

No. 1-12-2266

NOTICE: This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

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 MC5 662
)	
MICHAEL COLEMAN,)	The Honorable
)	Russell Hartigan,
Defendant-Appellant.)	Judge Presiding.
)	
)	
)	

JUSTICE FITZGERALD SMITH delivered the judgment of the court.
Presiding Justice Howse and Justice Epstein concurred in the judgment.

ORDER

- ¶ 1 *Held:* Reversed and remanded for a new trial based on trial court's improper reliance on hearsay evidence.
- ¶ 2 Following a bench trial, defendant Michael Coleman was acquitted of driving while under

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the influence of alcohol (DUI), but was found guilty of leaving the scene of an accident, and fleeing and eluding a peace officer, and was placed on supervision for one year. On appeal, defendant contends that he was not proved guilty beyond a reasonable doubt of leaving the scene of an accident. He argues that the State failed to prove the *corpus delicti* of the offense, and that the trial court's finding to the contrary rested on a misunderstanding of the law and improper reliance on hearsay evidence that was not being admitted for its truth. We agree with his hearsay argument and reverse on that ground.

¶ 3 The State indicated that the seven-volume record "was damaged during severe water and flooding." The deficiencies in the record on appeal appear to be attributable to the State, but defendant did not supplement the incomplete record with the missing materials. For example, the record before us does not contain a videotape that the trial court viewed. Defendant ordinarily would have failed to meet his burden of providing this court with an adequate record to support his claim of error. See *People v. Deleon*, 227 Ill. 2d 322, 342 (2008); *Foutch v. O'Bryant*, 99 Ill. 2d 389, 391-92 (1984). However, the portion of the record that defendant has provided contains sufficient evidence to allow meaningful review of the particular issues he asserts on appeal.

¶ 4 Officer Kiari Morgan testified that at approximately 9 p.m. on February 6, 2011, he made a traffic stop on the 3700 block of 95th Street in Cook County. When the assistant State's Attorney asked what the nature of that stop was, Officer Morgan testified, "It was a hit and run accident." Defense counsel objected on the ground of hearsay. The assistant State's Attorney

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responded, "It's not for the truth of the matter asserted. It's simply a question about the date." The court sustained the objection until the assistant State's Attorney established a foundation. Officer Morgan then testified that he also observed a traffic violation, failure to signal for a lane change, which led him to curb the vehicle. Thus, Officer Morgan had two reasons for stopping the vehicle: failure to signal for a lane change, and that "[t]he vehicle fit the description that [Officer Morgan's] dispatcher gave [to him] of a vehicle that was involved in an accident." There was no objection to that testimony.

¶ 5 Officer Jared Camer, who was in a separate marked squad car, assisted in the stop. Officer Morgan got out of his vehicle and spoke with the driver, whom he identified in court as defendant. Officer Morgan asked defendant if he was involved in the accident, and defendant responded that a vehicle had sideswiped his vehicle. When asked whether defendant made any other statements or whether Officer Morgan asked any questions, Officer Morgan testified, "Not that I recall." While Officer Morgan was standing at the driver's door, defendant tried to drive away with the officer attached to the vehicle. Defendant stopped the vehicle after Officer Morgan drew his gun. The officers had to remove defendant forcibly from the vehicle and handcuff him, and they transported him to the station. Defendant needed assistance to balance and walk to the vehicle. While defendant was in the back seat of the squad car, he leaned and slouched, and he needed help getting out. Defendant was very rude at the police station and told Officer Morgan that he would "kick [his] ass." Officer Morgan did not respond and could not have any communication with defendant after defendant threatened him, so Officer Morgan

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turned defendant over to the reporting officer, Detective Anthony Signorelli, who had been present when Officers Morgan and Camer took defendant into custody and placed the handcuffs on him. Officer Morgan stood by in the lockup after he turned defendant over to Detective Signorelli. When asked whether he heard defendant make any statements to Detective Signorelli, Officer Morgan testified, "Not that I recall." After defendant was placed in a cell, Officer Morgan left the lockup area. Thus, although defendant indicated at the scene that he had been involved in an accident in which someone else's vehicle had sideswiped his vehicle, defendant did not indicate why he had not stopped to report that accident, nor did defendant make any other statements about that accident. Officer Morgan did not have time to inquire about that accident at the scene because defendant tried to drive away while he was leaning into the vehicle.

