

NOTICE  
Decision filed 07/23/18. The text of this decision may be changed or corrected prior to the filing of a Petition for Rehearing or the disposition of the same.

2018 IL App (5th) 170487-U

NO. 5-17-0487

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

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).

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<i>In re</i> D.M.B., a Minor	)	Appeal from the
	)	Circuit Court of
(The People of the State of Illinois,	)	Marion County.
	)	
Petitioner-Appellee,	)	
	)	
v.	)	No. 17-JD-70
	)	
D.M.B.,	)	Honorable
	)	Ericka A. Sanders,
Respondent-Appellant).	)	Judge, presiding.

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JUSTICE GOLDENHERSH delivered the judgment of the court.  
Justices Welch and Moore concurred in the judgment.

**ORDER**

¶ 1 *Held:* Defendant's conviction of aggravated fleeing or attempting to elude a police officer and subsequent sentence of probation is affirmed where the State's evidence was sufficient to prove beyond a reasonable doubt that defendant was traveling at least 21 miles per hour over the legal speed limit.

¶ 2 **BACKGROUND**

¶ 3 The Marion County State's Attorney's Office (State) filed a petition for adjudication of wardship on May 23, 2017, alleging defendant, D.M.B., a male minor born on May 16, 2000, committed the offense of aggravated fleeing or attempting to elude a police officer, a Class 4 felony. 625 ILCS 5/11-204.1(a)(1) (West 2016).

Specifically, the petition alleged that on or about May 8, 2017, defendant drove a motor vehicle on a public roadway in Marion County and fled or attempted to elude police officer Craig Vieira after being given a visual or audible signal to stop his vehicle. The petition asserted defendant's flight or attempt to elude was at a rate of speed at least 21 miles per hour over the legal speed limit, in violation of section 11-204.1(a)(1) of the Illinois Vehicle Code (Code). 625 ILCS 5/11-204.1(a)(1) (West 2016). The State argued it was in the best interests of defendant and the public that defendant be adjudged a ward of the court.

¶ 4 Thereafter, defendant filed a motion for the appointment of a psychiatrist/psychologist to determine defendant's fitness to stand trial and whether defendant was sane at the time of the alleged offense. The court determined there was a *bona fide* doubt regarding defendant's fitness to stand trial and ordered defendant to be evaluated by a clinical psychologist without cost to defendant. Defendant was determined competent to stand trial, and the matter proceeded to an adjudicatory hearing on November 8, 2017.

¶ 5 At the hearing, the State presented testimony from Officer Ryan Meador and Officer Vieira. Meador testified he was working as a patrol officer for the city of Salem during the evening shift on May 8, 2017, when he observed a red van traveling at a high rate of speed. Meador initially observed the van traveling 47 miles per hour in a 30-mile-per-hour zone. Thereafter, Meador positioned his squad car behind the suspect vehicle in order to perform a traffic stop, activated his emergency lights to signal the vehicle to stop, and followed the vehicle out of the city of Salem. At some point outside

the jurisdiction of the city of Salem, Meador paced the suspect vehicle at 78 miles per hour in a 55-mile-per-hour zone. Meador terminated his pursuit of the vehicle at Bannister Road, where he witnessed two Marion County deputies pass him in pursuit of the vehicle.

¶ 6 Vieira testified he was on patrol as a deputy for the Marion County Sheriff's Department on the evening of May 8, 2017, when he responded to a request for assistance from Salem police concerning a red van. Vieira testified he caught up with the van and illuminated his emergency lights. He testified the suspect vehicle "continued to speed up from that point." Vieira initially paced the vehicle at 73 miles per hour in a 55-mile-per-hour zone but testified the vehicle later reached 80 miles per hour in a 55-mile-per-hour zone at the intersection of Apple Ridge Road and Metcalf Road. Vieira followed the vehicle until it pulled into a driveway, where defendant exited the van. Defendant was handcuffed and taken to jail.

¶ 7 The defense presented no evidence or testimony. Following the parties' closing arguments, the court found the State met its burden in proving defendant guilty of aggravated fleeing or attempting to elude a police officer beyond a reasonable doubt. 625 ILCS 5/11-204.1(a)(1) (West 2016). In support of its decision, the court noted Vieira testified with ease without having to refresh his recollection and without the benefit of a report in front of him. The court noted Vieira was able to relate the path that defendant's vehicle took which was "a very path at high rates of speed, many different turns." The court acknowledged Vieira's testimony regarding the speed of defendant's vehicle reaching 80 miles per hour in a 55-mile-per-hour zone and determined Vieira's testimony

was uncontroverted and credible. The court further noted it was presented no evidence which caused the court to doubt the veracity of Vieira's testimony.

