2012 IL App (2d) 111163-U
No. 2-11-1163
Order filed June 12, 2012

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

VILLAGE OF LAKE IN THE HILLS, Plaintiff-Appellant, v. JAMES MUELLER, Defendant-Appellee.	)))))))))	Appeal from the Circuit Court of McHenry County. No. 09-TR-36253 Honorable Michael W. Feetterer, Judge, Presiding.

JUSTICE HUDSON delivered the judgment of the court.
Justices Bowman and Schostok concurred in the judgment.

ORDER

Held: Jury's verdict acquitting defendant of operating an overweight vehicle is contrary to the manifest weight of the evidence and a new trial is warranted; the trial court erred in allowing into evidence several documents that were not relevant.

¶ 1 Following a jury trial in the circuit court of McHenry County, defendant, James Mueller, was found not guilty of an ordinance violation—namely, operating a vehicle overweight on gross weight (see Lake in the Hills Municipal Code Ch. 41.01 (eff. June 12, 2008); 625 Ill. App. 3d 5/15-111 (West 2008)). The Village of Lake in the Hills ("plaintiff" or "the Village"), now appeals an order of the circuit court of McHenry County denying its posttrial motions for judgment notwithstanding

the verdict ("judgment n.o.v.") or, alternatively, a new trial. See 735 ILCS 5/2-1202 (West 2010). Plaintiff also challenges two of the trial court's evidentiary rulings. For the reasons that follow, we reverse and remand for a new trial.

¶ 2 I. BACKGROUND

¶ 3 The following evidence was adduced at trial. Rick Mathre first testified for the State. Mathre is employed by the Illinois Department of Agriculture, Bureau of Weights and Measures. His job duties include inspecting weighing and measuring devices. Mathre tested and certified the scales used in this case to weigh the truck operated by defendant. As the accuracy of the scales is not seriously disputed on appeal, we will not set forth his testimony in detail

¶ 4 Officer Jason Lira next testified that he had been employed by the Village for 10 years as its "commercial motor vehicle inspection officer." He is trained in the operation of portable scales. Lira was on patrol at 2:19 p.m. on June 24, 2009, observing truck traffic. He was on Pyott Road in the area of Industrial Drive. Pyott Road is a county highway, and there are "multiple trucking companies" in the area. Lira testified that Industrial Drive—a nondesignated local roadway—is a road within the Village's jurisdiction. By "nondesignated," Lira meant it was not a truck route. He described the weather as "clear and sunny." When asked which way he was traveling, Lira stated, "I believe south." He saw a brown tractor-trailer on Industrial Drive approximately 150 to 200 yards away. The truck had eight axles, six of which were actually on the roadway and two that were in the "up position." The truck was equipped with pneumatic tires, which are "designed and filled with air to hold the load of the equipment." From his experience, Lira could tell the truck was longer than 55 feet and heavier than 73,280 pounds—the limits on Industrial Drive without a special permit.

¶ 5 Lira had to turn around before he could stop the truck. Meanwhile, he testified, the truck reached Pyott Road and turned to the south. A "car or two" got between the truck and him. Lira waited until he "could pull behind the truck in a safe manner" and follow it. Due to its size, he followed it onto Algonquin Road and then waited until the roadway opened to eight lanes, with a 12-foot shoulder, so there would be room for the truck to stop. Lira did not believe it would have been safe to stop the truck on Pyott Road.

¶ 6 Lira effectuated a stop on Algonquin Road and spoke to defendant. Lira asked defendant for a permit to operate on Industrial Drive, and defendant could not produce one (defendant produced a McHenry County permit, but it did not cover Industrial Drive). After another officer arrived to control traffic, Lira got a set of portable scales. He had previously used the scales over 100 times. When the scales are turned on, they perform a self test. The scales were functioning properly. Lira weighed the truck, which is accomplished by weighing each axle individually and adding the weights together. According to Lira, the truck weighed 120,300 pounds. As the weight limit on Industrial Drive is 73,280 pounds, the truck was 47,020 pounds overweight. Lira also measured the vehicle's length, from axle to axle, and found that it was 72 feet. Lira then issued defendant a citation.

