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2018 IL App (3d) 170043-U

Order filed April 3, 2018

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

2018

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the Circuit Court of the 14th Judicial Circuit, Henry County, Illinois.
Plaintiff-Appellee,)	
v.)	Appeal Nos. 3-17-0043, 3-17-0044
BRANDON R. JONES,)	Circuit Nos. 14-CF-283, 15-CF-299
Defendant-Appellant.)	Honorable Terence M. Patton, Judge, Presiding.

JUSTICE SCHMIDT delivered the judgment of the court.
Justices McDade and O'Brien concurred in the judgment.

ORDER

¶ 1 *Held:* The trial evidence was sufficient to prove beyond a reasonable doubt that defendant drove a vehicle while his license was suspended.

¶ 2 Defendant, Brandon R. Jones, appeals his conviction for driving while his license was suspended. Defendant contends that the trial evidence was insufficient to show that he was the individual driving a truck on the day of the incident. We affirm.

¶ 3 **FACTS**

¶ 4 The State charged defendant with driving while his license was suspended (625 ILCS 5/6-303(a), (d)(2) (West 2014)) and resisting a peace officer (720 ILCS 5/31-1(a) (West 2014)).

¶ 5 The matter proceeded to a jury trial. Police Officer Eric Dusenberry testified that he was working as a patrol officer shortly after 4 p.m. on October 22, 2015. Dusenberry was driving a marked squad car in a rural area. Dusenberry observed a white Ford truck without a front registration plate traveling in the opposite direction. Dusenberry knew the truck belonged to a company called I-80 Equipment. The truck did not say “I-80 Equipment” on it, but Dusenberry was familiar with I-80 Equipment vehicles. Dusenberry could see that defendant was the driver of the truck as it drove past his squad car. Defendant was wearing a T-shirt, baseball cap, and sunglasses.

¶ 6 Dusenberry had known defendant for approximately two years. Dusenberry knew that defendant’s license was suspended and that defendant worked at I-80 Equipment. Dusenberry had stopped defendant for traffic offenses in the past. Dusenberry had not seen defendant drive the white Ford truck before the day of the incident, but Dusenberry had seen defendant drive other vehicles. Dusenberry did not recall ever seeing defendant wear sunglasses and a baseball cap before the date of the incident.

¶ 7 When Dusenberry saw that defendant was driving, he turned his squad car around to conduct a traffic stop. Dusenberry stated that he activated the lights on his squad car as he turned his vehicle around. Dusenberry saw the white truck accelerate rapidly and turn onto another street. The driver failed to use his turn signal and turned “so fast that he almost had lost control and went into the other oncoming lane.” Dusenberry turned where the truck had turned and continued to follow the truck. Dusenberry’s lights were still activated at that time. Dusenberry followed the truck to the fleet yard of I-80 Equipment.

¶ 8 Dusenberry observed the white truck come to a complete stop at the end of a row of utility vehicles. Defendant exited the truck. Defendant looked at Dusenberry's squad car for "a brief second" and began running. Dusenberry drove in the direction defendant was running to intercept defendant at the other end of a row of utility vehicles. Dusenberry never lost sight of defendant. Dusenberry stopped his squad car and exited the vehicle. Defendant then "attempted to double back and begin running the other way." Dusenberry got out his Taser and ordered defendant to show his hands. Defendant stopped running, and Dusenberry arrested him. Defendant was out of breath and sweating profusely. As Dusenberry placed defendant in handcuffs, defendant kept repeating " 'Oh, my God, oh, my God, oh, my God.' " Dusenberry did not see anyone else in the area at that time.

¶ 9 Dusenberry ran defendant's name through dispatch to verify defendant's driving status. Dispatch stated that defendant's driver's license was suspended. Dusenberry also ran the vehicle's registration and learned that it was registered to I-80 Equipment. The police department towed the white Ford truck. Another officer searched the truck and found several articles of clothing and a receipt for payment of attorney fees with defendant's name written on it. Dusenberry believed that the officer who searched the truck located the receipt in the center console.

¶ 10 Dusenberry testified that there was a camera mounted by the rear view mirror in his squad car. The camera was immobile. The camera recorded video one minute prior to the activation of the squad car's emergency lights. Once the lights were activated, the camera began recording both video and audio. Dusenberry said that the audio and video were operational on the date of the incident. The court admitted a DVD containing a video recording from

Dusenberry's squad car into evidence. The State played the video for the jury. Dusenberry testified that the video recording started at 4:23 p.m.

¶ 11 In the video recording, Dusenberry was driving in a rural area. It was a clear and sunny day. After approximately 20 seconds, a white truck could be seen in the distance driving in the opposite direction of Dusenberry's vehicle. Four seconds later, the truck passed Dusenberry's vehicle and was no longer visible. Dusenberry made a U-turn and followed the white truck at a high rate of speed. The truck turned right. The truck appeared to be far away from Dusenberry's vehicle when it turned, and is not clear from the video whether the truck activated its turn signal. Dusenberry turned where the truck turned. At that point, the audio recording started. The white truck was no longer visible.