¶ 8 Defendant filed a motion for judgment of acquittal notwithstanding the verdict on December 5, 2017, which asserted Vieira testified his squad car reached speeds of up to 80 miles per hour in a 55-mile-per-hour zone during his pursuit of defendant. However, the motion asserted Vieira (1) never testified as to the period of time he drove that speed or any other particular speed; (2) never testified whether he maintained a constant speed during the pursuit; (3) never testified whether that speed or any other speed was the speed to which he accelerated in order to catch up to defendant's car; (4) never testified as to any spatial relationship of his car and defendant's vehicle during the pursuit, specifically whether defendant was pulling away from Vieira or whether Vieira was gaining on defendant; and (5) never testified as to when he specifically activated his siren. Defendant argued that because the State presented no competent evidence that would reasonably indicate the specific speed of defendant's vehicle, the trier of fact could not have reasonably inferred defendant was traveling at least 21 miles per hour over the speed limit. The trial court denied the motion, and defendant was sentenced to two years of probation.

¶ 9 This appeal followed.

¶ 10 ANALYSIS

¶ 11 Before we turn to the merits of this appeal, we first address the timeliness of our decision. This is an expedited appeal under Illinois Supreme Court Rule 660A (eff. May

1, 2013). Under Rule 660A, we are required to issue our decision within 150 days after the filing of the notice of appeal, except for good cause shown. Ill. S. Ct. R. 660A(f) (eff. May 1, 2013). Here, defendant's notice of appeal was filed on December 19, 2017, making the deadline to issue our decision May 18, 2018. However, this case was not placed on the oral argument schedule until July 19, 2018. Therefore, we find good cause to issue our decision after the 150-day deadline.

¶ 12 Turning to the merits, defendant alleges the trial court's finding that he was traveling more than 21 miles per hour over the legal speed limit was clearly erroneous. Specifically, defendant contends the State failed to provide sufficient evidence to prove beyond a reasonable doubt that defendant was traveling at least 21 miles per hour over the legal speed limit. Defendant asks this court to vacate the trial court's finding of guilt and subsequent sentence of probation.

¶ 13 The due process clause protects the accused against conviction unless the prosecution proves beyond a reasonable doubt every fact necessary to encompass the crime charged. *People v. Steele*, 2014 IL App (1st) 121452, ¶ 52. When a defendant challenges the sufficiency of the evidence to support a conviction, the relevant inquiry on review is whether, after considering the evidence in the light most favorable to the State, any rational trier of fact could have found the essential elements of the crime proven beyond a reasonable doubt. *Steele*, 2014 IL App (1st) 121452, ¶ 52. The trier of fact determines the credibility of the witnesses, the weight to be given their testimony, and the reasonable inferences to be drawn from the evidence. *Steele*, 2014 IL App (1st) 121452, ¶ 52. As a reviewing court, we will not substitute our judgment for that of the trier of fact.

*Steele*, 2014 IL App (1st) 121452, ¶ 52. However, we must reverse a conviction if evidence is insufficient to establish the defendant's guilt beyond a reasonable doubt. *Steele*, 2014 IL App (1st) 121452, ¶ 52.

¶ 14 Under section 11-204.1 of the Code, the offense of aggravated fleeing or attempting to elude a police officer is committed "by any driver or operator of a motor vehicle who flees or attempts to elude a [police] officer, after being given a visual or audible signal by a [police] officer \*\*\* and such flight or attempt to elude \*\*\* 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 2016). In this case, the only element in dispute is whether the State presented sufficient evidence to prove beyond a reasonable doubt that defendant was traveling at least 21 miles per hour over the legal speed limit.

¶ 15 At the adjudicatory hearing held on November 8, 2017, Vieira testified as follows regarding his pursuit of defendant:

"Q. [STATE] And when did you pace the vehicle?

A. [VIEIRA] Well, I was pacing the vehicle to initially make the traffic stop anyway. When we reached speeds of about 73 miles an hour is when I first activated the lights which is a 55 mile an hour zone. And then once again, I believe it was noted throughout as I was keeping dispatch informed of where we were at and the speeds we were traveling, somewhere around Apple Ridge is when he reached 80 miles an hour.

Q. So around the intersection with Apple Ridge Road?

A. And Metcalf Road."

Vieira testified that after speeds of 80 miles per hour were reached at the intersection of Apple Ridge Road, Vieira continued to follow defendant with his police car's emergency lights and sirens activated. Vieira testified defendant made several turns down different roads and failed to stop at certain stop signs before defendant pulled into a driveway, where defendant exited the vehicle and was taken to jail.

