

2011 IL App (2d) 100709-U
No. 2-10-0709

Order filed November 23, 2011

NOTICE: This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

IN THE
APPELLATE COURT OF ILLINOIS
SECOND DISTRICT

THE PEOPLE OF THE STATE)	Appeal from the Circuit Court
OF ILLINOIS,)	of Lake County.
)	
Plaintiff-Appellee,)	
)	
v.)	No. 10-DT-75
)	
MEGAN D. MARTINEZ,)	Honorable
)	John J. Scully,
Defendant-Appellant.)	Judge, Presiding.

JUSTICE SCHOSTOK delivered the judgment of the court.
Justice McLaren and Justice Burke concurred in the judgment.

ORDER

Held: (1) The defendant was convicted beyond a reasonable doubt of operating an uninsured motor vehicle; and (2) the defendant was entitled to a \$5 credit against her fine.

¶ 1 Following a bench trial, the defendant, Megan Martinez, was convicted of driving under the influence of alcohol (DUI) (625 ILCS 5/11-501(A)(1), (2) (West 2010)) and operating an uninsured vehicle (625 ILCS 5/3-707 (West 2010)). The defendant was sentenced to one year of court supervision for the DUI and also was assessed certain fines and costs and 100 hours in community service. The trial court imposed a \$505 fine and court costs for the conviction for operating an

uninsured vehicle. On appeal, the defendant argues that she (1) was not convicted beyond a reasonable doubt of operating an uninsured motor vehicle and (2) she is entitled to an additional \$5 credit against her fines. We affirm as modified.

¶ 2 On January 10, 2010, the defendant was charged by criminal complaint with DUI (625 ILCS 5/11-501(A)(1), (2) (West 2010)) and operating an uninsured motor vehicle (625 ILCS 5/3-707 (West 2010)). On May 11, 2010, the trial court conducted a bench trial on the charges against the defendant. Officers Philip Mazur and Traci Pugliese of the Gurnee police department testified that, on January 10, 2010, at approximately 12:27 a.m., they responded to a call about an accident on Route 41. At the scene of the accident, Officer Mazur observed that the defendant was slurring her speech and had a strong odor of alcohol on her breath.

¶ 3 Officer Mazur testified that his police vehicle was equipped with audio-visual equipment. A video was recorded of the traffic stop. The video was admitted into evidence. The video shows Officer Pugliese asking the defendant several questions while she was directly looking at the defendant. The defendant answered all of her questions. Officer Pugliese then walked behind the defendant to put handcuffs on her. Standing about a foot away from the defendant, Officer Mazur asked the defendant, “Do you have an insurance card in the vehicle, ma’am?” Officer Mazur spoke in a quieter voice than Officer Pugliese was speaking. However, his voice was clearly audible on the squad car video recording, which was being taken several feet away from where Officer Mazur was standing. The defendant was looking the opposite way from where Officer Mazur was standing, and she did not answer his question. Officer Pugliese, while frisking the defendant, asked the defendant if she had any bombs or weapons that might hurt her. The defendant said that she did not.

¶ 4 Officer Pugliese testified that when she was handcuffing the defendant in order to take her to the police station, she heard Officer Mazur ask the defendant if she had proof of insurance. The defendant did not respond.

¶ 5 At the close of the trial, the trial court found the defendant guilty of DUI and operating an uninsured vehicle. Following the denial of her motion for a new trial, the trial court sentenced the defendant to one year of court supervision for the DUI, along with a \$500 fine, court costs, and 100 hours of community service. The trial court imposed a \$505 fine and court costs for the conviction for driving an uninsured vehicle. The defendant thereafter filed a timely notice of appeal.

