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2016 IL App (3d) 150357-U

Order filed June 21, 2016

IN THE

APPELLATE COURT OF ILLINOIS

THIRD DISTRICT

2016

THE PEOPLE OF THE STATE OF) Appeal from the Circuit Court
ILLINOIS,) of the 21st Judicial Circuit,
) Kankakee County, Illinois,
 Plaintiff-Appellee,)
) Appeal No. 3-15-0357
 v.) Circuit No. 13-CF-566
)
 QUION L. WILLIAMS,) Honorable
) Susan S. Tungate,
 Defendant-Appellant.) Judge, Presiding.

JUSTICE McDADE delivered the judgment of the court.
Presiding Justice O'Brien and Justice Schmidt concurred in the judgment.

ORDER

- ¶ 1 *Held:* Evidence at trial was insufficient to prove defendant guilty beyond a reasonable doubt of aggravated fleeing and eluding.
- ¶ 2 Defendant, Quion L. Williams, appeals his conviction for aggravated fleeing or attempting to elude a peace officer. He argues that the evidence introduced at trial was insufficient to establish his guilt beyond a reasonable doubt. We vacate defendant's conviction and modify the judgment.

¶ 3

FACTS

¶ 4 The State charged defendant by indictment with aggravated fleeing or attempting to elude a peace officer, a Class 4 felony (625 ILCS 5/11-204.1(a)(4) (West 2012)). It also charged him with the Class A misdemeanor of driving while driver's license is suspended (625 ILCS 5/6-303(a) (2012)).

¶ 5 The matter proceeded to a bench trial on January 29, 2015. Logan Andersen of the Kankakee police department testified that he was on patrol at approximately 1 a.m. on December 12, 2013. He was travelling northbound on Wildwood Avenue when he observed a green minivan travelling southbound on the same street. Andersen had previous contacts with the minivan, and knew one of the drivers of the minivan to have a suspended driver's license. While the minivan travelled toward him, Andersen used his spotlight to illuminate the driver's compartment of the minivan. He was then able to observe that defendant was driving the minivan.

¶ 6 Andersen executed a U-turn in anticipation of executing a traffic stop. He testified that the minivan turned right, or westbound, onto Oak Street. Andersen stated: "Once I got to the intersection of Oak and Wildwood *** I activated my emergency lights." Andersen testified that the minivan continued westbound on Oak Street through three intersections, each of which had a stop sign. The minivan did not stop at any of those stop signs. Andersen was "[a]pproximately one to two stop signs or intersections behind the [minivan]."

¶ 7 After the third stop sign, the minivan turned right into an alley. The minivan subsequently pulled into a parking lot, at which point defendant alighted from the vehicle and fled on foot. A passenger also exited the vehicle, and Andersen placed the passenger under arrest.

¶ 8 The events to which Andersen testified were recorded by a camera mounted to the dashboard of Andersen's vehicle. The video recording was played in court. After the video was played, Andersen explained that the three stops which defendant drove through were located at the intersections of Rosewood Avenue and Oak Street, Greenwood Avenue and Oak Street, and Chicago Avenue and Oak Street, in that order.

¶ 9 On cross-examination, defense counsel asked Andersen: "[A]t no time were you closer, from what I could tell, than two blocks to the [minivan]. Correct?" Andersen replied: "It was approximately a block-and-a-half to two blocks." Andersen testified that he turned his emergency lights on "in the area of Oak and Wildwood." A few questions later, Andersen testified: "I turned onto Oak, and then I illuminated my lights." When Andersen turned on his lights, defendant was a "block, block-and-a-half" away from him. Defense counsel then replayed the videotape, pausing it throughout to ask further questions of Andersen. Upon watching the video, Andersen testified that he turned on his emergency lights "[r]ight before Rosewood in between Rosewood and Wildwood."

¶ 10 On redirect examination, Andersen testified that when he was behind the minivan, he never got closer than 1½ blocks away. Andersen reiterated on recross-examination that he was never closer than 1½ blocks from the minivan when his emergency lights were on.

¶ 11 The video recording from Andersen's vehicle begins as Andersen is in the process of executing a U-turn on Wildwood Avenue. The video shows that Andersen activated his emergency lights just prior to entering the intersection at Oak Street and Rosewood Avenue. The lights produce a distinct reflection off of the surroundings, including traffic signs, which enables a viewer to determine the exact moment at which the lights are activated. The minivan is visible in the video at the moment Andersen activates his lights, as is the stop sign at Oak Street and

Greenwood Avenue. The minivan, at that point, appears to be either directly adjacent to or just beyond the stop sign. Issues of resolution and depth perception prevent a viewer from making a more precise determination as to the minivan's location. It is clear, however, that the minivan is not any appreciable distance in front of the stop sign.

