2013 IL App (1st) 121217-U

FOURTH DIVISION
November 21, 2013

No. 1-12-1217

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. 11 CR 1672
	)	
DIVONNI KEEL,	)	
	)	Honorable
	)	James L. Rhodes,
Defendant-Appellant.	)	Judge Presiding.

PRESIDING JUSTICE HOWSE delivered the judgment of the court. Justices Lavin and Epstein concurred in the judgment.

ORDER

¶ 1 *HELD*: Defendant's conviction for aggravated reckless driving is affirmed where the evidence showed defendant committed multiple traffic offenses resulting in a collision that caused serious injury to the victim.

¶ 2 Following a bench trial, defendant Divonni Keel was convicted of aggravated reckless driving and sentenced to 30

months of probation. He now appeals the trial court's conviction claiming that there was insufficient evidence to convict him of aggravated reckless driving. For the reasons that follow, we affirm the trial court's findings.

¶ 3 BACKGROUND

¶ 4 The evidence in this case shows that on January 2, 2011, the defendant Divonni Keel took possession of a police vehicle and while driving the vehicle caused a collision that resulted in serious injuries to another motorist. As a result, defendant received traffic citations for violating the following statutes: 625 ILCS 5/12-215(a) (West 2010) (using oscillating, rotating or flashing lights on a motor vehicle), 625 ILCS 5/11-601(a) (West 2010) (speeding), 625 ILCS 5/6-112 (West 2010) (not having a driver's license on person), 625 ILCS 5/11-306 (West 2010) (disobeying a traffic signal), and 625 ILCS 5/11-503 (West 2010) (reckless driving). At trial, defendant was charged only with aggravated possession of a stolen police car and aggravated reckless driving. Following a bench trial, the trial court convicted defendant on the aggravated reckless driving charge and found that the State had not met its burden with respect to the charge of aggravated possession of a stolen police car.

¶ 5 The following facts were elicited at trial and are relevant to this appeal. Donna Stroup, the victim in the automobile

collision, testified that on January 2, 2011 at about 3:30 p.m. she was driving her car from work proceeding west on 156th street. She then stopped at the intersection of 156th Street and Wood Street. When the light turned green, she looked left and right, did not see any cars coming, and proceeded west through the intersection. When she reached the center of the intersection, a police SUV broadsided her car. The impact spun her car around causing her to hit a pole, leaving her car facing north. A woman came over to the car and told Stroup to stay alert. Stroup saw a young man being arrested while she was still in her car waiting for help to arrive. The fire department had to remove Stroup from her wrecked car. As a result of the collision, Stroup was hospitalized for five days and sustained severe injuries to her heart, right arm, left arm, right shoulder, neck and chest, which included a fractured sternum, hematoma, internal bleeding, a fractured collar bone, broken ribs and a rotator cuff injury. Stroup's right clavicle is permanently displaced, and she has been warned against lifting heavy objects as doing so could cause her displaced clavicle to puncture her heart. Stroup's Ford Focus was totaled as a result of the collision.

¶ 6 Bria Sykes was an eye witness to the collision. Just before the collision, Sykes was heading north on Wood Street just south

of 156th Street. As she was waiting for the light to turn green, she saw the black Ford Explorer police SUV with its lights on coming south on Wood. Cars were yielding to the police SUV as it approached the intersection. Sykes described the SUV as traveling "kinda fast." As the police SUV got closer to the intersection, it beeped its air horn four or five times. As the SUV went through the intersection, it hit a white Ford Focus, which was Stroup's car. After colliding with the Ford Focus, the police SUV then jumped a curb and hit a gate on the other side.

¶ 7 At that point, Sykes got out of her car to check on Stroup. Stroup was in the passenger side of her car holding a phone to her ear and appeared to be semiconscious. Sykes then observed someone from the police SUV, defendant, approach Stroup and ask if she had seen the police lights. At that point, since Sykes believed defendant was a police officer, she left. However, she soon returned to the scene of the collision shortly after leaving in case the police needed her statement.

