2019 IL App (4th) 170021-U

NO. 4-17-0021

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED
May 10, 2019
Carla Bender
4th District Appellate
Court, IL

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
Plaintiff-Appellee,	)	Circuit Court of
v.	)	McLean County
TYLER SCOTT HARTEMA,	)	No. 16CF375
Defendant-Appellant.	)	
	)	Honorable
	)	William A. Yoder,
	)	Judge Presiding.

JUSTICE KNECHT delivered the judgment of the court.
Justices DeArmond and Turner concurred in the judgment.

ORDER

¶ 1 *Held*: (1) Plain error occurred when defendant was not granted his motion for a directed verdict judgment on the charge of aggravated driving while under the influence at the close of the State's evidence.

(2) The evidence was sufficient to prove defendant guilty of illegal transportation of "alcoholic liquor" in a motor vehicle.

(3) Defendant's argument the written order and oral pronouncement was inconsistent regarding fines is moot, as the matter is remanded for resentencing on the lesser offense of simple driving while under the influence.

¶ 2 In October 2016, a jury found defendant guilty of two counts of aggravated driving under the influence (aggravated DUI), transportation of alcoholic liquor in a motor vehicle, and driving with a suspended license. Upon consolidating the aggravated DUI offenses, the trial court sentenced defendant to 120 days in jail and to pay fines.

¶ 3 Defendant appeals his convictions and sentence, arguing (1) the State failed to prove the aggravating element, not possessing a driver's license, to support his conviction for aggravated DUI; (2) the State failed to prove the bottle found in the car contained "alcoholic liquor," as required for the illegal-transportation offense; and (3) the trial court's written order regarding fines and fees should be amended to reflect the verbal imposition made at sentencing. We affirm in part, modify in part, and remand for resentencing.

¶ 4 I. BACKGROUND

¶ 5 On April 12, 2016, defendant was charged by information with aggravated DUI with "no valid driver's license" (625 ILCS 5/11-501(d)(1)(H) (West 2016)). The information states defendant committed the offense "in that the defendant drove or was in actual physical control of a motor vehicle while under the influence of alcohol at a time when he did not possess a valid driver[']s license." The information further indicates the charge was "aggravated pursuant to 625 ILCS 5/11-501(d)(1)(H) in violation of 625 ILCS 5/11-501(a)." On that same date, defendant was issued traffic violations for driving while license suspended (625 ILCS 5/6-303(a) (West 2016)) and for illegal transportation of alcohol (625 ILCS 5/11-502(a) (West 2016)). In September 2016, the State added a new charge for aggravated DUI, alleging defendant committed aggravated DUI ("no valid driver's license") in that he drove while the alcohol concentration in his blood was .08 or greater when he did not possess a valid driver's license.

¶ 6 A jury trial was held on the charges. At trial, Michael Gray, a lieutenant with the Bloomington Police Department, testified, on April 12, 2016, around 1:30 a.m., he was traveling west on East Oakland Avenue. As Lieutenant Gray approached Clinton Street, he observed a silver Chevy Malibu pull in front of him. The vehicle had left the gas station at a high rate of

speed. Lieutenant Gray increased his speed to catch up to the vehicle. He was able to run the license plate. At one point, the Malibu made a quick right turn and then another left turn. Lieutenant Gray, believing the car was attempting to elude him, called other units for assistance. Lieutenant Gray lost sight of the vehicle. Approximately 10 to 15 minutes later, Lieutenant Gray located the vehicle in a parking lot behind an apartment building on South Main Street near Miller Street. The vehicle's parking lights were on. The Malibu was unoccupied. The windows were down, and the keys were in the ignition. Lieutenant Gray observed "a half-full bottle of Bud Light beer in the center console." The bottle was open and still cold. Lieutenant Gray requested other officers search the area with him.

¶ 7 John Fermon, an officer with the Bloomington Police Department, testified he assisted in attempting to locate the silver Chevy Malibu. Officer Fermon observed only two males the entire night. The first he saw while Officer Fermon was driving on Center Street. The male looked directly at Officer Fermon, raising no suspicion. Officer Fermon testified he observed a second male with a pulled-up hood just south of Miller Street. The male was walking south on Main Street. When the male saw Officer Fermon in a marked squad car, he immediately turned away toward the east. Officer Fermon observed the same male a second time before learning Lieutenant Gray found the vehicle. Officer Fermon drove to the vehicle. He observed an open Bud Light beer bottle in the center console and some paperwork. Officer Fermon then drove back to the location where he saw the second male.

