2016 IL App (3d) 130626-U

Order filed October 5, 2016

IN THE

APPELLATE COURT OF ILLINOIS

THIRD DISTRICT

2016

VILLAGE OF PLAINFIELD,	)	Appeal from the Circuit Court
	)	of the 12th Judicial Circuit,
Plaintiff-Appellee,	)	Will County, Illinois.
	)	
v.	)	Appeal No. 3-13-0626
	)	Circuit No. 12-TR-48832
	)	
MARSHA V. CAMERON,	)	The Honorable
	)	Carmen Goodman,
Defendant-Appellant.	)	Judge, presiding.

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

ORDER

¶ 1 *Held*: In a case where the defendant was charged with driving while license suspended, the State failed to prove beyond a reasonable doubt that the defendant's driver's license was suspended on the date of the offense. The appellate court, therefore, reversed outright the finding of guilty as to defendant and remanded the case for further proceedings.

¶ 2 After a bench trial, defendant, Marsha V. Cameron, was found guilty of driving while license suspended (DWLS) (625 ILCS 5/6 303(a) (West 2012)) and sentenced to 12 months of court supervision. Defendant appeals, arguing: (1) she was not proven guilty beyond a

reasonable doubt; (2) the Village of Plainfield failed to prove that it had the written permission of the State's Attorney to prosecute the offense; and (3) the trial court erred in granting the Village's motion to reconsider the grant of a new trial to defendant. We agree with defendant's first argument. We, therefore, reverse outright the finding of guilty as to defendant on the charge of DWLS and remand this case for further proceedings consistent with this order.

¶ 3 FACTS

¶ 4 On June 6, 2012, shortly before noon, Village police officer Brian Heath made a traffic stop on a vehicle being driven by defendant in Plainfield, Will County, Illinois. Heath ticketed defendant for DWLS. A bench trial was held on the charge on May 2, 2013, before the Honorable Judge Cory Lund. Defendant was represented at the trial by an attorney, and the ticket was prosecuted by the Village. At the outset of the hearing, the parties stipulated to the admission of two exhibits, one for the Village and one for defendant. The Village's exhibit was a driving abstract for defendant issued by the Secretary of State on June 8, 2012, two days after the date of the alleged offense. It stated that defendant's driver's license was suspended on the date in question for financial responsibility reasons relating to vehicle insurance. Defendant's exhibit was a driving abstract for defendant issued by the Secretary of State about one year after the date of the offense. The abstract, which can no longer be located and has not been made a part of the record in this appeal, showed no suspension of defendant's driver's license in effect on the date of the offense.

¶ 5 The only witness to testify at the trial was the officer who had issued the traffic ticket, Village police officer Brian Heath. Heath testified that on June 6, 2012, at about 11:36 a.m., he was on patrol in Plainfield in the area of Route 59 and Riverwalk Court when he saw a white Chevrolet Malibu traveling north on Route 59 at his location. Heath ran the car's license plate

through his computer system and saw that the car was registered to defendant and that defendant's driver's license was suspended. The reason for the suspension was listed as financial, for not having insurance. Heath drove alongside the car and saw that the driver was a female and that she matched the age and physical description of the registered owner. Heath made a traffic stop on the vehicle and eventually ticketed defendant, the driver, for DWLS. At the time of the stop, defendant provided a valid insurance card to Heath and stated that she was not aware that her license was suspended.

¶ 6 During the trial, after the Village rested its case, the defense presented no additional evidence. Judge Lund found defendant guilty of DWLS. In so doing, Judge Lund commented that he was finding defendant guilty "[b]ecause of the lack of evidence as to why there [was] no suspension listed on Defense Exhibit 1." Judge Lund sentenced defendant to 12 months of court supervision. The sentence was entered on the same day as the trial, May 2, 2013.

¶ 7 On May 28, 2013, within 30 days after the sentence was entered, defendant filed a motion for new trial in the instant case. In the motion, defendant argued that she had not been proven guilty beyond a reasonable doubt of the offense. A hearing was held on the motion in June 2013. During the hearing, when Judge Lund was told defendant's maiden name, he realized that he was related to defendant. Judge Lund stated that he should not have heard the case. Without ruling on defendant's motion for new trial, Judge Lund entered an order for a new bench trial and recused himself from the case because of his familial relationship to defendant.

¶ 8 The Village filed a motion to reconsider. In the motion, the Village argued that a new trial was not warranted because there was neither an actual impropriety nor an appearance of impropriety under the circumstances of the case, since Judge Lund did not realize that he was related to the defendant until after he had found defendant guilty.

