

No. 1-11-2579

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IN THE  
APPELLATE COURT OF ILLINOIS  
FIRST JUDICIAL DISTRICT

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THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County.
	)	
v.	)	No. 11 C4 40161
	)	
CARL FREEMAN, JR.,	)	Honorable
	)	Carol A. Kipperman,
Defendant-Appellant.	)	Judge Presiding.

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JUSTICE HALL delivered the judgment of the court.  
Presiding Justice Lampkin and Justice Gordon concurred in the judgment.

**ORDER**

¶ 1 *Held:* Defendant's conviction of aggravated fleeing and eluding a peace officer affirmed over challenge to the sufficiency of the evidence and to the trial court's limitation of cross-examination of the officer.

¶ 2 Following a bench trial, defendant, Carl Freeman, Jr., was convicted of aggravated fleeing and eluding a peace officer (625 ILCS 5/11-204.1 (West 2010)), then sentenced to two years' probation. He was also assessed court fines, fees and costs, including a \$5 electronic citation fee. On appeal, defendant challenges the sufficiency of the evidence to sustain his

conviction, contends that the court erred in limiting his cross-examination of the police officer, and asserts that the electronic citation fee should be vacated as an *ex post facto* fine.

¶ 3 At trial, Riverside police officer Fabian Navarro testified that about 10:30 p.m. on December 22, 2010, he was on patrol in uniform and in a marked squad car. He was parked southbound on the median in the 3800 block of Harlem Avenue with his headlights on, just north of the intersection of Harlem and Ogden Avenues. There, he saw a silver car being driven northbound, and observed the driver, a white male wearing a skull cap, ride the white dotted line between the two lanes of northbound traffic for approximately 50 to 60 feet and change lanes without signaling. When the driver approached the red light, he slowed for traffic and slowly passed within three to five feet of the officer. At this point, he and the driver made eye contact, and Officer Navarro was able to see him clearly.

¶ 4 Officer Navarro then made a U-turn, pulled into traffic behind the car which was stopped at the red light at Ogden and Harlem, and ran the license plate number. He learned that the license of defendant, the registered owner, had been suspended.

¶ 5 Officer Navarro waited for the light to turn green, activated his emergency lights, and attempted to pull the vehicle over. The driver slowed, moved into the right lane, and turned right into an alley. He proceeded at a high rate of speed through the alley, and then made three right turns, which brought him back to where the chase began. Officer Navarro further testified that the driver ran through a red traffic light when he turned back onto Harlem, and until this point in the pursuit, he never lost sight of the vehicle. After turning onto Harlem, however, Officer Navarro observed that the headlights of the car had been turned off. The driver then proceeded north into oncoming traffic in the southbound lanes, and drove through three red lights to avoid the traffic stopped at those intersections.

¶ 6 Officer Navarro testified that he was driving approximately 60 to 70 miles per hour during the pursuit on Harlem, where the posted speed limit was 30 miles per hour. He did not know, but estimated that he may have been less than a city block behind the vehicle as he pursued it. Although it was dark and the headlights had been turned off, Officer Navarro was able to see the vehicle when the driver "hit the [brakes]" and the brake lights illuminated. The pursuit ended when he lost sight of the vehicle. During the chase, Officer Navarro had radioed dispatch that he was in pursuit of a silver Chevy Malibu, but after he ran the license plates through the LEADS computer, he learned that the car was a silver Buick Lucerne. He testified that this car is very similar to a Malibu.

¶ 7 Officer Navarro continued his investigation at the station, and obtained the address and driver's license photo of defendant who he identified as the driver of the car he pursued. Officer Navarro made several attempts to locate defendant, and succeeded approximately six weeks later. At that time, he confirmed that defendant was the driver, and made an in-court identification of him at trial.

¶ 8 During Officer Navarro's testimony, the State entered into evidence a videotape taken through the window of his police vehicle on the night of the pursuit. The officer explained that the video began after he executed a U-turn and positioned himself behind the vehicle, as he ran the license plates. When the video begins, the silver car is directly in front of his police vehicle and proceeding through an intersection. The driver then activates his right-turn signal, slows, and moves into the right lane. After Officer Navarro activates his emergency lights, the driver of the silver car turns right down an alley, and Officer Navarro follows. At this point, the driver appears to accelerate, then turns right outside of the video's frame, but moments later, the car reappears, turning right before leaving the video frame once again. After the driver makes a final right turn onto Harlem on a red light, the car can no longer be identified in the video. The

video also shows Officer Navarro pursuing the car at a high rate of speed for approximately two minutes, entering lanes of oncoming traffic to pass vehicles and to avoid vehicles stopped at traffic signals.

