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2013 IL App (4th) 120614-U

NO. 4-12-0614

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED
April 22, 2013
Carla Bender
4th District Appellate
Court, IL

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from
Plaintiff-Appellee,)	Circuit Court of
v.)	McLean County
ERIC WALKER,)	No. 11CF698
Defendant-Appellant.)	
)	Honorable
)	Rebecca Simmons Foley,
)	Judge Presiding.

JUSTICE APPLETON delivered the judgment of the court.
Presiding Justice Steigmann and Justice Knecht concurred in the judgment.

ORDER

¶ 1 *Held:* The appellate court affirmed the trial court's judgment where (1) the trial court did not err by denying defendant's motion *in limine* when the State did not act in bad faith or did not inadvertently destroy potentially exculpatory evidence, and (2) the evidence was sufficient to convict defendant of driving while his license was suspended.

¶ 2 In an April 2012 bench trial, defendant, Eric Walker, was convicted of driving while his license was suspended. Prior to trial, he filed a motion *in limine* seeking to prohibit the State from introducing any evidence pertaining to the time frame when the police officer's onboard camera would have produced a video of the traffic stop. The State claimed a technical error prevented the officer's camera from producing a video. The trial court denied defendant's motion, finding the State did not either purposely or accidentally destroy the evidence. Defendant filed this direct appeal, challenging the court's order denying his motion *in limine* as well as the sufficiency of the evidence

supporting his conviction. We affirm.

¶ 3

I. BACKGROUND

¶ 4

On August 17, 2011, the day after defendant was stopped by Normal police officer Joseph Gossmeier, the State charged defendant by information with driving while his license was suspended, his third offense, which is a Class 4 felony (625 ILCS 5/6-303(d-2) (West 2010)). A superseding indictment was filed on August 24, 2011.

¶ 5

On March 23, 2012, defendant filed a motion *in limine*, requesting the State be prohibited from introducing any evidence relating to events that occurred from the activation of Gossmeier's emergency lights on his squad car until the point when Officer Dobson (whose first name is not included in the record) arrived at the scene. According to defendant, the State allegedly destroyed the video and audio recording from Gossmeier's onboard video camera. Without this video evidence, defendant insisted he would be unable to prove he was not driving the vehicle as Gossmeier claimed.

¶ 6

At a pretrial hearing on March 27, 2012, the trial court considered defendant's motion. Defendant called Gossmeier as a witness, who said he had stopped and arrested defendant on the basis of him driving while his license was suspended. He said he observed defendant's vehicle for approximately 3 1/2 blocks. Defendant's counsel asked the following question:

"Q. But there were no other stops between the time that you initially reported observing [defendant's] vehicle to the point at which you actually activated your emergency lights?

A. Correct."

¶ 7

Gossmeier testified he was in a marked police car equipped with an onboard video

camera, which he assumed began recording when he activated his emergency lights. Gossmeyer said he was told by the evidence technician, Brian Williams, prior to his testimony, that the video recording from his onboard camera did not save and download "for whatever reason." Gossmeyer described the lack of a video recording as a "technological error." He said this type of error has occurred before in the 10 years he has been a Normal police officer. He said Dobson arrived on the scene to assist him and that Dobson had an onboard camera, which did produce a video.

¶ 8 At the close of Gossmeyer's testimony, the State requested the hearing be continued for the presentation of further evidence to "fully flesh out" its position. The trial court granted the State's motion over defendant's objection.

¶ 9 On April 20, 2012, the day scheduled for trial, the trial court resumed the hearing on defendant's motion *in limine*. The State presented the testimony of Officer Brian Williams, the evidence manager for the Normal police department. He explained that the onboard video cameras typically begin recording when the officer activates his emergency lights and continue recording for approximately 30 seconds after the officer turns off his lights. Once the police car returns to the station, the video recordings are automatically downloaded wirelessly to the server. Other than turning on and off the emergency lights, the officers have no responsibility regarding the video recording, as it is a fully automated system. If a video is requested for production, Williams searches and views the videos on the computer program designated for that purpose. Williams said neither he nor any officer can delete videos from the system.