¶ 16 Here, both parties agree that proof of a defendant's speed may be established by means of a radar gun or stopwatch, by pacing the defendant's vehicle, or by the direct testimony of an officer. *People v. Lipscomb*, 2013 IL App (1st) 120530, ¶ 7. The aforesaid testimony of Vieira indicates he paced defendant's vehicle traveling 80 miles per hour at the intersection of Apple Ridge Road and Metcalf Road in Marion County, which was a 55-mile-per-hour zone. When reviewing this evidence in a light most favorable to the State, we conclude there was sufficient evidence to find defendant was traveling "at a rate of speed at least 21 miles per hour over the legal speed limit" after Vieira signaled defendant to pull over. 625 ILCS 5/11-204.1(a)(1) (West 2016).

¶ 17 Defendant argues this case is similar to *People v. Lipscomb*, 2013 IL App (1st) 120530. In *Lipscomb*, the First District Appellate Court reduced the defendant's felony conviction for aggravated fleeing or attempting to elude a police officer to a conviction of misdemeanor fleeing or attempting to elude a police officer where it found the police officer's testimony was insufficient to establish the defendant was traveling at least 21 miles per hour over the legal speed limit. *Lipscomb*, 2013 IL App (1st) 120530, ¶ 13. The only evidence relating to the speed of the defendant's vehicle in *Lipscomb* was the police

officer's testimony that, after he made a U-turn and began pursuing the defendant, his speedometer read 55 miles per hour "at some point" in an area where the speed limit was 15 to 20 miles per hour. *Lipscomb*, 2013 IL App (1st) 120530, ¶¶ 7-8. In ruling this evidence was insufficient to establish the defendant was traveling at least 21 miles per hour over the speed limit, the court noted:

"Although [the officer] testified that his speedometer read 55 miles per hour during the pursuit, 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.

¶ 18 Relying on *Lipscomb*, defendant argues Vieira's testimony is insufficient to establish defendant was driving at least 21 miles per hour over the legal speed limit because the only evidence of defendant's speed "came from an officer's testimony about the speed of his car when he was following defendant." After careful consideration, we find defendant's argument is misplaced.

¶ 19 Here, Vieira testified he paced defendant's vehicle at 80 miles per hour at the intersection of Apple Ridge Road and Metcalf Road, which was a 55-mile-per-hour zone. Thus, unlike *Lipscomb* where the only evidence that the defendant was driving at least 21

miles per hour over the legal speed limit was the officer's ambiguous testimony that the officer drove 55 miles per hour in a 15- to 20-mile-per-hour zone "at some point" during the pursuit, Vieira testified defendant's vehicle reached 80 miles per hour in a 55-mile-per-hour zone at a specific location. We find this is ample evidence upon which a trier of fact could reasonably infer defendant was driving at least 21 miles per hour over the speed limit. Again, a defendant's speed may be established by the direct testimony of an officer. *Lipscomb*, 2013 IL App (1st) 120530, ¶ 7. Accordingly, we reject defendant's argument.

¶ 20 Defendant further argues that although an officer's direct testimony has been found sufficient to convict a person of aggravated fleeing or eluding a police officer, the facts of this case require a more exact determination of defendant's speed and provide little room for error in Vieira's testimony regarding defendant's speed. In support of this argument, defendant contends the State would have failed to meet its burden if Vieira's stated speed of defendant (80 miles per hour in a 55-mile-per-hour zone) "was off by as little as 5 miles per hour." We again find defendant's argument is misplaced.

¶ 21 Defendant essentially attempts to circumvent Vieira's testimony that defendant reached 80 miles per hour at the intersection of Apple Ridge Road and Metcalf Road. However, the trial court determined Vieira's testimony was uncontroverted and credible, as Vieira testified with ease without having to refresh his recollection and was able to relate the precise path defendant's vehicle took during the pursuit. It is well settled that the trier of fact sits in the best position to assess the credibility of the witnesses, and it is not the function of a reviewing court to retry the defendant. *In re Nasie M.*, 2015 IL App

(1st) 151678, ¶ 23. Based on Vieira's credible testimony, there is sufficient evidence to support the court's finding that defendant is guilty of aggravated fleeing or attempting to elude beyond a reasonable doubt. Accordingly, we reject defendant's argument.

¶ 22

#### CONCLUSION

¶ 23 For the foregoing reasons, the judgment of the circuit court of Marion County is hereby affirmed.

¶ 24 Affirmed.