2016 IL App (2d) 140599-U
No. 2-14-0599
Order filed June 1, 2016

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS, Plaintiff-Appellee, v. KARL COOKS, Defendant-Appellant.	))))))))))))	Appeal from the Circuit Court of Winnebago County. Nos. 13-CF-1302 13-TR-18323 13-TR-18324 13-TR-18332 Honorable Francis Martinez, Judge, Presiding.

JUSTICE BIRKETT delivered the judgment of the court.
Justices Burke and Hudson concurred in the judgment.

ORDER

¶ 1 *Held*: (1) The State did not prove defendant guilty beyond a reasonable doubt of driving with an obstructed windshield, as the State introduced only the size of the air fresheners hanging from defendant's rearview mirror, without introducing any evidence that they materially obstructed defendant's view; (2) the State proved defendant guilty beyond a reasonable doubt of failing to use a child-restraint system, as the officers' observations supported the inference that the children were under age eight; (3) we vacated defendant's successive (and thus unauthorized) DNA analysis fees.

¶ 2 Defendant, Karl Cooks, appeals his convictions of driving with an obstructed windshield (625 ILCS 5/12-503(c) (West 2012)) and two counts of failure to secure a child under age eight in a child-restraint system (625 ILCS 25/4 (West 2012)). He contends that the evidence was insufficient to prove him guilty beyond a reasonable doubt. He also contends that the trial court erred in assessing DNA testing and lab fees in connection with his conviction of aggravated fleeing or attempting to elude a peace officer (625 ILCS 5/11-204.1(a)(4) (West 2012)). We affirm the convictions of failure to secure a child under age eight in a child-restraint system, but we reverse the conviction of driving with an obstructed windshield and vacate the DNA testing and lab fees.

¶ 3 I. BACKGROUND

¶ 4 On May 10, 2013, defendant was charged with multiple offenses after he fled from police in his vehicle. In February 2014, a jury trial was held.

¶ 5 Deputy Sheriff Andrew Baylor testified that he stopped defendant after learning that defendant had three outstanding arrest warrants. He testified that he saw two air fresheners hanging from defendant's rearview mirror, which were "about like a 3 by 5 almost an index card only in the shape of a tree." No other information about the air fresheners was provided. Baylor approached the vehicle and spoke to defendant. He saw three small children in the back of the vehicle. They were wearing seatbelts, but none of them was in a child safety seat. When asked about their ages, Baylor estimated that their ages ranged between three and eight. When asked to elaborate, he said "[o]ne was younger; I would say the second one I saw was 5 to 6 and then maybe 8 to 9 years old." He based his estimation on "[j]ust experience, of their size, facial, everything." Defendant drove away and was pursued by police. Another deputy, who pursued the vehicle, testified that he did not see the children and that they must have been too little for

him to see them in the backseat. No other evidence was presented about the children. Pursuit of the vehicle was eventually halted, and defendant was arrested the next day.

¶ 6 Defendant moved for a directed verdict on all counts. The motion was denied, and the jury found him guilty. Defendant's motion for a new trial was denied, and he was sentenced to five years' incarceration for aggravated fleeing or attempting to elude a peace officer. He was ordered to pay $300 in fines for the traffic offenses and ordered to pay various fees, including a $200 DNA testing fee and a $100 lab fee. Defendant appeals.

¶ 7 II. ANALYSIS

¶ 8 Defendant first contends that the evidence was insufficient to prove him guilty beyond a reasonable doubt of driving with an obstructed windshield.

¶ 9 A reviewing court will not set aside a criminal conviction unless the evidence is so improbable or unsatisfactory that it creates a reasonable doubt of the defendant's guilt. *People v. Collins*, 106 Ill. 2d 237, 261 (1985). On a challenge to the sufficiency of the evidence, " 'the relevant question 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.' " (Emphasis in original.) *Id*. (quoting *Jackson v. Virginia*, 443 U.S. 307, 319 (1979)). This standard applies regardless of whether the evidence is direct or circumstantial, and circumstantial evidence meeting this standard is sufficient to sustain a criminal conviction. *People v. Jackson*, 232 Ill. 2d 246, 281 (2009).

¶ 10 Section 12-503(c) of the Illinois Vehicle Code provides that "[n]o person shall drive a motor vehicle with any objects placed or suspended between the driver and the front windshield, rear window, side wings or side windows immediately adjacent to each side of the driver which materially obstructs the driver's view." 625 ILCS 5/12-503(c) (West 2012). In the context of

reasonable suspicion for a stop, the Fourth District has held that the mere presence of an air freshener hanging from a rearview mirror does not give rise to reasonable suspicion of a violation of section 12-503(c). *People v. Mott*, 389 Ill. App. 3d 539, 547 (2009). Also, size alone does not determine whether an object materially obstructs the driver's view. *Id*. at 546.

