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2012 IL App (4th) 111146-U

NO. 4-11-1146

FILED
December 20, 2012
Carla Bender
4th District Appellate
Court, IL

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from
Plaintiff-Appellee,	)	Circuit Court of
v.	)	McLean County
DONALD WILBURN, JR.,	)	No. 11CF173
Defendant-Appellant.	)	
	)	Honorable
	)	Rebecca Simmons Foley,
	)	Judge Presiding.

JUSTICE TURNER delivered the judgment of the court.
Presiding Justice Steigmann and Justice Appleton concurred in the judgment.

ORDER

¶ 1 *Held*: Where the State's evidence was sufficient to prove defendant drove a vehicle while his license was revoked, we affirm his conviction.

¶ 2 Where certain fines and fees must be vacated or recalculated, we vacate in part and remand for an amended sentencing judgment.

¶ 3 In October 2011, a jury found defendant, Donald Wilburn, Jr., guilty of driving with a revoked license. In November 2011, the trial court sentenced him to an extended term of four years in prison.

¶ 4 On appeal, defendant argues (1) the State failed to prove him guilty beyond a reasonable doubt and (2) certain fines and fees must be recalculated and/or vacated. We affirm in part, vacate in part, and remand with directions.

¶ 5 I. BACKGROUND

¶ 6 In March 2011, a grand jury indicted defendant on one count of driving while license revoked (subsequent offense) (625 ILCS 5/6-303(a) (West 2010)), alleging he drove or was in actual physical control of a motor vehicle on a highway in the State of Illinois when his driver's license or privilege to drive was revoked. Defendant pleaded not guilty.

¶ 7 In October 2011, defendant's jury trial commenced. The parties stipulated defendant's driver's license was revoked at the time of his arrest. Bloomington police officer Shaun Meredith testified he was on patrol at approximately 4 a.m. on February 9, 2011. Following a recent snowstorm, "there was quite a bit of snowdrifts and ice and snow on the ground and roadway." At an intersection, Meredith observed a vehicle lodged in a snowdrift. Meredith investigated and found no one inside the vehicle, which was locked and had its engine turned off. Meredith saw a set of footprints in the snow leading away from the vehicle.

¶ 8 Officer Meredith then received a dispatch that officers were headed to an address where an individual was on the front porch knocking on a door. Meredith left the vehicle and proceeded to the address, which was a half-mile or less away. Meredith arrived to find defendant, who stated he was cold. Meredith asked him if the vehicle in the snowdrift belonged to him, but defendant denied knowing anything about it. Defendant consented to a search of his person, and Meredith located a set of keys. Meredith asked him if one of the keys belonged to the vehicle, and defendant answered in the affirmative. Meredith then asked if he had been driving, and defendant admitted he had been driving.

¶ 9 Upon Meredith's questioning defendant about how the vehicle ended up in the snowdrift, defendant stated he had turned the corner and dropped a cigarette in his lap. When he attempted to grab the cigarette, he "jerked on the wheel," which caused the vehicle to veer off

into the drift. Meredith stated defendant never mentioned anyone else being with him or anyone else driving the car. Meredith stated defendant did not appear intoxicated or impaired. A records check indicated his driver's license had been revoked. Meredith then arrested defendant.

¶ 10 The State rested, and the trial court denied defense counsel's motion for a directed verdict. Timothy Robbins then testified on defendant's behalf. Robbins stated defendant had left Robbins' house with his brother in the early evening. Defendant later returned and asked Robbins if he could take him home. Robbins drove and stated he lost control of the vehicle after turning a corner. Because the vehicle settled in a ditch on the driver's side, Robbins had to exit the car from the passenger side. Robbins stated he walked to a gas station to use the phone, but the station was closed. He then cut through a trailer court to get to his house.

¶ 11 Robbins stated he gave the keys to defendant because it was defendant's car. Defendant told him he was going to call a tow truck the next morning. Robbins testified defendant was "pretty drunk" when he had returned to his house to ask for a ride home.

¶ 12 On rebuttal, the State called Bloomington police officer Evan Hurt to testify. He stated he completed an inventory of the vehicle and a tow sheet. Hurt received a key from Officer Meredith, and Hurt stated the key went with the car in the snowdrift.

¶ 13 Following closing arguments, the jury found defendant guilty. In November 2011, defendant filed a motion for judgment notwithstanding the verdict or for a new trial, which the trial court denied. Thereafter, the court sentenced defendant to an extended term of four years in prison. The court also ordered defendant to pay a $20 Violent Crimes Victims Assistance Act (VCVA) fine, a $15 Children's Advocacy Center assessment, a $10 drug-court assessment, and a $35 probation testing fee. This appeal followed.

¶ 14 II. ANALYSIS

¶ 15 A. Sufficiency of the Evidence

¶ 16 Defendant argues the State failed to prove him guilty beyond a reasonable doubt of driving with a revoked license where the circumstantial evidence did not corroborate his alleged admission to driving the car. We disagree.