¶ 9 The case was reassigned to the Honorable Judge Carmen Goodman. After the case was reassigned, on June 24, 2013, defendant again filed her previous motion for new trial and noticed up the motion before Judge Goodman. In court on a later date, defendant referred to the motion as an amended motion.

¶ 10 A hearing was held on the Village's motion to reconsider on June 26, 2013, before Judge Goodman. At the conclusion of the hearing, Judge Goodman granted the motion to reconsider and vacated Judge Lund's order for new trial, reasoning that Judge Lund and defendant did not recognize their familial relationship until after Judge Lund had already made his decision in the case.

¶ 11 On August 20, 2013, a hearing was held before Judge Goodman on defendant's motion for new trial. After listening to the arguments of the attorneys, Judge Goodman denied the motion. Two days later, on August 22, 2013, defendant filed the instant appeal to challenge the trial court's ruling on her motion for new trial and, ultimately, to challenge the finding of guilty on the DWLS charge.

¶ 12 ANALYSIS

¶ 13 As her first point of contention on appeal, defendant argues that the trial court erred in finding her guilty of DWLS because the Village failed to prove her guilty of the offense beyond a reasonable doubt. More specifically, defendant asserts that based upon the two conflicting driving abstracts that were presented at trial, the evidence was insufficient for a rational trier of fact to find beyond a reasonable doubt that defendant's driver's license was suspended on the date in question. According to defendant, the trial court's finding of guilty was based solely upon speculation, conjecture, and improper shifting of the burden of proof to defendant.

Defendant asks, therefore, that we reverse outright the trial court's finding of guilty on the charge of DWLS.

¶ 14 The Village argues that the trial court's finding of guilty was proper and should be upheld. The Village asserts that defendant failed to introduce enough evidence on the charge to raise a reasonable doubt as to her guilt. According to the Village, the driver's license abstract that the Village presented and the credible testimony of Officer Heath were sufficient to prove that defendant's driver's license was suspended on the date of the offense. In making that assertion, the Village points out that defendant's trial exhibit was not made part of the record on appeal and that any doubts that arise because of the incompleteness of the record in that regard must be construed against defendant as the appellant. See *Foutch v. O'Bryant*, 99 Ill. 2d 389, 391-92 (1984). The Village asks, therefore, that we affirm the trial court's finding of guilty as to defendant on the charge of DWLS.

¶ 15 Before we reach the merits of this issue, we must first address the Village's argument that appellate jurisdiction is lacking because defendant failed to file her notice of appeal in a timely manner. In that regard, the Village asserts that defendant's second posttrial motion was filed well after the 30 day time period for filing a posttrial motion had expired and did not toll the time period for filing an appeal. As defendant correctly points out, however, both the supreme court and the appellate court have found that the filing of what amounts to an amended motion, before the original motion has been ruled upon, is permissible within the trial court's discretion and does, in fact, toll the 30 day time period. See *City of Chicago v. Greene*, 47 Ill. 2d 30, 33 (1970); see also *In re Marriage of Jones*, 187 Ill. App. 3d 206, 212-14 (1989). We, therefore, reject the Village's argument of lack of appellate jurisdiction in this case and, instead, turn to the merits of this issue.

¶ 16 It is well settled that when a reviewing court is faced with a challenge to the sufficiency of the evidence in a criminal case, it 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 proven beyond a reasonable doubt. *People v. Austin M.*, 2012 IL 111194, ¶ 107; *People v. Collins*, 106 Ill. 2d 237, 261 (1985). The reviewing court will not retry the defendant. *Austin M.*, 2012 IL 111194, ¶ 107. Determinations of witness credibility, the weight to be given testimony, and the reasonable inferences to be drawn from the evidence are responsibilities of the trier of fact, not the reviewing court. *People v. Jimerson*, 127 Ill. 2d 12, 43 (1989). A reviewing court will not reverse a conviction unless the evidence is so improbable, unsatisfactory, or inconclusive that it leaves a reasonable doubt of the defendant's guilt. *Austin M.*, 2012 IL 111194, ¶ 107.