¶ 7 During cross-examination, Lira acknowledged that the "sum total of [his] specialized portable scale training" amounted to four hours. Lira stated that he never saw defendant leave the truck yard, but he knew where the truck came from due to "prior knowledge." When he first saw the truck, it was about 200 yards from Pyott Road on Industrial Drive. Lira immediately wanted to stop the truck; however, he did not do so because of traffic. Lira turned around on Pyott Road and was then going north. He then made another U-turn at the intersection of Pyott Road and Industrial Drive in order to follow defendant, who had turned south. When asked how far he was from defendant's

truck, Lira replied, "Maybe a hundred feet, two car lengths." They traveled down Pyott Road, turned right on Algonquin Road, crossed Randall Road and drove another two miles to Ellis Street before Lira initiated a stop. Lira testified that he then followed the truck for approximately 5½ miles, in all, before he stopped it. During this time, according to Lira, he was never more than 100 feet from the truck. Lira agreed that part of the reason for weight limits for trucks is to "help restrict certain trucks from being on certain roadways to help in maintenance and maintaining the roadways." He further acknowledged that defendant did produce a permit when requested; however, he explained that it was not a permit issued by the Village. The State rested after Lira's testimony was completed.

¶ 8 Defendant first called Gail Kimmey, the secretary-treasurer of Neri Construction (by whom defendant is employed.) She maintains the business records for the company. She identified a McHenry County permit to operate overweight on June 24, 2009. She gave the permit to defendant. Following Kimmey's testimony, defendant moved for the admission of the permit, the minutes of a 1978 meeting of the board of the Village, and an ordinance purporting to annex half of Industrial Drive. The trial court granted defendant's requests, and defendant then rested.

¶ 9 The State called Jeffrey R. Young in rebuttal. Young is employed by the McHenry County Department of Transportation as an assistant engineer. He testified that on June 24, 2009, no portion of Industrial Drive was a county roadway. Further, the permit that was given to defendant by Kimmey did not cover Industrial Drive. On its face, the route described on the permit begins where Pyott Road meets Industrial Drive and covers Pyott Road and Algonquin Road. It terminates at State Route 47. The permit also states that it "does not release the applicant from compliance from other existing laws that may apply to the movement or from obtaining additional permits which may apply to the movement." Finally, Young testified that Industrial Drive was within the corporate limits of

the Village. After Young's testimony concluded, neither party presented additional witnesses. The jury found defendant not guilty. The State now appeals (as the prosecution of an ordinance violation is civil in nature, the State is allowed to appeal (*Village of Kildeer v. LaRocco*, 237 Ill. App. 3d 208, 211 (1992)). For the reasons that follow, we reverse and remand.

¶ 10 II. ANALYSIS

¶ 11 This appeal can be divided into two main parts. First, we will consider plaintiff's motion directed against the verdict requesting judgment notwithstanding the verdict or, in the alternative, a new trial. Second, since we are remanding for a new trial and the issues are likely to recur, we will address plaintiff's complaints about the trial court's decision to admit into evidence the McHenry County permit to operate overweight on June 24, 2009 ("the permit"), the minutes from a 1978 board meeting, and the ordinance purporting to annex half of Industrial Drive.

¶ 12 A. Plaintiff's Posttrial Motion Directed Against the Verdict

¶ 13 Plaintiff filed a motion seeking judgment n.o.v. or, alternatively, a new trial. See 735 ILCS 5/2-1202 (West 2010). Judgment n.o.v. is appropriate only where all of the evidence, viewed in the light most favorable to the opponent of the motion, so overwhelmingly favors the moving party that no contrary verdict could ever stand. *Department of Transportation v. Drury Displays, Inc.*, 327 Ill. App. 3d 881, 886 (2002). Judgment n.o.v. should not be granted where reasonable minds could differ regarding the inferences and conclusions to be drawn from the evidence. *Kincaid v. Ames Department Stores, Inc.*, 283 Ill. App. 3d 555, 564 (1996). A motion for a new trial, on the other hand, should be granted where the verdict is against to the manifest weight of the evidence. *Crump v. Universal Safety Equipment Co.*, 79 Ill. App. 3d 202, 214 (1979). A trial court has "greater latitude in granting a new trial than in denying one." *Torrez v. Raag*, 43 Ill. App. 3d 779, 782

