2014 IL App (4th) 130240-U

NO. 4-13-0240

FILED
February 24, 2014
Carla Bender
4th District Appellate
Court, IL

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS, Plaintiff-Appellee, v. KYLE A. McALLISTER-GRUM, Defendant-Appellant.	)	Appeal from Circuit Court of Macon County No. 12TR12330 Honorable Robert C. Bollinger, Judge Presiding.

JUSTICE HARRIS delivered the judgment of the court.
Justices Turner and Steigmann concurred in the judgment.

ORDER

¶ 1 *Held*: (1) The trial court committed no error in denying defendant's motion for a finding of not guilty at the close of the State's evidence.

(2) The State's evidence was sufficient to prove defendant guilty of failing to reduce speed to avoid an accident beyond a reasonable doubt.

¶ 2 Following a bench trial, the trial court found defendant, Kyle A. McAllister-Grum, guilty of failing to reduce speed to avoid an accident (625 ILCS 5/11-601(a) (West 2012)) and fined him $120 plus costs. Defendant appeals *pro se*, arguing (1) the court erred in denying his motion for a finding of not guilty at the conclusion of the State's case and (2) the State's evidence was insufficient to prove his guilt beyond a reasonable doubt. We affirm.

¶ 3 I. BACKGROUND

¶ 4 On September 28, 2012, defendant's vehicle collided with a vehicle being driven

by Michael Gremo. As a result of that accident, defendant received a traffic citation for failing to reduce speed to avoid an accident (625 ILCS 5/11-601(a) (West 2012). He pleaded not guilty to that offense and requested a bench trial.

¶ 5 On December 21, 2012, defendant's bench trial was conducted and defendant appeared *pro se*. The State presented two witnesses, Gremo and the police officer who issued defendant's traffic citation, Karl Wade Macomb. Gremo's testimony showed, on September 28, 2012, at approximately 4 p.m., he was on a two-lane road in front of his residence, waiting for oncoming traffic to pass so that he could make a left turn into his driveway. Gremo stated he was positioned in the westbound lane of travel and was stopped in front of his driveway with his turn signal light on. He had been waiting approximately 15 seconds for traffic to clear so that he could turn when his vehicle was struck from behind. Gremo testified his vehicle was pushed forward from the impact. Later, he learned from his auto body shop that his vehicle sustained damaged from being "hit square in the rear."

¶ 6 Gremo testified he believed all of the lights on his vehicle had been working properly at the time of the accident. Additionally, the day following the accident, he and his son verified that his vehicle's tail lights and signal lights were working so that his son could drive the vehicle to get repaired.

¶ 7 Macomb testified he was on duty on September 28, 2012, and responded to a dispatch call regarding the collision at issue. Upon arriving at the scene, he observed defendant's vehicle to have significant front end damage, which he described as "straight on in the front bumper, hood." At the scene, Macomb spoke with defendant, who reported that he had been traveling westbound, observed a vehicle stopped in front of him, attempted to stop but was

unable to, and struck the rear of the other vehicle. Macomb testified defendant provided no explanation for why he was unable to stop. Regarding visibility, the following colloquy occurred between the State and Macomb:

> "Q. What would you say is the—the visibility looking eastbound from the location where the—where the collision seems to have occurred? How far do you think you can see back from there?
>
> [A.] Uh, my best estimation maybe two, three hundred feet maybe. Because of the slight hill it is hard to see—
>
> Q. I see—
>
> A. —as you're going westbound to see too far."

On cross-examination, Macomb acknowledged that he did not take any measurements of the scene, but reiterated that, by his best estimate, the hill, when looking east from the location of the accident, was roughly 200 to 300 feet away.

¶ 8 At the close of the State's case, defendant made a motion for a judgment as a matter of law, arguing the State failed to prove necessary "legal requirements" and asking that the trial court find him not guilty. The court denied the motion. Defendant declined to present any evidence and, following the parties' arguments, the court found him guilty of failing to reduce his speed to avoid an accident. The court fined defendant $120 plus costs.

¶ 9 On January 18, 2013, defendant filed a motion for retrial. On March 8, 2013, the trial court denied his motion.

¶ 10 This appeal followed.

