No. 2—09—0848
Order filed March 9, 2011

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the Circuit Court of Lake County.
Plaintiff-Appellee,	)	
v.	)	No. 08—CF—1284
VERONICA Y. GONZALES,	)	Honorable Michael B. Betar,
Defendant-Appellant.	)	Judge, Presiding.

JUSTICE McLAREN delivered the judgment of the court.
Presiding Justice Jorgensen and Justice Burke concurred in the judgment.

ORDER

Held: The State failed to prove beyond a reasonable doubt that defendant was driving a vehicle and thus was guilty of various offenses; although she owned the vehicle and was, like the driver, a female with long dark hair, the inferences drawn could only relate to the probability rather than reasonable certainty that she was the driver of the vehicle in question. We are not convinced that the evidence was sufficient for any rational trier of fact to find the defendant guilty beyond a reasonable doubt.

Defendant, Veronica Y. Gonzales, was convicted after a bench trial of failure to report an accident involving injury (625 ILCS 5/11—401(b) (West 2008)), driving on a suspended license (see 625 ILCS 5/11—501.1 (West 2008)), and failing to obey a traffic signal (see 625 ILCS 5/11—306 (West 2008)). In this appeal, she asserts that the evidence at trial provided insufficient proof that she

was the driver in the hit-and-run accident. We agree that the evidence that defendant was the driver was insufficient, a necessary condition for conviction of any of the offenses, and we therefore reverse all of the convictions.

I. BACKGROUND

At defendant's bench trial, the parties stipulated that, on March 18, 2008, an SUV hit the passenger side of a vehicle driven by Kari Spencer. Further, Kevin Spencer, the driver's nine-year-old son, suffered a broken rib in the collision.

Lanette Goodale testified to seeing a blue vehicle drive through an intersection against the light, strike another vehicle, and then drive on without stopping. She waited until she had a green light, then followed the blue vehicle while calling the police. She briefly saw the driver's profile before losing sight of the vehicle. Asked what the driver looked like, she said, "I recall telling the officer that the hair was dark and was about shoulder, maybe a little longer, length." The State asked, "So a female with dark, shoulder-length hair?" and Goodale agreed.

Pete Molidor was the Round Lake police lieutenant who investigated the incident. He testified that the collision took place at about 3:12 p.m. At the scene, along with Spencer's car, he found the license plate and other front-end pieces of another vehicle. The registration information associated with the plate yielded an address in Wauconda and an owner's name: Veronica Gonzales Zarate. The vehicle was not at the address in the registration, but Molidor located it at another Wauconda address, 200 Lotus Street.

On March 31, 2008, Molidor went to the front door at that address and knocked. A "young lady" answered. He asked if Veronica was home, and the "young lady" said that she was in the shower. He asked whether Veronica's "truck" was there, and the "young lady" said that it was in

the garage and that he could go in; it was unlocked. Inside, he found a blue Mountaineer with a plate that matched the one at the scene. There were shards of glass on the hood and damage to the front end. While Molidor investigated, a "young lady" came out of the house. She said that she was "Veronica"; this was defendant.

Molidor, checking records, learned that no one had ever reported the Mountaineer stolen and that defendant's driver's license was suspended.

On cross-examination, Molidor agreed that the person who first answered the door was Hispanic and had dark, shoulder-length hair.

The State rested. Defendant moved for a directed finding. The court denied the finding, and defendant rested without presenting evidence.

The court found defendant guilty of all charges, particularly noting that the Mountaineer was parked in the garage, not in the street, and that it had shards of glass still on the hood. Defendant filed a posttrial motion contesting the sufficiency of the evidence. The court denied the motion. Defendant later moved in this court for leave to file a late notice of appeal; we granted that motion.

We note that the State has conceded that it failed to present any evidence that defendant failed to report the collision within half an hour of its occurrence. It would therefore have us reduce the conviction to one of leaving the scene of an accident involving personal injury (625 ILCS 5/11—401(a) (West 2008)).

II. ANALYSIS

When a defendant asserts that the evidence is insufficient to sustain a conviction, the task of the reviewing court is to decide " '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.' " (Emphasis in original.) *People v. Collins*, 106 Ill. 2d 237, 261 (1985), (quoting *Jackson v. Virginia*, 443 U.S. 307, 319 (1979)). "We will not reverse a conviction unless the evidence is so improbable, unsatisfactory, or inconclusive that it creates a reasonable doubt of defendant's guilt." *People v. Collins*, 214 Ill. 2d 206, 217 (2005). "[T]he reviewing court must allow all reasonable inferences from the record in favor of the prosecution," but need not allow "unreasonable inferences." *People v. Cunningham*, 212 Ill. 2d 274, 280 (2004).

The evidence that defendant was the hit-and-run driver was unsatisfactory because it depended on inferences that cannot reasonably produce the degree of certainty needed for proof beyond a reasonable doubt. We cannot agree that defendant's ownership of the vehicle, even joined with the other evidence favoring the State, established with sufficient certainty that she was driving. Illinois courts have recognized that the owner of a vehicle is the most likely driver. We find nothing to challenge in that premise, but suggest that care is required in drawing inferences from it. A Fourth District case, *People v. Barnes*, 152 Ill. App. 3d 1004, 1006 (1987), illustrates the difficulty of stating such an inference with precision. The issue in *Barnes* was whether the presence on the road of a vehicle registered solely to a person with a suspended license provided the reasonable suspicion necessary for a proper stop of the vehicle under *Terry v. Ohio*, 392 U.S. 1 (1968). The *Barnes* court held that it was:

> "Here the car owner is known to possess a suspended driver's license. A reasonable inference from that fact is that the owner is driving the vehicle. While other people may drive an owner's vehicle, it is clear that the owner will do the vast amount of driving." *Barnes*, 152 Ill. App. 3d at 1006.

