

2018 IL App (2d) 171028-U
No. 2-17-1028
Order filed October 29, 2018

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IN THE
APPELLATE COURT OF ILLINOIS
SECOND DISTRICT

THE PEOPLE OF THE STATE)	Appeal from the Circuit Court
OF ILLINOIS,)	of Kane County.
)	
Plaintiff-Appellee,)	
)	
v.)	No. 16-MR-773
)	
2006 YAMAHA MOTORCYCLE, VIN)	
#JYACJ10C16A009833,)	
)	
Defendant-Appellant)	Honorable
)	Christine Downs,
(Jack A. Mokrousov, Claimant).)	Judge, Presiding.

JUSTICE McLAREN delivered the judgment of the court.
Justices Hutchinson and Zenoff concurred in the judgment.

ORDER

¶ 1 *Held:* The trial court's forfeiture order was not against the manifest weight of the evidence, as the officer's testimony, based on his speedometer, that claimant was exceeding 73 miles per hour in a 50-mile-per-hour zone was sufficient to establish that claimant committed aggravated fleeing and eluding.

¶ 2 Claimant, Jack A. Mokrousov, appeals the trial court's order forfeiting to the State a 2006 Yamaha motorcycle. The complaint alleged that the vehicle should be forfeited because its driver attempted to flee the police while driving more than 21 miles per hour above the speed

limit. Claimant asserts that the trial court's finding to that effect was against the manifest weight of the evidence. We affirm.

¶ 3 At trial, Kane County detective Ryan Monaghan testified that he was patrolling on Empire Road in St. Charles on June 17, 2016. As he was driving west, he saw two motorcycles, one red and the other blue, going east at high speed. Based on his training and experience, Monaghan concluded that they were going above the posted speed limit of 50 miles per hour. Although it was almost midnight and the area was very dark, the motorcycles had no lights.

¶ 4 Monaghan made a U-turn, activated his lights and siren, and began to follow the motorcycles. As he began his pursuit, the motorcycles continued to accelerate, leading Monaghan to conclude that their riders were attempting to flee from him. He could tell by the bikes' increasing sound that their riders were using the throttles. His speedometer showed that he was accelerating. At one point he looked down at his speedometer and it registered 73 miles per hour, yet the motorcycles continued to pull away from him.

¶ 5 After a while, the blue motorcycle made a U-turn. Based on the speed and sound of the bike, the rider appeared to be accelerating. Monaghan continued to pursue the red motorcycle until it went off the road into a yard and the rider fell off.

¶ 6 Monaghan questioned the rider, who told Monaghan his address. Monaghan dispatched other officers to that address to attempt to locate the rider of the other bike. Monaghan later learned that other deputies had apprehended the blue bike's rider, claimant. Over claimant's hearsay objection, Monaghan testified that claimant told the other deputies, "Your partner practically caught me red handed." Claimant was charged with driving without a headlight and aggravated fleeing and eluding.

¶ 7 Claimant testified that he was riding his motorcycle on June 17, 2016, at about 11 p.m. He lived in the area, was familiar with it, and knew of the 50-mile-per-hour speed limit. He was riding a dirt bike, which had no license plates or headlight. After he made the U-turn, he realized that a police car with its lights on had been following him. He made the U-turn because he had passed his destination. He testified that he slowed down before making the U-turn. He could not estimate his actual speed. He pleaded guilty to a reduced charge of fleeing and eluding.

¶ 8 Claimant called Michael Cowsert. He was a detective with the Arlington Heights Police Department and owned his own business specializing in accident reconstruction. He reviewed Monaghan's report and the dashcam video. His training and experience had taught him how to properly pace another vehicle using his speedometer. He testified that it is impossible to pace accurately another vehicle while accelerating. Cowsert said that the video showed the squad car accelerating but did not show the motorcycle, so it was impossible to get a consistent speed.

¶ 9 The court ordered the motorcycle forfeited, finding that claimant was fleeing the officer while traveling more than 21 miles per hour above the speed limit. The court noted that Monaghan was not attempting to provide an exact speed for claimant's motorcycle and that his testimony that he was going 73 miles per hour while the motorcycles continued to pull away was essentially unchallenged. Claimant timely appeals.

