FOURTH DIVISION
March 19, 2015

No. 1-13-0084

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County.
	)	
v.	)	No. 11 CR 21353
	)	
LESLIE JOHNSON,	)	Honorable
	)	William G. Lacy,
Defendant-Appellant.	)	Judge Presiding.

JUSTICE HOWSE delivered the judgment of the court.
Presiding Justice Fitzgerald Smith and Justice Cobbs concurred in the judgment.

ORDER

¶ 1 *Held*: We do not address defendant's ineffective assistance of counsel claim in this direct appeal where omissions in the record make that claim more appropriate for collateral review; defendant's aggravated fleeing or attempting to elude a peace officer conviction is affirmed where there was sufficient evidence to reasonably infer that the officer chasing defendant had oscillating, rotating or flashing red or blue lights activated and defendant was traveling 21 miles per hour over the legal speed limit while he was being chased by the officer.

¶ 2 Following a bench trial, defendant Leslie Johnson was convicted of home invasion,

unlawful restraint, and aggravated fleeing or attempting to elude a peace officer and was sentenced to a 14-year imprisonment. Defendant now appeals his convictions.

¶ 3 Defendant Leslie Johnson was charged by indictment with three counts of aggravated sexual assault, one count of home invasion, one count of sexual criminal assault, one count of unlawful restraint, and one count of aggravated fleeing or attempting to elude a peace officer while driving at least 21 miles per hour over the posted speed limit. The trial court acquitted defendant of each aggravated sexual assault and criminal sexual assault charge, but convicted defendant of home invasion, unlawful restraint, and aggravated fleeing or attempting to elude a peace officer while driving at least 21 miles per hour over the posted speed limit. The trial court judge entered a 14-year imprisonment sentence for the home invasion conviction and merged the unlawful constraint conviction. The trial court also entered a concurrent 3-year sentence for the aggravated fleeing or attempting to elude a peace office conviction. Defendant now appeals his convictions for home invasion and aggravated fleeing or attempting to elude a peace officer. For the reasons that follow, we affirm the convictions.

¶ 4 BACKGROUND

¶ 5 The trial commenced on June 18, 2014. Lariesha Dent testified that on December 4, 2011, she lived at 1152 N. Monitor with her three-year old son, Jaylen. Dent and defendant began dating in 2009, but had broken up in late October 2011/early November 2011 because defendant "was controlling." At that time, defendant, who had been living with Dent, moved back in with his mother. After defendant moved out, Dent had her locks changed and she did not give defendant a new key.

¶ 6 On December 3, 2011, Dent finished her shift working at Barney's Pizza at 10:30 p.m. Upon leaving, she found defendant outside her place of employment, and he offered to take Dent

to her grandmother's house to pick up Jaylen and then drop them both off at Dent's home, 1152 N. Monitor. Dent agreed. After picking up Jaylen, defendant dropped them both off at Dent's home and drove away. Dent and Jaylen went inside, and Dent began to do laundry.

¶ 7 At approximately 12:30 or 1:00 a.m., defendant entered Dent's home while Dent was in her living room and Jaylen was in his room. Jaylen ran out of his room to greet defendant while Dent went to her room to retrieve another cell phone. Defendant then entered Dent's bedroom and disrobed down to his boxers. When they used to live together, defendant would come over, disrobe down to his boxers and play video games. This time, defendant just disrobed down to his boxers. Dent did not ask defendant to leave, but she got her cell phone and went into the living room. Defendant came out of her bedroom, stood over her in the living room, and asked why she did not want to have sex with him anymore. She told him why and told him that she did not have to have sex with him if she did not want to. Defendant and Dent then argued about this for about an hour before Dent went back into her bedroom. Defendant followed her into the bedroom while still talking about the two of them having sex. Dent told defendant that she did not want to have sex, and defendant pushed her up against the wall, told her he loved her and that she would still have to "give him some." From that point, the two began wrestling, during which time Dent was telling defendant to leave the apartment, and they ended up on the bed. Defendant refused to leave and tried to have sex with Dent, but was unable to do so. Defendant then stuck his hand inside Dent's vagina. Dent could not do anything about it because she was five feet four inches tall, weighed 100 pounds, and defendant was on top of her. Eventually, defendant got off Dent and Dent went into the living room. Defendant followed her into the living room, they continued to argue, and Dent continued to tell defendant to leave.

¶ 8 While in the living room, defendant shoved Dent and choked her with both hands,

causing her head to bump against and break the window. Defendant then hit Dent in her left eye with a closed fist and left the apartment.