¶ 9 During cross-examination, defendant questioned Officer Navarro about certain details in his testimony that were not included in his police report. Officer Navarro acknowledged that his report did not reflect that he was facing south on the median, that the silver car was being driven north, or that the driver was riding the white dotted line between traffic lanes. The report also contained no mention of the officer making eye contact with the driver of the silver car.

¶ 10 Defendant then attempted to ask the following four questions regarding the video:

"And in the video, you can't see the plate of the car that you are pursuing, can you?"

"Can you read the plate in this video as you turn on your lights?"

"Is there a reflection of your headlight on the plate when you look at the video[?]"

"Does the video depict that vehicle continuously?"

The State objected to these questions, reasoning that "[t]he video speaks for itself[,]" and the court sustained the objections.

¶ 11 At the close of evidence and argument, the trial court found defendant guilty as charged. In its ruling, the court stated that it found that Officer Navarro testified credibly, that he had ample opportunity to observe, that he identified defendant from his driver's license photo and in court, and that it was "taking into account [Navarro's] demeanor on the stand while testifying and the logical consistencies of his testimony."

¶ 12 Defendant now challenges that judgment, first contending that there was insufficient evidence to sustain his conviction. He maintains that the evidence was insufficient because the

State failed to prove that he was the driver of the vehicle which fled, or that the aggravating factors of fleeing and eluding were satisfied beyond a reasonable doubt. He also maintains that the court erred in accepting Officer Navarro's testimony because it was contradicted by his in-car video.

¶ 13 When considering a challenge to the sufficiency of the evidence, the relevant question on appeal is 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. *People v. Hall*, 194 Ill. 2d 305, 330 (2000). It is the responsibility of the trier of fact to determine the weight to be given to the witnesses' testimony, the witnesses' credibility and the reasonable inferences to be drawn from the evidence. *People v. Brown*, 362 Ill. App. 3d 374, 377 (2005). Although the determination of the trier of fact is not conclusive, its findings on witness credibility are entitled to great weight, and this court will reverse a conviction only where the evidence is so unreasonable, improbable or unsatisfactory as to justify a reasonable doubt of defendant's guilt. *People v. Smith*, 185 Ill. 2d 532, 542 (1999). For the reasons that follow, we do not find that this is the case.

¶ 14 To convict defendant of aggravated fleeing and eluding a peace officer in this case, the State was required to prove, in relevant part, that defendant, after being given an authorized visual or audible signal, flees or attempts to elude a peace officer, and such flight or attempt to elude is at a rate of speed at least 21 miles per hour over the legal speed limit; or involves disobedience of two or more official traffic control devices. 625 ILCS 5/11-204.1 (West 2010).

¶ 15 The evidence, viewed in the light most favorable to the prosecutions, shows that Officer Navarro observed a driver commit a traffic violation, then viewed the driver as he passed within three to five feet of him. The officer pulled behind the car, ran the license plate, and learned that the registered owner had a suspended license. At that point, the officer activated his emergency

lights, and the driver began to drive at a high rate of speed through a series of four right turns. The officer observed the driver enter lanes of oncoming traffic and commit four traffic signal violations. The officer estimated his speed at a rate of speed of 60 to 70 miles per hour while attempting to apprehend the driver during the pursuit. The officer subsequently made three positive identifications of defendant as the driver of the vehicle he had pursued—after obtaining his driver's license photo, after defendant was apprehended, and in court. From this evidence, the trial court could find that defendant was proved guilty beyond a reasonable doubt of aggravated fleeing and eluding a peace officer.

¶ 16 Defendant, however, disputes that conclusion, and asserts a number of inconsistencies in Officer Navarro's testimony regarding his identification of him as the driver of the vehicle being pursued. He maintains that the officer contradicted himself when he stated that he was north of the intersection of Harlem and Ogden when he made eye contact with the driver, and also testified that he made a U-turn, positioned himself behind the car, and ran the plates while waiting for the light to turn green at Harlem and Ogden. From this testimony, defendant posits that Officer Navarro must have been south of the intersection at the point in time when he claimed to have made eye contact with defendant, and that his "claim of a face-to-face-identification could not have occurred."

¶ 17 The discrepancy in Navarro's testimony regarding whether he was parked north or south of the intersection when he observed the driver of the car does not detract from his consistent identification of defendant as that person. *People v. Reed*, 80 Ill. App. 3d 771, 778 (1980). Officer Navarro testified that he was able to clearly observe defendant, as he approached a red light, slowed, and came within three to five feet of him as he passed his vehicle. He also testified that defendant was the registered owner of the car he pursued, that he was able to positively identify defendant based on his driver's license photo, and identified him again upon

his apprehension and at trial. Based on our review of the officer's positive and consistent identification of defendant as the driver, we find no reasonable doubt of defendant's guilt arising from the minor discrepancy noted by defendant. *Reed*, 80 Ill. App. 3d at 780.

