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2012 IL App (3d) 100405-U

Order filed January 13, 2012

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT
A.D., 2012

THE PEOPLE OF THE STATE)	Appeal from the Circuit Court
OF ILLINOIS,)	of the 12 th Judicial Circuit
)	Will County, Illinois.
Plaintiff-Appellee,)	
)	Appeal No. 3-10-0405
v.)	Circuit No. 09-CF-323
)	
JORGE A. MANZANARES,)	The Honorable
)	Edward Burmila, Jr.,
Defendant-Appellant.)	Judge, Presiding.

JUSTICE McDADE delivered the judgment of the court.
Justices O'Brien and Carter concurred in the judgment.

ORDER

- ¶ 1 *Held:* The trial court erred when it determined that the defendant had not presented slight evidence in order to support a jury instruction for the defense of necessity because the defendant met the low evidentiary threshold to warrant such an instruction.
- ¶ 2 A jury convicted the defendant, Jorge Manzanares, of aggravated driving with a revoked license (625 ILCS 5/6-303(d-3)(West 2008)), and the trial court imposed a 2½ year term of imprisonment. The defendant appeals, contending that the trial court erred when it found that he did not present sufficient evidence to justify the presentation of a necessity defense. Because

the record indicates that the defendant presented the slight evidence necessary to support a jury instruction on necessity, we reverse the defendant's conviction and remand the cause for a new trial.

¶ 3

FACTS

¶ 4 On February 25, 2009, the State charged the defendant with aggravated driving with a revoked license. 625 ILCS 5/6-303(d-3)(West 2008). Thereafter, in preparation for trial, the defendant filed a pretrial disclosure indicating that he intended to assert the affirmative defense of necessity. In turn, the State filed a motion *in limine*, seeking to bar the defendant from presenting a necessity defense. At the hearing on this motion, the State explained that it sought to prevent the defendant from mentioning the necessity defense until after the parties presented some evidence "to meet the bar that was required for the necessity defense." The court denied the State's motion *in limine*, but cautioned the defendant of speaking of the necessity defense in his opening statement and then presenting no evidence on the defense at trial.

¶ 5 The cause proceeded to a jury trial. Illinois State Trooper Matt Wierzbinski testified that on June 25, 2008, he was patrolling a construction zone on Interstate 55 (I-55) from just north of Interstate 80 to Weber Road. Due to the construction, only one or two lanes were open to commuter traffic and the speed limit was 55 miles per hour. Around 3:15 p.m., as Wierzbinski was traveling in the southbound left lane, he noticed a Buick vehicle traveling in the right lane at approximately 60 miles per hour. Wierzbinski traveled about 20 feet behind the Buick for a half mile, during which time the Buick consistently traveled at 60 miles per hour. Wierzbinski then pulled next to the Buick, and did not see anyone other than the driver in the car. Thereafter,

Wierzbinski pulled behind the Buick and initiated a traffic stop of it on the left side of the Route 30 exit ramp.

¶ 6 Wierzbinski identified the defendant as the driver, and asked for his driver's license and proof of insurance. The defendant provided Wierzbinski with an Illinois identification card and proof of insurance for the vehicle, but the defendant informed Wierzbinski that he did not have a driver's license because it was not valid. Wierzbinski then ascertained that the defendant's driver's license was suspended, and placed him under arrest for driving with a suspended license. He also issued the defendant a citation for speeding. Wierzbinski later testified that the Buick was registered to a person named Nancy Mendoza who had a Chicago address.

¶ 7 According to Wierzbinski, at some point during the stop, the defendant's mother, Blanca Rubia Manzanares, appeared on the scene. Wierzbinski stated that he saw her approach the scene on foot, but he was unsure whether she walked, drove herself and parked elsewhere, or had been dropped off. Wierzbinski did not converse with Blanca, and thereafter, Blanca drove the Buick away from the scene. Wierzbinski further testified that during his shift that day, he had been patrolling a 13 mile portion of I-55 between Interstate 80 and Weber Road since 2 p.m., and he did not notice any disabled vehicles on the side of the road from the time he began his shift until his traffic stop of the defendant.