¶ 10 Claimant contends that the trial court erred by ordering forfeiture, because the State did not prove that claimant was traveling more than 21 miles per hour above the speed limit. The State must prove its right to the contraband property by the civil standard of a preponderance of the evidence. *People v. Braden*, 243 Ill. App. 3d 671, 676 (1993). Following a bench trial, we will not disturb a judgment unless it is against the manifest weight of the evidence. *Chicago's Pizza, Inc. v. Chicago's Pizza Franchise Ltd. USA*, 384 Ill. App. 3d 849, 859 (2008). A

judgment is against the manifest weight of the evidence only when the opposite conclusion is readily apparent or when the court's findings are unreasonable, arbitrary, or not based on the evidence. *Id.*

¶ 11 A vehicle is subject to forfeiture if it is used with the owner's knowledge and consent in the commission of certain enumerated offenses. 720 ILCS 5/36-1(a)(5) (West 2016). Here, the complaint for forfeiture alleged that claimant was guilty of aggravated fleeing and eluding by driving at least 21 miles per hour above the speed limit (625 ILCS 5/11-204.1(a)(1) (West 2016)). See 720 ILCS 5/36-1(a)(5) (West 2016).

¶ 12 Monaghan testified that the speed limit on Empire Road was 50 miles per hour. He said that, after he began pursuing the motorcycles, his speedometer showed a speed of 73 miles per hour, yet the motorcycles continued to pull away from him. From this, the trial court could reasonably find that the State proved that the motorcycles—including the one that claimant was riding—were going faster than 73 miles per hour, which was more than 21 miles per hour above the speed limit.

¶ 13 Claimant, citing *Village of Schaumburg v. Pedersen*, 60 Ill. App. 3d 630 (1978), argues that there was no evidence that Monaghan's speedometer was checked for accuracy. *Pedersen* acknowledged a split of authority on whether the accuracy of a speedometer must be established in each case. *Id.* at 632. The court did not resolve the issue, noting that there was some evidence of the accuracy of the officer's speedometer and that the defendant did not object to the lack of further proof. *Id.* at 632-33.

¶ 14 Here, claimant never objected to the accuracy of Monaghan's speedometer. In general, to preserve an issue for appeal, a party must raise the issue in the trial court. *People v. Brown*, 319 Ill. App. 3d 89, 96 (2001); see also *People v. Trefonas*, 9 Ill. 2d 92, 98 (1956) ("A party cannot

sit by and permit evidence to be introduced without objection and upon appeal urge an objection which might have been obviated if made at the trial.”). Objections to foundational requirements are particularly critical because such errors can usually be easily cured. *People v. Rigsby*, 383 Ill. App. 3d 818, 823 (2008). Claimant’s failure to object forfeited the issue, and the trial court properly considered the evidence.

¶ 15 Claimant insists that he raised the issue when Cowsert testified that in pacing a vehicle he uses a calibrated speedometer. However, that testimony did not specifically call into question the accuracy of Monaghan’s speedometer. At most, it created an issue of fact for the trial court to resolve.

¶ 16 Claimant next contends that *People v. Lipscomb*, 2013 IL App (1st) 120530, held that an officer’s testimony of his speedometer’s reading “at some point” during a pursuit was insufficient to prove the defendant’s guilt of aggravated fleeing and eluding. However, *Lipscomb* rejected that evidence because there was no evidence that the defendant was pulling away from the officer. *Id.* ¶ 9. The court specifically distinguished *People v. Brown*, 362 Ill. App. 3d 374 (2005), which the State cites, on this basis.

¶ 17 Claimant points out that the evidence in *Brown* showed that the defendant was driving far in excess of the posted speed limit on a residential side street, whereas Monaghan testified that his speedometer showed that he was going only two miles per hour above the 21-mile-per-hour threshold. Claimant argues that, if Monaghan’s speedometer was off by as little as three miles per hour, the State would not have proved its case. However, as noted, claimant points to no such evidence.

¶ 18 Finally, claimant contends that Cowsert contradicted Monaghan’s testimony. Cowsert did not directly call into question Monaghan’s testimony that Monaghan was traveling 73 miles

per hour while the motorcycles were continuing to pull away from him. Cowsert testified that, based on his training and experience, Monaghan did not follow the proper procedures for “pacing” another vehicle. However, as the trial court noted, Monaghan was not “pacing” the motorcycles to establish their exact speed; he had to establish only that claimant rode, even momentarily, more than 21 miles per hour in excess of the posted speed limit. For that purpose, Monaghan’s testimony was sufficient. See *Lipscomb*, 2013 IL App (1st) 120530, ¶ 9.

¶ 19 It also does not matter that Monaghan was continuing to accelerate when he checked his speedometer, as he was not attempting to establish an exact speed. He testified clearly that he was traveling 73 miles per hour while accelerating and that the motorcycles were going faster.

¶ 20 The judgment of the circuit court of Kane County is affirmed.

¶ 21 Affirmed.