¶ 10 Williams testified he received a request in this case for a video from Gossmeyer's vehicle. He found one video in the system from defendant's traffic stop, but it was from Dobson's vehicle. Williams made a hard copy and forwarded it to the State's Attorney's office. He was asked

to search again, but he was unable to locate a video from Gossmeyer's vehicle. Williams said officers typically should indicate on their report that a video accompanied the incident report by checking a box next to the word "evidence." Gossmeyer did not place a mark in the "evidence" box. However, the fact that the box was not checked would have no effect on whether the video existed in the system. Regardless, Williams would have found the video had it been on the system. Dobson's report did not have the "evidence" box checked either, but his video was found on the system. Williams further testified the State requested the videos be maintained on the system for 90 days before they are purged. Gossmeyer's video was requested on October 7, 2012, within the 90-day time frame.

¶ 11 Williams requested the "IT department head" attempt to retrieve the video directly from the hard drive in Gossmeyer's vehicle to no avail. Because the video was not on the hard drive, Williams assumed the failure was either a camera malfunction or a corrupted file.

¶ 12 After considering the evidence and arguments of counsel, the trial court stated as follows:

"Thank you. Upon review of the *Kladis* case [(*People v. Kladis*, 2011 IL 110920)] ***, the court does find there are several distinguishing factors from the case at bar to that case.

*** There, the State acknowledged that because of their inaction, their failure to notify that particular police department, the video was then destroyed pursuant to department policy. That is not the case here. There has been no inaction at least with regard to the affirmative action of destruction in this case.

That leads to the last point of distinction that the court notes. In *Kladis* there was an acknowledgment that, yes, there was, in fact, an actual destruction. In the case at bar, the court cannot say with any certainty that this video ever existed, and by means to say that it was not saved properly, or there was an error in downloading it from the squad car camera to the hard drive or the server at the Normal Police Department.

The court recognizes the importance of video evidence. The legislature has recognized the importance of video evidence. That is why we have a statute in place requiring its preservation for a certain length of time. However, we have to balance that against the fact that in the technological age that we live in, sometimes those devices fail. In this particular case, I don't believe, and the court cannot make the finding, that this piece of evidence was destroyed.

* * *

I think, in essence, what the defendant is doing today is making the argument that the State has the obligation that at the time they believe the video's created, the State needs to ensure that it's properly captured, download it wirelessly from the squad car to the server, and then ensure at that point in time it's actually sitting there on the server or the hard drive at the Normal Police Department, and I do not believe that is practical, nor do I believe it is a requirement

of the People. Once that evidence is properly submitted, yes, they have the burden to ensure that once they're placed on notice that it is requested that it not be destroyed, and those are not the particular facts here.

Based upon all of the foregoing, the court will deny the defendant's motion *in limine*."

¶ 13 The trial court proceeded to defendant's bench trial. Gossmeier testified for the State. He said, while on patrol on August 16, 2011, at approximately 5:10 p.m., he observed a red Ford sports-utility vehicle with defendant driving. They were each stopped at a four-way stop sign heading in opposite directions, thereby facing each other. There were no passengers in defendant's vehicle. Gossmeier performed a registration check on the vehicle and found defendant, the registered owner, had a suspended driver's license. Gossmeier turned his vehicle around in order to initiate a traffic stop on defendant's vehicle. Gossmeier lost sight of the vehicle temporarily, but observed defendant pull into an auto repair shop. Gossmeier said he observed defendant exit the driver's side of the vehicle. Gossmeier advised defendant of the reason for the stop and asked if he was the registered owner of the vehicle. Defendant denied being the owner and Gossmeier asked for defendant's identification. When defendant's photo identification card revealed his name, the officer placed him under arrest. Gossmeier said defendant told him he denied being the owner of the vehicle because he did not want the hassle of being arrested for driving the vehicle only a few blocks to the repair shop. Dobson, whose vehicle was equipped with an onboard video camera, arrived to assist Gossmeier. The State introduced Dobson's video and a certified copy of defendant's driving abstract into evidence.

