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[¶ 2] TABLE OF AUTHORITIES

CASES

State Courts

State v. Burke, 2000 ND 25, 606 N.W.2d 108 ¶ 3

State v. Knowels, 2003 ND 180, 671 N.W.2d 816..... ¶ 3

State v. Wilson, 2004 ND 51, 676 N.W.2d 98 ¶ 3

LAW & ARGUMENT

[¶ 3] When reviewing challenges to the sufficiency of the evidence, this court considers the evidence most favorable to the verdict and all reasonable inferences from such evidence. State v. Wilson, 2004 ND 51, ¶ 6, 676 N.W.2d 98 (citing State v. Knowels, 2003 ND 180, ¶ 6, 671 N.W.2d 816). This Court reverses a conviction only if no rational fact-finder could have found the defendant guilty beyond a reasonable doubt, after applying the standard above. State v. Burke, 2000 ND 25, ¶ 12, 606 N.W.2d 108.

I. The City of Fargo presented no evidence to show that Curtis did not have a valid insurance policy.

[¶ 4] The City argues that the evidence was sufficient to sustain Curtis' conviction of driving without liability insurance. According to the City, the "evidence before the jury was that Curtis did not provide the arresting officer with proof of insurance at the time of the stop and that, to the best of the officer's knowledge, Curtis did not provide proof of insurance to anyone else." Appellee's Brief at 4. The City's theory is essentially that the crime of driving without liability insurance requires it to prove a negative and that since proving a negative is difficult, it should not have to do so. Although it might be difficult to prove a negative, that fact is irrelevant. First, it is important to note that the City overstates its case by characterizing the task of proving a negative as being "very near impossible." Appellee's Brief at 5. Contrary to the City's view, it would be very easy to prove the offense if there were a confession. Confessions and admissions are, of course, commonly and effectively used by the government to prove all sorts of crimes. Often times confessions and admissions are used rather effectively to prove another difficult element to other crimes: the rather pervasive element of intent. But even if it were impossible for the City to prove a negative in this

case or any other, the answer is not to water down the rights of defendant's by obliterating the burden of proof. The proper course of action when the City cannot prove an element is to consider this in charging decisions, or to lobby legislative bodies in order to have the offense defined in a more government friendly manner. One of the most basic principles and protections of this country's legal system is that the government must prove each element of any offense beyond a reasonable doubt. In this case, the trial court instructed the jury as follows:

The City's burden of proof is satisfied if the evidence shows, beyond a reasonable doubt, the following essential elements:
1) On or about August 19, 2005, in the City of Fargo, Cass County, the Defendant, Daniel Ray Curtis, drove a motor vehicle; and
2) At the time of the driving, a valid policy of liability insurance was not in effect.

(App. at 8). The City's argument at trial was quite literally that Curtis failed to prove he was innocent of the crime. During closing arguments the prosecutor argued:

[E]verybody's required to carry an insurance card with them in their vehicle to prove they have insurance on their car. The legislature has mandated that they have to carry insurance if they are going to operate a motor vehicle on city streets. The defendant didn't have an insurance card. The defendant has provided no evidence that the vehicle he was driving on the 19th of August of this year was insured, which is a violation.

(T. at 67-68). The prosecutor went on to say:

[T]he defendant can always provide proof of insurance prior to today, and that's good enough. The City -- that's going to satisfy the City if the defendant up until today had provided us with something to show he had insurance on the car. We haven't been able to see nothing.

(T. at 75).

¶ 5] The fact that it might be easier for the City to get a conviction by forcing a citizen to prove his own innocence than it is to prove guilt does not relieve the City of its

obligation to do so nor does it grant the City license to use burden shifting as a means of gaining convictions.

[¶ 6] With regard to the City's contention that a burden shifting procedure is built into the City ordinance, that is simply not the case. The City ordinance does say that a person may be charged with driving without insurance if that person does not provide proof of insurance and that the charge will be dismissed when adequate proof is furnished. Appellee's Brief at 4 (citing F.M.C. 8-0320). It does not say that a person can be convicted if he or she does not furnish proof, and the jury was certainly not instructed that it could find guilt by finding Curtis did not provide proof of insurance. The language of the ordinance is more akin to a statement that failure to provide proof of insurance creates probable cause to charge not evidence sufficient to convict. If it is so incredibly difficult to prove that a person does not have insurance, than the crime can simply be redefined as failure to provide proof of insurance. That would be a better solution that to turn the burden of proof on its head and saddle defendants with the responsibility of disproving the governments case.

CONCLUSION

[¶ 7] For all of the foregoing reasons, Curtis asks this Court to reverse his conviction and remand for new trial. Furthermore, because Curtis was convicted without evidence, and this issue is important to preserve the concept of the burden of proof, he asks this Court to reconsider its decision on oral argument. Curtis contends that oral argument is necessary and could simply be confined to issue II of his initial brief.

Dated this the 4th day of June, 2006.

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[¶ 8] CERTIFICATE OF SERVICE

A copy of this document and was e-filed with the North Dakota Supreme Court and served upon Tristan Van de Streek, pursuant to Administrative Order 14 on the 4th day of June, 2006. Specifically, this document was electronically filed and served as follows:

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