

No. 1-14-1911

**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).

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IN THE  
APPELLATE COURT OF ILLINOIS  
FIRST JUDICIAL DISTRICT

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|--------------------------------------|---|-----------------------|
| THE PEOPLE OF THE STATE OF ILLINOIS, | ) | Appeal from the       |
|                                      | ) | Circuit Court of      |
| Plaintiff-Appellee,                  | ) | Cook County.          |
|                                      | ) |                       |
| v.                                   | ) | No. 12 CR 23180       |
|                                      | ) |                       |
| MICHAEL IZETA,                       | ) | Honorable             |
|                                      | ) | Joseph G. Kazmierski, |
| Defendant-Appellant.                 | ) | Judge Presiding.      |

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JUSTICE SIMON delivered the judgment of the court.  
Presiding Justice Connors and Justice Mikva concurred in the judgment.

**O R D E R**

¶ 1 *Held:* We reverse the judgment of the circuit court where the evidence was insufficient to convict defendant of failing to report a motor vehicle accident involving death within one-half hour after the accident.

¶ 2 Following a bench trial, defendant Michael Izeta was convicted of, among other offenses, aggravated driving under the influence of alcohol (625 ILCS 5/11-501(a) (West 2010)) and failing to report leaving the scene of a motor vehicle accident involving death (625 ILCS 5/11-401(b) (West 2010)) and sentenced to consecutive prison terms of 11 years and 5 years,

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respectively. On appeal, defendant challenges only his conviction for failing to report the accident, arguing the State failed to prove he did not report the accident within one-half hour. We reverse.

¶ 3 On November 9, 2012, defendant struck and killed pedestrian Wayne Davis with his car. Defendant was charged with two counts of aggravated driving under the influence of alcohol, one count of reckless homicide, one count of leaving the scene of a motor vehicle accident involving death, and one count of failure to report leaving the scene of a motor vehicle accident involving death. Defendant proceeded to a bench trial where all the evidence was presented by stipulation. The evidence adduced at trial is as follows.

¶ 4 It was stipulated that Montrel O'Bannon would testify that he and defendant were friends who worked together at a Target store. In the early morning of November 9, 2012, defendant called O'Bannon and was invited over to O'Bannon's apartment. Defendant arrived around 5:20 a.m. Defendant told O'Bannon that he had been drinking vodka, and O'Bannon noticed defendant smelled like alcohol a "little bit" and that his eyes were a "little bit" red. He also noted that defendant's mannerisms were slightly different than usual.

¶ 5 Defendant stated that he had to leave to take his children to school, and O'Bannon asked for a ride to Target to pick up his paycheck. Defendant drove north on Broadway Street with O'Bannon in the front passenger seat. As they approached Lawrence Avenue, O'Bannon noticed an elderly man walking across the street in the crosswalk, west to east, at the intersection of Lawrence Avenue and Broadway Street. O'Bannon shouted to defendant to "watch out" but defendant did not respond. Defendant was driving around 10 to 15 miles per hour when he struck the man with the right front passenger side of his vehicle. The elderly man rolled over the car on the right side and onto the ground. Defendant stopped briefly and then turned left down Racine

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Avenue, driving a "little bit" faster than before. A police officer was right behind them and followed them down Racine Avenue. The police officer was in a marked SUV with blue lights activated. O'Bannon told defendant to "slow down" and "just stop," which defendant did about a half block down Racine Avenue.

¶ 6 O'Bannon would testify that a police officer cut off the car and officers started coming from every direction. Defendant, following police instructions, turned the car off and put the keys on the "windshield." O'Bannon and defendant exited the car through the back seat passenger door because there was a police car blocking the front passenger door. O'Bannon was placed in a separate police car from defendant, and he did not see him again that day.

¶ 7 O'Bannon would further testify that, when defendant arrived at his apartment that morning, defendant was "tipsy" and "slurring his words." After striking the elderly man, defendant was "incoherent" and made a U-turn going down Racine, slightly speeding up. The parties stipulated that Chicago police officer Qualls was working on November 9, 2012, at approximately 7:06 a.m. Qualls was driving northbound on Broadway when he observed a green Pontiac Bonneville disobey a red traffic signal and strike an elderly pedestrian who was crossing Broadway. The vehicle made a U-turn, struck the curb with its front passenger-side tire and proceeded south on Racine.

¶ 8 Qualls activated his emergency lights and sirens and followed the vehicle, eventually curbing it about one block from the scene. He called for additional officers, who positioned their squad cars in front of the vehicle, blocking the doors from opening. The driver, who Qualls would identify as defendant, was instructed to exit the vehicle through the rear passenger door. Defendant was then placed into custody and taken to the police station.