¶ 6 During cross-examination, Officer Morgan testified as follows. Around 9:30 on February 6, 2011, he received a dispatch to look for a black Pontiac, which he located near Kedzie Avenue and 95th Street. He stopped the vehicle after observing it make a lane change without signaling. Officer Morgan approached the vehicle and asked the driver (defendant) for his license and insurance and also asked about having been in an accident. Defendant did not produce the documents at the time of the stop, which was not stipulated in the report. Defendant said that another vehicle had sideswiped his vehicle, and he then tried to drive away slowly with Officer Morgan attached to the vehicle.

¶ 7 During redirect examination, Morgan testified as follows. Initially, Morgan received a call of a black Pontiac Grand Prix that had left the scene of an accident. "No model that I can

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recall." A license plate was given. Morgan identified the license plate number when he stopped the vehicle. One number was different on the plate from the description that the dispatcher had provided. "[O]n one plate where the dispatcher gave zero as the number, and on the Defendant's plate it was the No. 1 or vice versa on the numbers." When Morgan approached defendant's vehicle, defendant indicated that he had been involved in an accident with another vehicle. Morgan testified over defense counsel's overruled objection to relevance that, by stopping the vehicle, he intended to investigate the hit and run accident as well as enforce the traffic violation. After defendant indicated that he had been involved in an accident, defendant's vehicle took off while Morgan was hunched over and leaning into the driver's window.

¶ 8 Detective Anthony Signorelli testified that at approximately 9:30 on February 6, 2011, he responded to a hit and run accident. When he arrived at the scene, he spoke with someone. He believed that Mary Parker was the name of the person who reported the accident, and he generated a report based on conversations concerning the accident. Based on the report he generated, he determined which vehicle was involved in the accident with Mary Parker. Defense counsel objected on the ground that the question assumed facts not in evidence. The court sustained the objection and told the assistant State's Attorney to establish a better foundation. Detective Signorelli responded to an accident, spoke with Mary Parker, and based on the conversations, generated an accident report. Defense counsel then objected on the basis of hearsay because Mary Parker was not in court, and defense counsel asked that any testimony concerning his conversations with Mary Parker or generating an accident report be stricken. The

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court stated that any conversation with Mary Parker would be considered hearsay, and sustained the objection.

¶ 9 Detective Signorelli testified that, after speaking with Mary Parker, he reported to other officers about an accident. Detective Signorelli spoke with two officers who were already at the accident scene, or actually where the vehicle was stopped that was involved in the accident. Defense counsel objected on the ground that the question assumed facts not in evidence. The court overruled the objection. Detective Signorelli was indicating that he responded to another location because dispatch assigned him to this hit and run accident and provided a description of a black Pontiac with a license plate. Detective Signorelli did not recall the exact numbers. Several minutes later, Detective Signorelli heard Officer Morgan make a traffic stop of a vehicle with a very similar license plate. The number was only one digit off. Officer Morgan said that dispatch said that "the vehicle that was struck the motorist was following that offending vehicle." Defense counsel objected on the basis of hearsay. The court overruled the objection because that testimony did not go to the truth of the matter. Eventually Detective Signorelli responded to a location where his fellow officers had stopped a vehicle possibly involved in an accident that Detective Signorelli reported. When Detective Signorelli arrived at that location, he observed Officer Morgan standing on the driver's side of the black Pontiac. As Detective Signorelli got out of his vehicle, he observed Officer Morgan being dragged with his body halfway in the driver's side of the window of the car. Detective Signorelli helped Officer Morgan pull the driver out of the vehicle. Detective Signorelli testified: "I noticed the auto that matched the description

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that dispatch said was following the auto involved in the accident, so I went back and confirmed that the lady sitting in the vehicle was involved in this incident. She said her name was—"

Defense counsel then objected, and the court sustained the objection. Eventually, Detective Signorelli had a chance to look at defendant's vehicle, and saw signs of damage on it, namely, "the passenger side mirror was hanging off of the vehicle. There seemed to be fresh damage."

