

2018 IL App (1st) 171660-U
No. 1-17-1660
September 24, 2018

FIRST DIVISION

NOTICE: This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

IN THE
APPELLATE COURT OF ILLINOIS
FIRST DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the Circuit Court
Plaintiff-Appellee,)	Of Cook County.
v.)	No. TH 606835
CESAR HERRERA,)	The Honorable
Defendant-Appellant.)	Clare J. Quish,
	Judge Presiding.

JUSTICE WALKER delivered the judgment of the court.
Presiding Justice Mikva and Justice Pierce concurred in the judgment.

ORDER

- ¶ 1 *Held:* When the appellant provides a record that omits significant evidence presented to the trial court, the appellate court cannot assess the sufficiency of the evidence or the prejudicial effect of the trial court's rulings.
- ¶ 2 A jury found Cesar Herrera guilty of driving under the influence of alcohol. Herrera argues on appeal that the trial court erred in its rulings (1) on his motion to quash arrest, (2) on questions posed on *voir dire*, (3) on evidentiary objections, and (4) on jury instructions.

Because Herrera has not provided this court with a sufficient record, we must affirm the trial court's judgment.

¶ 3

BACKGROUND

¶ 4

Shortly after midnight on August 23, 2015, Officer Jeffrey Kriv of the Chicago Police Department activated his in-car camera as he drove south on Ashland Avenue. Kriv turned on Ogden Avenue and pulled up next to Herrera's car, which was parked by a deserted tavern. Herrera and Hedry Velez were walking away from the car. Kriv asked them what happened. Herrera said the car had run out of gas. Kriv asked Herrera to perform several sobriety tests. Velez spoke to Kriv, but she spoke only Spanish, and Kriv did not understand her. The tests indicated that alcohol impaired Herrera's ability to drive. Velez handed Kriv the car keys. Kriv tried to start the car, and found that it had no gas.

¶ 5

Kriv arrested Herrera for driving under the influence of alcohol. At the police station, Kriv read to Herrera the warning to motorists form, which told Herrera that if he refused to blow into a breathalyzer, he would have his license suspended for at least 12 months. Herrera refused to have his breath tested.

¶ 6

Before trial on the charge of driving under the influence of alcohol, Herrera filed a motion to quash the arrest, arguing that Kriv had no reason to believe that Herrera had been driving. At the hearing on the motion, Kriv testified that he saw Herrera driving the car and coming to a stop in the parking area. Defense counsel sought to elicit evidence that Kriv actually saw Herrera sitting in the driver's seat, trying to determine why the car had stopped working while Velez was driving. Defense counsel asked whether Kriv saw the lights on the back of Herrera's car flash "[a]s if someone were trying to shift the gear from park to drive or

neutral, or from neutral or drive back up to park." Kriv said he knew the driver had shifted the gear from drive to park. The transcript shows the following exchange:

"Q. *** But you don't know which direction the gear shift was being turned from your distance of 60 feet away at night, correct?

A. Actually I do.

Q. Do you have X-ray vision?

A. No, but I saw him drive up to that spot. And when she's driving there I know it's not a neutral or reverse."

¶ 7 The trial court watched the video recorded by the in-car camera, and denied the motion to quash the arrest.

¶ 8 Herrera filed a motion *in limine* to bar the prosecution from showing to the jury the video from the in-car camera. The trial court denied the motion.

¶ 9 On *voir dire*, defense counsel sought to question the venire as to "their attitudes about police fairness toward minorities." The court disallowed the question.

¶ 10 Kriv testified that as he turned his car from Ashland onto Ogden, he saw Herrera's car pull into the parking area, and he saw Herrera get out of the driver's side of the car. Kriv detailed all of the sobriety tests he used and how thoroughly Herrera failed the tests. When the prosecutor played the video for the jury, Kriv described the action. Kriv also testified about the warning to motorists he read to Herrera at the police station.

¶ 11 Velez testified, through a Spanish translator, that she drove Herrera's car on August 23, 2015. When it stopped working, she brought it to a stop in the parking area. Herrera looked

under the hood to see if he could determine what went wrong with the car, and then he got into the driver's seat to try to start the car. Herrera figured out that the car had no gas. Kriv drove up after Herrera got out of the driver's seat. Velez said to Kriv, "yo conduzco," meaning that she had been driving, but Kriv told her to shut up.