¶ 12 Dusenberry drove around a curve. A vehicle could then be seen in the distance for approximately three seconds. Dusenberry approached the parking lot for I-80 Equipment. At that point, a white truck could be seen driving through the lot in the distance. The white truck was visible for approximately one second. Dusenberry drove into the lot. Dusenberry drove to the end of a row of cherry pickers. A pair of legs could be seen walking toward the squad car. That individual then stopped, backed up, and started walking in the other direction. Dusenberry parked the squad car and exited it. Dusenberry yelled at the individual to put his hands behind his back. The individual started repeating "oh, my God" over and over. Dusenberry then led the individual over to the squad car. At that point, the individual could be seen on the video recording, and it was clear that it was defendant. Defendant was wearing a white polo shirt, sunglasses, and a baseball cap. Dusenberry handcuffed defendant.

¶ 13 Officer Dennis Hanks testified that he went to I-80 Equipment on the date of the incident upon receiving directions from dispatch. Hanks talked to Dusenberry. Hanks then performed an

inventory search on a white Ford truck. Hanks identified photographs of the interior of the truck from the day he searched it. Hanks found several articles of clothing in the passenger side of the vehicle, including a jacket. Hanks found a cash receipt voucher from a law firm inside the jacket pocket. The State introduced a photograph of the receipt into evidence. The photograph showed defendant's name written on the receipt as the individual who had paid. Hanks found the keys to the truck in the ignition.

¶ 14 The State rested.

¶ 15 Defendant called Mitch Melega as a witness. Melega testified that he worked for I-80 Equipment as the financial controller. Melega explained that I-80 Equipment remanufactured used bucket trucking equipment. Melega testified that I-80 Equipment had company pickup trucks the employees used. Melega believed the keys were often left in the vehicles and that “anybody out in production would have access to them if they really wanted them.”

¶ 16 Melega was in charge of the cameras and other surveillance equipment at I-80 Equipment. There were surveillance cameras in each of the 13 mechanical bays. After defendant's arrest, defendant asked Melega if he could play back the cameras during a specific time frame. Melega reviewed the footage and took a few screen shots of defendant walking through the shop. Defendant introduced two screen shots into evidence. The photographs were dated October 22, 2015. The photographs had time stamps of 4:16:39 p.m. and 4:16:32 p.m. In the photographs, a man wearing a white polo shirt, a baseball cap, and dark pants was walking through a mechanical area. The photographs were blurry, and the man's face was not in focus. Melega testified that he knew the man was defendant based on years of experience of being around defendant and knowing his appearance. Melega explained:

“[Y]ou can narrow it down, because there’s no mechanic, obviously it’s not a mechanic, and he was out in production. Of all the other people, there’s only two production managers. The only person that could be is [defendant] or Kyle Judge at that point, and Kyle Judge is a much bigger guy.”

¶ 17 Robert Lauritzen testified that he worked at I-80 Equipment on the date of the incident. At approximately 4:15 p.m., Lauritzen had a discussion with defendant that lasted approximately five to seven minutes. Lauritzen told defendant that he had finished repairing a bucket truck and asked defendant to find another bucket truck for him to work on the next morning. Lauritzen remembered the time of the conversation because it was close to 4:30 p.m., which was when the work day ended. Defendant walked outside toward new arrivals. After defendant went outside, Lauritzen saw a white truck pull into the parking lot. Lauritzen then saw a squad car and defendant being arrested.

¶ 18 Taren Komadina, defendant’s girlfriend, testified that Dusenberry had followed her on three to four occasions when she was driving her Pontiac Vibe or defendant’s Chevy Tahoe. The Chevy Tahoe had dealer plates through I-80 Equipment. Once Dusenberry saw that Komadina was driving rather than defendant, he drove away. On a few occasions, Komadina had also seen Dusenberry waiting down the road from the house where she and defendant lived. Komadina could see through the window that it was Dusenberry.

¶ 19 Defendant testified that he worked at I-80 Equipment as a production manager and a quality control employee. Defendant testified that he spoke with Lauritzen at approximately 4:15 p.m. on the date of the incident. Lauritzen told defendant he needed another truck to work on, and defendant went over to the new arrival line to find a truck for Lauritzen. Defendant

began looking at the truck closest to his office. Defendant inspected the truck to see its stock number and to determine whether it ran. Defendant was standing on the side of the truck inspecting it when he saw a squad car suddenly drive up. The squad car drove very close to defendant, and defendant backed up. Dusenberry started yelling at defendant. Dusenberry pointed his Taser at defendant. At the time, defendant believed the Taser was a gun. Defendant had a panic attack. Defendant stated that he was not driving the white truck in the video on the day of the incident.

