FIFTH DIVISION
JUNE 30, 2015

No. 1-13-1846

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County.
	)	
v.	)	Nos. YT 552761
	)	YT 552762
	)	YT 552763
	)	
JAMES J. FINNIGAN, JR.,	)	Honorable
	)	Gregory Robert Ginex,
Defendant-Appellant.	)	Judge Presiding.

JUSTICE GORDON delivered the judgment of the court.
Presiding Justice Palmer and Justice McBride concurred in the judgment.

O R D E R

¶ 1 *Held*: Defendant's convictions for driving with a blood-alcohol concentration of .08 or above and driving under the influence of alcohol affirmed where defendant failed to prove his car was an exception to the definition of a "vehicle" in the Illinois Vehicle Code; defendant's conviction for using unsafe tires also affirmed where his car was missing both passenger-side tires.

¶ 2 After a bench trial, defendant James Finnigan was convicted of driving with a blood-alcohol concentration of .08 or above, driving under the influence of alcohol and using unsafe tires. The trial court sentenced defendant to 18 months' supervision with various conditions. On

appeal, defendant contends the State failed to prove beyond a reasonable doubt that: (1) he was in physical control of a "vehicle" under the Illinois Vehicle Code (the Code) (625 ILCS 5/1-217 (West 2010)); and (2) he used unsafe tires. For the reasons that follow, we affirm the judgment of the circuit court of Cook County.

¶ 3 At trial, Officer Edgar Lara of the Cicero police department testified that at approximately 3:12 a.m. on September 10, 2011, he received a call from dispatch, directing him to a noisy automobile located near West 36th Street and South 61st Avenue. When Lara arrived, he noticed a vehicle stopped in the intersection. The vehicle was missing both passenger-side tires, had damage to both passenger-side rims and the engine was running.

¶ 4 When Lara approached the vehicle, he observed defendant sitting in the driver's seat with his hands on the steering wheel. Defendant told Lara that the vehicle was not moving and he did not know why. Lara smelled alcohol on defendant's breath and noticed he had slurred speech. Lara asked defendant to exit the vehicle and then began to administer him field sobriety tests.

¶ 5 Lara conducted four tests on defendant: the horizontal gaze nystagmus test, the walk-and-turn test, the one-leg stand and the finger-to-nose test. Lara concluded that defendant failed all four tests and arrested him.

¶ 6 Lieutenant Larry Polk of the Cicero police department testified that he was at the Cicero police station at approximately 4:30 a.m. on September 10, 2011. He performed a Breathalyzer test on defendant that revealed defendant had a .208 blood-alcohol concentration. After the test, defendant told Polk that he drank "some beers and two to three shots [of alcohol]" between 11 p.m. and 1 a.m. at G-Cue Billiards the evening before and that he had operated his vehicle after drinking.

¶ 7 Defendant made a motion for a directing finding on all charges but only argued on the charge of using unsafe tires. However, the trial court denied the motion and stated that if someone was driving with "no tires on the passenger's side, that clearly indicates that there's an unsafe condition."

¶ 8 Defendant testified that he was working as a disc jockey at G-Cue Billiards in the West Loop until approximately 3 a.m. on September 10, 2011. He did not drink any alcohol while at G-Cue Billiards. After he finished working, he was driving to his mother's house in Berwyn when he noticed that his "two tires were going low on the passenger side" of his vehicle. When he arrived at the intersection of West 36th Street and South 61st Avenue, his vehicle "became completely disabled."

¶ 9 Defendant had planned to have friends over to his mother's house later that day, so the day before, he had purchased a bottle of whiskey. Defendant testified that he was frustrated from being unemployed and did not have enough money for a tow truck, so he drank three-quarters of the bottle of whiskey, but only after his vehicle became disabled. After drinking the whiskey, defendant did not attempt to drive his vehicle and the keys were out of the ignition.