(1976). We conduct *de novo* review of the denial of a motion for judgment n.o.v. (*Demos v. Ferris-Shell Oil Co.*, 317 Ill. App. 3d 41, 47 (2000)), and we review the denial of a motion for a new trial using the manifest-weight standard (*Id.* at 52). Under the former standard, we owe no deference to the trial court (*Khan v. BDO Seidman*, LLP, 408 Ill. App. 3d 564, 595 (2011)), while under the latter, we may reverse only if an opposite conclusion to the trial court's is clearly apparent (*Demos*, 317 Ill. App. 3d at 52).

¶ 14 With these standards in mind, we believe a new trial is warranted, but we do not believe the evidence warrants judgment n.o.v. While defense counsel did cross examine Mathre, there was no serious challenge to the accuracy of the scales used to weigh the truck. Furthermore, Officer Lira's testimony was uncontradicted and clearly satisfied all of the elements of the ordinance violation. The Village incorporated section 15-111 of the Illinois Vehicle Code (625 Ill. App. 3d 5/15-111 (West 2008)) into its municipal code. See Lake in the Hills Municipal Code Ch. 41.01 (eff. June 12, 2008). Thus, to prevail, the State had to prove the following: "operation of a vehicle, with pneumatic tires, on a highway when the vehicle and load together exceed the applicable weight limitations." *People v. Jackson*, 98 Ill. App. 3d 418, 421 (1981). Lira gave unrebutted testimony on each of these elements. Thus, the jury's verdict was against the manifest weight of the evidence.

¶ 15 We do not, however, believe that, viewing the evidence in the light most favorable to defendant, no contrary verdict could ever stand— as would be necessary for us to grant judgment n.o.v. (*Drury Displays, Inc.*, 327 Ill. App. 3d at 886)). The evidence in this case simply does not rise to that level. Lira's testimony was impeached to a degree, notably that he followed defendant for over five miles before initiating the stop and that he made two u-turns in an area he testified it would have been unsafe to stop defendant. Lira explained that he was waiting until the truck reached a

place where a stop would be safe. Though this impeachment does not strike us as particularly compelling, it nevertheless existed. We cannot, therefore, conclude that no contrary verdict could ever stand. However, we have no difficulty concluding that the jury's verdict is contrary to the manifest weight of the evidence.

¶ 16 We find further support for this conclusion in the recent case of *Village of Richmond v. Magee*, 407 Ill. App. 3d 560 (2011). On facts similar to those present here, this court determined that the plaintiff had established a *prima facie* case that the defendant had been operating an overweight vehicle. *Id.* at 566. The court then considered variously possibilities as to how plaintiff's *prima facie* case might have been rebutted, and, finding none that were persuasive, entered judgment for the plaintiff. *Id.* at 567-68. In this case, as noted above, there was no serious challenge to the accuracy of the scales used by Lira to weigh defendant's vehicle. We also note that the truck weighed 47,020 pounds over the 73,280 pound weight limit—greater than 50% more. This significantly diminishes any concerns about the accuracy of the scales. *Jackson*, 98 Ill. App. 3d at 422, quoting *People v. Hansen*, 74 Ill. App. 2d 49, 52 (1966) ("Furthermore, any contention defendants make regarding the accuracy of the scales is 'hypercritical and frivolous' in light of the fact that their trucks were approximately 27 ½% and 34% overweight, respectively."). Moreover, Lira provided a plausible explanation—safety—as to why he waited to initiate a stop. Thus, like the *Magee* court, we hold that defendant has not rebutted plaintiff's *prima facie* case. See *Magee*, 407 Ill. App. 3d at 568-69.

