[Cite as *Cleveland v. Glaros*, 2018-Ohio-3058.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 106732

CITY OF CLEVELAND

PLAINTIFF-APPELLEE

vs.

KAREN GLAROS

DEFENDANT-APPELLANT

JUDGMENT:
REVERSED AND REMANDED

Criminal Appeal from the
Cleveland Municipal Court
Case No. 2017 TRD 030246

BEFORE: Kilbane, P.J., Stewart, J., and Jones, J.

RELEASED AND JOURNALIZED: August 2, 2018

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MARY EILEEN KILBANE, P.J.:

{¶1} Defendant-appellant, Karen Glaros ("Glaros"), appeals from her conviction for a violation of Cleveland Codified Ordinance ("C.C.O") 435.05(a)(1), allowing a nonlicensed driver to drive ("wrongful entrustment of a motor vehicle"). For the reasons set forth below, we reverse and remand.

{¶2} In October 2017, the city of Cleveland ("the City") filed a complaint charging Glaros with a single count of wrongful entrustment. In December 2017, this matter proceeded to trial before the bench.

{¶3} The following was adduced at trial through the testimony of Cleveland Police Officer Charles Holcomb ("Officer Holcomb"). In September 2017, Officer Holcomb and his colleagues conducted a driver's license check point. As part of the check point, Officer Holcomb randomly stopped a gray Honda. After talking with the driver of the vehicle, Kent Bowden ("Bowden"), Officer Holcomb determined that Bowden had a suspended license, and cited him for driving under suspension.

{¶4} Eventually, Glaros, the owner of the vehicle, arrived at the check point. Officer Holcomb cited Glaros, in his words, for "allowing another person to drive the vehicle who had no legal right to do so." Officer Holcomb testified that Glaros told him she had to get back to work, and was in a hurry to leave. He acknowledged that he did not have much conversation with Glaros other than advising her that "[Bowden's license] was suspended, he shouldn't be driving her car." Officer Holcomb asked Glaros for her driver's license in order to determine whether she was the owner of the vehicle. After Officer Holcomb returned Glaros's license, Glaros got into a cab and left the area.

{¶5} Officer Holcomb testified that he was "not a hundred percent sure what the relationship is between [Bowden and Glaros]. * * * I just know the car belonged to [Glaros,] and [Bowden] * * * was driving it."

{¶6} At the conclusion of the City's evidence, the defense moved for acquittal under Crim.R. 29, arguing that "[t]he City has failed to prove any evidence that [Glaros] knew the car

being in someone else[’s] hands. Also [the City] failed to prove that she knew what that person’s driving status was.”

{¶7} The trial court denied defense counsel’s Crim.R. 29 motion, and found Glaros guilty of the single count of wrongful entrustment. The trial court ordered Glaros to pay a $1,000 fine as well as court costs and sentenced her to 180 days in jail, suspending $900 of the fine and the entire jail sentence. The trial court further ordered Glaros’s sentence to be held in abeyance pending appeal.

{¶8} It is from this order that Glaros appeals, raising the following two assignments of error for our review:

Assignment of Error One

> [Glaros’s] conviction for a violation of [C.C.O.] 435.05(a)(1), allowing a non-licensed driver to drive, is not supported by sufficient evidence.

Assignment of Error Two

> There is insufficient evidence to support an increase from an unclassified misdemeanor to a first degree misdemeanor violation of [C.C.O.] 435.05(a)(1).

Wrongful Entrustment

{¶9} In the first assignment of error, Glaros argues the City failed to present sufficient evidence to support her wrongful entrustment conviction.

{¶10} Sufficiency of the evidence is a test of adequacy _ whether the evidence is legally sufficient to sustain a conviction. *State v. Thompkins*, 78 Ohio St.3d 380, 386, 1997-Ohio-52, 678 N.E.2d 541. The Double Jeopardy Clause bars retrial of a defendant for an offense reversed upon a finding that the evidence was legally insufficient to support the conviction. *Id*., citing *Tibbs v. Florida*, 457 U.S. 31, 47, 102 S.Ct. 2211, 72 L.Ed.2d 652 (1982).

{¶11} Our function when reviewing the sufficiency of the evidence to support a criminal conviction is to examine the evidence admitted at trial to determine whether such evidence, if believed, would convince the average mind of the defendant's guilt beyond a reasonable doubt. *State v. Jenks*, 61 Ohio St.3d 259, 259, 574 N.E.2d 492 (1991), paragraph two of the syllabus. The relevant inquiry is whether, after viewing the evidence in a light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime proven beyond a reasonable doubt. *Id*.

{¶12} Here, the trial court found Glaros guilty of violating C.C.O. 435.05(a)(1), which provides that:

> No person shall permit a motor vehicle owned by the person or under the person's control to be driven by another if * * * :
>
> (1) The offender knows or has reasonable cause to believe that the other person does not have a valid driver's or commercial driver's license or permit or valid nonresident driving privileges.