¶ 14 On cross-examination, Gossmeier testified he was unable to locate the key to the vehicle. He said defendant did not enter the repair shop prior to his arrest and the key was not located on defendant's person.

¶ 15 The video shows defendant in custody near Gossmeier's patrol car, which had its emergency lights activated, when Dobson arrived at the repair shop. The conversation between Gossmeier and Dobson indicated they were both searching for the key in the vehicle, on defendant, and in the repair shop. They did not locate it. The alarm on the vehicle was activated repeatedly, and without a key, the officers had trouble turning the alarm off and preventing it from reactivating. The vehicle was eventually towed away. The State rested.

¶ 16 Defendant testified he walked to the auto shop to check on his truck, which was scheduled to be serviced at the shop. He denied driving the vehicle before Gossmeier approached him.

¶ 17 On cross-examination, defendant said his children's mother was the one who typically drove the vehicle. The repair shop did not know what was wrong with it, so they asked defendant to describe what needed repaired. Defendant did not know how long the vehicle had been there or how it got there. He had walked from his girlfriend's house, which was only a few blocks from the repair shop. As he approached the vehicle, he saw the officer pull in and park behind the vehicle. Defendant rested.

¶ 18 After considering the evidence and arguments of counsel, the trial court found the State had sufficiently proved defendant guilty of driving while his license was suspended. The court specifically noted it found Gossmeier's testimony to be credible, and further noted, the key could have been "placed elsewhere from the time of the exit of the vehicle to the time of the encounter with

Officer Gossmeier."

¶ 19 Defendant filed a motion to reconsider the trial court's ruling on his motion *in limine*. Citing *Kladis*, defendant claimed the video evidence, had it existed, would have exonerated him. He claims without the video evidence, a verdict finding him guilty was "so unreasonable, improbable, or unsatisfactory as to justify reasonable doubt."

¶ 20 On June 12, 2012, the court conducted a hearing on defendant's motion. After considering the arguments of counsel, the court again noted the distinguishing factor of the destruction of the video in *Kladis* and denied defendant's motion. The court proceeded to sentence defendant to 30 months' conditional discharge with 60 days in jail. This appeal followed.

¶ 21 II. ANALYSIS

¶ 22 Defendant poses two arguments on appeal: (1) the trial court erred in denying his motion *in limine*, and (2) the evidence was insufficient to prove him guilty beyond a reasonable doubt. After addressing each in turn, we find no error and affirm the court's judgment.

¶ 23 A. Motion *In Limine*

¶ 24 First, defendant relies on the supreme court's decision in *Kladis*. There, the defendant was charged with driving under the influence of alcohol (DUI). Five days following her arrest and 25 days prior to her first court appearance, she requested the State produce a video recording of the traffic stop made by the officer's onboard video camera at the first court hearing. The police department's policy was that the recordings were automatically purged within 30 days of the arrest. The video related to the defendant's traffic stop was purged just hours before the first court appearance. *Kladis*, 2011 IL 110920, ¶ 6. The trial court held that, because the State was put on notice of her request within 30 days of her arrest, sanctions were proper in the form of prohibiting

the State's introduction of testimony relating to 5 seconds prior to the time the officer activated his emergency lights until the lights were turned off, *i.e.*, testimony relating to what was contained on the tape was barred at the hearing on her motion to rescind her statutory summary suspension (*Kladis*, 2011 IL 110920, ¶ 9) as well as at her criminal trial (*Kladis*, 2011 IL 110920, ¶ 15).

¶ 25 The appellate court upheld the sanctions imposed by the trial court. *Kladis*, 2011 IL 110920, ¶ 17. Our supreme court noted "the use of video recordings as evidence at trial has become a common practice to allow a defendant the opportunity to present an effective defense and to further the truth-seeking process." *Kladis*, 2011 IL 110920, ¶ 28. As such, the court held these video recordings are discoverable even in misdemeanor DUI cases. *Kladis*, 2011 IL 110920, ¶ 29. The court further held the video "recording assists the trier of fact in seeking the truth and at arriving at a just result." *Kladis*, 2011 IL 110920, ¶ 34. "The video recording is relevant and admissible evidence because it reveals what transpired during the traffic stop which serves to further the truth-seeking function of a trial. This evidence may be helpful to both the defendant and the State." *Kladis*, 2011 IL 110920, ¶ 37. The court held the trial court did not abuse its discretion in finding the video was subject to discovery. *Kladis*, 2011 IL 110920, ¶ 39.