¶ 8 Blanca testified through an interpreter that she resided in Crest Hill, Illinois, with the defendant, his girlfriend Nancy Mendoza, her husband and her daughter. According to Blanca, on June 25, 2008, as she was driving home from work on I-55, she noticed that the Buick was stopped by police as she exited the interstate. She recognized the Buick as Nancy's car, so she pulled over. At that time, she saw the defendant but she did not see Nancy. Thereafter, a police

officer informed her that she would have to drive the Buick away from the scene, and, at the officer's direction, she brought her car "to a station," walked two minutes back to the scene of the traffic stop, and drove the Buick to her home.

¶ 9 The defendant testified on his own behalf. According to him, on the day of the incident, he was released from work in Bolingbrook around 2 p.m. and Nancy picked him up in her vehicle, a Buick Park Avenue. As Nancy entered I-55 from Weber Road, she and the defendant engaged in an argument because Nancy believed that the defendant was unfaithful to her. According to the defendant, at some point Nancy pulled off of the interstate, parked the vehicle on side of the highway, struck the defendant in the face, exited the vehicle and walked away.

¶ 10 At that point, the defendant stated that he waited inside the vehicle for approximately 10 minutes to see if Nancy would return. During this time, the defendant stated that he could feel other cars passing the parked Buick as he sat inside of it, so he got out of the car. He initially stood in front of the Buick, but because he feared that someone would hit the Buick and the vehicle would in turn hit him, he then stood at the back of the Buick so he could see the traffic coming towards him. The defendant stated that he was trying to get help or a ride home.

¶ 11 According to the defendant, he was on the shoulder of I-55 for approximately 30 to 45 minutes. The defendant testified that the shoulder of the interstate was small, so he was concerned for his own safety, and also was concerned for the safety to others were someone to collide with the Buick. The defendant further testified that he did not walk down the highway to try to find help because he did not want to get struck by a car. The defendant stated that he therefore decided to drive Nancy's vehicle to his home.

¶ 12 The defendant further testified that as he proceeded home in the Buick, he was traveling at 55 miles per hour and he “was being careful because [he] knew [that he] didn’t have a license.” The defendant stated that he subsequently noticed a police car traveling behind him for about a mile, and then noticed that the police car pulled next to him. The defendant testified that the police car stopped him as he was exiting the interstate.

¶ 13 At some point while the defendant was stopped on the exit ramp, he testified that Blanca arrived in her vehicle, and that she spoke with Wierzbinski. According to the defendant, Blanca drove her car to a “park and ride” lot and returned to the scene one or two minutes later to drive Nancy’s car to her home.

¶ 14 On cross-examination, the defendant testified that he did not have a mobile phone on the day of the incident, and that there was a grassy area on the side of the interstate near the location that Nancy initially parked her vehicle. He also stated that Nancy left the keys in the ignition after she exited the car following her argument with the defendant. The defendant further acknowledged that he had testified that he intended to drive the car home, but he also then stated that he wanted to try to find a public telephone so he could arrange for someone to help him. The defendant also explained that he had never seen Nancy again, but that she had only come to retrieve her car. During the course of the defendant’s testimony, the court admitted numerous photographs depicting the areas on I-55 on which the defendant had traveled that day.

¶ 15 After the State submitted a certified copy of the defendant’s prior felony conviction for driving with a revoked or suspended license, the court conducted a jury instruction conference. In addition to accepting a proposed instruction that the jury could only use the aforementioned conviction to assess the defendant’s credibility, and not as evidence of the offense charged, it

considered two proposed Illinois Pattern Instructions from the defendant that pertained to necessity.

¶ 16 In support of these instructions, the defendant asserted that it did not matter that he planned to drive the Buick to his home, only that he believed it was necessary to remove the Buick from the shoulder of the interstate. The defendant believed that he had met the threshold for presenting the necessity instruction to the jury, and that the State could argue that driving was not a legal necessity for the defendant. The State, on the other hand, argued that under the court's discretion, it should view the facts of the case and hold that they were not appropriate to support a necessity defense, especially in light of the fact that the defendant sought to drive the Buick home and not only off of the interstate.