¶ 9 Dent called her mother, and Dent's sister, along with two police officers and an ambulance, arrived at Dent's apartment shortly thereafter. Before leaving her apartment, Dent spoke with the police officers before going to the hospital via ambulance.

¶ 10 While Dent was still at her apartment with the police officers, defendant called Dent to apologize for what he had done. Defendant called Dent a second time, and Dent could hear sirens in the background. During that conversation, defendant was telling Dent to make the police stop and that he would just pull over. Defendant was being chased. While Dent was at the hospital with the two police officers, she tried to get defendant to come to the hospital, but she never saw defendant at the hospital.

¶ 11 After being released from the hospital, Dent went to the police station and spoke with police officers who took photographs of her. Dent identified those photographs of herself taken on December 4, 2011, which depicted her with a swollen left eye. She also identified a photo of a broken window as the window that defendant broke when he shoved her head into it.

¶ 12 Dent further testified that after defendant moved out, she obtained an order of protection against him on November 9, 2011.

¶ 13 The state’s attorney then asked Dent about an affidavit she signed, which was dated April 4, 2012. Dent testified that on April 4, 2012, she wrote the affidavit. The affidavit did not state that anything she had previously said was untrue. Although the April 2012 affidavit was not admitted into evidence at trial or during any post-trial proceedings, the circuit court entered an order on April 17, 2014 directing that the affidavit be bound or certified as a supplemental record. It was submitted as a supplemental record on appeal, without objection. The April 2012

affidavit notarized and signed by Dent states:

> "On the dates of 12-03-11 and 12-04-11 me and Leslie Johnson did get into a fight. The police was called and it let to his arrest. During the time of this altercation, I may have said some things out of anger and fear. The charges Leslie Johnson is being faced with do not stand for him to be accounted for because of our relationship and by us living in the same household. There was no assault forced upon me by Leslie Johnson, he did not sexually assault me in no form nor did Leslie invade the premises because he owned a key to the apartment."

¶ 14 Dent wrote the affidavit because she did not understand why defendant was being charged with home invasion and sex offenses since they used to live together and they had been in a relationship together for three years. Dent testified that she and defendant did not live together and were not dating on December 4, 2011. Dent also did not give defendant permission to have any kind of sexual relations with her on that date.

¶ 15 Dent testified that defendant had pushed her and hit her in the face on July 26, 2011 when they were living together on Division Street, and that he hit her in her jaw on October 1, 2011 when she was living at 1152 N. Monitor. Dent testified that on October 1, 2011, defendant took her keys. On November 7, 2011, defendant came to 1152 N. Monitor, grabbed Dent and threatened to throw her out the window.

¶ 16 On cross-examination, Dent stated that she did not press charges against defendant for any of the prior incidents that occurred on July 26, 2011, October 1, 2011, and November 7, 2011. She stated that when Officers Ramos and Ochalla came to her house on December 4,

2011, she told them what had happened to her, but she never told them defendant had put his hand in her vagina; she just told them that they had had a fight. She also did not tell any of the nurses or doctors at the hospital that defendant put his hand in her vagina or that he had choked her. Although Dent did tell the hospital personnel that her head went through the window, she did not have any injuries to her head. Dent further testified that she did not tell the paramedics that defendant put his hand in her vagina or that defendant pushed her head through a window; Dent denied telling the paramedics that she had gotten into a fight with her father-in-law.

¶ 17 Dent further testified on cross-examination that she did not invite defendant into her apartment on December 3, 2011 after he had given her and Jaylen a ride home. Dent did not see defendant on the night of December 2, 2011; she has visited him while he has been in jail for the instant charges.

¶ 18 With respect to the April 2012 affidavit, Dent testified on cross-examination that she wrote the affidavit in April 2012 and took it to a currency exchange to be notarized. In the affidavit, she wrote that she made some statements on December 3 and 4, 2011 out of anger and fear, that there was no force upon her by defendant, that he did not sexually assault her in any form, and that defendant did not invade her premises because he owned a key to the apartment. Dent stated that defendant moved out of her apartment at the end of October 2011and stayed with his mother after that. Although defendant had come to Dent's apartment a couple of times after he moved out, he never stayed the night. Dent admitted that she had invited defendant over even after she had the order of protection entered against him.

¶ 19 On redirect, Dent stated that she did not press charges against defendant for the previous incidents because she still wanted to date defendant. She admitted that, during the course of their relationship, defendant had established a relationship with her son. Dent stated that the April

2012 affidavit stated that she had an altercation with defendant. On recross examination, Dent again testified that the April 2012 affidavit indicated that she and defendant had gotten into a fight.