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¶ 9 Chicago police officer Holowach would testify that he was assigned to assist Officers Qualls and Pearson on an "auto/pedestrian" investigation at approximately 7:06 a.m. on November, 9, 2012. He would identify defendant as the man placed in custody by Qualls and Pearson. Defendant was transported to the police station where he was given his "warnings to motorists." Holowach monitored defendant for approximately 20 minutes and, at approximately 9:35 a.m., gave defendant a breathalyzer test. The result of this test was .215.

¶ 10 Police investigator Bogumila Galey would testify she and Assistant State's Attorney Heather Kent interviewed defendant, who she would identify in court, at approximately 3:00 p.m. on November 9, 2012. Defendant consented to having his statement memorialized in writing and made any necessary changes. Galey would further identify defendant's written statement as a true and accurate copy.

¶ 11 In defendant's written statement, he stated that, on November 8, 2012, around 11:00 p.m., he began drinking vodka by himself and drank at least three glasses. He remembered leaving his house but had "no idea" at what time he left. Defendant owned a 1993 Pontiac Bonneville car and remembered driving his car down Broadway towards Peterson.

¶ 12 The next thing defendant remembered was being told to get out of the car by police officers. He remembered throwing the keys onto the windshield and exiting the car through the passenger side because of the angle of the police car next to him. Defendant did not remember calling O'Bannon or picking him up. He only saw O'Bannon when told by police to exit his car.

¶ 13 Defendant did not remember hitting anyone with his vehicle. He went to the police station to take a breathalyzer test, but he did not remember taking any other tests when the police first stopped his car.

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¶ 14 Doctor Ponni Arunkumar of the Cook County Medical Examiner's office would testify that the cause of Davis' death, to a reasonable degree of medical and scientific certainty, was cerebral injuries due to automobile striking pedestrian.

¶ 15 After the State rested, defendant offered no evidence. The trial court found defendant guilty of all charges. It denied defendant's motion for a new trial and sentenced him to five years on count 1, failure to report leaving the scene of a motor vehicle accident involving death (625 ILCS 5/11-401(b) (West 2010)), and 11 years on count 2, aggravated driving under the influence of alcohol (625 ILCS 5/11-501(a) (West 2010)), to be served consecutively. The court merged the remaining convictions into count 2. After defendant's written motion to reconsider sentence was denied, he timely appealed.

¶ 16 Defendant challenges his conviction for failing to report leaving the scene of a motor vehicle accident involving death under section 11-401(b) of the Illinois Vehicle Code (625 ILCS 5/11-401(b) (West 2010)).

¶ 17 Section 11-401(a) of the Illinois Vehicle Code provides:

"The driver of any vehicle involved in a motor vehicle accident resulting in personal injury to or death of any person shall immediately stop such vehicle at the scene of such accident, or as close thereto as possible and shall then forthwith return to, and in every event shall remain at the scene of the accident until the requirements of Section 11-403 have been fulfilled. Every such

stop shall be made without obstructing traffic more than is necessary."<sup>1</sup> 625 ILCS 5/11-401(a) (West 2010).

¶ 18 Violation of this section is a Class 4 felony, punishable by one to three years in prison. 625 ILCS 5/11-401(c) (West 2010); 730 ILCS 5/5-4.5-45(a) (West 2010).

¶ 19 Section 11-401(b) of the Illinois Vehicle Code provides:

"Any person who had failed to stop or to comply with the requirements of paragraph (a) shall, as soon as possible but in no case later than one-half hour after such motor vehicle accident, or, if hospitalized and incapacitated from reporting at any time during such period, as soon as possible but in no case later than one-half hour after being discharged from the hospital, report the place of the accident, the date, the approximate time, the driver's name and address, the registration number of the vehicle driven, and the names of all other occupants of such vehicle, at a police station or sheriff's office near where such accident occurred. No report made as required under this paragraph shall be used, directly, or indirectly, as a basis for the prosecution of any violation of paragraph (a)." 625 ILCS 5/11-401(b) (West 2010).

¶ 20 Violation of this section is a Class 2 felony punishable by three to seven years in prison. 625 ILCS 5/11-401(d) (West 2010); 730 ILCS 5/5-4.5-35(a) (West 2010). But if, as here, the

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<sup>1</sup> Section 11-403 requires, *inter alia*, that "[t]he driver of any vehicle involved in a motor vehicle accident resulting in injury to or death of any person" must give the driver's and the vehicle's identifying information to the person struck "and shall render to any person injured in such accident reasonable assistance." 625 ILCS 5/11-403 (West 2010).

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accident results in a death, the offense is enhanced to a Class 1 felony punishable by 4 to 15 years in prison. 625 ILCS 5/11-401(d) (West 2010); 730 ILCS 5/5-4.5-30(a) (West 2010). Failing to report the required information within one-half hour is a required element of the offense. *People v. Moreno*, 2015 IL App (2d) 130581, ¶ 23.