¶ 26 In addressing whether the sanction imposed was appropriate, the court first noted that trial courts are afforded a great deal of discretion when imposing sanctions. *Kladis*, 2011 IL 110920, ¶ 42. The trial court had clearly specified that the defendant's driving actions prior to the start of the recording and her actions after she was placed under arrest were admissible. *Kladis*, 2011 IL 110920, ¶ 43. Thus, because the sanction did not completely cripple the State, the supreme court held the sanction was "narrowly tailored" and the court had "properly exercised its discretion in choosing from the spectrum of available options." *Kladis*, 2011 IL 110920, ¶¶ 43, 45.

¶ 27 In this appeal, defendant relies on *Kladis* by arguing the video was "clearly a critical piece of evidence," in that it would have proved defendant's "guilt or innocence beyond question." Defendant suggests the State's explanation of why no video was produced "is suspect." That is, the State could only speculate as to why no video appeared on the server, as no evidence of a malfunction was produced. Defendant contends he was prevented from fully presenting his defense and as such, his motion *in limine* should have been granted. He claims the trial court should have barred the State from introducing evidence relating to events that would have occurred on the video recording.

¶ 28 We must determine whether the State's failure to produce the video recording in this case constituted a discovery violation. *Kladis*, 2011 IL 110920, ¶ 24. Where the facts giving rise to the alleged discovery violation are not in dispute, the question is one of law and the standard of review is *de novo*. *People v. Hood*, 213 Ill. 2d 244, 256 (2004). The State argues no discovery violation occurred because defendant failed to prove, as was his burden, that a video was actually taken from Gossmeier's vehicle. The State contends defendant produced no evidence that Gossmeier had ever activated his emergency lights so as to activate the recording system. Although the video from Dobson's vehicle shows Gossmeier's vehicle with the lights activated at the time Dobson arrived at the repair shop, the State is correct that Gossmeier did not testify that he did, in fact, activate the lights prior to arriving at the repair shop. Gossmeier only confirmed there were no stops between the time he initially met defendant's vehicle and the time he activated his lights. However, he does not say when that was. Because we do not know when Gossmeier activated his emergency lights, we cannot know what the video would show if it existed. Defendant failed to demonstrate that any video recorded from Gossmeier's onboard camera would have aided in his

defense that he did not drive the vehicle. Thus, defendant's position that "[t]he video evidence from Officer Gossmeier's vehicle would have proven the defendant's guilt or innocence beyond question." We would agree with defendant's statement *only if* defendant had sufficiently proved that Gossmeier activated his emergency lights before he pulled into the repair shop parking lot. Only then could we see whether defendant exited the driver's seat.

¶ 29 The fact the video could not be found does not justify sanctions or the preclusion of evidence as in *Kladis*. The holding in *Kladis* provides that a non-due-process discovery violation may be found where the State, without bad faith, destroyed relevant evidence after being put on notice of defendant's request for the evidence. Williams' testimony revealed that no video recording from Gossmeier's vehicle was found on the computer system or on the vehicle's hard drive. Additionally, Williams' testimony revealed that neither he nor any officer could delete a video recorded from a vehicle. This testimony supports a finding that the State neither acted in bad faith nor destroyed the evidence. Apparently, technological errors of this sort have occurred before and are outside of the police department's or the State's control.