{¶13} Thus, in order to prove a violation of C.C.O. 435.05(a)(1), the City must prove the following beyond a reasonable doubt: (1) Glaros owned the vehicle, (2) and she permitted Bowden to drive the vehicle, (3) with actual knowledge or reasonable cause to know, (4) that Bowden did not have a valid driver's license.

{¶14} Glaros argues that the City did not meet its burden to prove beyond a reasonable doubt that she permitted Bowden to drive her vehicle, or that she knew or had reasonable cause to believe that Bowden's license had been suspended. We agree.

{¶15} This court has defined "permit" as "'1. [t]o consent to formally * * * 2. [t]o give opportunity for * * * 3. [t]o allow or admit of * * *.'" *Bedford v. Davis*, 8th Dist. Cuyahoga No. 89049, 2007-Ohio-5949, ¶ 32, quoting *Black's Law Dictionary* 1176 (8th Ed.2004). At both her

arraignment and a pretrial hearing, Glaros maintained that she did not allow Bowden to drive her vehicle, and that she did not know he had taken her vehicle because she was at work. At trial, the City presented no evidence that Glaros permitted Bowden to drive her vehicle. The record demonstrates that Glaros was not aware that Bowden had driven her vehicle until she arrived at the check point after Officer Holcomb cited Bowden.

{¶16} Likewise, the record does not demonstrate that Glaros was aware that Bowden's license had been suspended until Officer Holcomb so advised her. This court has explained that for wrongful entrustment under R.C. 4511.203, the counterpart of C.C.O. 435.05 in the Ohio Revised Code, "'knowingly' * * * place[s] upon the prosecution the burden of establishing circumstances from which knowledge on the owner's part that the driver was not duly licensed could be inferred." *Cleveland v. Elkins*, 8th Dist. Cuyahoga No. 91378, 2008-Ohio-6288, ¶ 29.[1]

{¶17} In *Elkins*, this court found insufficient evidence to support the defendant _ Elkins's wrongful entrustment conviction under R.C. 4511.203. *Id*. at _ 32. Elkins was headed to a job site with his employee, Butler, when Butler was pulled over by a Cleveland police officer for a traffic offense. *Id*. at _ 3. Elkins and Butler were driving separately, and Butler was driving a pickup truck owned by Elkins. *Id*. After the police officer ran Butler's driver's license, he

[1] We note that the language of R.C. 4511.203(A)(1) is identical to C.C.O. 435.05(a)(1). R.C. 4511.203(A)(1) provides:

> (A) No person shall permit a motor vehicle owned by the person or under the person's control to be driven by another if any of the following apply:
>
> (1) The offender knows or has reasonable cause to believe that the other person does not have a valid driver's or commercial driver's license or permit or valid nonresident driving privileges.

discovered that Butler's license was suspended. *Id*. During the traffic stop, Elkins approached and told the police officer that he was the owner of the pickup truck. *Id*. at _ 4.

{¶18} On appeal, we determined that although it was undisputed that Butler had Elkins's permission to drive the vehicle, the City failed to introduce any evidence that Elkins had actual or constructive knowledge that Butler had no legal right to drive a vehicle. *Id*. at _ 31.

{¶19} Here, the City did not establish that Glaros had actual or constructive knowledge that Bowden did not have a valid driver's license. The City did not present evidence demonstrating the existence of any circumstances from which Glaros's knowledge that Bowden was not licensed could be inferred. As discussed above, the City called one witness_Officer Holcomb. Officer Holcomb testified that he was "not a hundred percent sure what the relationship is between [Bowden and Glaros]. * * * I just know the car belonged to [Glaros,] and [Bowden] * * * was driving it." This testimony establishes only that Glaros owned the vehicle — it is not evidence that she permitted Bowden to drive her car, or that she knew or had reasonable cause to believe that he did not have a valid driver's license. We note that the total trial transcript is eight pages long. At trial, the City never addressed whether Bowden had permission to drive Glaros's car, or whether Glaros had knowledge that Bowden did not have a valid driver's license. In *Elkins*, we explained that "mere ownership of the vehicle does not constitute a violation of the statute." *Id*. at _ 31.

{¶20} In viewing the evidence in a light most favorable to the City, we find that no rational trier of fact could have found all of the essential elements of C.C.O. 435.05(a)(1) proven beyond a reasonable doubt in this case. Therefore, we determine that the evidence in this case was insufficient evidence to convict Glaros of wrongful entrustment. Thus, the trial court erred when it did not grant Glaros's Crim.R. 29 motion for acquittal.

{¶21} Accordingly, the first assignment of error is sustained.

{¶22} We note that the City concedes Glaros's second assignment of error in part. However, in light of our resolution of the first assignment of error, Glaros's second assignment of error is moot. *See* App.R. 12(A)(1)(C).

{¶23} Judgment is reversed, and we remand this matter to the trial court to vacate Glaros's conviction.

It is ordered that appellant recover of appellee costs herein taxed.

It is ordered that a special mandate be sent to said court to carry this judgment into execution.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

MARY EILEEN KILBANE, PRESIDING JUDGE

MELODY J. STEWART, J., and
LARRY A. JONES, SR., J., CONCUR