¶ 6 The defendant's first contention on appeal is that the State failed to prove beyond a reasonable doubt that she did not have liability insurance at the time of her arrest. The defendant argues Officer Mazur's asking her if she had an insurance card in her car was not the same as asking her if she had proof of insurance. Further, even if Officer Mazur's question constituted a request for proof of insurance, she insists that it is not apparent from the video that she heard the question. As Officer Mazur did not ask any follow-up questions to verify that she heard his question, the defendant insists that his asking a question that she did not hear was equivalent to no question being asked at all.

¶ 7 When a defendant asserts, as here, that the State has failed to prove her guilty beyond a reasonable doubt, it is not the job of the reviewing court to retry the defendant. *People v. Nitz*, 143 Ill. 2d 82, 95 (1991). Rather, the reviewing court must uphold the verdict if, viewing the evidence in the light most favorable to the prosecution, a rational trier of fact could have found the elements of the offense beyond a reasonable doubt. *People v. Merritt*, 318 Ill. App. 3d 115, 117 (2001). The trier of fact is allowed to make all reasonable inferences from the evidence. *Nitz*, 143 Ill. 2d at 95.

¶ 8 The elements that the State must prove beyond a reasonable doubt to sustain a conviction for driving an uninsured motor vehicle are: (1) that the defendant was driving a motor vehicle, and (2) at the time the defendant was operating the vehicle, it was not covered by a liability insurance policy. 625 ILCS 5/3–707 (West 2010). It is also possible under the Illinois Vehicle Code for a driver to be convicted of driving an uninsured motor vehicle if the driver fails to comply with a request by a law enforcement officer for proof of insurance. *Id.*

¶ 9 Here, Officer Mazur asked the defendant whether she had an insurance card in her vehicle. We believe that the officer's question was equivalent to his asking her for proof of insurance. Although the defendant insists that the record is not clear that she heard the officer's question, we believe that the trial court could reasonably infer that she did. When Officer Mazur asked the defendant his question, he was standing approximately one foot away from her. He spoke loud enough that his voice was picked up by the recording. Although the defendant did not respond to Officer Mazur's question, she had responded to Officer Pugliese's questions that she had been asked both before and after Officer's Mazur's question. From these circumstances, the trial court could reasonably infer that the defendant heard Officer Mazur's question and had chosen not to comply with his request for proof of insurance. As such, the State proved the defendant guilty of driving a vehicle without insurance. See *id.*

¶ 10 In so ruling, we find unpersuasive the defendant's reliance on *Merritt*. In that case, after a police officer searched a vehicle, he ticketed the defendant for driving an uninsured motor vehicle. At trial, the police officer testified that he ticketed the defendant because no one presented him an insurance card. After a jury convicted the defendant of driving an uninsured motor vehicle, the reviewing court reversed. *Merritt*, 318 Ill. App. 3d at 117. The reviewing court explained that the State's evidence was insufficient because there was no indication that the police officer had ever

asked anyone to produce an insurance card. *Id.* In contrast, in the instant case, the State did present evidence that the defendant had been asked to show proof of insurance.

¶ 11 The defendant's second contention on appeal is that she is entitled to a \$5 credit against her fine for the day she spent in jail following her arrest. The State confesses error. Section 110-14 of the Code of Criminal Procedure of 1963 (725 ILCS 5/110-14) (West 2010)) provides for a \$5-per-day credit for any person who is incarcerated on a bailable offense but does not pay bail. The credit applies from the time the defendant is in pretrial custody up to the time of sentencing. *People v. Rivera*, 378 Ill. App. 3d 896, 899 (2008). Any portion of a day spent in custody is counted as a full day for the purposes of this credit. *People v. Robinson*, 391 Ill. App. 3d 822, 845 (2009). The record reflects that the defendant was in custody for one day before sentencing, entitling her to a \$5 credit against her fine.

¶ 12 Pursuant to our authority under Supreme Court Rule 615(b) (eff. Jan. 1, 1967), we modify the defendant's sentencing order to reflect a monetary credit of \$5 against her fines. The remainder of the judgment of the Lake County circuit court is affirmed.

¶ 13 Affirmed as modified.