Detective Signorelli then testified, "I believe, it was, if I'm not mistaken, it was the passenger side mirror, possibly," of defendant's vehicle. Detective Signorelli went back to speak with "the woman" and asked her "if this vehicle was involved in an accident with hers." Defense counsel objected, and the court sustained the objection.

¶ 10 During posttrial proceedings, the trial court observed as follows. Officer Morgan testified without objection that defendant's car matched the description of the car involved in the accident, and that defendant admitted to having been involved in an accident. Officer Morgan testified that he was investigating a hit and run accident, and defense counsel objected to that. Detective Signorelli testified without objection that he responded to the hit and run accident. Detective Signorelli testified that he spoke with Mary Parker, who reported the hit and run accident and who did not appear in court. The testimony of Officer Morgan and Detective Signorelli was sufficient evidence concerning the description of the vehicle, the license plate number, and that there was a hit and run accident that matched defendant's vehicle except for one of the digits on the license plate, which did not draw an objection. The court observed that defense counsel objected "at certain times" and that the court had sustained some of the objections. The court

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further observed that there was no objection to the description of the car as matching the description provided by Mary Parker.

¶ 11 On appeal, defendant challenges the sufficiency of the evidence. He argues that, even if his statement included an admission to all of the elements of the crime, the statement was not sufficient, pursuant to the *corpus delicti* rule, to establish his guilt beyond a reasonable doubt for leaving the scene of an accident. He maintains that no evidence was introduced regarding the time and place of the accident, whether the other driver was available and able to understand the required information, and/or whether he (defendant) was on his way to the police station. He alleges that the only corroborating evidence was Detective Signorelli's observation of "fresh" damage to the vehicle. He also maintains that the trial court misunderstood the elements of the crime of leaving the scene of an accident and improperly relied on hearsay evidence.

¶ 12 Pursuant to section 11-402 of the Illinois Vehicle Code (625 ILCS 5/11-402 (West 2012)), "a driver involved in a motor vehicle accident resulting only in damage to a vehicle that is driven or attended to by any person must stop and remain at the scene until section 11-403's duty to give information and render aid is fulfilled." *People v. Digirolamo*, 179 Ill. 2d 24, 40 (1997). Section 11-403 (625 ILCS 5/11-403 (West 2012)) requires a motorist who is involved in an accident resulting in injury or death of a person or damage to a vehicle to (1) provide his or her name and address, registration number, and the name of the vehicle's owner, (2) display his or her driver's license to the victim upon request, and (3) render reasonable assistance to any injured individual. *Digirolamo*, 179 Ill. 2d at 38. The standard of review for the sufficiency of

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the evidence is whether, after considering the evidence in the light most favorable for the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. *Digirolamo*, 179 Ill. 2d at 43. When assessing evidence that can produce conflicting inferences, the fact finder is not required to look for all possible explanations consistent with innocence and elevate them to the level of reasonable doubt. *Digirolamo*, 179 Ill. 2d at 45; see also *People v. Slinkard*, 362 Ill. App. 3d 855, 858 (2006) (State's evidence need not exclude every possible doubt).

¶ 13 Regarding defendant's *corpus delicti* challenge, with such a challenge, "a defendant alleges not that the State failed to prove him guilty of the crime beyond a reasonable doubt but that there is insufficient evidence to indicate that the crime occurred at all." *People v. Shaw*, 278 Ill. App. 3d 939, 949 (1996). The *corpus delicti* is the commission of a crime. *People v. Lara*, 2012 IL 112370, ¶ 17. The State must present independent corroborating evidence when the defendant's confession is part of the proof. *Id.* When a conviction is based upon a confession, the confession must be corroborated for the conviction to be sustained. *People v. Willingham*, 89 Ill. 2d 352, 358-59 (1982).

"[I]n establishing the *corpus delicti*, there must be some evidence, apart from the confession, demonstrating that a crime occurred. Once the required showing has been made, the circumstances along with the confession may be considered in determining whether the *corpus delicti* is sufficiently proved (as

well as the guilt of the defendant)." *Willingham*, 89 Ill. 2d at 360.

