be proved without also proving the identity of the person who committed the crime; it is impossible to prove that a driver did not have a license without proving the identity of the driver. The State's initial argument is that the *corpus delicti* rule does not apply as the issue is the identity of the driver. Were we to adopt the view taken by the State, we would have to hold that in cases where the fact that a crime occurred cannot be proved without proving the identity of the perpetrator, the *corpus delicti* rule does not apply. The State does not provide any case law supporting such a holding.

¶ 15 On the other hand, defendant cites to *People v. Foster*, 138 Ill. App. 3d 44, 46-47 (1985), in support of his argument that the *corpus delicti* rule applies in this case. In *Foster*, the

defendant was convicted of drunk driving. *Id.* at 45. The evidence at trial established that a car had run partly off the road and that when the police arrived two men were asleep in the car. *Id.* The defendant was sleeping in the passenger seat; a second man was asleep in the driver's seat. *Id.* At the scene, defendant told the officers that he had been driving. *Id.* at 46. Later at the station, defendant told them that he had not been driving, which they believed at the time. *Id.* After a bench trial, the judge found the defendant guilty. *Id.* On appeal, the defendant argued that the State had failed to establish the *corpus delicti* with any evidence other than his own confession. *Id.* The appellate court reversed the conviction finding the State had not presented any evidence that tended to corroborate the defendant's confession. *Id.* at 47. In circumstances similar to those in this case, the *Foster* court applied the *corpus delicti* rule in a case requiring proof of the perpetrators identity to establish that a crime had occurred. We also note that in *Sargent*, our supreme court recognized that this rule has been followed in Illinois for over 150 years and it found no good reason to abandon it. *Sargent*, 239 Ill. 2d at 187-88. Accordingly, we find the rule applicable here.

¶ 16 The question we must answer is whether Leigh's testimony: placing defendant next to the Kia and two other men next to the Escalade; indicating nobody else in the area when Leigh arrived; and Leigh's arrival on the scene shortly after he received the call concerning the accident, tend to establish that defendant drove the Kia. We find Leigh's testimony tends to establish that defendant drove the Kia. Certainly, a reasonable inference to be drawn from defendant's proximity to the Kia is that he drove it. In addition, the fact that only three people

were present along with the fact that the condition of the Kia prevented a passenger from riding in the passenger seat also tends to show that the one person standing by the Kia was the driver of that vehicle. The jury was entitled to consider defendant's confession in determining whether defendant was guilty beyond a reasonable doubt. Viewing all the evidence, including the confession, in the light most favorable to the State, we find that a rational factfinder could find defendant guilty beyond a reasonable doubt. Defendant's conviction is affirmed.

¶ 17

II. Credit for Time Served

¶ 18 Defendant argues that pursuant to section 5-4.5-100(b) of the Unified Code of Corrections, he is entitled to seven days of credit against his sentence for time spent in presentence custody from February 25, 2009, through March 3, 2009. 730 ILCS 5/5-4.5-100(b) (West 2010). Defendant bases his argument on the fact that the PSI indicates he was in custody on these days and the fact that at the sentencing hearing the State indicated that no changes needed to be made to the PSI. The State now argues that the PSI is incorrect. A review of the record shows that defendant was arrested on February 25 and released on an appearance bond the same day.

¶ 19 Defendant argues that the record of proceedings takes precedence over the common law record; he is correct. *People v. Stingley*, 277 Ill. App. 3d 239, 242 (1995). However, this is not a case where the record of the proceeding conflicts with the common law record; here, the PSI conflicts with the appearance bond, both of which are part of the common law record. Moreover, defendant argues the State has forfeited the right to argue that defendant was not in

custody from February 25 through March 3 as it agreed below that the PSI accurately indicated defendant was in custody on those days. Regardless of whether the State failed to argue the PSI was incorrect below, a sentence that does not conform to the statutory requirements is void, and this court has a duty to vacate or modify void orders. See *People v. Thompson*, 209 Ill. 2d 19, 24, 27 (2004); S. Ct. R. 615(b)(1) (eff. Jan. 1, 1967). The record shows that defendant was in custody on February 25, 2009, and that he did not receive credit for that day. He is entitled to one additional day of credit. See *People v. Harris*, 2011 IL App (1st) 092 ¶ 35. We order the mittimus modified to reflect one day of presentencing credit for February 25, 2009.

¶ 20

III. DNA

¶ 21 The trial court ordered defendant to submit a DNA sample and pay a \$200 DNA assessment pursuant to section 5-4-3 of the Unified Code of Corrections. 730 ILCS 5/5-4-3 (West 2010). Defendant argues that he should not be required to submit a new sample or pay the assessment since his DNA is already in the database. In *People v. Marshall*, 242 Ill. 2d 285 (2011), the Illinois Supreme Court held that trial courts are not authorized by statute to order defendants, whose DNA is already on file, to submit a new sample of DNA and pay a corresponding assessment. *Id.* at 303. Accordingly, we vacate that portion of the trial court's order requiring defendant to submit a DNA sample and pay a \$200 DNA assessment.

¶ 22

CONCLUSION

¶ 23 The State corroborated defendant's confession with evidence that tended to show a crime was committed; the conviction is affirmed. The sentence is affirmed with the following

modifications. Defendant is granted one additional day of presentence credit for February 25, 2009, and the portion of the trial court's order requiring defendant to submit a DNA sample and pay a DNA assessment is vacated.

¶ 24 For the foregoing reasons, the judgment of the circuit court of Peoria County is affirmed as modified.

¶ 25 Affirmed as modified.