¶ 30 It is possible the video may have exonerated defendant. However, it is equally possible, the video had "the potential to banish any hope of exoneration." *People v. Gentry*, 351 Ill. App. 3d 872, 878 (2004). Absent a showing of bad faith on the State's part, or that the State destroyed the evidence, there can be no justification for suppressing evidence due to the State's failure to produce the video. See *People v. Hopley*, 159 Ill. 2d 272, 307 (1994) (*The Brady* (*Brady v. Maryland*, 373 U.S. 83, 87 (1963))) due-process analysis which ignores whether the State's conduct was in good faith or bad faith "is ill-suited for situations where evidence has been lost or destroyed and its contents are unknown."). For these reasons, we find no discovery violation to justify the

imposition of sanctions or the preclusion of evidence as requested in defendant's motion *in limine*. See *Hobley*, 159 Ill. 2d at 308 (where the court could not be certain the requested fingerprint report ever existed (or if it did, the report must have been lost), the State was under no obligation to produce something not within its control). We find the trial court did not abuse its discretion in denying defendant's motion.

¶ 31

B. Sufficiency of the Evidence

¶ 32

Next, defendant contends the State failed to prove beyond a reasonable doubt that he drove while his license was suspended. In analyzing the sufficiency of the evidence, a reviewing court must view the evidence in a light most favorable to the prosecution and determine whether any rational trier of fact could have found the elements of the crime proved beyond a reasonable doubt. *People v. Washington*, 2012 IL 107993, ¶ 33. " 'A conviction will be reversed where the evidence is so unreasonable, improbable, or unsatisfactory that there remains a reasonable doubt of defendant's guilt.' " *Id.* (quoting *People v. Ross*, 229 Ill. 2d 255, 272 (2008)).

¶ 33

Defendant contends the trial court received conflicting testimony regarding whether defendant was driving his vehicle—Gossmeyer said he was, defendant said he was not. According to defendant, this conflicting testimony, coupled with the fact the officers could not locate the key, supports his claim that he did not drive the vehicle as Gossmeyer claimed. Gossmeyer and Dobson searched defendant, the vehicle, and the repair shop for the key without success. Defendant poses the following question in support of his argument on appeal: "[H]ow [] could [he] have been driving if he did not have a key to the vehicle[?]" The trial court found defendant could have placed the key somewhere besides his person, the vehicle, or the shop between the time he exited the vehicle until his encounter with Gossmeyer.

¶ 34 To summarize the pertinent testimony, we note Gossmeier testified he met defendant's vehicle at a four-way stop. Defendant was driving with no passengers in the vehicle. Gossmeier initiated a vehicle-registration inquiry and followed defendant when he discovered his driver's license was suspended. He observed defendant pull into the parking lot of the repair shop and exit the driver's side of the vehicle. Gossmeier met defendant outside of the vehicle and asked if he was the registered owner. Defendant said he was not. Gossmeier requested defendant's photo identification and the vehicle's registration, which indeed showed defendant as the registered owner. When asked to explain his previous denial of ownership, defendant said he did not want the hassle of being arrested for driving only a few short blocks. At trial, defendant denied driving the vehicle and said he was approaching the vehicle when Gossmeier arrived.

¶ 35 The trial court specifically made a credibility finding in favor of Gossmeier. Because determinations of the weight to be given to a witness's testimony, his credibility, and any reasonable inferences to be drawn from the evidence are the responsibility of the fact finder, we, as the reviewing court, should not retry defendant but instead, defer to court on those issues. See *People v. McMillan*, 239 Ill. App. 3d 467, 496 (1993) ("The resolution of the factual disputes and assessment of the credibility of witnesses is for the trier of fact, and a reviewing court will not reverse a conviction unless the evidence is so unsatisfactory or improbable that a reasonable doubt as to defendant's guilt remains."). On this record, we determine the evidence was not so unreasonable, improbable, or unsatisfactory that we are left with a reasonable doubt of defendant's guilt. See *Washington*, 2012 IL 107993, ¶ 33. We find the evidence, particularly Gossmeier's account of the incident, was sufficient to convict defendant of driving while his license was suspended and therefore, we affirm the trial court's judgment.

¶ 36

III. CONCLUSION

¶ 37 For the foregoing reasons, we affirm the trial court's order denying defendant's motion *in limine* and affirm the trial court's judgment of conviction. As part of our judgment, we award the State its \$75 statutory assessment against defendant as costs of this appeal.

¶ 38 Affirmed.