¶ 11 In *Mott*, the arresting officer pulled over the defendant's vehicle, which contained a leaf-shaped air freshener hanging from the rearview mirror. The officer estimated that the air freshener was 3½ to 4 inches wide and 4 to 5 inches tall. It hung about one inch below the mirror on a string that swung side to side. The officer had no formal training as to what constituted a "material obstruction," and the trial court found that the officer "mistakenly believed any object the size of a fingernail or larger hanging between the driver and the windshield constituted a 'material obstruction' providing reasonable suspicion for a traffic stop." *Id*. at 543. After noting that the air freshener was smaller than estimated by the officer, the court found that he did not testify to the relationship between the air freshener and the defendant's eye level. The court granted the defendant's motion to suppress, and the State appealed. On appeal, the court noted that the officer failed to articulate any specific facts giving rise to an inference that the defendant's view was obstructed. *Id*. at 544. The court emphasized that the mere presence of an air freshener was insufficient and that size alone could not show a material obstruction. *Id*. at 546-47. Thus, the court affirmed. *Id*. at 547.

¶ 12 Here, the only evidence regarding an obstructed windshield was the mere presence of two air fresheners. No evidence was given as to how those might have obstructed defendant's view. The State contends that *Mott* is distinguishable based on the size of the air fresheners, but *Mott* clearly held that size alone does not determine whether there is a material obstruction. Section

12-503(c) does not criminalize hanging one or more air fresheners from the rearview mirror. It criminalizes items that materially obstruct the driver's view.

¶ 13 The State also argues that *People v. Jackson*, 335 Ill. App. 3d 313 (2002), controls. There, this court held that reasonable suspicion for a stop could be found when the officer stopped the defendant after observing " 'what appeared to be a large obstruction' " that turned out to be two air fresheners. *People v. Jackson*, 335 Ill. App. 3d 313, 314 (2002). But *Jackson*, like *Mott*, involved the lower standard of reasonable suspicion for a stop, and the officer in *Jackson* specifically stated that he saw something that appeared to be a large obstruction. Here, the only evidence was that two air fresheners were present. As there was no evidence as to whether defendant's view was obstructed at all, much less materially obstructed, the State failed to prove defendant guilty beyond a reasonable doubt.

¶ 14 Defendant next contends that the State failed to prove him guilty beyond a reasonable doubt of failure to secure a child under age eight in a child-restraint system. Section 4 of the Child Passenger Protection Act requires use of an appropriate child-restraint system whenever any person is transporting a child under the age of eight. 625 ILCS 25/4 (West 2012).

¶ 15 Defendant claims that there was no proof that the children were under the age of eight and no proof as to their weight. He argues that if the children were over forty pounds or over the age of eight, there would be no need for them to have child restraints. As to the weight of the children, defendant's interpretation of section 25/4 is incorrect. The forty pound reference is limited to the use of a lap belt only where the child is riding the back seat of a vehicle and the vehicle is not equipped with a combination lap and shoulder belt. This provision does not relate to the requirement that children under the age of eight be in a restraint system.

¶ 16 Regarding the issue of age, neither party specifically addresses whether age for purposes of section 4 may be proved by circumstantial evidence. However, it is clear that "[c]ircumstantial evidence alone is sufficient to sustain a conviction where it satisfies proof beyond a reasonable doubt of the elements of the crime charged." *People v. Pollock*, 202 Ill. 2d 189, 217 (2002). Here, while the evidence was sparse, Baylor testified that, based on his experience, the size of the children, and their facial features, he believed that two of the children were under the age of eight. Another officer testified that the children were too small to be seen from behind the vehicle. The jury was able to hear that testimony and judge whether it was credible. Accordingly, we determine that the evidence was sufficient to prove defendant guilty beyond a reasonable doubt.

¶ 17 Finally, defendant contends that the trial court erred in assessing a DNA testing fee and a related lab fee, because he previously had his DNA collected and a fee assessed. The State properly concedes that the fees were improper. Accordingly, we vacate that part of the judgment. See *People v. Marshall*, 242 Ill. 2d 285, 303 (2011).

¶ 18 III. CONCLUSION

¶ 19 The evidence was insufficient to prove defendant guilty beyond a reasonable doubt of driving with an obstructed windshield. Accordingly, we reverse that conviction. We also vacate the DNA testing and lab fees. We affirm the convictions of failure to secure a child under age eight in a child-restraint system. The judgment of the circuit court of Winnebago County is affirmed in part, reversed in part, and vacated in part.

¶ 20 Affirmed in part, reversed in part, and vacated in part.