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2014 IL App (3d) 130786-U

Order filed October 22, 2014

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IN THE  
APPELLATE COURT OF ILLINOIS  
THIRD DISTRICT

A.D., 2014

VILLAGE OF ROMEOVILLE,	)	Appeal from the Circuit Court
	)	of the 12th Judicial Circuit,
Plaintiff-Appellee,	)	Will County, Illinois,
	)	
v.	)	Appeal No. 3-13-0786
	)	Circuit No. 12-TR-013486
	)	
ROBERT K. GALLAGHER,	)	Honorable
	)	Joseph C. Polito,
Defendant-Appellant.	)	Judge, Presiding.

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PRESIDING JUSTICE LYTTON delivered the judgment of the court.  
Justices Holdridge and Wright concurred in the judgment.

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**ORDER**

¶ 1 *Held:* Defendant's conviction for disobeying a traffic control device is affirmed.

¶ 2 Following a jury trial, defendant, Robert K. Gallagher, was found guilty of disobeying a traffic control device (625 ILCS 5/11-305 (West 2012)) and sentenced to supervision, fines, and costs. On appeal, defendant argues: (1) the jury erred finding the police officer's testimony more credible than his own testimony; (2) the jury's finding of guilt was not supported by the

evidence; (3) the State's process of jury selection was improper; and (4) defendant lacked the *mens rea* or willing intent to violate the law. We affirm.

¶ 3

#### FACTS

¶ 4

On February 8, 2012, defendant was charged by Illinois traffic citation and complaint with disobeying a traffic control device. The nature of the offense was described as "red light." Defendant pled not guilty to the offense and requested a jury trial.

¶ 5

On May 18, 2012, jury selection was conducted, and 12 jurors were selected. The jury found defendant guilty of disobeying a traffic control device. Defendant made an oral motion for new trial, which the trial court denied. On October 10, 2012, defendant was sentenced to three months of supervision and \$185 in fines and costs.

¶ 6

#### ANALYSIS

¶ 7

On appeal, defendant argues that we should reverse his conviction for disobeying a traffic control device. According to defendant, he testified that the traffic control device was defective in that it switched sporadically from green to red without displaying the transitioning yellow light. Defendant claims that the sudden switching of the light caused him to appear as if he disobeyed the stop light. Defendant argues that the evidence at trial showed that the officer had written on the backside of the traffic citation that "the light was timed wrong," which indicates that the officer knew the light was defective. Defendant's claims are not supported by the record on appeal.

¶ 8

No report of proceedings or bystander's report is contained in the record on appeal. An elemental rule of appellate procedure is that a reviewing court is restricted to examining the record provided on appeal. *People v. Toft*, 355 Ill. App. 3d 1102 (2005). The appellant has the burden to present a sufficiently complete record on appeal to support any claims of error. *Id.*

Where the issue on appeal relates to the conduct of a hearing or proceeding, the issue is not subject to review absent a bystander's report or record of the proceedings. *Id.* As discussed below, without a sufficient record on appeal, we are unable to review defendant's claims.

¶ 9

### I. Credibility Determination

¶ 10

First, defendant claims the jury erred in finding the officer's testimony more credible than his own. The reviewing court does not retry the defendant, and the trier of fact remains responsible for making determinations regarding the credibility of witnesses, the weight to be given to their testimony, and the reasonable inferences to be drawn. *People v. Emerson*, 189 Ill. 2d 436 (2000). We will not reverse a conviction unless it is so unreasonable, improbable, or unsatisfactory that there remains a reasonable doubt of defendant's guilt. *People v. Smith*, 185 Ill. 2d 532 (1999). Without a record, we must presume that the order entered by the trial court is in conformity with the law and had a sufficient factual basis. *Toft*, 355 Ill. App. 3d 1102.

¶ 11

In this case, it was for the jury to determine the credibility of the witnesses. Due to the inadequacy of the record, we are unable to review the evidence to determine whether defendant's conviction was so unreasonable, improbable, or unsatisfactory that reasonable doubt of his guilt remains. We must therefore presume defendant's conviction is valid.

¶ 12

### II. Sufficiency of the Evidence

¶ 13

Defendant argues that the evidence presented was insufficient to sustain a conviction. When a defendant challenges the sufficiency of the evidence supporting his conviction, a reviewing court must determine whether, when 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. *People v. Cunningham*, 212 Ill. 2d 274 (2004). Under this standard, a reviewing court must allow all reasonable inferences from the record in favor of the prosecution.

*Id.* Without an adequate record, we are unable to review the evidence and cannot consider defendant's claim of insufficient evidence.

¶ 14

### III. Jury *Voir Dire*

¶ 15

Defendant contends that he was denied his right to a fair and impartial jury. Specifically, defendant claims the State prescreened potential jurors and selected jury members so as to create a pro-police jury by excluding any venire members who believed police lie or had a bad experience with police or the government. A defendant is required to object to errors during jury selection; otherwise, the advantage of gaining a reversal through failure to act will be gained by not allowing the trial court the opportunity to prevent or correct errors at trial. *People v. Wembley*, 342 Ill. App. 3d 129 (2003).

¶ 16

In this case, due to the insufficiency of the record, there is no indication whether defendant properly objected to the alleged error in the trial court. Without a sufficient record for review, we must resolve any doubts arising from an incomplete record against the appellant. *Id.* Furthermore, without a record containing information regarding the questions posed during *voir dire*, no review is possible. *Toft*, 355 Ill. App. 3d 1102. Consequently, we cannot say that any error existed during jury selection so as to deny defendant a fair and impartial jury.

¶ 17

### IV. Culpable Mental State

¶ 18

Defendant claims that he lacked the required *mens rea* or willing intent to violate section 11-305 of the Illinois Vehicle Code (Code). Section 11-305 of the Code provides that "[t]he driver of any vehicle shall obey the instructions of any official traffic-control device \*\*\* unless otherwise directed by a police officer, subject to the exceptions granted the driver of an authorized emergency vehicle." 625 ILCS 5/11-305 (West 2012). The statute does not require a

mental state. Therefore, defendant's claim that he lacked the applicable mental state to commit the offense lacks merit.

¶ 19

#### CONCLUSION

¶ 20

The judgment of the circuit court of Will County is affirmed.

¶ 21

Affirmed.