¶ 12 Defense counsel asked the court to instruct the jurors that they should judge the police officer's testimony the same way they judge the testimony of any other witness. Counsel also requested an instruction on the factors the jury should consider in evaluating identification testimony. The trial court refused both instructions.

¶ 13 The jury found Herrera guilty of driving under the influence of alcohol. The trial court denied Herrera's motion for a new trial and sentenced him to 18 months of conditional discharge. Herrera now appeals.

¶ 14 ANALYSIS

¶ 15 Herrera argues on appeal that the trial court should have granted the motion to quash the arrest; the court should have barred the prosecution from presenting to the jury the in-car video and the warning to motorists; the court should have permitted defense counsel to ask venire members about their attitudes concerning police treatment of minorities; and the court should have given the instructions defense counsel requested.

¶ 16 "A reviewing court will not disturb a trial court's ruling on a motion to quash arrest unless that finding is manifestly erroneous." *People v. Gacho*, 122 Ill. 2d 221, 234 (1988). Herrera did not include the in-car video in the record on appeal. When the appellant provides an incomplete record, we must "indulge in every reasonable presumption favorable to the judgment from which the appeal is taken, including that the trial court ruled or acted

properly." *People v. Ranstrom*, 304 Ill. App. 3d 664, 672 (1999). Kriv testified that he "saw him drive up to" the place where the car stopped. We presume the court found credible Kriv's testimony that he saw Herrera driving, and the court correctly denied the motion to quash arrest on that basis. Because the record on appeal does not include important evidence presented at the hearing on the motion to quash arrest, we have no basis for overturning the trial court's ruling on that motion. See *Webster v. Hartman*, 309 Ill. App. 3d 459, 460 (1999).

¶ 17 Herrera challenges the trial court's refusal to ask the venire about their attitudes concerning police treatment of minorities. The trial court said it would ask some questions about the relationships of the venire members with police, and the court would allow further probing if a venire member's responses indicated a possible source of bias. "When we review a trial court's denial of a party's request to question prospective jurors on a particular viewpoint, our standard of review is whether the court abused its discretion. *** A trial court properly refuses questions designed to educate the jurors on the defendant's theory of defense and ensure the selected jurors are receptive to that defense." *People v. Reeves*, 385 Ill. App. 3d 716, 729-30 (2008).

¶ 18 Herrera has not included in the record on appeal a transcript of jury selection. We cannot determine from this record whether the trial court permitted sufficient questions to probe an area of potential bias. Because we cannot determine whether the alleged error in *voir dire* affected the fairness and impartiality of the jury, the questioning of the venire does not give us grounds for reversal. See *People v. Zehr*, 103 Ill. 2d 472, 477-78 (1984) (prejudicial error in *voir dire* required reversal).

¶ 19 Herrera objected to the trial court's rulings admitting into evidence the warning to motorists and the video recording of the arrest. "Generally speaking, evidentiary motions, such as motions *in limine*, are directed to the trial court's discretion. A trial court's ruling on such motions will not be disturbed on review absent an abuse of that discretion. *** Moreover, even where an abuse of discretion has occurred, it will not warrant reversal of the judgment unless the record indicates *** substantial prejudice affecting the outcome of the trial." *In re Leona W.*, 228 Ill. 2d 439, 460 (2008). The jury saw the in-car video not included in the record on appeal. Without a sufficiently complete record, we cannot assess the prejudicial effect of the trial court's evidentiary rulings. On this record, we cannot say that the evidentiary rulings justify reversal of the judgment.

¶ 20 Finally, Herrera contends that this court should reverse the trial court's judgment due to errors in the instructions. "As a general rule, a new trial should be granted for improper jury instructions only where the opposing party has suffered serious prejudice." *Thompson v. MCA Distributing, Music Corp. of America*, 257 Ill. App. 3d 988, 991 (1994). Where the record on appeal does not include crucial evidence presented to the jury, we cannot assess the prejudicial effect of the alleged error in the instructions. It is within the trial court's discretion to determine whether an instruction should be given. *People v. Mohr*, 228 Ill. 2d 53, 65 (2008). Based on the record, we cannot find that the refusal to give the proffered instruction was an abuse of discretion.

¶ 21

CONCLUSION

¶ 22

Because the record on appeal includes neither the transcript of *voir dire* nor the video recording shown to the jury, we cannot determine whether any of the alleged errors had prejudicial effect. Accordingly, we must affirm the trial court's judgment.

¶ 23

Affirmed.