

No. 1-12-0164

**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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IN THE  
APPELLATE COURT OF ILLINOIS  
FIRST JUDICIAL DISTRICT

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THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County.
	)	
v.	)	No. 09 CR 6198
	)	
TYSHAUN HUNTER,	)	Honorable
	)	Stanley Sacks,
Defendant-Appellant.	)	Judge Presiding.

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JUSTICE LAMPKIN delivered the judgment of the court.  
Presiding Justice Hoffman and Justice Hall concurred in the judgment.

**O R D E R**

¶ 1 **Held:** Evidence consisting of a police officer's speed estimate based on his speedometer reading and corroborated, in part, by a video recording sufficient to sustain defendant's conviction for aggravated fleeing or attempting to elude a police officer; mittimus corrected.

¶ 2 Following a bench trial, defendant Tyshaun Hunter was found guilty of aggravated fleeing or attempting to elude a police officer and was sentenced to a five-year term of imprisonment. Defendant was also found guilty of reckless conduct, and was sentenced to a term

of 120 days in county jail, with time considered served. On appeal, defendant contends that the evidence was insufficient to prove him guilty of aggravated fleeing or attempting to elude a police officer in that no evidence was presented regarding the accuracy of the police officer's speedometer. In the alternative, he contends that his mittimus should be corrected to accurately reflect the offense of which he was convicted.

¶ 3 Defendant and co-defendants Darren Jones and Jason Williams, who are not parties to this appeal, were charged with multiple counts of attempted first degree murder, aggravated battery and aggravated fleeing or attempting to elude a police officer in relation to an incident that occurred in the early morning hours of March 7, 2009. At that time, following an altercation with police officers, defendant and Williams fled from police in a vehicle which defendant was driving. Following a successful pursuit, defendant was arrested and charged in this case.

Defendant and his co-defendants were tried in a joint but severed bench trial.

¶ 4 At trial, relevant to this appeal, the State presented evidence that in the early morning hours of March 7, 2009, Officers Jeffry Phillips and Mel Castelar were on patrol when they approached a group of men who were causing a disturbance at the entrance of the Dragonfly Mandarin restaurant located at 832 West Randolph Street in Chicago, Illinois. The officers instructed the men to disperse, and, in the process, one of the men, identified as Williams, punched Officer Phillips in the face several times. Officers Phillips and Castelar then chased Williams, who jumped into the passenger seat of defendant's vehicle, which was parked nearby. The two officers attempted to extricate Williams from the car, but were unsuccessful in doing so. Phillips sustained injuries when defendant drove away at a high rate of speed, causing the vehicle's door to hit Phillips and knock him down. At that point, other officers who arrived on the scene engaged in a pursuit of defendant's vehicle.

¶ 5 Officer Stremplewski testified that on the night of the incident he and his partner, Officer Adrienne Seiber, were on patrol in uniform and in a marked squad car that was equipped with an in-car camera which films what occurs in front of the vehicle. Upon arriving at the scene, he saw a vehicle driving away from that location, proceeding eastbound on Randolph Street. Officer Stremplewski activated his spotlight and siren, and, along with officers in another squad car, began to pursue defendant's vehicle through city streets. Defendant's vehicle proceeded to turn right onto Green Street, left on Washington Boulevard, then turned right on DesPlaines and right on Madison Street. Officer Stremplewski testified, without objection, that during this portion of the pursuit he looked at his squad car's speedometer and saw that he was traveling over 50 miles per hour (mph). At this time, defendant's car always traveled faster than his squad car. The speed limit in this area was 30 mph.

¶ 6 Officer Stremplewski further testified that he continued his pursuit as defendant drove his vehicle onto the expressway, driving southbound on Interstate 90/94, then exiting onto Interstate 290, traveling westbound. Officer Stremplewski testified, without objection, that while on Interstate 290, which has a 55 mph speed limit, he looked at his speedometer and saw that he was traveling 80 mph. At this time, defendant's vehicle continued to travel at a faster speed than his squad car. Officer Stremplewski then saw defendant attempt to exit near Oakley Avenue, but in the process, defendant's vehicle flipped over several times. At that point, defendant exited the driver's side of his vehicle and attempted to flee on foot, but he was unsuccessful and was arrested on the scene. The entire pursuit was recorded by Officer Stremplewski's in-car camera and that recording was played in open court.