¶ 20 After defense counsel was done questioning Dent, the trial court judge indicated that he had a few questions. The judge asked if Dent had obtained the order of protective on November 4th, and Dent replied that she obtained it on November 9th, that defendant was in court when the order was entered, and that the order had a one-year duration. The trial court judge then asked if defendant had a key to Dent's apartment on December 4, 2011, and Dent stated that he had previously owned a key, but that was before she had the locks changed and before December 4, 2011. When the trial court judge asked how defendant got into the apartment on December 4, 2011, and Dent answered "with a key," defense counsel objected and called a sidebar. During the sidebar, defense counsel explained that she had spoken with the prosecution before trial stating that she would make a motion *in limine* to prohibit Dent from testifying about the key based on the proof of other crimes doctrine, but that she did not do so because the prosecution agreed that it would not elicit the fact that defendant had stolen the key. Following the sidebar, the judge overruled the objection and admitted the evidence about the stolen key based, in part, on the fact that sustaining defense counsel's objection would, in essence, be hiding the truth from the fact finder and, in part, because it was relevant to a consent defense that was raised.

¶ 21 The State next called Detective Andrew Perostianis who testified that on December 4, 2011, he received an assignment that involved Dent. When he arrived at Dent's apartment, there was an officer protecting the scene but he did not see anyone else there. Inside the apartment, he saw signs of a struggle, including a knocked over chair and a broken window in the main living area. Detective Perostianis met with Dent at the police station for the first time and learned that

defendant was Dent's ex-boyfriend and that he was the offender in this case. Detective Perostianis then indentified defendant in court.

¶ 22 Officer George Ramos testified that he was working on December 4, 2011 from 5:30 a.m. to 2:30 p.m. with his partner Officer Ochalla; they were working as regular, uniformed patrol officers driving a marked squad car. They responded to a domestic battery call at 1152 N. Monitor. When they arrived to 1152 N. Monitor, they spoke with Dent before she was taken to the hospital. Both officers went to the hospital and patrolled the area surrounding the hospital; Officer Ochalla stayed in contact with Dent during this time. While driving south on Austin Avenue, the officers saw a Lincoln car that matched the description Dent had just given them driving north on Austin near the hospital. Officer Ramos traveled south a half a block and then made a u-turn and began heading northbound on Austin. As he approached defendant's vehicle from behind, he activated his police "mars" lights on top of his squad car and attempted to get behind defendant. Defendant fled in his car and Officer Ramos activated his sirens on the squad car and pursued defendant.

¶ 23 According to Officer Ramos, defendant was driving recklessly and at a high rate of speed. The majority of streets that the officers chased defendant through were residential streets with a posted speed limit of 30 miles per hour. Officer Ramos was driving 55-60 miles per hour behind defendant. The officers had their lights and sirens on while chasing defendant and the closest they got to defendant was about a half a block. There were many stop signs and traffic lights on the pursuit route, but defendant did not stop at any of them. The officers pursued defendant for approximately ten minutes, lost sight of him for about two minutes, but then were able to pick him up again after he crashed into another car at Cicero and Roosevelt in Cicero, Illinois. Officer Ramos approached the car and identified defendant outside the car.

¶ 24 The State then admitted photos of Dent's swollen eye and the broken window into evidence. The State also admitted a certified copy of the order of protection Dent obtained against defendant on November 9, 2011. The State then rested.

¶ 25 Defense counsel moved for a directed verdict on all the sexual assault charges, but the trial court denied defense counsel's motion finding that the State had proven a *prima facie* case beyond a reasonable doubt.

¶ 26 Defendant then testified on his own behalf. Defendant testified that although he and Dent had broken up and he had moved back in with his mother in November 2011, Dent continued to text him and they had gotten back together and were dating as of December 4, 2011. On December 3, 2011, he picked up Dent from work, picked up her son from her grandmother's house, and then went back to their apartment at 1152 N. Monitor. When they arrived at the apartment, all three of them went inside and ate pizza together. Defendant testified that he could not play with his Play Station 3 because Dent had previously gotten mad and thrown it out the window, thereby causing the window to break. Dent placed plastic over the broken window. The other living room window was broken because Dent had gotten mad and was throwing things around. Both windows were broken by Dent before December 4, 2011. Defendant denied choking Dent, pushing her into a window, attempting to have sex with her and putting his fingers into her vagina on December 3-4, 2011. Defendant admitted that he had prior convictions for possession of a controlled substance and vehicular hijacking. Defendant testified that he had keys to 1152 N. Monitor because Dent gave them to him when he moved back in sometime before December 3, 2011; he denied stealing them.

