

No. 1-14-2150

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

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellee,)	Cook County.
)	
v.)	No. 14 CR 2418
)	
JOHNATHON BRITTON,)	Honorable
)	James B. Linn,
Defendant-Appellant.)	Judge Presiding.

JUSTICE DELORT delivered the judgment of the court.
Presiding Justice Rochford and Justice Hall concurred in the judgment.

ORDER

¶ 1 **Held:** One of defendant’s two convictions for aggravated fleeing and eluding is vacated because the State did not offer sufficient evidence that defendant exceeded the posted speed limit by more than 21 miles per hour after the pursuing squad car activated its lights and sirens.

¶ 2 Following a bench trial, defendant Johnathan Britton was convicted of two counts of aggravated fleeing and eluding a peace officer. Those convictions were based on separate counts alleging that: (1) he exceeded the posted speed limit by at least 21 miles per hour; and (2) he disobeyed two traffic control devices. On appeal, defendant contends the State did not prove the

first count beyond a reasonable doubt because it did not establish the posted speed limit nor that he exceeded that speed limit by more than 21 miles per hour. Defendant also argues that although his convictions were based on separate counts of exceeding the speed limit and disobeying two traffic lights, one of those convictions must be vacated pursuant to the one-act, one-crime rule because both convictions were based on his single, continuous act of driving.

¶ 3 Defendant was charged with aggravated fleeing and eluding while traveling at least 21 miles per hour over the legal speed limit, pursuant to section 11-204.1(a)(1) of the Illinois Vehicle Code (625 ILCS 5/11-204.1(a)(1) (West 2012)). Defendant also was charged with aggravated fleeing and eluding while disobeying two or more traffic control devices, pursuant to section 11-204.1(a)(4) of the Illinois Vehicle Code (625 ILCS 5/11-204.1(a)(4) (West 2012)). In addition, defendant was charged with aggravated possession of a stolen motor vehicle and possession of a stolen motor vehicle.

¶ 4 At trial, Chicago police officer Steve Schmid testified that at about 3 a.m. on December 25, 2013, he and a partner were in a marked squad car travelling north on South Union Avenue approaching West 51st Street. Officer Schmid observed defendant driving a black Monte Carlo in which two passengers were riding. Defendant failed to stop at a red light and eventually stopped the car in the middle of the intersection of Union Avenue and 51st Street.

¶ 5 After stopping in the intersection, defendant drove north on Union Avenue. Officer Schmid testified that he ran the license plate number of the Monte Carlo through the LEADS system and determined that the vehicle was stolen. The officers followed the Monte Carlo and activated the police car's lights and sirens at 4900 South Halsted.

¶ 6 Officer Schmid further testified:

“At this point, [defendant] would not stop with the lights and sirens on at a high rate of speed, he continued through a solid red light at 4700 South Halsted, continued northbound through a solid red light at 4500 South Halsted, that red light, continuing to 43rd Place and approximately 750 West 43rd Place where the vehicle stalled after he made a right eastbound turn.”

¶ 7 When the vehicle stalled, defendant and the two passengers got out and fled. Defendant was apprehended by police shortly thereafter. Officer Schmid further testified as follows:

“Q. Okay. Now, on Union from 51st to 45th, is there a posted speed limit?

A. Yes.

Q. And what is the posted speed limit?

A. 30 miles per hour.

Q. As you were traveling behind the vehicle driven by the defendant, did you have an opportunity to pace the vehicle?

A. I did.

Q. Was the speedometer on the car calibrated [and] found to be working properly?

A. Yes, it was.

Q. And did you determine the speed that defendant was traveling as he was traveling northbound on Union?

A. I did.

Q. What was that?

A. It was at least 60, but he was exceeding that, that's how fast I was going.

Q. 60 miles per hour?

A. 60 miles per hour."

¶ 8 On cross-examination, Officer Schmid testified when he first observed the Monte Carlo at 51st and Union, that car was traveling "at a normal rate of speed." When asked to describe the entire pursuit, the officer stated that they "continued from 51st and Union to 49th and Union and then we proceeded westbound on 49th Street for the remainder to Halsted, which is about a block." After activating the emergency lights at 4900 South Halsted, Officer Schmid said the squad car began pursuing defendant's car. Officer Schmid stated he did not use a radar gun to determine the speed at which defendant was driving, and he stated the dashboard camera of the squad car was not working.

¶ 9 Chicago police officer Shawn Najm testified that on the night in question, she and her partner responded to Officer Schmid's call for assistance in a car chase. Officer Najm detained defendant in the 4400 block of South Union. Officer Schmid identified defendant that night as the driver of the Monte Carlo.

¶ 10 The defense presented no witnesses. The trial court found that defendant was driving the Monte Carlo and was eluding the officers and found defendant guilty of both counts of aggravated fleeing and eluding. The trial court found defendant not guilty of the two counts related to possession of a stolen vehicle. Defendant was sentenced to a three-year term of imprisonment for each aggravated fleeing and eluding conviction, with those terms to be served concurrently.