¶ 14 The independent corroborating evidence (apart from the defendant's confession) needed to prove the *corpus delicti* is minimal. *People v. Hurry*, 2013 IL App (3d) 100150-B, ¶ 20.

¶ 15 In this case, defendant's admission that he had been in an accident in which his vehicle was sideswiped was not the only basis for his conviction. The independent evidence outside of defendant's statement tended to prove that the crime occurred. The physical evidence and the testimony presented at trial sufficiently corroborated defendant's statement to sustain his conviction. The *corpus delicti* was established by defendant's statement admitting that he had been in an accident, and the physical evidence, namely, that the side view mirror was dangling from defendant's car, which may have been visible on the video that the trial court viewed. Additionally, Detective Signorelli also testified that he observed "fresh damage" to defendant's vehicle, namely, the broken side view mirror that was dangling from the vehicle. Circumstantial evidence established the rest of the *corpus delicti* of the crime. When defendant was stopped, he was not at the scene of the accident, because he had left the scene and was driving. Defendant also failed to produce his license and insurance, he did not explain why he did not stop to report the accident, and he fled from Officers Morgan and Camer. The fact that he fled from the police belies his theory, which need not be accepted (see *Digirolamo*, 179 Ill. 2d at 45; see also *Slinkard*, 362 Ill. App. 3d at 858), that he was on his way to the police station to report the incident. Finally, defendant does not contend that his statement was involuntary. When the evidence is viewed in the light most favorable to the State, as it must be, the *corpus delicti* was

proved, and the evidence was sufficient to prove defendant guilty beyond a reasonable doubt of leaving the scene of an accident.

¶ 16 Next, the trial court did not misapprehend the elements of the crime of leaving the scene of an accident. The trial court is presumed to know the law and to follow it unless the record affirmatively indicates the contrary. *In re Jonathon C.B.*, 2011 IL 107750, ¶ 72. Moreover, the circumstances defendant lists as elements of the crime that the court failed to consider (the time and place of the accident, the other driver's availability and ability to comprehend, and whether or not defendant was on his way to the police station) are not elements of the crime of leaving the scene of a property damage accident under the language of section 11-402. See 625 ILCS 5/11-402 (West 2012). Therefore, the trial court did not misunderstand the elements of the crime when it failed to treat those circumstances as elements.

¶ 17 Regarding defendant's hearsay argument, we agree that the trial court relied on hearsay evidence to support the elements of the offense of leaving the scene of an accident. In ruling on defendant's posttrial motion, the court cited *People v. Linus*, 48 Ill. 2d 349 (1971), for the proposition that an "objection to admissibility of evidence cannot be raised after it was not raised at trial [citation]." *Linus*, 48 Ill. 2d at 354-55, held that an issue could not be raised for the first time on appeal, and thus, an objection to hearsay would be waived if not raised in a timely manner in the trial court. See *People v. Rink*, 97 Ill. 2d 533, 542 (1983).

¶ 18 Even if an issue could not be raised for the first time in a posttrial motion, the transcript discloses that defense counsel objected multiple times to testimony specifically on the ground of

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hearsay. The police officers testified to inadmissible hearsay by testifying to the substance of their conversations with dispatchers and Mary Parker. The officers testified to the substance of their conversations with dispatchers concerning the description of the vehicle and the license plate, and the officers testified to the substance of their conversations with Mary Parker concerning the hit and run accident, all inadmissible hearsay. See *People v. Johnson*, 199 Ill. App. 3d 577, 582 (1990). We therefore find that the hearsay issue was preserved for appeal and that the trial court erred in relying on hearsay evidence to convict defendant of leaving the scene of an accident. All of the evidence adduced at the trial may be considered for purposes of double jeopardy when evaluating the sufficiency of the evidence. *People v. Olivera*, 164 Ill. 2d 382, 393 (1995). The evidence was sufficient to convict, and therefore double jeopardy does not bar defendant's retrial. *People v. Jiles*, 364 Ill. App. 3d 320, 337-38 (2006).

¶ 19 The judgment of the circuit court is reversed, and the cause is remanded for a new trial.

¶ 20 Reversed and remanded for a new trial.