¶ 27 On cross-examination, defendant could not remember the exact date on which him and Dent got back together, but he knew it was sometime in November. Defendant acknowledged

being served with an order of protection on November 9, 2011, and acknowledged that he understood the order prohibited him from having any contact with Dent and prohibited from living at the 1152 N. Monitor apartment after he was served with the order. Defendant acknowledged that Dent did have the locks changed when he moved out in November 2011, and that he did not have a key when he moved out. Defendant testified that after the December 4, 2011 incident he fled and did not stick around to help Dent, but he called her several times while she was at the hospital. Defendant acknowledged that as he approached the hospital, he saw Chicago police squads and "took off." The police "chased [defendant]" while they had their emergency equipment, their lights, and their sirens on. Defendant did not stop for the police officers until he crashed his car. He was then taken into custody. Defendant denied that he weighed 210 pounds at the time of his arrest claiming that he only weighed 150 pounds. He stated that he gained weight in custody and probably weighed about 230 pounds at the time of trial.

¶ 28 On redirect, defendant testified that he went back to the 1152 N. Monitor apartment despite the order of protection because Dent was calling and texting him and because they had started to date and sleep together again. Defendant stated that he moved back in with Dent when she invited him to do so.

¶ 29 The parties stipulated that, if called to testify, hospital personnel would testify that Dent never told them her head went through a window, and the Chicago paramedic that responded to the domestic battery call would testify that Dent told him she had gotten into a fight with her father-in-law.

¶ 30 Following closing arguments, the trial court judge acquitted defendant of all sexual assault charges, but found defendant guilty of home invasion, unlawful restraint and aggravated

fleeing. In making these rulings, the trial court judge acknowledged that Dent "was certainly impeached" with the prior inconsistent statements that were in her handwritten April 2012 affidavit, but found that the prior inconsistent statements mostly pertained to the sexual assault charges. Because those charges were based exclusively on Dent's testimony, and were not corroborated by physical evidence, medical evidence or by testimony that Dent made any immediate outcry to police or medical personnel, the judge found defendant not guilty on three aggravated criminal sexual assault charges and the one criminal sexual assault charge. The court found, though, that Dent's credibility was not "totally diminished to the point of having no credibility and not being believable in some areas." With respect to the home invasion conviction, the judge commented: "defendant admitted receiving that order of protection. He admitted knowing that he was not to be there. His statement which I absolutely do not believe that she invited him into that apartment is meaningless. I do not believe that. I believe as I mentioned, I do believe Ms. Dent when she testified on the date in question he was not invited into the apartment[;] that he entered the apartment without her permission." The judge went on to state that he did not consider defendant's prior convictions or the evidence of other crimes in making his findings. Specifically, the trial court judge stated "I have in no way considered the other crimes evidence that I have allowed to be admitted in deciding this case."

¶ 31 The trial judge sentenced defendant to 14 years' imprisonment for home invasion and merged the conviction for unlawful restraint. He entered a concurrent three-year sentence on the conviction for aggravated fleeing or attempting to elude a peace officer. Defendant filed a motion for a new trial, which was denied by the trial court. Of note, the motion for a new trial did not include any ineffective assistance of counsel claims nor did it attach the April 2012 affidavit.

¶ 32 Defendant now appeals his home invasion and aggravated fleeing or attempting to elude a peace officer convictions. For the reasons that follow, we affirm the trial court's convictions.

¶ 33 ANALYSIS

¶ 34 On appeal, defendant challenges both convictions for home invasion and aggravated fleeing or attempting to elude a peace officer. With respect to his conviction for home invasion, defendant argues that he received ineffective assistance of counsel when defense counsel failed to impeach Dent with certain statements from her April 2012 affidavit and, further, when counsel did not introduce Dent's April 2012 affidavit as substantive evidence. As a result, defendant argues that this conviction must be reversed. With respect to his aggravated fleeing or attempting to elude a peace officer conviction, defendant argues that this conviction must be reversed because the State failed to prove the colors of the police officer's lights when the police officers were chasing defendant and failed to prove whether those lights were flashing, rotating or oscillating. In the alternative, defendant argues that because the State failed to prove that defendant was traveling 21 miles per hour over the speed limit during the chase, his aggravated fleeing or attempting to elude a peace officer conviction should be reduced to misdemeanor fleeing or attempting to elude a peace officer. We address each conviction below separately.

¶ 35 Home Invasion

¶ 36 In this direct appeal defendant presents a claim of ineffective assistance of counsel.