¶ 8 According to Officer Fermon, once he located the male, defendant, he turned on his emergency lights and told defendant to stop. Defendant was on his cell phone. He looked back at the officer but did not do anything. Defendant "just stood there." After Officer Fermon

told him, “Stop, police,” a second time, defendant very slowly turned toward Officer Fermon. When Officer Fermon tried to speak with defendant, defendant “had slurred, mumbled speech.” When Officer Fermon approached defendant, he “could smell an extreme odor of an alcoholic odor coming from his breath.” Officer Fermon tried to talk with defendant, but he was not “really” responsive to him. On cross-examination, Officer Fermon confirmed defendant had “an extreme odor of alcohol.”

¶ 9 Raymond Lee Carey, a cashier at Circle K, testified defendant purchased cigarettes from him on April 12, 2016, around 1:30 a.m. Later that morning, officers asked to view the surveillance videos at Circle K.

¶ 10 Christopher Miller, an officer with the Bloomington Police Department, testified he observed defendant driving the silver Chevy Malibu earlier that morning. After Officer Fermon stopped defendant, defendant refused to participate in field-sobriety tests. Officer Miller obtained a search warrant for defendant’s urine and blood. Defendant’s blood alcohol content was .174g/DL. The findings were consistent with what Officer Miller observed. Officer Miller “could smell the alcohol coming off of [defendant’s] breath.” He agreed there was “an overwhelming odor of alcohol.”

¶ 11 Jesse Lanphear, an officer with the Bloomington Police Department, testified to finding a letter addressed to defendant in the trunk of the Malibu. Officer Lanphear also found in the Malibu a vehicle registration for older plates with defendant’s name.

¶ 12 The State introduced into evidence a one-page driving abstract from the Secretary of State’s Office. According to the abstract, the “issue date” for defendant’s license was November 26, 2013. The expiration date was March 5, 2017. The abstract further states

"suspension was in effect on 04-12-2016" (Emphasis omitted).

¶ 13 At the close of the State's evidence, defendant moved for a directed verdict. Defense counsel's argument, in its entirety, follows: "We would be moving for a directed finding at this time. We do not believe that the [S]tate has met its burden, recognizing the burden is any reasonable juror, there is still not enough evidence at this point that's been presented to rely on for a guilty verdict. We'd request the court direct this." The trial court found sufficient evidence and denied defendant's motion.

¶ 14 Defendant testified on his own behalf. Around 1 a.m. on April 12, 2016, defendant was at home. When asked why he went to the Circle K, defendant testified "[b]ecause it's right out my back door about 30 seconds, and I don't have a driver's license, so that's my store, my grocery store." He had been drinking that night with friends. Defendant testified the silver Chevy Malibu was not his car on April 12, 2016. The Malibu was impounded a year earlier and he could not afford to recover it. Defendant sold his car to an acquaintance for $1, and the unnamed acquaintance would retrieve it from impound.

¶ 15 The jury found defendant guilty on all counts. The trial court sentenced defendant to 30 months' probation. The court ordered defendant to comply with 75 hours of intensive outpatient alcohol treatment. The court ordered fines and costs. The court imposed 120 days in the county jail with "60 of those up front with one[-]day credit[;] [v]ictim[-]pact panel, 60 days stayed pending compliance with the alcohol treatment."

¶ 16 This appeal followed.

¶ 17 II. ANALYSIS

¶ 18 A. Aggravated DUI

¶ 19 1. *Standard of Review and Applicable Law*

¶ 20 "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 *** 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 2016). A directed verdict is proper when the trial court determines, upon viewing the evidence in a light most favorable to the State, no reasonable juror could find the State met its burden of proving defendant guilty beyond a reasonable doubt. *People v. Shakirov*, 2017 IL App (4th) 140578, ¶ 81, 74 N.E.3d 1157. We review the trial court's decision on a motion for a directed verdict *de novo*. *People v. Johnson*, 334 Ill. App. 3d 666, 676, 778 N.E.2d 772, 781 (2002).