¶ 17 After recessing until the next day to allow the parties to submit case law on the matter, the trial court ultimately denied the defendant's request to submit jury instructions on the defense of necessity. The court specifically noted the low threshold needed to support such an instruction, and also noted the case of *People v. Haynes*, 223 Ill. App. 3d 126 (1991), stating that the court must "look at the evidence that was presented and make some kind of determination in advance as to whether the evidence that was presented [was] sufficient to raise the defense." The trial court also noted this court's decision in *People v. Kucavik*, 367 Ill. App. 3d 176 (2006), and stated that we "c[a]me down on the issue of once some evidence has been introduced, the defendant [was] thereafter entitled to have that issue of his reasonableness decided not by a trial court in determining whether to give the instruction or not[,] but by the jury."

¶ 18 The court continued by differentiating the instant case from *Kucavik* by noting that the instant vehicle did not belong to the defendant and thus, he was not legally responsible for it.

The court also noted that unlike *Kucavik*, the instant defendant was not under a threat to move the car and that vehicle at issue here was already parked on the shoulder of the road. The court then recounted the version of events as testified by Wierzbinski and the defendant, and stated that, when “taking all the evidence into account, [it had] to determine [whether it was] clear and convincing that the defendant, through no fault of his own, had to break the law to commit the felony offense of driving while his license was revoked[,]” and that it could not “find, even in light of *Kucavik*’s direction to [it], that the evidence given the factual differences from the *Kucavik* case support[ed] the giving of the instruction in this case of necessity.”

¶ 19 Thereafter, the jury found the defendant guilty of driving with a revoked license, but not guilty of speeding. The defendant filed a motion for a new trial and judgment notwithstanding the verdict, contending that the court erred when it did not instruct the jury on necessity. The court denied this motion, stating that it had to assess the motion in light of the credibility of the witnesses, and that based on a lack of credibility, the instruction should not be given to the jury. The court then sentenced the defendant to a 2½ year term of imprisonment. The defendant appealed.

¶ 20 ANALYSIS

¶ 21 On appeal, the defendant contends that the court erred when it refused to instruct the jury on the defense of necessity. In support of this contention, the defendant asserts that he presented the requisite “slight evidence” to support such an instruction. See *Kucavik*, 367 Ill. App. 3d 176. The State, on the other hand, contends that based on the facts presented at trial, the court properly declined the defendant’s request to instruct the jury on necessity. We conclude that the trial court erred when it declined to give an instruction on necessity because the defendant

presented slight evidence to justify such an instruction; thus, we reverse the defendant's conviction and remand the cause for a new trial.

¶ 22 To properly warrant a jury instruction on the affirmative defense of necessity, the defendant must show that he: (1) was without blame in occasioning or developing the situation; and (2) reasonably believed that such conduct was necessary to avoid a public or private injury greater than the injury which might reasonably result from his own conduct. 720 ILCS 5/17-13 (West 2008); see also *People v. Janik*, 127 Ill. 2d 390 (1989). The necessity defense is generally viewed as involving a choice between two admitted evils where other courses of conduct are unavailable, and, the chosen conduct must promote a higher value than literal compliance with the law. *Janik*, 127 Ill. 2d 390.

¶ 23 Whether to give a particular jury instruction is a matter within the sound discretion of the trial court, and thus, we will not overturn that determination absent an abuse of discretion. *People v. Gibson*, 403 Ill. App. 942 (2010). However, it is a matter of law whether the defendant has met the evidentiary minimum so as to warrant an instruction on an affirmative defense, and, a defendant is entitled to an instruction on any defense supported by the evidence, even if such evidence is slight. *Kucavik*, 367 Ill. App. 3d 176; see also *People v. Everette*, 141 Ill. 2d 147 (1990).

