THIRD DIVISION
August 22, 2012

No. 1-11-0672

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County.
	)	
v.	)	No. 09 CR 20397
	)	
JUAN MAGDALENO,	)	Honorable
	)	James B. Linn,
Defendant-Appellant.	)	Judge Presiding.

PRESIDING JUSTICE STEELE delivered the judgment of the court.
Justices Murphy and Salone concurred in the judgment.

O R D E R

¶ 1 *Held*: Evidence that defendant failed to produce proof of liability insurance alone was insufficient to prove that defendant knew or should have known that the vehicle he was driving when arrested for driving under the influence of alcohol did not have liability insurance.

¶ 2 Following a bench trial, defendant Juan Magdaleno was found guilty of three counts of aggravated driving under the influence of alcohol, with the aggravating factors being driving while his driving privileges were revoked (count 1), driving without a driver's license or valid permit (count 2), and driving in a vehicle that defendant knew or should have known did not

have liability insurance (count 3). The trial court sentenced him to one year in prison for each of the three counts, to be served concurrently. On appeal, defendant contends that his conviction for driving under the influence in a vehicle without liability insurance must be reversed because the State failed to prove beyond a reasonable doubt that defendant knew or should have known that the vehicle he was driving did not have liability insurance. We agree with defendant and reverse the one challenged conviction.

¶ 3 Chicago police officer Tim Walter was patrolling the area of Lawrence and Western Avenues around 11:43 p.m. on November 1, 2009, when he observed defendant commit several traffic violations while driving a Chevy S-10 pickup truck. After Officer Walter curbed the truck, he asked defendant to produce his driver's license and proof of insurance. Defendant shrugged, said that he did not have a driver's license, and then fumbled with his wallet. When Officer Walter asked defendant to produce identification, Officer Walter detected a strong odor of alcohol, noting that defendant's eyes were bloodshot and glassy and that his speech was slurred.

¶ 4 After defendant continued to fumble with his wallet, Officer Walter observed that defendant could not produce proof of insurance. After defendant stumbled onto the sidewalk, Officer Walter administered three field sobriety tests, and defendant's poor performance suggested that defendant was likely impaired. Officer Walter transported defendant to the police station, where he administered *Miranda* warnings to defendant, which defendant waived. Defendant admitted to drinking "Corona beer," but refused to take a Breathalyzer test.

¶ 5 Defendant testified that he had left work shortly before being stopped, had not been drinking, and was driving normally when Officer Walter pulled him over. After stopping his car, Walter walked over and asked defendant for his driver's license, which defendant did not have. Defendant stepped out of the vehicle and onto the sidewalk without stumbling and did not

perform any sobriety tests. He denied telling officers at the station that he had been drinking Corona beer.

¶ 6 The parties stipulated that when defendant was pulled over, his license was in revoked status due to a previous charge of driving under the influence.

¶ 7 The court found Officer Walter's testimony to be "credible and compelling" and found defendant guilty of all three charges. The court sentenced defendant to three concurrent, one-year prison terms, one for each count.

¶ 8 On appeal, defendant only challenges his conviction for aggravated driving under the influence in a vehicle he knew or should have known did not have liability insurance, contending that his failure to produce proof of liability insurance after being asked by Officer Walter alone was insufficient to prove that he was guilty of the offense. We agree.

¶ 9 When reviewing the sufficiency of evidence in a criminal case, our inquiry is whether, after 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. Sutherland*, 155 Ill. 2d 1, 17 (1992).

¶ 10 A defendant is guilty of aggravated driving under the influence when, while driving intoxicated, he knew or should have known that the vehicle which he was driving was not covered by a liability insurance policy. 625 ILCS 5/11-501(a)(2) (West 2008); 625 ILCS 5/11-501(d)(1)(I) (West 2008).

¶ 11 A defendant is deemed to have acted knowingly, or with knowledge, if it is shown he was aware of the existence of facts which make his conduct unlawful. *People v. Hodogbey*, 306 Ill. App. 3d 555, 559 (1999) (citing *People v. Gean,* 143 Ill. 2d 281, 288 (1991)). Knowledge can be established through circumstantial evidence. *Hodogbey*, 306 Ill. App. 3d at 559-60 (citing *People v. Weiss,* 263 Ill. App. 3d 725, 731 (1994)).

¶ 12 Here, the State provided no evidence, either direct or circumstantial, that defendant knew or should have known the vehicle he was driving was uninsured, that it was actually uninsured, or that defendant owned the vehicle. The evidence presented at trial revealed that Officer Walter asked defendant to produce his driver's license and proof of liability insurance. Defendant shrugged and told Officer Walter that he did not have a driver's license, then fumbled around with his wallet. During this time, Officer Walter also asked defendant for identification. Defendant continued to fumble with his wallet, which Officer Walter took to mean that defendant did not have liability insurance before he asked defendant to step out of the vehicle. Neither the testimony of Walter nor any evidence ever established that defendant knew or should have known that the pickup truck he was driving was not covered by a liability insurance policy. Absent such proof, defendant's conviction under count 3 must be reversed.

¶ 13 To overcome the lack of evidence to prove the knowledge element for a violation of the subject offense under count 3, the State mistakenly relies on two different statutes that are absolute liability offenses. The State first directs attention to section 3-707 of the Illinois Vehicle Code (625 ILCS 5/3-707(b) (West 2008)), which provides:

> "Any person who fails to comply with a request by a law enforcement officer for display of evidence of insurance, as required under section 7-602 of this Code, shall be deemed to be operating an uninsured vehicle."

¶ 14 This statute does not require proof of a culpable mental state. *People v. O'Brien*, 197 Ill. 2d 88, 92 (2001). Defendant was neither charged nor convicted of this offense.

¶ 15 Second, the State directs attention to the offense of failure to possess a firearm owner's identification (FOID) card when in possession of a firearm or under the other circumstances enumerated in section 2(a) of the Firearm Owners Identification Card Act (430 ILCS 65/2(a)

(West 2008)). This offense imposes criminal liability based on the person's failure to actually possess a valid FOID card regardless of whether the person actually owned a FOID card. *See People v. Williams*, 266 Ill. App. 3d 752, 759-60 (1994), relying on *People v. Mourecek*, 208 Ill. App. 3d 87, 93 (1991); and *People v. Cahill*, 37 Ill. App. 3d 361, 364 (1976). Contrary to the offense at issue in the instant appeal, the FOID card violation does not impose a culpable mental state but simply rests on actual possession.

¶ 16 For the foregoing reasons, we reverse defendant's conviction and sentence for aggravated driving under the influence without liability insurance (count 3) and affirm the judgment of the trial court in all other respects.

¶ 17 Reversed in part; affirmed in part.