¶ 10 In finding defendant guilty of all three charges, the trial court found "the credibility of the Defendant *** very lacking." The court stated the evidence showed defendant was in "physical control of an operating vehicle" based upon his statements to Polk, and based on his failed field sobriety tests, defendant was "operating [the vehicle] under the influence of alcohol." The court sentenced defendant to 18 months' supervision with various conditions.

¶ 11 Defendant first contends that the State failed to prove beyond a reasonable doubt he was in physical control of a "vehicle" as defined by the Code (625 ILCS 5/1-217 (West 2010)),

because at the time of his intoxication, his vehicle was disabled and thus a "junk vehicle." See 625 ILCS 5/1-134.1 (West 2010) (defining a "junk vehicle").

¶ 12 However, the exception merely withdraws a junk vehicle from the operation of the statute. Accordingly, in order to prove defendant's vehicle was a "junk vehicle" and thus an exception to the definition of a "vehicle," defendant bears the burden of proof by a preponderance of the evidence. See *People v. Fields*, 2014 IL App (1st) 130209, ¶¶ 41, 45.

¶ 13 We initially note that we must decline to entertain defendant's contention that his vehicle was not a "vehicle" under the Code. He did not make this argument to the trial court and raises it for the first time on appeal. Accordingly, defendant has forfeited this contention. See *People v. Daniel*, 2013 IL App (1st) 111876, ¶ 25 (stating "[i]ssues not raised before the trial court are generally considered forfeited on appeal").

¶ 14 Moreover, even if we did consider defendant's contention on appeal, we would find that it has no merit.

¶ 15 Defendant was convicted of driving with a blood-alcohol concentration of .08 or above, and under the influence of alcohol. See 625 ILCS 5/11-501(a)(1), (2) (West 2010). To find a defendant guilty under section 11-501(a)(1) and (2) of the Code, the State must prove he (1) was in "actual physical control" of a *vehicle*, and (2) either his blood-alcohol concentration was .08 or above, or that he was under the influence of alcohol. 625 ILCS 5/11-501(a)(1), (2) (West 2010).

¶ 16 Defendant does not argue the "actual physical control" element, that his blood-alcohol concentration was above .08 or that he was under the influence of alcohol. Rather, defendant solely argues that his vehicle was an exception to the definition of a "vehicle" under the Code (625 ILCS 5/1-217 (West 2010)), and was actually a "junk vehicle." 625 ILCS 5/1-134.1 (West 2010).

¶ 17 A vehicle is defined as:

> "Every device, in, upon or by which any person or property is or may be transported or drawn upon a highway or requiring a certificate of title under Section 3-101(d) of this Code, except devices moved by human power, devices used exclusively upon stationary rails or tracks and snowmobiles as defined in the Snowmobile Registration and Safety Act. For the purposes of this Code, unless otherwise prescribed, a device shall be considered to be a vehicle until such time it either comes within the definition of a junk vehicle, as defined under this Code, or a junking certificate is issued for it." 625 ILCS 5/1-134.1 (West 2010).

A junk vehicle is defined as:

> "[A] vehicle which has been or is being disassembled, crushed, compressed, flattened, destroyed or otherwise reduced to a state in which it no longer can be returned to an operable state." 625 ILCS 5/1-134.1 (West 2010).

¶ 18 Despite defendant's vehicle being disabled in an intersection, the trial court still found his vehicle to be a "vehicle" under the Code. See 625 ILCS 5/1-217 (West 2010). Certainly while defendant's vehicle was in the intersection, it was not operating properly; however, that fact does not necessarily mean it could not "be returned to an operable state" and thus considered a "junk vehicle." 625 ILCS 5/1-134.1 (West 2010); see *People v. Cummings*, 176 Ill. App. 3d 293, 297 (1988) (holding that a vehicle that had "a broken tie rod, was not driveable and had to be towed away" was not evidence that "the defendant's vehicle fit the description of a 'junk vehicle' "). In fact, Officer Lara testified that the vehicle's engine was still running. Furthermore, the descriptors used to define a "junk car," such as "disassembled, crushed, compressed, flattened, [and] destroyed" clearly contemplate something far more irreversible than what occurred with

defendant's vehicle here. Additionally, there was no evidence presented that a "junking certificate" had been issued for defendant's vehicle. See 625 ILCS 5/1-217 (West 2010).

