

No. 1-10-0314

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IN THE  
APPELLATE COURT OF ILLINOIS  
FIRST JUDICIAL DISTRICT

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THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County.
	)	
v.	)	No. 06 CR 561
	)	
DOUGLAS LEMON,	)	Honorable
	)	Neera Lall Walsh,
Defendant-Appellant.	)	Judge Presiding.

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JUSTICE PUCINSKI delivered the judgment of the court.  
Justices Fitzgerald Smith and Sterba concurred in the judgment.

**ORDER**

¶ 1 *Held:* Where the trial court properly admitted other-crimes evidence, defendant is not entitled to a new trial; we affirm the judgment of the circuit court.

¶ 2 Following a jury trial, defendant Douglas Lemon was convicted of driving under the influence of alcohol (DUI) and sentenced to 30 months' imprisonment. On appeal, defendant contends that the trial court improperly allowed other-crimes evidence, *i.e.*, driving without a valid driver's license or insurance, the prejudicial nature of which outweighed its probative value. We affirm.

¶ 3 The record shows that on November 17, 2009, defendant filed a motion *in limine* to bar the State from introducing at trial any evidence that he did not have a driver's license or insurance. Defendant maintained that the fact that he did not have a driver's license or insurance was not relevant to the DUI charge, and would be prejudicial if introduced at trial. The trial court denied his motion, finding that whether defendant had a driver's license or insurance related to the police officer's course of conduct.

¶ 4 During opening statements, the State indicated that police observed that defendant was unable to stay in his lane and pulled over the vehicle he was driving. The State then indicated, over defendant's objection, that defendant was unable to produce a driver's license or insurance as requested by police.

¶ 5 At trial, Officer Paul Meagher testified that at about 2 a.m. on March 13, 2005, he was on routine patrol with Officer Drewes near the 4700 block of West Division Street in Chicago. At that time, Meagher observed a vehicle that failed to stay in its lane, activated his squad car's emergency equipment in an attempt to stop it, and, after the vehicle traveled about three blocks, Meagher pulled it over. Meagher approached the vehicle, which was driven by defendant and contained a passenger, and asked defendant to produce his driver's license and insurance. Over defendant's objection, Meagher testified that defendant did not have a driver's license or insurance. Defendant's eyes appeared to be glassy and bloodshot, his speech was slurred, and he emitted a strong odor of alcohol.

¶ 6 Meagher also testified that he asked defendant to step out of the vehicle because he was unable to produce a license and insurance, and because he thought defendant might be under the influence of alcohol. Defendant did not comply with Meagher's request to exit the vehicle and was combative. After the third request, defendant used the door as support to exit the vehicle and stumbled as he walked to the rear of the vehicle. Defendant was also swaying back and forth

while he stood in place, and refused to perform any field sobriety tests. Defendant was placed into custody and taken to the police station, where he appeared "very sleepy." The passenger of the vehicle was released at the scene.

¶ 7 After the jury was excused, the State entered into evidence a certified copy of defendant's driving background that showed his driving privileges had been revoked at the time of the incident at bar.

¶ 8 Johnny Lemon testified for the defense that defendant was his brother, and, prior to midnight on the date in question, defendant consumed alcohol. At about midnight, Johnny and defendant took turns driving and went to a liquor store where defendant bought alcohol, which only defendant consumed. On their way to a bowling alley, Johnny and defendant were stopped by police at about 2 a.m. According to Johnny, he was driving with defendant in the front passenger seat when police stopped them. They both exited the car, and Johnny spoke with one officer who released him at the scene. Johnny walked away from the car without defendant, who was arrested, and called a cab.

¶ 9 Defendant, who had two prior felony convictions for possession of a controlled substance, testified similarly to Johnny. He also testified that he did not drink any alcoholic beverages before they started driving, and that he only had one beer after stopping at the liquor store. According to defendant, police arrested him for being disorderly.

¶ 10 Officer Tim Drewes testified for the State in rebuttal. On the date and time in question, Drewes was working with Officer Meagher. Drewes testified similarly to Meagher and also stated that after pulling over the vehicle in question he had a conversation with the passenger of the vehicle. He also identified defendant as the driver.

¶ 11 During closing argument, the State noted that defendant could not provide a driver's license or insurance as requested by police at the scene. Following closing arguments, the jury

found defendant guilty of DUI. At sentencing, the offense was elevated to a Class 4 offense because the State proved that defendant was driving while his license was revoked.

¶ 12 On appeal, defendant contends that his conviction should be reversed and his cause remanded for a new trial because the trial court improperly allowed the jury to hear other-crimes evidence, *i.e.*, that defendant was driving without a valid driver's license or insurance. He claims that the prejudicial nature of this evidence outweighed its probative value.

