

NOTICE
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2012 IL App (4th) 110593-U

NO. 4-11-0593

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED
November 14, 2012
Carla Bender
4th District Appellate
Court, IL

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from
Plaintiff-Appellee,)	Circuit Court of
v.)	Macon County
CHAS T. BURNS,)	No. 10TR10630
Defendant-Appellant.)	
)	Honorable
)	Scott B. Diamond,
)	Judge Presiding.

JUSTICE APPLETON delivered the judgment of the court.
Justices Cook and Knecht concurred in the judgment.

ORDER

¶ 1 *Held:* Because the State failed to prove, beyond a reasonable doubt, that the moped defendant was driving was a "motor vehicle" (625 ILCS 5/1-146 (West 2010)), the convictions of driving while his driver's license was revoked (625 ILCS 5/6-303(a) (West 2010)), operating an uninsured motor vehicle (625 ILCS 5/3-707(a) (West 2010)), and operating a vehicle without the display of proper evidence of registration (625 ILCS 5/3-701(1) (West 2010)) are reversed, leaving only the conviction of operating a moped without glasses or goggles (625 ILCS 5/11-1404(a) (West 2010)), an offense that does not require proof that he was driving a "motor vehicle."

¶ 2 In a bench trial, the trial court found defendant, Chas T. Burns, guilty of driving while his driver's license was revoked (625 ILCS 5/6-303(a) (West 2010)), operating an uninsured motor vehicle (625 ILCS 5/3-707(a) (West 2010)), operating a moped without glasses or goggles (625 ILCS 5/11-1404(a) (West 2010)), and operating a vehicle without the display of proper evidence of registration (625 ILCS 5/3-701(1) (West 2010)). For those offenses, the court sentenced him to conditional discharge for 12 months. He appeals, challenging the sufficiency of the evidence.

¶ 3 In this appeal, defendant does not contest his conviction of operating a moped without glasses or goggles, but he contests the remaining convictions. He argues that, as a matter of law, the State failed to prove, beyond a reasonable doubt, an essential element of those remaining convictions, namely, that the homemade moped he was driving met the statutory definition of a "motor vehicle" (625 ILCS 5/1-146 (West 2010)). Looking at all the evidence in a light most favorable to the prosecution and drawing every reasonable inference in the prosecution's favor, we conclude it would be impossible for a rational trier of fact (acting reasonably) to find that the State had proved, beyond a reasonable doubt, that the moped in question was a "motor vehicle" within the meaning of section 1-146 of the Illinois Vehicle Code (625 ILCS 5/1-146 (West 2010)). See *Jackson v. Virginia*, 443 U.S. 307, 319 (1979). Therefore, we affirm the trial court's judgment in part and reverse it in part: we affirm the conviction of operating a moped without glasses or goggles, but we reverse the remaining convictions.

¶ 4 I. BACKGROUND

¶ 5 In the bench trial, a Decatur police officer, Bobby Hull, testified that, on July 17, 2010, at about 1 p.m., he was sitting in his squad car, in a parking lot in the 900 block of North Van Dyke Street, when he saw defendant go by on North Van Dyke Street, heading south. Defendant was riding a two-wheeled vehicle, which was emitting the sound of a combustion engine. Because defendant was not wearing glasses or goggles and because his moped did not display a registration sticker, Hull pulled out of the parking lot and followed him.

¶ 6 Hull pulled up behind the moped when it was stopped for a red light at the intersection of North Van Dyke Street and West Eldorado Street. When the light turned green, defendant began pedaling the moped, turning east on West Eldorado Street. Hull continued to follow

him. Soon the motor of the moped started up again, whereupon defendant stopped pedaling.

¶ 7 They went east on West Eldorado Street. The next intersection, after North Van Dyke Street, was North Pine Street. And then came North Mercer Street and then North Monroe Street.

Hull testified:

"A. I followed him, and as we crested the slight incline there by Pine Street, between Pine and Mercer, he obtained [*sic*] the speed of 35 miles an hour with me behind him.

Q. So the vehicle was propelled solely by human power?

A. At the point, it was solely propelled by the motorized engine."

¶ 8 Hull turned on his emergency lights to initiate a traffic stop. Defendant turned south on North Monroe Street and into the yard of what was apparently his residence. Hull pulled in behind him.

¶ 9 When Hull explained to defendant the reasons for the traffic stop, defendant responded that he did not think it was illegal to ride this moped on the streets. "He said that he had built the bike himself out of four different bikes, and he said that it only had a 49cc [(49-cubic-centimeter)] motor on it."