¶ 21 2. *Defendant's Argument*

¶ 22 Defendant argues error occurred when he was not granted a directed verdict at the close of the State's evidence. Defendant contends the State charged him with aggravated DUI based on subsection 11-501(d)(1)(H) of the Illinois Vehicle Code (Code) (625 ILCS 5/11-501(d)(1)(H) (West 2016)), meaning the State had to prove he did not possess a driver's license at the time of the DUI. Defendant argues the State did not meet this burden. According to defendant, the abstract entered into evidence at trial demonstrates defendant possessed a license issued on November 26, 2013, that expired on March 5, 2017. Defendant acknowledges his license was suspended but maintains subsection (H) does not apply to suspended licenses. Defendant contends to interpret subsection (H) as covering "suspended licenses" renders superfluous subsection (G), which elevates simple DUI offenses to aggravated DUI for individuals who have a suspended license for specific offenses (625 ILCS 5/11-501(d)(1)(G)

(West 2016)).

¶ 23 3. *State's Argument*

¶ 24 The State initially counters defendant's argument by asserting he waived an appeal of the denial of his motion for a directed verdict when he presented evidence and when he failed to renew the motion at the close of all evidence. In support, the State relies on *People v. Washington*, 23 Ill. 2d 546, 548, 179 N.E.2d 635, 636-37 (1962), in which the Illinois Supreme Court concluded, in criminal cases, "a motion for a directed verdict made at the close of the plaintiff's case is waived when the defendant introduces evidence after the motion has been denied." The State further points to case law showing defendant waives a motion for a directed finding by failing to renew his motion after the close of all evidence. See *People v. DeBartolo*, 242 Ill. App. 3d 811, 816, 610 N.E.2d 131, 135 (1993); see also *People v. Barrow*, 133 Ill. 2d 226, 249, 549 N.E.2d 240, 250 (1989) ("an election by the defendant to present evidence after a motion for directed verdict has been overruled waives any error in the trial court's ruling on the motion [(citation)], except when the defendant renews the motion at the close of all the evidence").

¶ 25 The State next contends, even if defendant had not waived his motion for a directed verdict, the evidence as a whole, viewed in the light most favorable to the State, establishes defendant's guilt beyond a reasonable doubt (see *People v. Turner*, 127 Ill. App. 3d 784, 790, 469 N.E.2d 368, 372 (1984)). The State points to defendant's testimony he walked to Circle K because he had no license. Citing *Guidani v. Cumerlato*, 59 Ill. App. 2d 13, 19, 207 N.E.2d 1, 4 (1965), the State argues we must ignore evidence unfavorable to the plaintiff to determine if there is any evidence (excluding all unfavorable evidence) upon which the jury

could base a verdict for the plaintiff.

¶ 26 The State concludes by arguing subsection (H) applies to defendant and all suspensions. The State points to legislative history to support its interpretation of subsection (H). The State also contends the legislature did not amend subsection (H) after the appellate court, in *People v. Rosenbalm*, 2011 IL App (2d) 100243, ¶ 10, 958 N.E.2d 715, interpreted it to include all expired and suspended licenses. In making its argument, the State maintains defendant's interpretation was not proper as he could not "possess" a driver's license as the Code requires the holder to surrender the license to the Secretary of State. See 625 ILCS 5/6-209 (West 2016).

¶ 27 4. *Defendant's Argument in Reply*

¶ 28 Defendant urges this court to consider the issue under the plain-error doctrine. Defendant maintains the failure to raise an issue is forfeiture, not waiver. Defendant points to the trial record as demonstrating the issue of the State's failure to prove the aggravating factor was not raised before the trial court in the motion for a directed verdict. Nor was it raised at the close of all evidence. These facts, according to defendant, indicate a failure to act—a forfeiture.

¶ 29 Defendant also maintains subsections (G) and (H) when read together are not ambiguous. Defendant disputes the State's interpretation of the legislative history.

¶ 30 5. *Forfeiture or Waiver*

¶ 31 Our resolution of this appeal turns on the question of whether defendant's testifying after moving for a directed verdict and defendant's failure to renew the motion at the close of all evidence amounts to a "waiver" or "forfeiture." The distinction between the terms "waiver" and "forfeiture" is a crucial one. Under the doctrine of plain error, courts of review may consider claims that were procedurally forfeited. *People v. Smith*, 2016 IL 119659, ¶ 39, 76

N.E.3d 1251 (observing a reviewing court may address *forfeited* claims under the plain-error doctrine). The plain-error doctrine does not, however, apply to *waived* claims. See *People v. Lewis*, 2019 IL App (4th) 150637-B, ¶ 84.