Two aspects of this reasoning are insufficiently precise for our purposes. One, the court implies that the registered owner is the primary driver of *every* vehicle. That cannot be correct. Exceptions, such as vehicles registered to parents but driven primarily by their driving-age children, are far from unknown. The proper statement is that registered owners are the primary driver of *most* vehicles. Two, the wording suggests too strong a relationship between ownership and driving. The decision, read literally, suggests that, from the fact that (most) vehicles are primarily owner-driven, one can infer that a particular vehicle was owner-driven at a particular time. That is similar to inferring from the fact that most people are right-handed that a particular person is right-handed. It would be more precise to say that, given that most people are right-handed, we can infer, absent information to the contrary, that a specific individual is probably right-handed. Similarly, a more precise statement of the relationship between ownership and driving is to say that, given that most vehicles are primarily owner-driven, we can infer, absent information to the contrary, that a particular vehicle at a particular time is probably owner-driven.

In *People v. Galvez*, 401 Ill. App. 3d 716 (2010), we implicitly adopted a formulation similar to the one we have just stated and applied it to the quantum of proof of articulable suspicion. The issue in *Galvez* was again whether reasonable suspicion existed for a *Terry* stop when an officer saw a vehicle registered to a person with a suspended license. This time, however, the person with a suspended license was one of two co-owners; the defendant was male and the other co-owner female. We agreed with the reasoning in *Barnes* to the extent it recognized that most vehicles are primarily owner-driven, but we deemed that the suspension of an owner's driver's license was a factor that would increase the likelihood that the co-owner with the valid license was the driver.

One co-owner's suspended license is thus, to some uncertain extent, "information to the contrary" that weighs against that co-owner being the driver.

Similarily, the presence of another "young lady" with dark, shoulder-length hair at defendant's residence, who knew where the car was located and gave the police officer permission to enter the garage, was information that weighed against defendant being the driver and weakened the effect of the scant identification evidence. The trial evidence does not directly show that person's relationship to defendant, but that she opened the door of defendant's residence when defendant was unavailable suggests that she was someone with a close personal relationship to defendant. Such a person, by virtue of proximity or personal ties, is a very likely recipient of the loan of a vehicle. Of course, the "young lady" might also have been someone in a role such as a babysitter. Whoever she was in reality, on the evidence here, her presence offers a concrete suggested answer to the question of to whom defendant might have lent her vehicle.

The State argues that a third line of evidence increases the likelihood that defendant was the driver: that, nearly two weeks after the collision, defendant's vehicle was in the garage of her residence with glass still on the hood. It argues that, because defendant had not been driving the vehicle, she was displaying consciousness of guilt. Such an inference is not reasonable to establish guilt beyond a reasonable doubt. If defendant had driven the obviously damaged vehicle, she would have risked police attention and thus arrest for driving without a valid license. The presence of glass does not infer the identity of the driver so much as whether or not the car had been driven since the accident. That factual circumstance, without more, does not tend to establish the identity of the driver.

Taking all the evidence together, we observe that the State had one piece of evidence that pointed to defendant as the driver, her ownership of the vehicle, and one further piece of concrete evidence regarding an eyewitness identification, the testimony about the driver's hair. The evidence also shows that her license was suspended, that someone with hair similar to defendant answered the door while defendant was in the shower, which shows substantial familiarity, and that, most likely, no one drove the vehicle after the drive involving the collision. Everything beyond that is built up from inferences from general human nature ungrounded in specific knowledge of defendant. Such inferences are not necessarily unreasonable. They are, however, limited in the level of certainty that they can produce. They deal only in abstract likelihoods. Because the State's case was over-reliant on these abstract likelihoods, it was insufficient to establish guilt beyond a reasonable doubt.

The State argues that the evidence merely left room for a reasonable hypothesis of defendant's innocence and that, under the rule in *People v. Pintos*, 133 Ill. 2d 286, 291 (1989), the mere existence of such a hypothesis is an insufficient basis for a reversal. We disagree; what existed here was more akin to an obvious possibility of innocence. In many—perhaps most—cases built upon circumstantial evidence, a defendant is likely to be able to devise, *post hoc*, some reasonable alternative explanation for the evidence, that is, a mere reasonable hypothesis of innocence. Such a *post hoc* explanation will generally be intuitively distinguishable from a possibility naturally suggested by the evidence. That someone else, perhaps the other "young lady," might have been driving is not a *post hoc* explanation. The court here need not have "search[ed] out" some "possible explanation[] consistent with innocence" (*People v. McDonald*, 168 Ill. 2d 420, 447 (1995)); one such explanation was patent in the evidence itself. Considering the evidence, we do not believe any

rational trier of fact could have found the defendant guilty of the charged offenses beyond a reasonable doubt.

III. CONCLUSION

For the reasons stated, we reverse defendant's convictions.

Reversed.