¶ 10 The moped had no license plates and no registration sticker. Defendant was unable to provide any proof of insurance. Ever since December 2006, his driver's license was revoked.

¶ 11 On cross-examination, defense counsel asked Hull:

"Q. Were you able to determine if the engine was less than one horsepower, were you able to determine that?"

A. No. I just—he said it was a 49cc motor.

Q. So you don't know—have any idea if it was under one horsepower?

A. No. I'm not a mechanic. Sorry.

Q. You don't know how much Mr. Burns weighs?

A. His D.L. showed from his revoked status 140.

Q. So he was—he weighed considerably less than 170; isn't that correct?

A. Correct.

Q. So the weight would make a difference on the speed of the—on one of these low-speed bicycles could obtain—the weight?

A. A little bit, yes."

¶ 12 Defendant testified he built the moped out of parts from junked 10-speed bicycles and that he added a 49-cubic-centimeter motor, which burned gasoline mixed with oil in a 16-to-1 ratio. He testified that motors fueled in this 16-to-1 ratio were 0.7 horsepower at the most.

¶ 13 According to defendant, the motor did not have enough power to move the moped forward from a dead stop. It was necessary to pedal the moped, and to acquire some momentum, and then the motor could take over and maintain the speed. Thus, after turning east onto West Eldorado Street, defendant pedaled half a block, reaching a speed of perhaps 15 miles per hour, and only then could the motor take over.

¶ 14 Defendant testified that, immediately before coming to the trial (which was held in April 2011), he weighed himself and that he weighed 154 pounds. Never in his life had he weighed

as much as 170 pounds. He testified that the more weight that was placed on the moped, the slower it would travel.

¶ 15

II. ANALYSIS

¶ 16 Each of the offenses of which defendant was convicted, except the offense of operating a moped without glasses or goggles, can be committed only with a "motor vehicle." 625 ILCS 5/6-303(a), 3-707(a), 3-701(1), 3-402(A) (West 2010). Section 1-146 of the Illinois Vehicle Code (625 ILCS 5/1-146 (West 2010)) defines a "motor vehicle" as follows: "Every vehicle which is self-propelled and every vehicle which is propelled by electric power obtained from overhead trolley wires, but not operated upon rails, except for vehicles moved solely by human power, motorized wheelchairs, low-speed electric bicycles, and low-speed gas bicycles."

¶ 17 Thus, section 1-146 defines "motor vehicle" so as to exclude "low-speed gas bicycles"—a "low-speed gas bicycle" is not a "motor vehicle." Section 1-140.15 of the Illinois Vehicle Code (625 ILCS 5/1-140.15 (West 2010)) in turn defines "low-speed gas bicycle" as follows: "A 2 or 3-wheeled device with fully operable pedals and a gasoline motor of less than one horsepower, whose maximum speed on a paved level surface, when powered solely by such a motor while ridden by an operator who weighs 170 pounds, is less than 20 miles per hour." So, to be a "low-speed bicycle," a vehicle must have all four of the following characteristics: (1) it must have either two or three wheels, (2) it must have fully operable pedals, (3) it must have a gasoline motor of less than one horsepower; and (4) it must have a maximum speed of less than 20 miles per hour when, "powered solely by [the] motor," it is driven on a level surface by someone weighing 170 pounds.

¶ 18 To "power" means "to supply with power and esp[ecially] motive power." Merriam-

Webster's Collegiate Dictionary 911 (10th ed. 2000). "Motive" means "of or relating to motion or the causing of motion." *Id.* at 758. Hence, "motive power" is the power of motion. It follows that if a moped, when "powered solely by [the] motor," can travel 20 miles per hour, the motor alone, to the exclusion of the pedals, can supply the motive power causing the moped to travel 20 miles per hour. 625 ILCS 5/1-140.15 (West 2010). The moped in this case cannot move one inch without the assistance of the pedals. Defendant testified, and the evidence showed, that the motor lacked sufficient power to set the moped in motion from a dead stop. To get the moped moving from a dead stop, one had to pedal the moped, gaining enough momentum that the motor could take over. Hull saw that, after stopping at the intersection of North Van Dyke Street and West Eldorado Street, defendant had to pedal the moped for a while until the motor kicked in.