¶ 17 " 'When reviewing a challenge to the sufficiency of the evidence in a criminal case, the relevant inquiry is whether, when 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.' " *People v. Ngo*, 388 Ill. App. 3d 1048, 1052, 904 N.E.2d 98, 102 (2008) (quoting *People v. Singleton*, 367 Ill. App. 3d 182, 187, 854 N.E.2d 326, 331 (2006)). The trier of fact has the responsibility to determine the credibility of witnesses and the weight given to their testimony, to resolve conflicts in the evidence, and to draw reasonable inferences from that evidence. *People v. Jackson*, 232 Ill. 2d 246, 280-81, 903 N.E.2d 388, 406 (2009). "[A] reviewing court will not reverse a criminal conviction unless the evidence is so unreasonable, improbable[,] or unsatisfactory as to create a reasonable doubt of the defendant's guilt." *People v. Rowell*, 229 Ill. 2d 82, 98, 890 N.E.2d 487, 496-97 (2008).

¶ 18 To sustain a conviction for driving with a revoked license, the State must prove the defendant drove or was in actual physical control of a motor vehicle at a time when his driver's license was revoked. 625 ILCS 5/6-303(a) (West 2010). Here, the parties stipulated defendant's license was revoked at the time he was arrested. However, defendant argues the State failed to prove beyond a reasonable doubt that he drove or was in actual physical control of the car where his statement to Officer Meredith was insufficient to establish the *corpus delicti* of

the offense.

¶ 19 "Under the law of Illinois, proof of an offense requires proof of two distinct propositions or facts beyond a reasonable doubt: (1) that a crime occurred, *i.e.*, the *corpus delicti*; and (2) that the crime was committed by the person charged." *People v. Sargent*, 239 Ill. 2d 166, 183, 940 N.E.2d 1045, 1055 (2010). "In general, the *corpus delicti* cannot be proven by a defendant's admission, confession, or out-of-court statement alone." *People v. Lara*, 2012 IL 112370, ¶ 17, __ N.E.2d __. "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." *Sargent*, 239 Ill. 2d at 183, 940 N.E.2d at 1055.

> "To avoid running afoul of the *corpus delicti* rule, the independent evidence need only *tend to show* the commission of a crime. It need not be so strong that it alone proves the commission of the charged offense beyond a reasonable doubt. If the corroborating evidence is sufficient, it may be considered, together with the defendant's confession, to determine if the State has sufficiently established the *corpus delicti* to support a conviction." (Emphasis in original.) *Lara*, 2012 IL 112370, ¶ 18, __ N.E.2d __.

¶ 20 In the case *sub judice*, the proof of the *corpus delicti* did not rest exclusively on defendant's extrajudicial statement that he was driving the vehicle. Instead, the evidence showed the car belonged to defendant, and police found defendant a short distance away with the key to the car on his person. Further, Officer Meredith testified it was approximately 4 a.m. when he approached defendant outside of a house. Meredith stated no one else was around at that time

and there was only one set of footprints leading away from defendant's car.

¶ 21 Here, the evidence was sufficient to corroborate defendant's statement for purposes of proving *corpus delicti*. While defendant points to testimony from his witness, Timothy Robbins, as well as testimony regarding the officers' investigation, to rebut the State's evidence, any conflicts in the evidence and the credibility of the witnesses were matters for the trier of fact to resolve. In viewing the evidence in the light most favorable to the prosecution, a rational jury could have found defendant drove a vehicle while his license was revoked beyond a reasonable doubt.

¶ 22 B. Fines and Fees

¶ 23 Defendant argues the $20 VCVA fine must be recalculated and the $35 probation testing fee vacated. The State concedes the issue, and we accept the State's concession.

¶ 24 In this case, defendant was required to pay $20 under the VCVA (725 ILCS 240/10(c)(2) (West 2010)). However, section 10(c)(2) only applies when no other fine is imposed. The Children's Advocacy Center assessment has been found to constitute a fine. *People v. Williams*, 405 Ill. App. 3d 958, 965-66, 940 N.E.2d 95, 101 (2010). Moreover, the drug court assessment is also a fine. *People v. Unander*, 404 Ill. App. 3d 884, 886, 936 N.E.2d 795, 797 (2010).

¶ 25 As the Children's Advocacy Center fine and the drug-court fine were imposed here, the $20 VCVA fine calculated under section 10(c)(2) was improperly assessed and must be vacated. Instead, the VCVA fine, which is mandatory, should have been calculated under section 10(b). 725 ILCS 240/10(b) (West 2010); see also *People v. Brown*, 388 Ill. App. 3d 104, 114, 904 N.E.2d 139, 148-49 (2009) (finding "section 10(b) of the [VCVA] is the operative provision

here where other fines were imposed"). Therein, the assessment must be calculated as "$4 for each $40, or fraction thereof, of fine imposed." 725 ILCS 240/10(b) (West 2010). Thus, as the Children's Advocacy Center fine totaled $15 and the drug-court fine totaled $10, the VCVA fine must be set at $4 because the other fines totaled less than $40.

¶ 26 Defendant also argues he was assessed a probation testing fee pursuant to section 5-6-3.1(g) of the Unified Code of Corrections (730 ILCS 5/5-6-3.1(g) (West 2010)). However, that section only applies to defendants who are placed on supervision. As defendant was not placed on supervision in this case, the probation testing fee should not have been assessed and must be vacated.

¶ 27 Accordingly, this cause must be remanded for an amended sentencing judgment to reflect the vacatur of the $20 VCVA fine and the probation testing fee, as well as the imposition of a $4 VCVA fine pursuant to section 10(b).

¶ 28 III. CONCLUSION

¶ 29 For the reasons stated, we affirm in part, vacate in part, and remand with directions. As part of our judgment, we award the State its $50 statutory assessment against defendant as costs of this appeal.

¶ 30 Affirmed in part, vacated in part, and cause remanded with directions.