¶ 24 In *Kucavik*, this court interpreted the second prong of the necessity defense and concluded that, “[t]o require the defendant’s conduct to be the ‘sole’ alternative to illegal conduct would render the language in the statute referring to the accused’s reasonable belief meaningless.” *Kucavik*, 367 Ill. App. 3d at 180. This court further concluded that were the trial court to determine that the defendant had other alternatives, his reasonable belief would be

rendered irrelevant. Accordingly, we noted that the defense of necessity involved an objective test and a subjective test for the reasonableness of the defendant's conduct under the circumstances. This court thus believed that "[t]he existence of other alternatives may lead a jury to find that, given [his] subjective belief and the circumstances [he] faced, [the] defendant nonetheless did not act objectively reasonably." *Kucavik*, 367 Ill. App. 3d at 180; but see *People v. Cord*, 258 Ill. App. 3d 188 (1994) (under the second prong of the necessity defense, the defendant's otherwise illegal conduct must be his sole reasonable alternative).

¶ 25 In this case, we conclude that the trial court abused its discretion when it declined to give an instruction on necessity because the defendant presented slight evidence to justify such an instruction.

¶ 26 First, the defendant presented slight evidence that he was without blame in occasioning or developing the situation involving Nancy parking her car on the shoulder of the interstate and leaving it there. Specifically, the defendant testified that after Nancy retrieved him from work, she accused him of being unfaithful to her, hit him, parked the car on the shoulder of I-55 and walked away. Accordingly, the defendant entered the Buick after work and expected Nancy to transport him home, and he did not necessarily have control over her accusation of infidelity, her decision to stop the Buick on the shoulder of the interstate, or her decision to abandon the defendant and the vehicle there. Furthermore, the defendant had no control over the fact that at that time, I-55 was under construction and thus, only one or two lanes of travel were open to traffic and the shoulder was small.

¶ 27 Second, the defendant also presented slight evidence that he reasonably believed that driving the Buick away from the shoulder was necessary to avoid a public or private injury

greater than the injury that might reasonably result from his driving of the vehicle while his license was revoked. Concerning the subjective reasonableness of the defendant's belief, the record indicates that the defendant presented slight evidence that subjectively, he had a reasonable belief that he needed to move the Buick from the shoulder of I-55 to avoid injury to himself or others. Specifically, the defendant testified that he could feel the traffic passing him as he sat in the vehicle on the shoulder of the interstate. He also stated that he did not feel safe walking down the interstate to seek help, nor did he feel safe standing outside the vehicle. The defendant further expressed concern for other individuals were they to collide with the parked Buick.

¶ 28 Concerning the objective reasonableness of the defendant's belief that he needed to drive the Buick from the shoulder of the interstate while his license was revoked, the record indicates that at the time of the incident, I-55 was under construction, travel in the lanes was restricted such that only one or two lanes were open to vehicular traffic, and the shoulder area was small. Objectively speaking, in such an instance, it is reasonable that a person did not want to remain in a parked vehicle on the shoulder of the road, as he essentially was a target with which anyone could collide with the smallest of driving errors. Given the construction and the restricted lanes, in such an instance, the Buick as parked on the shoulder removed any margin of error for a driver in that space to be able to swerve to avoid a collision with another vehicle on the road, or for a driver who may inadvertently weave onto the shoulder due to a distraction in his own vehicle. Also, we believe that it is objectively reasonable for a person to want to refrain from standing outside of the vehicle or walking along the interstate to seek help, as doing so could place the person, and others, at risk for injury or possibly death.

¶ 29 In reaching this conclusion, we make no comment on whether the defense of necessity is sufficient to relieve the defendant from criminal liability for the instant attempt to drive the Buick all the way home while his license was revoked. Rather, we only adhere to our prior decision in *Kucavik*, and the principle that jury instructions are to be given if slight evidence supports the instruction. Therefore, we conclude that in this instance, the defendant presented the slight evidence necessary to warrant jury instructions on necessity. Accordingly, the trial court erred when it determined that it would not instruct the jury on necessity, and, as a result of this error, the defendant must have a new trial.

¶ 30 CONCLUSION

¶ 31 For the foregoing reasons, the judgment of the circuit court of Will County is reversed, and the cause is remanded for a new trial.

¶ 32 Reversed and remanded.