¶ 11 II. ANALYSIS

¶ 12 On appeal, defendant first argues the trial court erred by denying his motion for judgment as a matter of law. He contends the State failed to prove the essential elements of the offense and his motion asking the court to find him not guilty at the conclusion of the State's evidence should have been granted.

¶ 13 Initially, we note the State argues defendant has forfeited this issue by failing to include it in a posttrial motion. See *People v. Enoch*, 122 Ill. 2d 176, 186, 522 N.E.2d 1124, 1129-30 (1988) (Generally, both a trial objection and a posttrial motion raising the issue are required to preserve the issue for review). However, the record refutes its contention and, in fact, shows defendant did raise the issue in his posttrial motion for retrial. Specifically, in that motion, defendant argued his "motion for a judgment as a matter of law should have been allowed as the State did not meet the minimal requirements to show" he violated the relevant statute. Thus, defendant has not forfeited this issue as asserted by the State and we address the merits.

¶ 14 "When, at the close of the State's evidence or at the close of all of the evidence, the evidence is insufficient to support a finding or verdict of guilty the court may and on motion of the defendant shall make a finding or direct the jury to return a verdict of not guilty, enter a judgment of acquittal and discharge the defendant." 725 ILCS 5/115-4(k) (West 2012). "The motion for a finding of not guilty in a bench trial serves the same purpose as a motion for a directed verdict in a jury trial" and the same legal standards apply to both motions. *People v. Connolly*, 322 Ill. App. 3d 905, 915, 751 N.E.2d 1219, 1227 (2001).

¶ 15 A motion for a directed verdict or finding of not guilty "asserts only that as a

matter of law the evidence is insufficient to support a finding or verdict of guilty." *People v. Withers*, 87 Ill. 2d 224, 230, 429 N.E.2d 853, 856 (1981). When such a motion is made, the trial court must "consider only whether a reasonable mind could fairly conclude the guilt of the accused beyond reasonable doubt, considering the evidence most strongly in the People's favor." *Withers*, 87 Ill. 2d at 230, 429 N.E.2d at 856. "In moving for a directed verdict, the defendant admits the truth of the facts stated in the State's evidence for purposes of the motion." *Connolly*, 322 Ill. App. 3d at 915, 751 N.E.2d at 1227. "[A] motion for a directed verdict of not guilty asks whether the State's evidence *could support* a verdict of guilty beyond a reasonable doubt, not whether the evidence *does in fact support* that verdict." (Emphases in original.) *Connolly*, 322 Ill. App. 3d at 915, 751 N.E.2d at 1227. Motions for a finding of not guilty or directed verdict present questions of law and are subject to *de novo* review. *Connolly*, 322 Ill. App. 3d at 917-18, 751 N.E.2d at 1229.

¶ 16 To prove a defendant guilty of failing to reduce speed to avoid an accident, the State must show that the defendant drove carelessly and that he failed to reduce his speed to avoid colliding with another person. *People v. Brant*, 82 Ill. App. 3d 847, 851, 403 N.E.2d 282, 285-86 (1980). "Conviction for that offense does not require proof that the defendant was exceeding the speed limit because the offense can be committed regardless of the speed of the defendant's vehicle or the relevant speed limit." *People v. Sturgess*, 364 Ill. App. 3d 107, 116, 845 N.E.2d 741, 750 (2006). Additionally, proof of the second element of the offense (failure to reduce speed to avoid a collision) cannot be inferred merely from the fact that an accident occurred. *Brant*, 82 Ill. App. 3d at 852, 403 N.E.2d at 286.

¶ 17 Here, the State presented evidence that Gremo was stopped on the roadway for

approximately 15 second while he waited for traffic to clear so that he could make a left turn into the driveway of his home. The evidence showed defendant had the opportunity to observe Gremo's stopped vehicle from 200 to 300 feet away. Also, defendant acknowledged to Macomb that he did observe Gremo's vehicle but was unable to stop before striking it. According to Macomb, defendant provided no explanation for his inability to stop. We find this evidence, when viewed in a light most favorable to the State, was sufficient to establish the necessary elements of failure to reduce speed to avoid an accident, in that, the State presented evidence from which a reasonable trier of fact could find defendant drove carelessly and failed to reduce his speed to avoid colliding with another person. The trial court committed no error in denying defendant's motion for a finding of not guilty at the close of the State's evidence.