¶ 8 Officer Bischoff of the Harvey Police Department testified that just before the collision he was in a marked vehicle heading north on Wood. When he got to the corner of 154th Street, he observed the black police SUV with its emergency lights on and testified that it was "going pretty fast." Bischoff continued north on Wood and soon received a dispatch about a collision on

156th and Wood. When Bischoff arrived at the scene of the collision to investigate, he recognized defendant. He recognized defendant because he worked with defendant's father, who was a commander with the Harvey Police Department. After defendant admitted that he was driving the police SUV, Bischoff asked why he had the police lights on. Defendant offered no response. Defendant told Bischoff that he had a green light and that Stroup hit his car. Bischoff arrested defendant and then went to check on Stroup. By the time Bischoff returned to his car, defendant was belligerent and trying to kick out the windows of the car. Bischoff testified that besides colliding with Stroup's Ford Focus, the police SUV had also struck a red Chevy and a green Pontiac.

¶ 9 The State called two remaining witnesses, Darrell Stafford and Denard Eaves, who testified that: (1) the black SUV was a Harvey police car that belonged to Commander Keel, defendant's father; (2) non-police personnel are not allowed to drive the police cars; (3) defendant did not have authority to drive the police SUV; (4) defendant did not have the requisite training that is required when using the emergency lights on the police SUV; and (5) the police SUV was totaled in the collision. Stafford further testified that he found an empty Smirnoff bottle in the back pocket of the passenger's seat of the police SUV that

he sent out for testing. He never received the results of those tests.

¶ 10 The defense rested without calling any additional witnesses, and the trial court found defendant guilty of aggravated reckless driving. In making this finding, the trial court judge stated:

> "Well, I think [Bria Sykes'] testimony was very important. To me it proves that defendant, instead of driving carefully at the intersection, was driving fast through the intersection, blowing his horn, trying to get people to stop, as if he were a police car on some type of emergency mission; that his going through the stop light caused the accident."

On March 28, 2012, defendant was sentenced to 30 months of probation. Defendant now appeals the trial court's aggravated reckless driving conviction claiming that the State failed to prove that claim beyond a reasonable doubt. For the reasons that follow, we affirm the trial court's conviction.

¶ 11 ANALYSIS

¶ 12 Where a defendant challenges the sufficiency of the evidence to sustain his conviction, our duty is to determine whether all of the evidence, direct and circumstantial, when viewed in the

light most favorable to the prosecution, would cause a rational trier of fact to conclude that the essential elements of the offense have been proven beyond a reasonable doubt. *People v. Wiley*, 165 Ill. 2d 259, 297 (1995). It is the responsibility of the trier of fact to determine the credibility of witnesses and the weight to be given their testimony, to resolve conflicts in the evidence, and to draw reasonable inferences from the evidence. *People v. Williams*, 193 Ill. 2d 306, 338 (2000). A criminal conviction will be reversed only if the evidence is so unsatisfactory or improbable that it leaves a reasonable doubt of defendant's guilt. *Wiley*, 165 Ill. 2d at 297.

¶ 13 Here, defendant is challenging his conviction of aggravated reckless driving in violation of section 11-503(a)(1)(c) of the Illinois Vehicle Code (the Code). Section 11-503(a)(1)(c) of the Code states in pertinent part:

> "(a) A person commits reckless driving if he or she:
>
> (1) drives any vehicle with a willful or wanton disregard for the safety of persons or property; or
>
> * * *
>
> (c) Every person convicted of committing a violation of subsection (a) shall be guilty

> of aggravated reckless driving if the violation results in great bodily harm or permanent disability or disfigurement to another." 625 ILCS 5/11-503(a)(1)(c) (West 2010).

The Criminal Code of 1961 defines "recklessness" as follows:

> "A person is reckless or acts recklessly when that person consciously disregards a substantial and unjustifiable risk that circumstances exist or that a result will follow, described by the statute defining the offense, and that disregard constitutes a gross deviation from the standard of care that a reasonable person would exercise in the situation. An act performed recklessly is performed wantonly, within the meaning of a statute using the term 'wantonly', unless the statute clearly requires another meaning." 720 ILCS 5/4-6 (West 2010).