¶ 18 Defendant also asserts that it is unbelievable that Officer Navarro could make eye contact with and identify the driver if he initially was unable to accurately identify the make and model of the vehicle. However, the officer testified that the Malibu and the Lucerne were similar vehicles, and we find that this initial mistake in identifying the model of the silver car was minor and does not detract from his positive identification of defendant. *Reed*, 80 Ill. App. 3d at 780.

¶ 19 Defendant next contends that Officer Navarro's testimony is incredible because his identification occurred at 10:30 p.m., and that the headlights on the officer's vehicle would have caused a glare on the driver's side window of defendant's vehicle, making the alleged identification impossible. The record, however, contains no evidence that the officer's headlights caused a "glare" that impeded his ability to see and identify the driver of the vehicle. To the contrary, the officer testified unambiguously that he saw and made eye contact with defendant from a distance of three to five feet away as the vehicle slowed and passed him. Thus, we find defendant's argument speculative and insufficient to weaken the officer's identification to any significant degree. *Reed*, 80 Ill. App. 3d at 779.

¶ 20 Defendant further claims that Officer Navarro was impeached by certain omissions from his police report. He specifically cites the officer's failure to include his eye contact with the driver, and his observation of the car being driven on the dotted line. These minor discrepancies were fully explored at trial (*People v. Scott*, 152 Ill. App. 3d 868, 872 (1987)) and are not of such magnitude as to undermine the officer's credibility (*People v. Villalobos*, 78 Ill. App. 3d 6, 13 (1979)) or create a reasonable doubt of defendant's guilt (*Scott*, 152 Ill. App. 3d at 872).

¶ 21 Defendant also contends that Navarro's testimony was contradicted by the video, citing *Scott v. Harris*, 550 U.S. 372, 380-81 (2007) for the proposition that where video evidence does not corroborate testimony, the video footage should carry greater weight. He maintains that after the first four right turns, the vehicle is not seen again, and therefore, the video does not show the vehicle or its brake lights in the lanes of oncoming traffic as testified to by Officer Navarro. He also maintains that the video "captures more than a city block" in front of the officer, and rebuts his testimony that he was within a block of defendant during the pursuit.

¶ 22 We find *Harris* distinguishable from the case at bar. In *Harris*, the Supreme Court considered whether the factual record supported a finding that the respondent was driving in such fashion as to endanger human life. *Harris*, 550 U.S. at 378-81. The Court held that the trial and appellate courts erred in accepting the version of events given by respondent, who had described the pursuit as having "little, if any, actual threat to pedestrians or other motorists, as the roads were mostly empty and [respondent] remained in control of his vehicle." *Harris*, 550 U.S. at 378. The Court observed that "[t]he videotape quite clearly contradicts the version of the story told by respondent[.] \*\*\* Far from being the cautious and controlled driver the lower court depicts, what we see on the video more closely resembles a Hollywood-style car chase of the most frightening sort, placing police officers and innocent bystanders alike at great risk of serious injury." *Harris*, 550 U.S. at 378-80. The Court therefore held that "[r]espondent's version of events is so utterly discredited by the record that no reasonable jury could have believed him. The Court of Appeals \*\*\* should have viewed the facts in the light depicted by the videotape." *Harris*, 550 U.S. at 380-81.

¶ 23 By contrast, the video evidence in this case does not contradict the officer's testimony, and in fact corroborates it in many respects. The video depicts the driver of the silver car making a series of four right turns, and accelerating to high rates of speed in an apparent attempt

to elude the officer following with his emergency lights activated. Although the silver car can no longer be identified in the video after the final right turn onto Harlem Avenue, we note that the video picture quality is relatively poor, and lights in the background of the video cause objects in the distance to become even more difficult to identify. Although the car can no longer be identified in the video after the driver turned off his headlights, this fact does not contradict Officer Navarro's testimony that he was able to follow and observe the car as it drove at a high rate of speed and disobeyed traffic signals, and therefore, it does not negate defendant's commission of the charged offense.

¶ 24 Defendant also maintains that the State did not prove that he was attempting to elude police by traveling more than 21 miles over the speed limit or by disobeying more than two traffic control devices, because the video evidence did not show the violations. Defendant cites no authority requiring video evidence of these violations, and we are aware of no such authority. To the contrary, the officer's testimony that he pursued defendant at 60 to 70 miles per hour in a 30 mile per hour zone and observed defendant drive through four red lights was sufficient to allow the trial court to find that defendant was proved guilty of the charged offense beyond a reasonable doubt.

¶ 25 Defendant next contends that the court erred in limiting his cross-examination of Officer Navarro concerning discrepancies between his testimony and the video. As a preliminary matter, the State maintains that defendant has forfeited his right to challenge this issue on appeal because he did not raise the issue in his posttrial motion. Defendant acknowledges that he did not do so, but contends that the issue is nevertheless preserved, because the right to confront witnesses is constitutional in nature, and forfeiture does not apply to "constitutional issues which have properly been raised at trial and which can be raised later" in post-conviction proceedings. *People v. Enoch*, 122 Ill. 2d 176, 190 (1988).