¶ 21 Defendant concedes he was properly convicted under section 11-401(a), thus admitting he left the scene of the accident knowing that the accident involved injury or death to another person. See *People v. Digirolamo*, 179 Ill. 2d 24, 42 (1997) ("section 11-401 requires that a motorist have knowledge that he or she was involved in an accident that involved another person"). He argues, however, that the evidence did not show he failed to report the accident within one-half hour as required under section 11-401(b). Specifically, he claims the State did not present any evidence concerning defendant's statements or reports during the half hour following the accident, between approximately 7:06 a.m. and 7:36 a.m. Defendant also argues that section 11-401(b) is inapplicable here as its requirements were fulfilled before any police investigation could be contemplated. He asserts the police acquired the necessary information immediately after the accident from Officer Qualls' observation of the accident and arrest of defendant. Defendant asks that we reverse his Class 1 conviction under section 11-401(b) and remand for resentencing on his Class 4 section 11-401(a) conviction. See *People v. Patrick*, 406 Ill. App. 3d 548, 565 (2010) (reducing the defendant's Class 2 violation of section 11-401(b) to a Class 4 violation of section 11-401(a)).

¶ 22 The standard of review when challenging the sufficiency of the evidence is whether, after viewing the evidence in the light most favorable to the State, any rational trier of fact could have found the essential elements of the offense proven beyond a reasonable doubt. *People v. Brown*, 2013 IL 114196, ¶ 48. We must allow all reasonable inferences from the record in favor of the

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State. *People v. Cunningham*, 212 Ill. 2d 274, 280 (2004). A conviction will not be reversed unless "the evidence is so improbable, unsatisfactory, or inconclusive that it creates a reasonable doubt of defendant's guilt." *People v. Collins*, 214 Ill. 2d 206, 217 (2005).

¶ 23 We agree with defendant that the State did not offer specific evidence that he did not report the accident within the one-half hour grace period. As defendant points out, O'Bannon was separated from defendant immediately following the accident, and neither Officers Qualls nor Holowach gave any statements that would implicate defendant's failure to report the accident within the one-half hour after the accident. Qualls only stated that defendant "was eventually placed into custody and then taken to the 19th District." Holowach only stated that he began monitoring defendant at 9:15 a.m., an hour-and-a-half after the reporting window had closed. The State responds, relying on *People v. Moreno*, 2015 IL App (2d) 130581, that it did present evidence of defendant's failure to report in the form of his memorialized statement to Investigator Galey. It argues the trier of fact could reasonably infer that defendant failed to report the accident within one-half hour from the fact that, in his interview eight hours after the accident, he did not remember hitting anyone with his vehicle. In other words, if defendant did not remember the accident, whether truthfully or not, he would not have reported it.

¶ 24 In *People v. Moreno*, 2015 IL App (2d) 130581, on appeal from his conviction for failure to report a motorcycle accident involving death, the defendant driver argued that the State failed to present any evidence that he did not report the accident within one-half hour after being released from the hospital, within the grace period provided in section 11-401(b). *Id.* at ¶ 23. Despite the police having gathered the relevant details surrounding the accident, including the information set out in section 11-401(b), the Second District found that the defendant still did not provide the statutorily-required information during his interview after being released from the



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hospital. *Id.* at ¶ 24. Instead, it found the defendant "spent the first 45 minutes denying any knowledge that a motorcycle had hit his car" and that his "statements were all in the form of denials of any knowledge of his own involvement." *Id.* Accordingly, because the defendant consistently denied his involvement during the taped interview, the Second District found "the trier of fact could have reasonably inferred" he did not previously report it. *Id.* at ¶ 25

¶ 25 *Moreno* is distinguishable from the present case. In *Moreno*, the defendant actively misled the police by blaming the accident on another driver. *Id.* at ¶ 22. Further, after being released from the hospital and taken to the police station, the defendant continued to deny his involvement even after being confronted by police that a motorcyclist had died. *Id.* at ¶ 24. Here, in contrast, there was no evidence presented that defendant attempted to thwart the police investigation of the accident or denied that he struck and killed Davis.

¶ 26 Defendant was arrested one block away from the accident moments after it occurred. Officer Qualls observed defendant's car strike Davis and make a U-turn. He stopped the vehicle a block away, more officers converged on the scene, and defendant was arrested and taken to the police station. There was no testimony from any officer that defendant denied involvement in the accident or did not cooperate with police.

¶ 27 We find that it is unreasonable to infer that defendant did not report the accident within one-half hour merely because, at his interview eight hours later, he could not remember hitting someone. This inference is pure speculation. The State has the burden to prove each element of the offense beyond a reasonable doubt. *People v. Siguenza-Brito*, 235 Ill. 2d 213, 224 (2009). Given these particular facts, the State did not present any evidence that defendant failed to report the accident within one-half hour. Accordingly, we reverse defendant's conviction under section 11-401(b) and remand for resentencing on his conviction under section 11-401(a).

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¶ 28 For the reasons set forth above, we reverse the judgment of the circuit court of Cook County and remand for resentencing on defendant's conviction under section 11-401(a).

¶ 29 Reversed and remanded.