Reckless driving cases fall into three general categories: (1) the commission of multiple traffic offenses which together demonstrate the driver's willful and wanton disregard for the safety of persons and property; (2) a driver's conscious

disregard for the particular surroundings and circumstances that rises to the level of willfulness and wantonness; and (3) where willful and wanton conduct is based, in part, upon the driver's intoxication or impaired state. *People v. Paarlberg*, 243 Ill. App. 3d 731, 736 (1993). Neither intoxication nor actual damage to persons or property are necessary elements of the offense. *People v. Stropoli*, 146 Ill. App. 3d 667, 670 (1986).

¶ 14 Here, when viewing the evidence in a light most favorable to the State, the evidence sufficiently shows that defendant violated multiple offenses during the January 2, 2011 collision, namely speeding, using emergency lights without authorization, driving a police SUV without authorization, and driving through a red light. See *People v. Pena*, 170 Ill. App. 3d 347 (1988) (reckless driving upheld where defendant was speeding and weaving); *People v. Brady*, 23 Ill. App. 3d 330 (1974) (reckless driving upheld where defendant was speeding and weaving); *McWethy v. Lee*, 1 Ill. App. 3d 80 (1971) (decedent driver's recklessness included speeding, failure to stop at intersection, and failure to yield right-of-way); *People v. Baier*, 54 Ill. App. 2d 74 (1964) (reckless driving upheld where defendant was speeding and failed to stop at an intersection). Evidence of other crimes or traffic offenses used to prove reckless driving need not be proven beyond a reasonable doubt, but rather must be more than a

mere suspicion. *Village of Kildeer v. Munyer*, 384 Ill. App. 3d 251, 255 (2008). Here, the State presented evidence from two witnesses, including a police officer, that defendant was driving fast prior to the collision. The State also presented uncontested evidence that defendant was not authorized to drive the police SUV or use the police SUV emergency lights. Accordingly, the State showed that defendant had not received any training on how to use the police SUV's emergency lights. Further, the State offered two witnesses, Stroup and Sykes, who both testified that defendant ran a red light. As such, the State was able to show that defendant committed multiple traffic offenses which together demonstrate his willful and wanton disregard for the safety of persons and property. *Paarlberg*, 243 Ill. App. 3d at 736.

¶ 15 Further, given that defendant, without authorization to do so, drove the police SUV with the emergency lights on down the public streets, was driving fast, was forcing other cars to yield to the police SUV, was honking his horn as he approached the red light, and then proceeded to go through a red light resulting in a collision with Stroup's car that caused her severe bodily injuries, we find such evidence also established a conscious disregard for the particular surroundings and circumstances sufficient to rise the level of willfulness and wantonness.

Paarlberg, 243 Ill. App. 3d at 736.

¶ 16 Defendant argues that he merely ran a red light and that cannot be the sole basis of a willful and wanton finding. Defendant cites *People v. Johnson*, 30 Ill. App. 3d 974 (1975) in support of this failing argument. However, in that case, which is wholly different than the case presented here, defendant merely made a right turn onto a highway without stopping at a stop sign, causing his tires to squeal; he did not collide with anyone else or cause any injury to another. A police officer observed the defendant's failure to stop and arrested him. We find that this case is clearly distinguishable from *Johnson* as it is not a case of a driver merely running through a stop sign.

¶ 17 Further addressing defendant's arguments, defendant's contention that he was acting cautiously by using the emergency lights and honking his horn before proceeding through the red light is without merit as such actions could have easily resulted in injuries to others on the road as Sykes testified that other cars were making efforts to yield to defendant. And, while defendant argues that he didn't try and escape from the scene of the collision and immediately checked on the injured victim, we note that the record indicates the police SUV was a total loss and the evidence presented shows that the first and only interaction defendant had with the victim was asking her if she

had seen the emergency lights on the police SUV. Therefore, when reviewing all the evidence in a light most favorable to the State, we cannot say that defendant's reckless driving conviction was based upon evidence that was so unsatisfactory or improbable that it leaves a reasonable doubt of defendant's guilt. *Wiley*, 165 Ill. 2d at 297.

¶ 18 CONCLUSION

¶ 19 For the above reasons, we affirm the trial court's conviction.

¶ 20 Affirmed.