¶ 26 Defendant's reliance on *Enoch* is misplaced. *Enoch* was a capital case in which the supreme court held that when a capital defendant fails to file a posttrial motion, the court's constitutional obligation to review death penalty cases does not require it to review every issue raised on appeal. *Enoch*, 122 Ill. 2d at 190. The supreme court then held that when an issue is not properly preserved by an objection in the trial court and a written posttrial motion, review will be limited to constitutional issues which have been properly raised at trial, or which could be raised later in a postconviction hearing petition. *Enoch*, 122 Ill. 2d at 190. The case at bar, however, is not a capital case, and since defendant failed to properly preserve the issue for review, it is forfeited (*Enoch*, 122 Ill. 2d at 186), unless he can establish plain error (*People v. Hillier*, 237 Ill. 2d 539, 545 (2010)).

¶ 27 The plain error rule is a narrow exception to the forfeiture rule which allows a reviewing court to consider unpreserved claims of error where defendant shows that the evidence is closely balanced, or the error is so serious that it affected the fairness of his trial and challenged the integrity of the judicial process. *People v. Naylor*, 229 Ill. 2d 584, 593 (2008). Under both prongs, defendant bears the burden of persuasion, and he must first show that a clear or obvious error occurred. *Hillier*, 237 Ill. 2d at 545. If defendant fails to meet his burden, his procedural default will be honored. *Hillier*, 237 Ill. 2d at 545.

¶ 28 A criminal defendant's right to confrontation under the sixth amendment of the United States Constitution (U.S. Const., amend. VI; see also Ill. Const. 1970, art. I, sec. 8) includes the right to cross-examine witnesses against him. *People v. Kirchner*, 194 Ill. 2d 502, 536 (2000). Although any limitation on the right to cross-examine requires scrutiny, defendant's rights under the confrontation clause are not absolute. *People v. Averhart*, 311 Ill. App. 3d 492, 497 (1999). The latitude permitted on cross-examination is largely left to the discretion of the trial court, and

a trial court's restriction of cross-examination will not be reversed absent an abuse of discretion. *People v. Enis*, 139 Ill. 2d 264, 295 (1990).

¶ 29 Defendant contends that his inability to question Officer Navarro about the video impeded his ability to properly impeach his testimony with the video evidence and undermine his credibility. Defendant's proposed questions on cross-examination related to whether the officer could have accurately seen the license plate on the vehicle, and whether he lost sight of the vehicle earlier in the pursuit than he suggested in his testimony.

¶ 30 Defendant's contentions presume that the video clearly and accurately captures the officer's view during the pursuit. However, as noted previously, the picture quality of the video is relatively poor, and the fact that the pursued car cannot be identified in the video after making a final right turn onto Harlem Avenue does not contradict Officer Navarro's testimony that he was able to maintain sight of the vehicle when it was being driven into oncoming traffic and violating traffic signals.

¶ 31 Additionally, the officer testified that he read and ran the plates when he initially pulled behind the car, before the pursuit began. He then activated his emergency lights and video camera. Thus, whether the image quality of the video was sharp enough to display the license plate of the car at this point in time—when the car can be seen directly in front of the officer—has little relevance to whether the officer would have been able to read the license plate consistent with his testimony. See *e.g., People v. Malone*, 2012 IL App (1st) 110517, ¶ 41, 51-52 (finding that a witness's testimony was sufficient to show that defendant was armed with a gun that met the statutory definition of a firearm, over defendant's contention that the video evidence was too blurry to determine if it was a BB or toy gun instead).

¶ 32 We also observe that the video medium suffers from an innate limitation in that the viewable area is restricted. Therefore, whether the car was continuously tracked in the video's

viewable area has little relevance to whether the officer was able to maintain sight of the vehicle during the pursuit and observe defendant's traffic infractions. In any event, the video was entered into evidence, and viewed by the trial court. Under these circumstances, we find no abuse of discretion by the court in limiting defendant's cross-examination of the officer regarding the video, and no error to excuse defendant's forfeiture of this claim.

¶ 33 Finally, defendant contends that this court should vacate the \$5 electronic citation fee, because it was assessed in violation of the *ex post facto* clause of the federal and Illinois constitutions. The State concedes that the charge is a fine that was not in effect at the time of the offense and should be vacated. We agree and vacate the \$5 electronic citation fee. Pursuant to our authority under Supreme Court Rule 615(b), we amend the fines and fees order to reflect a total assessment of \$645.

¶ 34 Affirmed; fines and fees order modified.