

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).

NO. 4-09-0895 Order Filed 3/10/11

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

JUSTICE TURNER delivered the judgment of the court. Justices Pope and McCullough concurred in the judgment.

ORDER

Held: (1) Where the State failed to prove defendant knowingly possessed a fraudulent identification card, his conviction must be reversed.

In November 2009, the trial court found defendant, Victor Badillo, guilty of possession of a fraudulent identification card. The court then sentenced him to 12 months' conditional discharge.

On appeal, defendant argues the State failed to prove him guilty beyond a reasonable doubt. We reverse.

I. BACKGROUND

In March 2009, the State charged defendant with one count of possession of a fraudulent identification card (15 ILCS 335/14B(b)(1) (West 2008)), alleging he knowingly possessed, displayed, or caused to be displayed a fraudulent identification

card. The State also charged defendant with one count of unlawful possession of alcohol by a minor (235 ILCS 5/6-20 (West 2008)).

In June 2009, defendant filed a motion to quash arrest and suppress evidence. Defendant alleged Officer Nick Guinn executed a traffic stop and placed him under arrest after learning defendant did not have a valid driver's license. At the police station, Officer Guinn searched defendant's wallet and allegedly discovered a false social security card. Defendant alleged the search of his wallet exceeded the scope of standard police procedure and was not authorized by any consent or justified by any exigent circumstances.

In September 2009, the trial court conducted a hearing on defendant's motion. Arcola police officer Nicholas Guinn testified he was on patrol on the evening of March 7, 2009. While sitting in a parking lot, Officer Guinn ran the license-plate number of passing car. The computer check revealed the license plate was suspended. Guinn then initiated a traffic stop. Guinn talked to defendant, the driver, who did not speak much English. Through a passenger in the car, Guinn learned defendant did not have a valid driver's license. Guinn placed defendant under arrest. A search of his person revealed no contraband. Guinn transported defendant to the police station. Guinn then searched defendant's wallet "for identification" and

as a matter of taking inventory.

The trial court found the stop of the vehicle was lawful. Also, the court found the search of defendant's wallet was incident to an inventory search prior to incarceration. The court denied the motion.

In November 2009, the parties indicated their desire to proceed to a stipulated bench trial. Defense counsel indicated the evidence would consist of the facts presented at the hearing on the motion to suppress. Defense counsel stated he was not stipulating to the sufficiency of the evidence and reserved the right to present a defense.

In his argument, the prosecutor stated Officer Guinn "testified about the traffic stop and he found a fake permanent residence identity card" in defendant's wallet and defendant admitted it was false. Defense counsel focused his argument on his belief that the card should have been suppressed.

The trial court found defendant guilty of possession of a fraudulent identification card. Per the State's request, the court dismissed the possession-of-alcohol charge. Thereafter, the court sentenced defendant to 12 months' conditional discharge, imposed a \$500 fine, and required him to submit and pay for a deoxyribonucleic-acid sample. This appeal followed.

II. ANALYSIS

Defendant argues the State failed to prove him guilty

of possession of a fraudulent identity card because no evidence showed he possessed an identity card or that the card was fraudulent. We agree.

"When reviewing a challenge to the sufficiency of the evidence in a criminal case, the relevant inquiry is whether, when 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. Singleton, 367 Ill. App. 3d 182, 187, 854 N.E.2d 326, 331 (2006). Where the relevant facts are uncontroverted and the issue centers on whether those facts establish the elements of the charged offense, defendant's claim is reviewed *de novo*.

People v. Chirchirillo, 393 Ill. App. 3d 916, 921, 913 N.E.2d 635, 640 (2009).

Here, the State charged defendant with possession of a fraudulent identification card. It is a violation of section 14B(b)(1) of the Illinois Identification Card Act (15 ILCS 335/14B(b)(1) (West 2008)) for a person "[t]o knowingly possess, display, or cause to be displayed any fraudulent identification card." Thus, the State must prove defendant possessed an identification card, that the card was fraudulent, and he knew it was fraudulent.

In the case *sub judice*, no evidence was introduced at the stipulated bench trial that showed defendant possessed a

fraudulent identification card. The parties stipulated the evidence to be considered by the trial court was the testimony given by Officer Guinn at the suppression hearing. However, Officer Guinn did not state what type of card he found in defendant's wallet. Moreover, he did not testify that whatever card he found was fraudulent.

The State argues the prosecutor told the trial court that Officer Guinn "found a fake permanent resident identity card" in defendant's wallet and defendant admitted it was false. However, this was not the evidence presented at the suppression hearing, and the prosecutor's argument is not considered evidence. See *People v. Ngo*, 388 Ill. App. 3d 1048, 1057, 904 N.E.2d 98, 106 (2008) (noting the trial court instructed the jury that closing arguments were not evidence).

The State also argues defendant admitted his guilt by stipulating to the testimony presented at the suppression hearing. However, defense counsel indicated defendant was not stipulating to the sufficiency of the evidence. Had he done so, the trial court would have been required to admonish him pursuant to Illinois Supreme Court Rule 402 (eff. July 1, 1997). See also *People v. Foote*, 389 Ill. App. 3d 888, 893, 906 N.E.2d 1214, 1219 (2009) ("If a stipulated bench trial is tantamount to a guilty plea, the trial court must admonish the defendant pursuant to Rule 402(a)"). Here, the court gave no such admonitions.

In the end, the State asks this court to speculate on the sufficiency of the evidence in this case and rely, not on the testimony of the suppression hearing, but on what the prosecutor thought the evidence happened to be. However, defendant's guilt or innocence should not be based on speculation and conjecture. We do not know what type of card defendant had in his wallet or whether it was fraudulent. Defendant did not stipulate to the sufficiency of the evidence, and the evidence relied on by the State failed to prove him guilty beyond a reasonable doubt. Accordingly, defendant's conviction must be reversed.

III. CONCLUSION

For the reasons stated, we reverse the trial court's judgment.

Reversed.