¶ 32 We are mindful of the use of the term "waived" or "waiver" in the case law relied upon by the State (see, *e.g. Washington*, 23 Ill. 2d at 548) is not determinative of the issue. As our supreme court recognized, "courts often use the terms 'forfeit,' 'waive,' and 'procedural default' interchangeably in criminal cases." *People v. Blair*, 215 Ill. 2d 427, 443, 831 N.E.2d 604, 615 (2005). This court has specifically defined the two terms: "[w]aiver is the intentional relinquishment of a known right, whereas forfeiture is the failure to make a timely assertion of a known right." *People v. Bowens*, 407 Ill. App. 3d 1094, 1098, 943 N.E.2d 1249, 1256 (2011). We observed trial counsel, while representing clients, "may (1) make a tactical decision not to object to otherwise objectionable matters, which thereby waives appeal of such matters, or (2) fail to recognize the objectionable nature of the matter at issue, which results in procedural forfeiture." *Id.*

¶ 33 In this case, the record reveals the decision to present evidence after the motion for a directed verdict was denied and the act of not renewing the motion for a directed verdict amounts to forfeiture, not waiver. The decision to proceed with defendant's testimony was not a tactical one. Defendant's theory at trial was that he was not driving the silver Chevy Malibu. The argument defendant possessed a driver's license, thereby negating an element of the charged aggravated DUI, is not inconsistent with the trial theory. No tactical reason exists to reasonably not argue both theories. Further supporting the conclusion the facts present forfeiture as opposed to waiver is defense counsel's failure to mention the issue to the court when counsel presented

the general request for a directed verdict. Defendant "fail[ed] to recognize the objectionable nature of the matter at issue" In these circumstances, we hold defendant forfeited his challenge to the motion for a directed verdict.

¶ 34 Under the plain-error doctrine, a reviewing court may exercise discretion to excuse forfeiture of an error in one of two instances: (1) when "clear or obvious error occurred and the evidence is so closely balanced that the error alone threatened to tip the scales of justice against the defendant, regardless of the seriousness of the error" or (2) when "clear or obvious error occurred and that error is so serious that it affected the fairness of the defendant's trial and challenged the integrity of the judicial process, regardless of the closeness of the evidence." (Internal quotation marks omitted.) *People v. Sebby*, 2017 IL 119445, ¶ 48, 89 N.E.3d 675 (quoting *People v. Piatkowski*, 225 Ill. 2d 551, 565, 870 N.E.2d 403, 410 (2007)); see also *Smith*, 2016 IL 119659, ¶ 39 (observing a reviewing court may address *forfeited* claims under the plain-error doctrine). The initial step in plain-error review is deciding whether an error occurred. *People v. Thompson*, 238 Ill. 2d 598, 613, 939 N.E.2d 403, 413 (2010).

¶ 35 6. *Statutory Interpretation of Subsection 11-501(d)(1)(H)*

¶ 36 Whether error occurred turns on the interpretation of subsection (H). When interpreting a statute, our primary goal is to give effect to the intent of the legislature while presuming the legislature did not intend absurd, inconvenient, or unjust results. *People v. Walker*, 2018 IL App (4th) 170877, ¶ 16, 115 N.E.3d 1012. The best indicator of legislative intent is the language of the statute, given its plain and ordinary meaning. *Id.* We must, when possible, give effect to each word, clause, and sentence. *Id.* Moreover, we "must not read a statute so as to render any part inoperative, superfluous, or insignificant[,]" and we "must not depart from the

statute's plain language by reading into it exceptions, limitations, or conditions the legislature did not express." *Id.* (quoting *People v. Ellis*, 199 Ill. 2d 28, 39, 765 N.E.2d 991, 997 (2002)). When the statutory language is clear and unambiguous, we are to apply the statute without resorting to further aids of construction. *In re Marriage of Heroy*, 2017 IL 120205, ¶ 13, 89 N.E.3d 296. Only when we find the language ambiguous may we look to other sources to determine legislative intent. *Id.* Our review of a matter of statutory construction is *de novo*. *Walker*, 2018 IL App (4th) 170877, ¶ 16.