¶ 19 Finally, defendant's reliance on *People v. Johnson*, 43 Ill. App. 3d 428 (1976), for the proposition that his vehicle no longer constituted a "vehicle" is misplaced. While in *Johnson*, the reviewing court held that the defendant's vehicle did not meet the definition of a "vehicle" because it had a damaged battery cable, the statute that defined "vehicle" was different and has since been amended to its current version. Defendant's reliance on *Johnson* for support has likewise been rejected by this court. See *Cummings*, 176 Ill. App. 3d at 297; *People v. Borst*, 162 Ill. App. 3d 830, 836 (1987).

¶ 20 Accordingly, the defendant who bears the burden of proof to demonstrate his vehicle was an exception to the definition of "vehicle" (see *Fields*, 2014 IL App (1st) 130209, ¶ 45), did not meet this burden.

¶ 21 Defendant also contends that the State failed to prove beyond a reasonable doubt that he used unsafe tires where his vehicle was missing both passenger-side tires, and the State presented no evidence about the physical condition of the driver-side tires.

¶ 22 The parties dispute the standard of review applicable to this contention. Defendant argues that because his challenge concerns whether uncontested facts were sufficient to sustain his conviction, we should review his claim *de novo.* The State, meanwhile, simply relies on the rational-trier-of-fact standard, in which "our inquiry is limited to '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 omitted.) *People v. Cox*, 195 Ill. 2d 378, 387 (2001) (quoting *Jackson v. Virginia*, 443 U.S. 307, 318-19 (1979)). We agree with the State and find that there was sufficient evidence to prove defendant was using

unsafe tires. We view this as a question of fact for the trier of fact. See *People v. McCarter*, 2011 IL App (1st) 092864, ¶ 60 (stating when a defendant challenges the "quantum of evidence presented against him," the proper standard of review is whether any rational trier of fact could have found defendant guilty beyond a reasonable doubt of the charged offense). Accordingly, we will review defendant's claim under the rational-trier-of-fact standard (see *Baskerville*, 2012 IL 111056, ¶ 31), but note that under either standard of review, the outcome would be the same.

¶ 23 Defendant was convicted of using unsafe tires under the Code (625 ILCS 5/12-405 (West 2010)), which states no person should use "one or more *** tires deemed to be unsafe" on a highway in the State of Illinois. In determining what constitutes an unsafe tire, section 12-405(d) lists the relevant criteria, including when:

> "[a] depth of tread groove less than 2/32 of an inch or less than 1/32 of an inch if on a motorcycle or truckster, measured in any 2 or more adjacent tread grooves at 3 locations approximately equally spaced around the circumference of the tire, at least one of which, in the judgment of the inspecting officer, is a location at which the tread is thinnest, providing that any measurement over a tie bar, tread wear indicator, hump or fillet is excluded[.]" 625 ILCS 5/12-405(d)(5) (West 2010).

¶ 24 The indisputable evidence demonstrated that when Officer Lara encountered defendant's vehicle, it had no passenger-side tires and the passenger-side rims were damaged. Since there were no passenger-side tires, there were no tread grooves where the passenger-side tires should have been and necessarily the depth of the non-existent tread grooves were "less than 2/32 of an inch." 625 ILCS 5/12-405(d)(5) (West 2010). Therefore, the tires were unsafe according to the Code, and we cannot say that no rational trier of fact could have found defendant was using unsafe tires. Accordingly, the judgment of the circuit court of Cook County is affirmed.

¶ 25 Affirmed.