¶ 17 Defendant attempts to distinguish *Magee*, pointing out that *Magee* involved a bench trial while the present case was decided by a jury. According to defendant, that means that *Magee* "is in no way analogous to the instant matter." We agree to an extent insofar as procedure is concerned

(though we find *Magee* to be of sound guidance factually). In that case, the court applied the manifest-weight standard. *Magee*, 407 Ill. App. 3d at 569. This standard is certainly different than the one used to determine whether a judgment n.o.v. is warranted. Thus, *Magee* provides no support for the proposition that a judgment n.o.v. would be appropriate. However, the propriety of granting a request for a new trial is assessed using the manifest-weight standard. *Crump*, 79 Ill. App. 3d at 214. As in *Magee*, Lira's testimony was uncontradicted (though impeached weakly) and established a *prima facie* case that defendant did not rebut. *Magee*, 407 Ill. App. 3d at 565, 566-68. Therefore, like the *Magee* court, we hold that the decision below was against the manifest weight of the evidence.

¶ 18 A motion for a new trial should be granted when a verdict is contrary to the manifest weight of the evidence. *Crump*, 79 Ill. App. 3d at 214. That, then, is the appropriate remedy here. We therefore reverse and remand for a new trial and any other proceedings the trial court deems appropriate.

¶ 19 B. Evidentiary Issues

¶ 20 Plaintiff complains of two of the trial court's rulings regarding certain evidentiary issues. Though we are reversing on other grounds, we will briefly address these issues, as they are likely to recur on remand. See *People v. Fuller*, 205 Ill. 2d 308, 346 (2002). First, plaintiff asserts that the McHenry County permit allowing defendant to operate overweight on June 24, 2009, was not relevant. Second, plaintiff contends that the minutes from the 1978 board meeting and the ordinance purporting to annex half of Industrial Drive should not have been admitted.

¶ 21 It is axiomatic that only evidence that is relevant is admissible. *People v. Thedos*, 2011 IL App (1st) 103218, ¶ 140. Evidence is relevant if it tends to make some material fact more or less

likely to have occurred. *In re Stephen K.*, 373 Ill. App. 3d 7, 29 (2007). Relevancy is judged by interpreting the proffered evidence in light of the factual issues set forth in the pleadings. *Thedos*, 2011 IL App. (1st) 103218, ¶ 140. These matters are within the discretion of the trial court. *People v. Jones*, 161 Ill. App. 3d 688, 699 (1987). We will disturb such decisions only where the trial court abuses its discretion. *Id.* An abuse of discretion occurs only where no reasonable person could agree with the trial court. *People v. Faris*, 2012 IL App (3d) 100199, ¶ 26. That is the case here.

¶ 22 Regarding the permit, we first note that defendant was charged with operating an overweight vehicle "Upon a Public Highway, or other Location, Specifically N/B INDUSTRIAL RD., S E OF PYOTT RD." The McHenry County permit applied to "Pyott from Industrial to Algonquin Rd. ending @ Rt. 47." Thus, the permit did not pertain to Industrial Road. Since the violation with which defendant was charged occurred on Industrial Road, the permit was plainly not relevant.

¶ 23 As for the meeting minutes and the ordinance, we conclude that they were pertinent to a question of law rather than fact and should not have been submitted to the jury. *Moore v. People for the Ethical Treatment of Animals, Inc.*, 402 Ill. App. 3d 62, 71 (2010). These documents were pertinent to the question of whether Industrial Drive was within the jurisdiction of the Village. Answering this question required construing the ordinance (which purports to annex half of Industrial Drive) as well as a statute (which states: "The new boundary shall extend to the far side of any adjacent highway and shall include all of every highway within the area annexed. These highways shall be considered to be annexed even though not included in the legal description set forth in the petition for annexation." (Ill. Rev. Stat. 1977, ch. 24, ¶ 7-1-1, now codified at 65 Ill. 2d 5/7-1-1 (West 2012)). Construing these enactments and determining the effect of the latter upon the former present questions of law. *Hawthorne v. Village of Olympia Fields*, 328 Ill. App. 3d 301, 306

(2002). Furthermore, the minutes of the meeting are of no apparent relevance to anything other than the interpretation of the ordinance. See *La Salle National Bank, N.A. v. DeCarlo*, 336 Ill. App. 3d 280, 284 (2003) (using legislative history to construe a statute). Hence, neither of these documents should have been admitted into evidence.

¶ 24 III. CONCLUSION

¶ 25 In light of the foregoing, the judgment of the circuit court of McHenry County is reversed and this cause is remanded for further proceedings consistent with the views expressed in this order.

¶ 26 Reversed and remanded with directions.