¶ 17 DWLS is a strict liability offense. *People v. Stevens*, 125 Ill. App. 3d 854, 855-57 (1984). To prevail on a charge of DWLS, the prosecution must prove two elements beyond a reasonable doubt: (1) that defendant drove or was in actual physical control of a motor vehicle on a highway of this State; and (2) that defendant's driver's license was suspended at that time. See 625 ILCS 5/6-303(a) (West 2012); Illinois Pattern Jury Instructions, Criminal, No. 23.40 (4th ed. 2000); *People v. Jackson*, 2013 IL 113986, ¶ 16. Only the second element is in dispute in the instant case. The prosecution may prove that element—that the defendant's driver's license was suspended on the date of the offense—by admitting at trial a certified driving abstract from the Secretary of State. See 625 ILCS 5/2-123(g)(6), 6-303(f) (West 2012); *People v. Meadows*, 371 Ill. App. 3d 259, 261-63 (2007). A certified driving abstract constitutes prima facie evidence of the facts stated therein, is admissible for any prosecution under the Vehicle Code, and shall be admitted as proof of any prior conviction, records, notices, or orders recorded on individual

driving records maintained by the Secretary of State. See 625 ILCS 5/2-123(g)(6), 6-303(f) (West 2012); *Meadows*, 371 Ill. App. 3d at 261-63. A certified driving abstract, however, is not unchallengeable. *Meadows*, 371 Ill. App. 3d at 263. Rather, a defendant may present evidence to rebut the abstract's veracity. See *id.*

¶ 18 In the instant case, the defendant did exactly that. The defendant presented a certified driving abstract of her own to rebut the statement in the prosecution's abstract, that defendant's driver's license was suspended on the date in question.[1] Defendant's abstract showed, however, that defendant's driver's license was not suspended on the date in question. Faced with two conflicting statements from the same source, the Secretary of State, it was incumbent upon the prosecution, as the party with the burden of proof, to present further evidence to establish that defendant's driver's license was, in fact, suspended on the date of the offense. Absent further evidence, there was no way for the trial court, as the trier of fact, to determine which of the two certified abstracts was correct, without engaging in improper speculation. See *People v. Lavelle*, 396 Ill. App. 3d 372, 382-84 (2009) (forty-year sentencing enhancement was improper because the State failed to prove beyond a reasonable doubt that defendant had personally discharged the firearm that had proximately caused the victim's death where it was impossible to tell from the evidence presented whether the bullet that had struck the victim had been fired by defendant or

[1] Although the prosecution argues that any doubt in the record caused by the failure of defendant as appellant to include defendant's trial exhibit as part of the record on appeal must be construed against defendant, we find that the appellate record sufficiently describes the nature of the exhibit and what was contained in the exhibit to allow for full and thorough review of this issue. See *Chapman v. Chapman*, 285 Ill. App. 3d 377, 381-82 (1996) (an incomplete record does not automatically preclude review of an issue on appeal).

by an accomplice); *Romano v. Municipal Employees Annuity & Benefit Fund of Chicago*, 402 Ill. App. 3d 857, 864-65 (2010) ("[w]here from the proven facts the non-existence of the fact to be inferred appears to be just as probable as its existence, then the conclusion that it exists is a matter of speculation, surmise, and conjecture"). The trial court erred, therefore, when it found that defendant's driver's license was suspended on the date of the offense. See *Lavelle*, 396 Ill. App. 3d at 382-84; *Romano*, 402 Ill. App. 3d at 864-65.

¶ 19 Contrary to the Village's assertion on appeal, Officer Heath's testimony regarding the status of defendant's driver's license on the date of the offense did not serve to bolster the Village's contention that defendant's driver's license was suspended. Even if we assume that Officer's Heath's testimony regarding what he had seen on his computer screen could be considered as substantive evidence on that issue, we would still be left with the same limitation—that the source of the information was the Secretary of State, the same source as the Village's driving abstract and the defendant's driving abstract. That testimony did not provide Judge Lund with a means for determining which of the two driving abstracts was correct. In addition, we find no merit to the Village's suggestion that there may have been a rescission of the suspension or some other indication on the abstract presented by defendant as to why the abstract did not show a suspension in effect on the date of the offense. While it is true that the abstract presented by defendant has not been made part of the record in this appeal, we feel confident in finding that the trial court or the attorneys would have pointed out that information at the bench trial if there was anything of that nature listed on the abstract presented by defendant. Therefore, after applying the *Collins* standard in this case, we must conclude that the evidence was insufficient to prove the second element of the offense beyond a reasonable doubt. Our ruling here is limited to the unique facts of this particular case.

¶ 20 Having found that the evidence was insufficient to prove defendant guilty, we need not address the other arguments made by defendant in this appeal.

¶ 21 CONCLUSION

¶ 22 For the foregoing reasons, we reverse the judgment of the circuit court of Will County and we reverse outright the finding of guilty as to defendant on the charge of driving while license suspended. We remand this case for the trial court to vacate the finding of guilty and the sentencing order and to notify the Secretary of State accordingly.

¶ 23 Reversed and remanded.