

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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PEOPLE OF THE STATE OF MICHIGAN,  
  
Plaintiff-Appellee,

UNPUBLISHED  
September 11, 2012

v

LAWRENCE PARKER,

No. 304295  
Saginaw Circuit Court  
LC No. 10-035059-FH

Defendant-Appellant.

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Before: SERVITTO, P.J., and FITZGERALD and TALBOT, JJ.

PER CURIAM.

Lawrence Parker appeals as of right his jury trial conviction of driving while license suspended—2nd offense (“DWLS 2nd”).<sup>1</sup> Parker was also convicted of operating while intoxicated—3rd offense (“OWI 3rd”).<sup>2</sup> Parker was sentenced as a fourth habitual offender<sup>3</sup> to concurrent terms of 40 to 60 months’ imprisonment for the OWI 3rd conviction and one year in jail for the DWLS 2nd conviction. We affirm in part and reverse in part, vacating Parker’s conviction for DWLS 2nd.

On August 1, 2010, Michigan State Police Trooper Rick Jones observed Parker speeding and driving across lanes of traffic without signaling. After counting five separate driving violations, Jones conducted a traffic stop. Jones noted a strong odor of alcohol and testified that Parker admitted that he was drinking “a little bit” that night. After Parker failed three separate field sobriety tests, Jones arrested him for OWI. It was ultimately determined that Parker’s blood contained between 0.140 and 0.141 grams of alcohol per 100 milliliters of blood.

Jones also testified that Parker’s license was suspended at the time of arrest. A certified copy of Parker’s driving record, which is not part of the record on appeal, was admitted into evidence. Purportedly, it indicated that Parker’s license was suspended on the day of his arrest. Jones, however, did not testify and there is nothing in the record to indicate that Parker was

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<sup>1</sup> MCL 257.904(1).

<sup>2</sup> MCL 257.625.

<sup>3</sup> MCL 769.12.

notified that his license had been suspended. Moreover, the jury was not instructed that it had to find that Parker had notice of the suspension in order to convict him of DWLS 2nd.

Parker argues that the prosecution presented insufficient evidence at trial to convict him of DWLS 2nd. We agree. While this Court reviews the evidence *de novo* for a challenge based on sufficiency of the evidence, this Court must consider all the evidence in the light most favorable to the prosecution.<sup>4</sup> In doing so, this Court must determine whether a rational factfinder could determine that each element of the crime was proved beyond a reasonable doubt.<sup>5</sup> This Court should defer to the factfinder's determinations regarding credibility, the reasonable inferences that "may be fairly drawn from the evidence[.]" and "the weight to be accorded those inferences."<sup>6</sup>

The elements of DWLS are as follows: (1) operation of a motor vehicle on a highway, public place or place generally accessible to motor vehicles; (2) while the driver's license was suspended, revoked, or application has been denied (or the driver never applied for a license); and (3) the driver was provided notice of the suspension or revocation of his or her driving privileges by personal delivery or first-class mail, as established by statute.<sup>7</sup>

At trial, the prosecution offered sufficient evidence to establish two of the three elements for DWLS. Jones's testimony established that Parker was driving on a public road. Moreover, Parker's driving record established that his driving privileges were suspended on the day that Jones observed him driving erratically on the road. The record, however, fails to establish that the prosecution offered any proof—either direct or circumstantial—that Parker received notice of his suspended license. Because this is an essential element of the crime of DWLS, Parker's conviction must be reversed.

Further, even if the driving record or Jones' testimony had established that Parker received notice, the trial court did not instruct the jury that notice had to be proved in order to convict Parker of DWLS. "[J]uries are presumed to follow the instructions of a trial court, and thus trial courts have the responsibility to ensure that juries are fully informed about the applicable law . . . ."<sup>8</sup> The failure to instruct the jury on any essential element of a criminal offense constitutes structural constitutional error, which is not subject to harmless error analysis and mandates reversal.<sup>9</sup> This Court notes that Parker may not be retried for DWLS 2nd. A

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<sup>4</sup> *People v Johnson*, 293 Mich App 79, 82; 808 NW2d 815 (2011).

<sup>5</sup> *Id.*

<sup>6</sup> *People v Kissner*, 292 Mich App 526, 534; 808 NW2d 522 (2011) (citation and quotations omitted).

<sup>7</sup> MCL 257.904(1); MCL 257.212; *People v Nunley*, 491 Mich 686; \_\_\_ NW2d \_\_\_ (2012), slip op, p 2-4.

<sup>8</sup> *People v Breidenbach*, 489 Mich 1, 13; 798 NW2d 738 (2011).

<sup>9</sup> *People v Duncan*, 462 Mich 47, 57; 610 NW2d 551 (2000).

determination that there was insufficient evidence to support a conviction bars retrial on that charge based on double jeopardy grounds.<sup>10</sup>

Parker also claims that he received ineffective assistance of counsel at trial. Our resolution of the first issue, however, is dispositive of this matter. Thus, we decline to address Parker's ineffective assistance argument.

Affirmed regarding Parker's OWI 3rd conviction, but Parker's conviction of DWLS 2nd is reversed and vacated.

/s/ Deborah A. Servitto  
/s/ E. Thomas Fitzgerald  
/s/ Michael J. Talbot

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<sup>10</sup> See *People v Parker*, 288 Mich App 500, 509; 795 NW2d 596 (2010).