¶ 18 On appeal, defendant further argues the State failed to prove him guilty of failing to reduce speed to avoid an accident beyond a reasonable doubt. "When reviewing a challenge to the sufficiency of the evidence, this court considers whether, viewing the evidence in the light most favorable to the State, ' "*any* rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. (Emphasis in original.)" ' [Citations.]" *People v. Wheeler*, 226 Ill. 2d 92, 114, 871 N.E.2d 728, 740 (2007) (quoting *People v. Collins*, 106 Ill. 2d 237, 261, 478 N.E.2d 267, 277 (1985) (quoting *Jackson v. Virginia*, 443 U.S. 307, 319 (1979)). "[A]nalysis of the sufficiency of the evidence to support the finding of guilt is identical to the analysis applied to the sufficiency of the evidence at the close of the State's case upon the motion for a finding of not guilty" and "[t]he only difference is that we must now also consider the evidence adduced by defendant during his case." *Connolly*, 322 Ill. App. 3d at 919, 751 N.E.2d at 1230.

¶ 19 As discussed, the State presented sufficient evidence to establish the necessary elements of the offense of failure to reduce speed to avoid an accident. Further, the record reflects defendant presented no evidence following the denial of his motion for a finding of not guilty. We find the evidence, when viewed in the light most favorable to the State, was sufficient to prove defendant's guilt beyond a reasonable doubt.

¶ 20 On appeal, defendant argues Macomb acknowledged visual impairments existed on the roadway and failed to perform any measurements regarding the distance from which Gremo's vehicle would have been observable by defendant. However, although Macomb acknowledged the existence of a "slight hill" in the roadway and that he did not obtain any measurements, he also clearly testified that visibility existed from approximately 200 to 300 feet away. Further, defendant acknowledged to Macomb that he did observe Gremo's vehicle prior to the collision. Defendant asserted he was unable to stop but provided no explanation as to why. We find, from the evidence presented, the trier of fact could draw reasonable inferences that defendant was driving carelessly and failed to reduce his speed to avoid colliding with Gremo.

¶ 21 Defendant also contends that his guilt may not be inferred merely from the fact that an accident occurred. While he accurately sets forth relevant legal authority, we disagree that the State merely relied on the fact of an accident to establish defendant's commission of the offense. Instead, the State presented sufficient other evidence from which the trial court could draw reasonable inferences as to defendant's guilt. Specifically, the evidence showed Gremo was stopped approximately 15 second before the collision occurred, defendant would have been able to observe Gremo from 200 to 300 feet away, and defendant acknowledged seeing Gremo but inexplicably was unable to stop.

¶ 22 Finally, on appeal defendant points out that he raised the issue of Gremo's violation of section 11-1301(a) of the Illinois Vehicle Code (625 ILCS 5/11-1301(a) (West 2012)) before the trial court and asserts he could not be guilty of driving carelessly when Gremo himself acted illegally. That section provides as follows:

> "Outside a business or residence district, no person shall stop, park or leave standing any vehicle, whether attended or unattended, upon the roadway when it is practicable to stop, park or so leave such vehicle off the roadway, but in every event an unobstructed width of the highway opposite a standing vehicle shall be left for the free passage of other vehicles and a clear view of such stopped vehicle shall be available from a distance of 200 feet in each direction upon such highway." 625 ILCS 5/11-1301(a) (West 2012)).

¶ 23 We reject defendant's argument and find the evidence fails to show Gremo violated section 11-1301(a). In particular, we note the record shows Gremo was attempting to make a left turn into his driveway and was merely stopped on the roadway to wait for oncoming traffic to pass, the incident occurred in a residential district (see *People v. Glisson*, 359 Ill. App. 3d 962, 973, 835 N.E.2d 162, 172 (2005) (reading "the language that the statute is applicable only '[o]utside a business or residence district' to mean the statute is applicable to areas other than business or residential districts")), and testimony established Gremo's vehicle was visible from at least 200 feet away.

¶ 24 III. CONCLUSION

¶ 25 For the reasons stated, we affirm the trial court's judgment. As part of our judgment, we grant the State's request that defendant be assessed $50 as costs for this appeal.

¶ 26 Affirmed.