¶ 37 To prevail on a claim of ineffective assistance of counsel, a defendant must show both that: (1) counsel's representation was so deficient as to fall below an objective standard of reasonableness under prevailing professional norms, and (2) the deficient performance so prejudiced defendant as to deny him a fair trial. *Strickland v. Washington,* 466 U.S. 668, 687-88 (1984). To establish deficient performance, the defendant must overcome the strong

presumption that counsel's action or inaction was the result of sound trial strategy. *People v. Evans,* 186 Ill. 2d 83, 93 (1999). "Decisions concerning which witnesses to call at trial and what evidence to present are matters of trial strategy, and cannot form the basis for a claim of ineffective assistance of counsel unless a strategy is so unsound that counsel can be said to have entirely failed to conduct any meaningful adversarial testing." *People v. Negron,* 297 Ill. App. 3d 519, 538 (1998). "Neither mistakes in strategy nor the fact that another attorney with the benefit of hindsight would have handled the case differently indicates the trial lawyer was incompetent." *Id.* at 538. Additionally, defendant must prove there is a reasonable probability that, but for counsel's errors, the result of the proceeding would have been different. *People v. Johnson,* 218 Ill. 2d 125, 143-44 (2005). If either prong of the *Strickland* test is not met, defendant's claim must fail. *People v. Perry,* 224 Ill. 2d 312, 342 (2007).

¶ 38 Defendant first argues that his trial counsel was ineffective by failing to introduce as impeachment and substantive evidence Dent's statements made in her April 2012 affidavit. Defendant argues that defense counsel's assistance was ineffective because she failed to confront the complaining witness, Dent, with a prior inconsistent statement contained in her affidavit that negated an element of the home invasion offense because Dent's affidavit contained a statement that they "were living in the same household." Second, defendant argues that defense counsel was ineffective because she failed to advise the court that the prior inconsistent statements in the April 2012 affidavit could be considered as substantive evidence of defendant's innocence. As a result of both of the alleged errors, defendant argues that his case was prejudiced.

¶ 39 As stated earlier, Dent's April 2012 affidavit was never made a part of the record during the trial and was filed as a supplemental record on appeal more than a year after defendant's trial and post-trial motions were resolved. As such, it is unclear from the record whether the trial

court judge ever saw the April 2012 affidavit during the trial and sentencing.

¶ 40 In this appeal, defendant argues that the key element of the offense for which he was convicted was his unauthorized entry into the apartment. Defendant argues that the April 2012 affidavit contains a statement that the parties lived together in the apartment and, therefore, his entry into the apartment could not have been unauthorized. Defendant claims that his attorney provided ineffective assistance of counsel by not pointing out the fact that the affidavit contained this statement that they lived together and there is no reasonable strategy for not raising this point.

¶ 41 If the April 2012 affidavit contained an unequivocal statement that defendant resided with Dent on the date of the offense, the defense argument that counsel was ineffective for not raising this point would be far more persuasive because we cannot think of a reason why a lawyer representing a person charged with unauthorized entry would not use this statement as impeachment. However, we note this affidavit is ambiguous in that Dent's statement is capable of multiple interpretations. By way of example, while the affidavit states that Dent and defendant were "living in the same household," it does not clarify what period of time she is referring to. Did she mean they were living together before the incident? At the time of the incident? Or after the incident? We know that Dent and defendant lived together at some point; however, the crucial issue is whether they were living together on December 3-4, 2011. More importantly, though, there is nothing in the record before us to explain defense counsel's reasoning why she chose to use the April 2012 affidavit in the way that she did. Counsel may have decided that clarification on this issue was not warranted especially given that defendant himself testified he moved out of the apartment in November 2011. However, this is mere speculation as there was never any hearing held in the trial court on the issue of ineffective

assistance of counsel since this issue was not raised in the trial court. Given the incomplete record before us, we would be required to engage in speculation and conjecture in determining whether trial counsel was ineffective in her use of the April 2012 affidavit and whether defendant's case was prejudiced as a result. *People v. Bew,* 228 Ill. 2d 122, 134-35 (2008) ("A claim of ineffective assistance cannot be based upon speculation and conjecture.").