¶ 19 The State might argue, on the other hand, that, although pedal power is needed to get the moped going from a dead stop, once the motor takes over, the moped is powered solely by the motor. The validity of that argument depends on whether the original motive power, the pedal power, goes away when the motor takes over. In answering that question, we may take judicial notice of fundamental laws of science. *People v. Bentley*, 357 Ill. 82, 103 (1934). Newton's first and second laws of motion appear to be relevant to this question. His first law of motion is as follows: "Every body perseveres in its state of rest, or of uniform motion in a right [(straight)] line, unless it is compelled to change that state by forces impressed thereon." (Emphasis omitted.) Isaac Newton, *Newton's Principia: The Mathematical Principles of Natural Philosophy* 83 (Andrew Motte trans., Daniel Adee 1846) (1687). In his commentary to this first law, the law of inertia, Newton explains that "[p]rojectiles persevere in their motions, so far as they are not retarded by the resistance of air, or impelled downwards by the force of gravity." *Id.* In other words, motion does not peter out of

its own accord. Once the moped is pedaled into motion, that original motive power has no inherent tendency to diminish or go away. Instead, the moped wants to maintain its state of motion; it would keep moving forever, without any further pedaling, but for the countervailing forces of friction and gravity. See *id.*

¶ 20 Newton's second law of motion is as follows: "The alteration of motion is ever proportional to the motive force impressed; and is made in the direction of the right line in which that force is impressed." (Emphasis omitted.) *Id.* In his commentary to this law, Newton explains that if a body already is moving, an additional motive force either "add[s] to or subduct[s] [(takes away)] from the former motion, according as they directly conspire with or are directly contrary to each other." *Id.*

¶ 21 It would seem, then, that if the moped, from a state of rest, were pedaled to a speed of, say, 15 miles per hour, whereupon the operator stopped pedaling, the moped would keep moving forever but for the countervailing forces of friction and gravity. We know this from the first law, the law of inertia. If the motor takes over after the moped is pedaled to a speed of 15 miles per hour, the motor does not *replace* the original motive force, the pedal power; the original motive force is still there, according to the law of inertia. Instead, in the words of Newton's commentary to the second law of motion, the motor "add[s] to," "or directly conspire[s] with," the "former motion," contributing just enough additional force to overcome the countervailing forces of friction and gravity. *Id.* To put it differently, in the economy of the physical world, units of motion do not simply go away; "motions directed towards the same parts"—in this case, the motor motion and the pedal motion—are added together. *Id.* at 86.

¶ 22 Likewise, if the motor increases the speed of the moped from 15 miles per hour to

35 miles per hour, the original motive power, the pedal power, has not gone away—it is still there—but the motor has built on, added, to, the momentum provided by the original motive power. To use a hypothetical example, if the motor can take the moped to 90 miles per hour only after the moped first has reached the velocity of 85 miles per hour by being shot out of a giant slingshot, the moped cannot travel 90 miles per hour when powered solely by the motor.

¶ 23 It follows that, in order for the moped in this case to have a maximum speed of 20 miles per hour when—"powered solely by [the] motor"—it is driven on a level surface by someone weighing 170 pounds, the motor *alone* must be able to take the moped from a dead stop to 20 miles per hour. (Emphasis added.) 625 ILCS 5/1-140.15 (West 2010). The motor on defendant's moped cannot do that; all the motor can do is maintain, or build on, the momentum already provided by the pedals. Absent proof that the motor has the capability described in section 1-140.15, the State has not proved that the moped is a "motor vehicle" (625 ILCS 5/1-146 (West 2010)), an essential element of the charged offenses (except the offense of driving a moped without glasses or goggles). "[T]he Due Process Clause protects the accused against conviction except upon proof beyond a reasonable doubt of every fact necessary to constitute the crime with which he is charged." *In re Winship*, 397 U.S. 358, 364 (1970).

¶ 24 III. CONCLUSION

¶ 25 For the foregoing reasons, we affirm the trial court's judgment in part and reverse it in part: we affirm the conviction of driving a moped without glasses or goggles (625 ILCS 5/11-1404(a) (West 2010)), but we reverse the convictions of driving while his driver's license was revoked (625 ILCS 5/6-303(a) (West 2010)), operating an uninsured motor vehicle (625 ILCS 5/3-707(a) (West 2010)), and operating a vehicle without the display of proper evidence of registration

(625 ILCS 5/3-701(1) (West 2010)). Because of the affirmance in part, we award the State \$50 in costs against defendant.

¶ 26 Affirmed in part and reversed in part.