¶ 13 The State initially maintains that driving without a license or insurance does not amount to other-crimes evidence. The State specifically maintains that driving without insurance is a "business offense," and driving without a license is not even in the Illinois Vehicle Code. However, we agree with defendant that the limitations on the admissibility of other-crimes evidence extends to "bad acts." See *People v. Reeves*, 385 Ill. App. 3d 716, 731 (2008) (applying the rule limiting other-crimes evidence to noncriminal conduct or "bad acts"). Thus, whether driving without a license or without insurance constitutes evidence of other crimes or prior bad acts, we turn to the merits of defendant's appeal.

¶ 14 Evidence of crimes for which defendant is not on trial is only admissible when relevant for a purpose other than to show defendant's propensity to commit a crime. *People v. Donoho*, 204 Ill. 2d 159, 170 (2003). Several recognized purposes include identity, motive, intent, design, course of conduct, or common scheme. *People v. Poe*, 16 Ill. App. 3d 805, 806 (1974). If evidence of other crimes is intertwined with the charged offense, such evidence may be admissible. *People v. Evans*, 373 Ill. App. 3d 948, 958 (2007).

¶ 15 When other-crimes evidence is offered, the trial court must weigh its probative value against its prejudicial effect, and may exclude evidence if its prejudicial effect substantially outweighs its probative value. *People v. Illgen*, 145 Ill. 2d 353, 365 (1991). The admissibility of evidence is within the sound discretion of the trial court, and its decision may not be overturned

on appeal absent a clear abuse of discretion. *Evans*, 373 Ill. App. 3d at 959.

¶ 16 In this case, the trial court held that the police officers discovered that defendant did not have a driver's license or insurance through their course of conduct, and thus such evidence was admissible. Our review discloses no abuse of discretion in that ruling.

¶ 17 We agree with the court that defendant's failure to present the police with a driver's license or insurance was admissible to show the officers' course of conduct. Defendant's inability to produce his driver's license or insurance, combined with Officer Meagher's observations that defendant appeared to be under the influence of alcohol, explains why Meagher asked defendant to exit the vehicle. Based on this record, we find that the prejudicial effect of Officer Meagher's testimony regarding defendant's lack of a driver's license and insurance did not substantially outweigh its probative value (*Illgen*, 145 Ill. 2d at 365), and that the trial court did not abuse its discretion in admitting this testimony (*Evans*, 373 Ill. App. 3d at 959).

¶ 18 We further note that even if the trial court improperly allowed testimony regarding defendant's lack of a driver's license or insurance, such error was harmless in light of the substantial evidence that defendant was driving under the influence of alcohol. See *People v. Chromik*, 408 Ill. App. 3d 1028, 1042 (2011), quoting *People v. Boyd*, 366 Ill. App. 3d 84, 95 (2006) (even where the trial court improperly balances the probative value of the other-crimes evidence against the unfair prejudice, "[r]eversal is not warranted if it is unlikely the error influenced the jury"). In this case, Officer Meagher testified that he stopped the vehicle defendant was driving after observing him swerve out of his lane. He also observed that defendant's eyes were bloodshot, his breath smelled like alcohol, and his speech was slurred. Officer Meagher further testified that defendant stumbled as he walked towards the rear of the car, swayed as he attempted to stand still, and, when police brought defendant to the station, he appeared "very sleepy." Based on this testimony that clearly showed defendant was driving

under the influence of alcohol, it is unlikely defendant's lack of a driver's license or insurance influenced the jury.

¶ 19 In reaching this conclusion, we find *People v. Robinson*, 368 Ill. App. 3d 963 (2006), relied on by defendant, distinguishable from the case at bar. In *Robinson*, 368 Ill. App. 3d at 976, the trial court mistakenly believed that the defendant's prior DUIs were elements of the charge on trial before it, and thus improperly admitted them at trial. This court held that because the case was closely balanced, and because the trial court never corrected its interpretation of the law, the erroneous admission of defendant's past DUI convictions was not harmless. *Robinson*, 368 Ill. App. 3d at 977. Here, by contrast, the trial court did not admit the evidence regarding defendant's lack of a driver's license or insurance because it believed that such evidence was an element of the offense at bar. Instead, it admitted the evidence because it was part of Officer Meagher's course of conduct in pulling defendant over and requesting him to exit the car. Moreover, unlike *Robinson*, the evidence against defendant was substantial and it was not a close case.

¶ 20 For the foregoing reasons, we affirm the judgment of the circuit court.

¶ 21 Affirmed.