¶ 42 In *Massaro v. United States,* 538 U.S. 500 (2003), the United States Supreme Court explained that ineffective assistance of counsel claims are preferably brought on collateral review rather than on direct appeal because frequently the record on direct review is insufficient to support a claim of ineffective assistance of counsel. One of the problems with raising an ineffective assistance claim on direct appeal is the "appellate counsel and the court must proceed on a trial record not developed precisely for the object of litigating or preserving the claim and thus often incomplete or inadequate for this purpose." *Massaro,* 538 U.S. at 504-05. Another problem is the record likely does not reflect counsel's reasoning behind his or her actions or omissions, and thus the reviewing court may lack a "way of knowing whether a seemingly unusual or misguided action by counsel had a sound strategic motive or was taken because the counsel's alternatives were even worse." *Id.* at 505. Yet, "in a collateral proceeding, the defendant has a full opportunity to prove facts establishing ineffectiveness of counsel, the government has a full opportunity to present evidence to the contrary, the district court hears spoken words we can see only in print and sees expressions we will never see, and a factual record bearing precisely on the issue is created. " (Internal quotation marks omitted.) *In re CH.W.*, 399 Ill. App. 3d 825, 829-30 (2010) (in adjudication of wardship proceeding, where the Juvenile Court Act does not provide for collateral review of judgments, the appellate court remanded respondent's ineffective assistance of counsel claim to the trial court for further

proceedings). Where the disposition of a defendant's ineffective assistance of counsel claim requires consideration of matters beyond the record on direct appeal, it is more appropriate that the defendant's contentions be addressed in a proceeding for postconviction relief, and the appellate court may properly decline to adjudicate the defendant's claim in his direct appeal from his criminal conviction. *People v. Morris*, 229 Ill. App. 3d 144, 167 (1992); see *People v. Gilbert*, 224 Ill. App. 3d 624, 632-33 (1992). "Claims of ineffective assistance of counsel are usually reserved for postconviction proceedings where a trial court can conduct an evidentiary hearing, hear defense counsel's reasons for any allegations of inadequate representation, and develop a complete record regarding the claim and where attorney-client privilege no longer applies." *People v. Weeks*, 393 Ill. App. 3d 1004, 1012 (2009), see *People v. Kunze*, 193 Ill. App. 3d 708, 725-26 (1990). Courts allow postconviction petitions where resolution of the issues requires an inquiry into matters outside the common law record. *People v. Thomas*, 38 Ill. 2d 321 (1967); *People v. Burns*, 304 Ill. App. 3d 1, 12 (1999); *People v. Smith*, 268 Ill. App. 3d 574, 578 (1994).

¶ 43 In light of these principles, we decline to address the merits of defendant's argument that his trial counsel was ineffective for her alleged improper use of the April 2012 affidavit at trial. A disposition of defendant's claim requires consideration of matters *dehors* the record before us in this direct appeal, *i.e.* trial counsel's reasoning to use the April 2012 affidavit in the manner that she did at trial. As such, "[d]efendant's claim on this point is more properly addressed in a proceeding for post-conviction relief, where a complete record can be made regarding defendant's allegations in this regard." *Morris*, 229 Ill. App. 3d at 166.

¶ 44 Aggravated Fleeing or Attempting to Elude a Peace Officer

¶ 45 Defendant next argues that his conviction for aggravated fleeing or attempting to elude a peace officer must be reversed because the State failed to prove that Officer Ramos "gave a signal to stop by displaying illuminated oscillating, rotating or flashing red or blue lights." In the alternative, defendant argues that because the State failed to prove that defendant was traveling 21 miles per hour over the speed limit, his aggravated fleeing or attempting to elude a peace officer conviction should be reduced to misdemeanor fleeing or attempting to elude a peace officer. For the reasons below, we affirm defendant's conviction of aggravated fleeing or attempting to elude a peace officer.

¶ 46 "A criminal conviction will not be set aside unless the evidence is so improbable or unsatisfactory that it creates a reasonable doubt of the defendant's guilt." *People v. Collins*, 106 Ill. 2d 237, 261 (1985). In viewing the sufficiency of the evidence, we will not retry the defendant. *People v. Smith*, 185 Ill. 2d 532, 541 (1999). Instead, our inquiry is limited to "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." (Emphasis in original.) *Jackson v. Virginia*, 443 U.S. 307, 318-19 (1979); accord *People v. Cox*, 195 Ill. 2d 378, 387 (2001). This means the reviewing court must allow all reasonable inferences from the record in favor of the prosecution; and no unreasonable inferences. *People v. Cunningham*, 212 Ill. 2d 274, 280 (2004).