¶ 11 We first consider defendant's challenge to the sufficiency of the evidence supporting his conviction of aggravated fleeing and eluding based on the act of driving at least 21 miles per hour over the legal speed limit. Defendant contends that the State did not establish the speed at which he was driving on Halsted after the squad car's emergency lights had been activated. Defendant points to the State's questions to Officer Schmid as to the posted speed limit on Union and the speed at which defendant traveled "northbound on Union."

¶ 12 When considering a challenge to the sufficiency of the evidence, a reviewing court must determine whether, viewing the evidence in the light most favorable to the State, a rational trier of fact could have found the defendant committed the required elements of the crime beyond a reasonable doubt. *People v. Bradford*, 2016 IL 118674, ¶ 12. On appeal from a criminal conviction, this court will not reverse the judgment of the trial court unless the evidence is so unreasonable, improbable or unsatisfactory that it justifies a reasonable doubt of the defendant's guilt. *Id.*

¶ 13 The offense of fleeing or attempting to elude a peace officer occurs when a driver fails to or refuses to stop for the officer after "having been given a visual or audible signal." 625 ILCS 5/11-204 (West 2012). The Vehicle Code's definition of "signal" includes the activation of the squad car's emergency lights. 625 ILCS 5/11-204(a) (West 2012). Here, the State charged defendant with two counts of aggravated fleeing and eluding under two different statutes based on two aggravating factors, namely: (1) his act of driving at least 21 miles per hour over the posted speed limit (625 ILCS 5/11-204.1(a)(1) (West 2012)); and (2) his act of disobeying two or more traffic control devices (625 ILCS 5/11-204.1(a)(4) (West 2012)).

¶ 14 The testimony at trial did not establish that defendant exceeded the speed limit by more than 21 miles per hour after the police car's emergency lights were activated. Officer Schmid

testified he first observed defendant's car at Union Avenue and 51st Street and that defendant drove north on Union. Officer Schmid was asked if there was a posted speed limit on Union from 51st Street to 45th Street, and he responded that the posted speed limit was 30 miles per hour. When asked the speed at which defendant was driving north on Union, Officer Schmid testified that defendant's speed exceeded 60 miles per hour.

¶ 15 During the officers' pursuit, they followed defendant from Union west on 49th Street to Halsted, a street that runs parallel to Union. Officer Schmid testified the police car's lights and sirens were activated at 4900 South Halsted and that defendant drove through red lights at 4700 South Halsted and 4500 South Halsted. Neither Officer Schmid nor anyone else testified as to the posted speed limit on Halsted.

¶ 16 The State asserts on appeal that the prosecutor mistakenly questioned the officer about Union instead of Halsted but argues that the prosecutor "meant to inquire as to the posted speed limit on Halsted, where defendant was being chased[.]" The State contends that when the testimony is read as a whole, Officer Schmid's account refers to the pursuit of defendant on Halsted. We decline to read such a key fact into the record in this case. The State's position that such evidence can be presumed from Officer Schmid's testimony necessarily concedes that such testimony was not elicited. Because the State did not present proof of the posted speed limit after the police activated its lights and sirens, the State did not establish an element of the charged offense of aggravated fleeing and eluding based on driving at least 21 miles per hour faster than the posted speed limit.

¶ 17 Based upon our finding that the State did not prove the aggravating factor of the charged offense, defendant's conviction on that count should be reduced to simple fleeing and eluding, as the evidence presented at trial was sufficient to show that defendant failed to stop after the

activation of the police car's lights and sirens. See *People v. Lipscomb*, 2013 IL App (1st) 120530, ¶ 12 (fleeing or attempting to elude a police officer is a lesser-included offense of aggravated fleeing or attempting to elude). Accordingly, under Illinois Supreme Court Rule 615(b)(3) (eff. Jan. 1, 1967), we vacate defendant's conviction imposed under section 11-204.1(a)(1) of the Vehicle Code (625 ILCS 5/11-204.1(a)(1) (West 2012)) and enter judgment on the lesser-included offense of fleeing or attempting to elude a police officer (625 ILCS 5/11-204(a) (West 2012)). Given that disposition, we need not address defendant's claim that his two convictions for aggravated fleeing and eluding violate the one-act, one-crime doctrine.

¶ 18 Defendant now stands convicted of one count of aggravated fleeing and eluding based on his disregard of two or more traffic control devices, along with one count of simple fleeing and eluding. Defendant contends on appeal that in this instance, his reduced conviction for simple fleeing and eluding should be vacated pursuant to the one-act, one-crime rule because it is a lesser-included offense of the remaining aggravated fleeing and eluding conviction.

¶ 19 Under the one-act, one-crime rule, a criminal defendant cannot receive multiple convictions resulting from a single act. *People v. King*, 66 Ill. 2d 551, 566 (1977). Where multiple offenses occur and one of them is a lesser-included offense, the lesser-included offense is merged into the greater conviction. *People v. Garcia*, 179 Ill. 2d 55, 71 (1997). Accordingly, the conviction for the lesser-included offense of fleeing and eluding is vacated, as it merges into defendant's remaining conviction for aggravated fleeing and eluding.

¶ 20 Affirmed in part and vacated in part.