¶ 12 The State rested following Andersen's testimony. Defense counsel moved for a directed verdict, but that motion was denied. Defendant called the passenger from the minivan in his case-in-chief, and also testified in his own defense. Neither of those witnesses provided any evidence bearing on our present analysis.

¶ 13 The trial court found defendant guilty of both the charged offenses. The court reasoned:

"He went through three stop signs. *** I saw the [minivan's] door was open. *** There were a couple of tracks, I could just barely see in that video, of where someone had gotten out of the car. I also saw the lights on in a sufficient amount of time that any driver who was paying attention *** would have seen those lights."

The court concluded that "[h]e took off, no doubt in my mind. So on both counts he is guilty."

¶ 14 Following a separate sentencing hearing, the court, on March 24, 2015, sentenced defendant to a term of six years' imprisonment for aggravated fleeing or attempting to elude a peace officer. The judgment provided that defendant would receive credit for 126 days served in presentence custody. The court entered no sentence on the misdemeanor charge.

¶ 15 Defendant subsequently filed a motion requesting that the trial court reconsider the evidence presented at trial. In the motion, defendant argued that "the evidence did not show that the Defendant was given a visual or audible signal by a peace officer directing him to stop prior to disregarding two traffic control devices," and requested the court enter a finding of not guilty.

Defense counsel argued that point at the ensuing hearing on the motion. At the hearing, the court asked: "Are you tryin' to tell me the statute says, in connection with the signals, that the stop sign isn't *** a signal[?]" Defense counsel responded by insisting that the disobedience to traffic control devices must occur after the visual or audible signal is given. The court replied: "You don't think that a stop sign's a visual signal?" The court denied defendant's motion.

¶ 16

ANALYSIS

¶ 17

On appeal, defendant argues that the State failed to prove him guilty beyond a reasonable doubt of aggravated fleeing or attempting to elude a peace officer. Specifically, defendant contends that the evidence was insufficient to prove beyond a reasonable doubt that he disobeyed two or more traffic control devices after being given a signal by a peace officer. We agree that the evidence was insufficient in this regard, and vacate defendant's conviction.

¶ 18

When a challenge is made to the sufficiency of the evidence at trial, we review to determine whether any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. *People v. Baskerville*, 2012 IL 111056, ¶ 31; *People v. Collins*, 106 Ill. 2d 237, 261 (1985). In making this determination, we review the evidence in the light most favorable to the prosecution. *Baskerville*, 2012 IL 111056, ¶ 31. All reasonable inferences from the record in favor of the prosecution will be allowed. *People v. Bush*, 214 Ill. 2d 318, 327 (2005). The relevant question is whether any rational trier of fact could have found the elements of the crime proven beyond a reasonable doubt. See *People v. Pintos*, 133 Ill. 2d 286, 292 (1989). "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." *Collins*, 106 Ill. 2d at 261.

¶ 19

Section 11-204.1 of the Illinois Vehicle Code (Code) provides:

"(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:

* * *

(4) involves disobedience of 2 or more official traffic control devices[.]" 625 ILCS 5/11-204.1(a)(4) (West 2012).

Section 11-204 of the Code provides:

"(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." 625 ILCS 5/11-204(a) (West 2012).

¶ 20

Defendant's argument requires us to perform a statutory construction analysis.

Specifically, we must determine whether section 11-204.1's temporal element—that the attempt to elude occur after a peace officer's signal to stop—also applies to factors (a)(1) through (a)(5), which serve to aggravate the offense. We conclude that the temporal element does apply to each

element. In other words, for the State to obtain a conviction under subsection (a)(4), it must prove that a defendant disobeyed two or more traffic control devices *after* being signaled to stop.