¶ 47 Section 11-204.1 of the Illinois Vehicle Code, "Aggravated fleeing or attempting to elude a peace officer," states: "(a) The offense of aggravated fleeing or attempting to elude a peace officer is committed by any driver or operator of a motor vehicle who flees or attempts to elude a peace officer, after being given a visual or audible signal by a peace officer in the manner prescribed in subsection (a) of Section 11-204 of this Code, and such flight or attempt to elude:

(1) is at a rate of speed at least 21 miles per hour over the legal speed limit[.]" 625 ILCS 5/11-204.1(a)(1) (West 2012). Section 11-204 of the Illinois Vehicle Code, "Fleeing or attempting to elude a peace officer," states: "(a) Any driver or operator of a motor vehicle who, having been given a visual or audible signal by a peace officer directing such driver or operator to bring his vehicle to a stop, wilfully fails or refuses to obey such direction, increases his speed, extinguishes his lights, or otherwise flees or attempts to elude the officer, is guilty of a Class A misdemeanor. The signal given by the peace officer may be by hand, voice, siren, red or blue light. Provided, the officer giving such signal shall be in police uniform, and, if driving a vehicle, such vehicle shall display illuminated oscillating, rotating or flashing red or blue lights which when used in conjunction with an audible horn or siren would indicate the vehicle to be an official police vehicle. Such requirement shall not preclude the use of amber or white oscillating, rotating or flashing lights in conjunction with red or blue oscillating, rotating or flashing lights as required in Section 12-215 of Chapter 12." 625 ILCS 5/11-204 (a) (West 2012).

¶ 48 Defendant first argues that his conviction should be reversed because the State failed to prove that he committed aggravated fleeing or attempting to elude a peace officer where "[t]he State presented absolutely no evidence concerning the color or nature of the lights used by Officer Ramos, whose testimony merely established that he had used some kind of lights." We disagree.

¶ 49 The statute at issue states in relevant part: "Provided, the officer giving such signal shall be in police uniform, and, if driving a vehicle, such vehicle shall display illuminated oscillating, rotating or flashing red or blue lights *which when used in conjunction with an audible horn or siren would indicate the vehicle to be an official police vehicle*." (Emphasis added.) 625 ILCS 5/11-204 (a) (West 2012); *People v. Brown*, 362 Ill. App. 3d 374, 379 (2005) ("Pursuant to

section 11-204(a), the purpose of requiring use of a vehicle's 'illuminated oscillating, rotating or flashing red or blue lights' with a siren is so that they 'would indicate the vehicle to be an official police vehicle.' "). Here, Officer Ramos' testimony establishes that, while chasing defendant, he was driving a marked squad car, the mars lights on his squad car were activated, and his sirens were also activated. Further, and more importantly, defendant acknowledged that he "took off" when he saw the police car, and that the police "chased [him]" while they had their emergency equipment, their lights, and their sirens on. Because the evidence established not only that Officer Ramos was driving a marked squad car that had both its lights and sirens activated, but also that defendant was aware that a police car was chasing him and that he observed the police car's emergency equipment, lights and sirens were activated, we find that the State met its burden such that any rational trier of fact could have found that Officer Ramos' vehicle was displaying "illuminated oscillating, rotating or flashing red or blue lights which when used in conjunction with an audible horn or siren would indicate the vehicle to be an official police vehicle" beyond a reasonable doubt.

¶ 50 Even setting aside the above analysis, we would find that based on the evidence presented at trial—Officer Ramos was in a marked squad car during the chase, the mars lights and sirens on his marked squad car were activated, and defendant saw that Officer Ramos' emergency equipment, including his lights and sirens, were activated during the chase—it would be more than reasonable for the trier of fact to infer that Officer Ramos had displayed "oscillating, rotating or flashing red or blue lights." See 625 ILCS 5/11-204 (a) (West 2012); see also *Cunningham*, 212 Ill. 2d at 280 (when reviewing a sufficiency of the evidence claim, the reviewing court must allow all reasonable inferences from the record in favor of the prosecution).

¶ 51 Defendant alternatively argues that we must reduce his aggravated fleeing or attempting to elude a peace officer conviction to fleeing or attempting to elude a peace officer, which is a misdemeanor offense, because the State failed to prove the aggravating element: that defendant was driving "at a rate of speed at least 21 miles per hour over the legal speed limit[.]" 625 ILCS 5/11-204.1(a)(1) (West 2012). We disagree.