¶ 37 Section 11-501(a) of the Code (625 ILCS 5/11-501(a) (West 2016)) sets forth the offense of simple DUI. Individuals who violate subsection (a) are guilty of Class A misdemeanors. See 625 ILCS 5/11-501(c)(1) (West 2016). Subsection (d) elevates a conviction of simple DUI to aggravated DUI (625 ILCS 5/11-501(d) (West 2016)), typically a Class 4 felony (625 ILCS 5/11-501(d)(2)(A) (West 2016)). Subsection (d)(1) states the following, in relevant part:

> Every person convicted of committing a violation of this Section shall be guilty of aggravated driving under the influence of alcohol, other drug or drugs, or intoxicating compound or compounds, or any combination thereof if:
>
> * * *
>
> (G) the person committed a violation of subsection (a) during a period in which the defendant's driving privileges are revoked or suspended, where the revocation or suspension was for a violation of subsection (a) or a similar provision, Section 11-

501.1, paragraph (b) of Section 11-401, or for reckless homicide as defined in Section 9-3 of the Criminal Code of 1961 or the Criminal Code of 2012;

(H) the person committed the violation while he or she did not possess a driver's license or permit or a restricted driving permit or a judicial driving permit or a monitoring device driving permit;[.]" 625 ILCS 5/11-501(d)(1)(G) , 11-501(d)(1)(H) (West 2016).

¶ 38 Defendant argues the State's interpretation of subsection (H) renders subsection (G) superfluous. We agree. In subsection (G), the legislature listed suspensions resulting from enumerated offenses will result in an aggravated DUI. The specific offenses in subsection (G) are suspensions resulting from simple DUI (625 ILCS 5/11-501(a) (West 2016)), a refusal to submit to chemical testing (625 ILCS 5/11-501.1 (West 2016)), failure to stop and comply with statutory factors after being involved in a motor-vehicle accident involving death or personal injury (615 ILCS 5/11-401(b) (West 2016)), and reckless homicide. (720 ILCS 5/9-3 (West 2016)). Subsection (G) does not elevate a simple DUI offense to aggravated DUI for other suspensions. Therefore, excluded from this provision are, for example, suspensions resulting from a failure to appear in court (92 Ill. Adm. Code 1040.100(a)(1) (2016)), suspensions based on three traffic tickets in one year (92 Ill. Adm. Code 1040.30 (2016)), and suspensions for failure to pay child support (625 ILCS 5/7-702 (West 2016)). To interpret subsection (H) as the State does would include all of the suspensions the legislature excluded in subsection (G). Not only would subsection (G) be rendered superfluous in its entirety but also suspensions the

legislature decided to exclude in (G) would lead to aggravated DUI.

¶ 39 When reading the two provisions together, not rendering subsection (G) superfluous, the plain language reveals subsection (H) does not apply to suspended licenses. First, contrary to the charges against defendant, the subsection does not contain the word "valid." Second, the term "possess" should not be read as restrictively as the State advocates. The term does not require actual, physical possession of the driver's license. "Possess" is defined as "to have and hold as property: OWN." Merriam Webster Dictionary, https://www.merriam-webster.com/dictionary/possess (last visited Apr. 16, 2019). The abstract submitted by the State at defendant's trial shows defendant "owned" a driver's license, although his right to use it was suspended for an unspecified reason.

¶ 40 We disagree with the Second District's *dicta* decision in *Rosenbalm* arguing subsection (H) applies to suspended licenses. *Rosenbalm*, 2011 IL App (2d) 100243, ¶ 9. In *Rosenbalm*, the court considered whether the defendant, whose license was *expired* at the time of the offense, could be convicted of aggravated DUI under subsection (H). *Id.*, ¶ 7. In concluding subsection (H) applies to expired licenses, the court expanded its holding to "suspended" licenses: "Although, as defendant contends, the statute does not expressly refer to a valid driver's license, to read the statute to avoid application of the aggravating factor where a person possesses a revoked, suspended, or expired license would lead to absurd results." *Id.* ¶ 9. The court found the real question was whether the person had permission to drive. *Id.* ¶ 10. The court recognized its interpretation rendered subsection (G) superfluous but determined the overlap was "an oversight" in the extensive history of amendments. *Id.* ¶ 12.

¶ 41 We conclude the legislature did not specify suspensions for named offenses in one

subsection and then, in the next subsection, aggravate a DUI conviction from a misdemeanor to a felony for suspensions resulting from a failure to appear in court, multiple traffic tickets, or failure to pay child support. It is reasonable to believe the legislature would choose to elevate a DUI offense for individuals who have not gone through the testing and process to obtain a license and permission to drive in Illinois for a specified time (625 ILCS 5/11-501(d)(1)(H) (West 2016)) but would choose to leave suspensions not involving alcohol or physical injuries to simple DUI.