¶ 20 Defendant stated that he was the individual in the security camera photographs that Melega had previously identified. Defendant was not certain if the photographs were captured before or after he spoke with Lauritzen.

¶ 21 Defendant testified that he knew Dusenberry. Dusenberry had stopped him for traffic violations before. Dusenberry also waited down the road from defendant's house and followed any vehicle that drove out of defendant's driveway. Defendant stated that his license was suspended on the date of the incident, but he had gotten his license back at the time of the trial.

¶ 22 The jury found defendant guilty of driving while his license was suspended. The jury found defendant not guilty of resisting a peace officer. The court sentenced defendant to 180 days in the county jail and 24 months' conditional discharge.

¶ 23 ANALYSIS

¶ 24 Defendant argues that the evidence at the trial was insufficient to prove beyond a reasonable doubt that he was the individual driving the white Ford truck. We find that the Dusenberry's testimony, when viewed in the light most favorable to the State, was sufficient to prove defendant guilty of driving while his license was suspended.

¶ 25 “When presented with a challenge to the sufficiency of the evidence, it is not the function of this court to retry the defendant.” *People v. Collins*, 106 Ill. 2d 237, 261 (1985). Rather “ ‘the relevant question is whether, after 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.’ ” (Emphasis in original.) *Id.* (quoting *Jackson v. Virginia*, 443 U.S. 307, 319 (1979)). The credibility of the witnesses and the weight to afford to their testimony are matters “exclusively within the province of the jury.” *Id.* at 261-62. “Similarly, it is for the jury to resolve any conflicts in the evidence.” *Id.* at 262. We will not set aside a criminal conviction “unless the evidence is so improbable or unsatisfactory that it creates a reasonable doubt of the defendant’s guilt.” *Id.* at 261.

¶ 26 We find that, when viewed in the light most favorable to the State, the evidence was sufficient to prove defendant was the individual driving the white truck. Dusenberry testified that he recognized defendant as the driver of the white truck when the white truck first drove past Dusenberry’s squad car. Dusenberry also testified that he saw defendant exit the white truck once he reached I-80 Equipment and run behind a row of cherry pickers. Dusenberry stated that he then apprehended defendant on the far end of the row of cherry pickers. Dusenberry’s testimony is supported by the squad car video footage. Also, Officer Hanks found a receipt belonging to defendant in the white truck that Dusenberry pursued.

¶ 27 We reject defendant’s contention that Dusenberry’s testimony was not credible because some of the things Dusenberry observed, like defendant exiting the white truck and running, were not captured on the video recording. Unlike the stationary squad car camera, Dusenberry was able to turn his neck and see things that were not directly in front of the squad car. Notably, the video footage did not contradict Dusenberry’s testimony.

¶ 28 We also reject defendant’s argument that it was “highly improbable” that Dusenberry could initially see that the white truck had no front registration plate, defendant was driving the truck, and what defendant was wearing. Defendant notes that the white truck drove past the squad car very quickly. However, it was the province of the jury to assess the credibility of Dusenberry’s testimony and resolve the inconsistencies in the evidence. *Id.* at 261-62. We reassert that “it is not the function of [the reviewing] court to retry the defendant.” *Id.* at 261.

¶ 29 Likewise, we reject defendant’s argument that the still images taken from the security cameras at I-80 Equipment show that he could not have been driving the white Ford truck. The security camera images were time stamped between 4:16 p.m. and 4:17 p.m. on the date of the incident. Dusenberry testified that he first saw defendant driving the white truck at 4:23 p.m. It is possible that defendant drove a short distance from I-80 Equipment after being seen on the security cameras. Approximately one minute and ten seconds elapsed between the time the truck came into view on the squad car video footage and the time the squad car pulled into I-80 Equipment. Thus, even given the security camera images, it is possible that defendant was the individual driving the truck. Moreover, it is the province of the jury to resolve any potential inconsistencies in the evidence. *Id.* at 262.

¶ 30 Finally, we reject defendant’s argument that the trial evidence showed that Dusenberry “rush[ed] to judgment due to a personal animus” against defendant. Defendant contends that this “inference of prejudgment” is supported by the fact that Dusenberry followed the truck at a high rate of speed upon believing defendant was driving, Dusenberry’s lack of investigation into who was driving the vehicle, and evidence of Dusenberry’s past encounters with defendant and Komadina. While these factors might support an inference that Dusenberry rushed to judgment, the jury was not required to accept such an inference. Furthermore, on appeal we “must allow all

reasonable inferences from the record in favor of the prosecution.” *People v. Cunningham*, 212 Ill. 2d 274, 280 (2004).

¶ 31

CONCLUSION

¶ 32

For the foregoing reasons, the judgment of the circuit court of Henry County is affirmed.

¶ 33

Affirmed.