¶ 52 Again, when reviewing a sufficiency of the evidence claim, we consider the evidence in a light most favorable to the prosecution, which includes all reasonable inferences that may be derived from that evidence. *Cunningham*, 212 Ill. 2d at 280. Here, Officer Ramos testified that: (1) defendant was driving recklessly and at a high rate of speed; (2) the posted speed limit on the streets where the chase occurred was 30 miles per hour; (3) Officer Ramos was driving 55-60 miles per hour behind defendant; (4) there were many stop signs and traffic lights on the pursuit route, but defendant did not stop at any of them; (5) the closest the officers were able to get to defendant was about a half a block; and (6) the officers lost defendant after chasing him for approximately ten minutes, but were able to find him again two minutes later because he had chased into another vehicle. Additionally, defendant admitted that when he saw the police car, he "took off" and the police "chased [him]" for quite some time until he crashed. Further, Dent testified that when defendant called her at the hospital, he told her the police were chasing him. When reviewing all this evidence in a light most favorable to the State, we find there was sufficient evidence to find defendant was driving "at a rate of speed at least 21 miles per hour over the legal speed limit" (625 ILCS 5/11-204.1(a)(1) (West 2012)) after the police had activated their emergency lights and sirens to pull him over.

¶ 53 Defendant, though, argues that these facts are insufficient to prove he was traveling 21 miles per hour over the posted speed limit of 30 miles per hour based on *People v. Lipscomb*,

2013 IL App (1st) 120530 and *City of Rockford v. Custer*, 404 Ill. App. 3d 197, 198 (2010). However, we find each of those cases distinguishable here.

¶ 54 In *Lipscomb*, the trial court judge reduced the defendant's aggravated fleeing or attempting to elude a peace officer conviction to a simple fleeing or attempting to elude a peace officer conviction where it found that the State failed to prove that the defendant was traveling at least 21 miles per hour over the legal speed limit. There, the only evidence relating to the speed of any vehicle was the officer's testimony that, after he made a u-turn to pull over the defendant, he looked down at his speedometer at some point and saw that it read 55 miles per hour. *Lipscomb*, 2013 IL App (1st) 120530, ¶¶7-8. In ruling that this evidence was insufficient to prove that the defendant was traveling 21 miles per hour over the speed limit, the court noted that: "there is no evidence as to the period of time he drove at this speed, whether this was a constant speed during the pursuit or whether it was simply the speed to which he accelerated in order to catch up to defendant's car. Furthermore, there is no evidence dealing with the relationship of [the officer's] and defendant's vehicles during the pursuit, whether defendant was pulling away from [the officer] or whether [the officer] was gaining on defendant, from which the trier of fact could reasonably infer defendant was traveling at least 21 miles per hour over the speed limit." *Lipscomb*, 2013 IL App (1st) 120530, ¶8.

¶ 55 Here, the record not only contains evidence of how fast Officer Ramos was driving, 55 to 60 miles per hour in a 30 mile per hour zone, but evidence of how close Officer Ramos was able to come to defendant during the chase (a half a block), and Officer Ramos' testimony that defendant was driving recklessly at a high rate of speed, not stopping at any red lights or stop signs, and ultimately was able to get away from the officers. Additionally, defendant admitted that when he saw the police, he "took off", after which the police "chased [him]" for quite some

time until he crashed, and Dent testified that defendant told her the police were chasing him over the telephone while the chase was occurring. Therefore, unlike *Lipscomb* where the only evidence that the defendant was driving 21 miles per hour over the speed limit was that the officer drove 55 miles per hour at some point while driving in a 15 to 20 mile per hour zone, here there is ample evidence upon which a trier of fact could reasonably infer that defendant was driving 21 miles per hour over the legal speed limit. As such, we find *Lipscomb* distinguishable and the evidence presented at trial here sufficient for the trier of fact to infer that defendant drove at least 51 miles per hour during the time when he was admittedly being chased by the police.

¶ 56 *City of Rockford* is also distinguishable. In *City of Rockford*, after finding that the use of a radar device was inadmissible, the City was only left with the stationary officer's testimony that defendant's vehicle was traveling at a high rate of speed and he believed that the vehicle was speeding even before he measured its speed electronically. *City of Rockford*, 404 Ill. App. 3d at 198. Here, the finding that defendant was driving at least 21 miles per hour over the speed limit during a police chase was not based on a stationary officer's bare testimony that he believed the defendant was speeding because he was driving at a high rate of speed; instead, it was based on the officer's testimony who was chasing defendant, which was far more detailed, as discussed at length above. Further, *City of Rockford* dealt with violations of the municipal code for speeding and did not involve any type of police chase. As such, we find that *City of Rockford* carries no weight here.

¶ 57 CONCLUSION

¶ 58 For the reasons above, we do not address defendant's ineffective assistance of counsel claim and affirm defendant's conviction of aggravated fleeing or attempting to elude a peace officer.

¶ 59 Affirmed.