¶ 42 Following the mandate to interpret a statute in a manner so as not to render other provisions superfluous, we find subsection (H) does not act as a catchall to extend aggravated DUI to individuals with suspended licenses for offenses not listed in subsection (G).

¶ 43 7. *The Sufficiency of the Evidence and Plain Error*

¶ 44 The next question is based on the evidence at defendant's trial, when viewed in the light most favorable to the State, whether a reasonable juror could find the State met its burden of proving defendant guilty beyond a reasonable doubt (*Shakirov*, 2017 IL App (4th) 140578, ¶ 81). We need not decide whether to limit our review to the evidence presented before the motion for a directed verdict was filed or to include all the evidence, including defendant's testimony, as in both circumstances, no reasonable juror could find the State proved defendant guilty beyond a reasonable doubt. Defendant's statement regarding having "no license" was not a conclusive legal statement. Given the context of the testimony, defendant simply acknowledged his license was suspended. When considered with the abstract submitted by the State, it is clear the State failed to prove defendant guilty beyond a reasonable doubt of not possessing a license as set forth in subsection (H).

¶ 45 We are not convinced by the State's argument we should ignore evidence unfavorable to the State when deciding whether no reasonable juror could find the State met its burden. The State cites a 54-year-old civil case in which the defendant's liberty was not at stake. *Guidani*, 59 Ill. App. 2d at 19. Defendant was entitled to judgment at the close of the State's evidence.

¶ 46 Having found error, we return to the plain-error analysis and conclude the second instance of the doctrine applies as the error is so serious "it affected the fairness of the defendant's trial and challenged the integrity of the judicial process, regardless of the closeness of the evidence" (*Sebby*, 2017 IL 119445, ¶ 48). "[D]ue process requires the State to prove every element of an offense beyond a reasonable doubt." *People v. Woodrum*, 223 Ill. 2d 286, 308, 860 N.E.2d 259, 274 (2006). Here, a factor that increased the offense from a Class A misdemeanor to a Class 4 felony was not proved. This court has invoked the plain-error rule when no evidence supported an element of the offense. See *People v. Lewis*, 327 Ill. App. 3d 285, 292, 763 N.E.2d 422, 427 (2002) (finding, on argument the jury was improperly instructed, plain error occurred as the evidence did not support a necessary element). We will do so here. We reduce defendant's conviction from aggravated DUI to simple DUI.

¶ 47 B. Illegal Transportation of Alcohol

¶ 48 Defendant next argues the State failed to prove transportation of alcoholic liquor in a motor vehicle beyond a reasonable doubt. Defendant maintains, in light of the statutory definition for "alcoholic liquor," which excludes substances "containing one-half of one per cent, or less, of alcohol by volume" (235 ILCS 5/1-3.05 (West 2016)), proof of "alcoholic liquor" should be adduced through chemical analysis as required for drugs. Defendant contends the

references to "beer" and "Bud Light" were insufficient to establish beer was in the bottle in the Malibu.

¶ 49 The State counters the evidence is sufficient to support a reasonable inference defendant was transporting an open container of beer. We agree.

¶ 50 In these circumstances, chemical testing was unnecessary to prove defendant was unlawfully transporting alcoholic liquor. The definition of "alcoholic liquor" explicitly includes beer. See *id.* Two officers testified to seeing a bottle labeled "Bud Light" in the Malibu defendant was seen driving. One officer testified the bottle was cold and half full. Multiple officers testified defendant exhibited signs of intoxication and had a strong odor of alcohol. Defendant was also later tested and found to have a high blood-alcohol content. Defendant was proved guilty of illegal transportation of alcohol beyond a reasonable doubt.

¶ 51 C. Defendant's Fines

¶ 52 Defendant last argues his fines should be reduced, as the oral pronouncement and the written order conflict as to the type and amount of fines to be imposed. As this court is remanding the case for resentencing on the offense of simple DUI, this issue is moot.

¶ 53 III. CONCLUSION

¶ 54 We affirm defendant's conviction for illegal transportation of alcohol and reduce defendant's aggravated DUI conviction to DUI (625 ILCS 5/11-501(a) (West 2016)) and remand for resentencing.

¶ 55 Affirmed in part; modified in part; remanded.