¶ 21 Our conclusion is supported by the plain language of the statute. The offense of fleeing or eluding a peace officer is defined in section 11-204(a) as occurring only after a peace officer has given a signal to stop. 625 ILCS 5/11-204(a) (West 2012). Section 11-204.1 subsequently defines aggravated fleeing or eluding as fleeing and eluding plus any one of five factors. 625 ILCS 5/11-204.1 (West 2012). Though section 11-204.1 also includes language regarding a peace officer's signal, this language is mere surplusage, as that same language is already incorporated into the definition of fleeing and eluding. 625 ILCS 5/11-204(a) (West 2012). Under section 11-204.1(a)(4), a defendant commits aggravated fleeing or eluding when his flight or attempt to elude "involves disobedience of 2 or more official traffic control devices." 625 ILCS 5/11-204.1(a)(4) (West 2012). Because the flight or attempt to elude does not commence until *after* a peace officer has given a signal to stop, it follows that the disobedience of traffic control devices must also occur after that signal.¹

¶ 22 In the present case, defendant concedes that he disobeyed the three stop signs described by Andersen, and that those stop signs constitute traffic control devices under the Code. He also concedes that the activation of Andersen's emergency lights was a sufficient signal to stop under the Code. The only issue then, is whether the activation of those emergency lights occurred prior to defendant's disobedience of at least two of those stop signs. More specifically, the question is whether the State proved beyond a reasonable doubt that Andersen's emergency lights were activated before defendant disobeyed the second stop sign, at Oak Street and Greenwood Avenue.

¹The State does not dispute this construction.

¶23 Though Andersen initially testified that he activated his emergency lights "[o]nce [he] got to the intersection of Oak and Wildwood," he eventually clarified that he did not activate the lights until "[r]ight before Rosewood in between Rosewood and Wildwood." Indeed, the latter statement is supported by the video recording, which shows the lights activating just before Andersen reaches the stop sign at Oak Street and Rosewood Avenue.

¶24 The minivan and the stop sign at Oak Street and Greenwood Avenue are both visible in the video at the moment Andersen activates his emergency lights. Though it appears likely that the minivan had passed the stop sign at that point, this cannot be discerned with any certainty. In any event, the nature and quality of the video is such that no reasonable trier of fact could possibly conclude beyond a reasonable doubt that the minivan had not yet reached the stop sign at the moment the emergency lights were activated. See *Pintos*, 133 Ill. 2d at 292.²

¶25 However, we need not rely solely on the video evidence. Though Andersen initially testified that he was as close as one block away from the minivan, he subsequently and repeatedly testified—in response to questions from both defense counsel and the State—that he never was closer than 1½ blocks away from the minivan. This affirmatively demonstrates that

²We note that defendant also argues that the trial court misapplied that. Specifically, defendant contends that the trial court's suggestion that the stop signs themselves constituted the necessary visual signal demonstrates the court's misunderstanding. Certain case law suggests that the standard to be applied to appellate challenges to the sufficiency of the evidence is altered where the trial court proceeded under a misinterpretation of the law. See, e.g., *People v. Hernandez*, 2012 IL App (1st) 092841, ¶¶13-47. However, because we find that defendant should prevail even under the more deferential *Collins* standard, we need not address this argument.

the minivan must have been beyond the stop sign at Oak Street and Greenwood Avenue at the moment Andersen activated his emergency lights. Those lights were activated only slightly before reaching the Rosewood Avenue intersection; a distance 1½ blocks beyond that point would necessarily be beyond the next intersection.

¶ 26 The State failed to prove beyond a reasonable doubt that defendant disobeyed two or more traffic control devices. However, because the only element that the State failed to prove beyond a reasonable doubt was one of the aggravating factors under section 11-204.1, the evidence introduced at trial was sufficient to prove him guilty of the lesser included, nonaggravated offense. See 625 ILCS 5/11-204 (West 2012). The maximum sentence for the Class A version of the offense, however, is 365 days' imprisonment. 730 ILCS 5/5-4.5-55(a) (West 2012).

¶ 27 For the foregoing reasons, we vacate defendant's conviction of felony aggravated fleeing or attempting to elude a peace officer (625 ILCS 5/11-204.1(a)(4) (West 2012)). Pursuant to our authority under Illinois Supreme Court Rule 615(b)(4), judgment of conviction is entered on the charge of misdemeanor fleeing or attempting to elude a police officer (625 ILCS 5/11-204(a) (West 2012)), and we reduce defendant's sentence to 365 days' imprisonment, time served.

People v. Lipscomb, 2013 IL App (1st) 120530, ¶¶ 12-13.

CONCLUSION

¶ 29 The judgment of the circuit court of Kankakee County is vacated and a modified judgment is entered.

¶ 30 Vacated; judgment modified.