¶ 7 The trial court found defendant guilty of count 33 of the indictment; aggravated fleeing or attempting to elude a police officer, as well as guilty of reckless conduct, the lesser included

offense of aggravated battery in count 13 of the indictment. Defendant subsequently filed a motion for a new trial wherein he raised numerous arguments, but did not raise any issues pertaining to the admissibility of Officer Stremplewski's testimony regarding his speedometer readings. The court denied defendant's motion, then sentenced him to 120 days in county jail for reckless conduct, with time considered served. The court also sentenced defendant to a five-year term of imprisonment for aggravated fleeing or attempting to elude a police officer, and, on appeal, defendant contests the sufficiency of the evidence to sustain this conviction.

¶ 8 The standard of review on a challenge to the sufficiency of the evidence is 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. *People v. Siguenza-Brito*, 235 Ill. 2d 213, 224 (2009). This standard applies to all criminal cases, whether the evidence is direct or circumstantial, and acknowledges the responsibility of the trier of fact to determine the credibility of the witnesses, to weigh the evidence and draw reasonable inferences therefrom, and to resolve any conflicts in the evidence. *People v. Campbell*, 146 Ill. 2d 363, 374-75 (1992). A reviewing court will not reverse a conviction unless the evidence is so unreasonable, improbable, or unsatisfactory as to justify a reasonable doubt of defendant's guilt. *People v. Jackson*, 232 Ill. 2d 246, 281 (2009).

¶ 9 To sustain defendant's conviction, the State had to prove that he was fleeing or attempting to elude a police officer after having been given a visual or audible signal by the officer, and, in the process of fleeing, defendant was traveling at a rate of speed at least 21 mph over the applicable speed limit. 625 ILCS 5/11-204.1(a)(1) (West 2008). Defendant does not contest the sufficiency of any of the elements of this offense aside from whether he was traveling at a rate of speed at least 21 mph over the speed limit.

¶ 10 The applicable speed limits in this case were 30 mph on the city streets and 55 mph on the expressway. Thus the State had to prove that defendant was traveling at least 51 mph while on the city streets, or that he was traveling at least 76 mph while he was traveling on the expressway. Defendant maintains that we may consider only the expressway portion of the incident because the video reflects that Officer Stremplewski did not engage in proper "pacing" on the city streets because the officer's vehicle did not remain at a constant distance from defendant's vehicle during the entirety of that portion of the pursuit. However, the State did not rely on pacing as a basis of establishing defendant's speed, but rather, relied on Officer Stremplewski's testimony regarding his estimation of defendant's speed. Accordingly, we will examine the incident in its entirety.

¶ 11 It has been held that an officer's estimate of the speed at which defendant is traveling is sufficient to sustain a conviction for aggravated fleeing or attempting to elude a police officer. *People v. Brown*, 362 Ill. App. 3d 374, 375-76, 378-79 (2005); see also *People v. Hampton*, 96 Ill. App. 3d 728, 730 (1981) (holding that an officer's estimate of defendant's speed is sufficient to sustain a conviction for speeding). Here, Officer Stremplewski testified that he was traveling over 50 mph in a 30 mph zone during the portion of the pursuit that took place on the city streets, that he was traveling at 80 mph in a 55 mph zone while pursuing defendant on the expressway, and that defendant's vehicle traveled at a faster speed than his vehicle during the entirety of the pursuit. Viewing this evidence in the light most favorable to the prosecution (*Siguenza-Brito*, 235 Ill. 2d at 224), we find that defendant's speed during the city street portion of the incident was, at a minimum, 51 mph, and that his speed during the expressway portion of the pursuit was, at a minimum, 81 mph. Because these speeds are at least 21 mph over the 30 mph and 55 mph

respective speed limits, we find that defendant was found guilty beyond a reasonable doubt.

*Brown*, 362 Ill. App. 3d at 375-76, 378-79; *Hampton*, 96 Ill. App. 3d at 730.

¶ 12 Defendant, however, maintains that Officer Stremplewski's estimation of his speed is insufficient because it did not establish that defendant was speeding by at least 10 mph over the "speeding element of the offense." In so arguing, defendant relies upon *City of Rockford v. Custer*, 404 Ill. App. 3d 197, 201 (2010). In *Custer*, radar evidence was ruled inadmissible and the evidence of defendant's speed was based solely on the officer's visual observation of defendant's vehicle. *Id.* at 198, 200. On appeal, the reviewing court discounted the officer's estimation that defendant was traveling at a "high rate of speed," because he had not quantified defendant's estimated speed. *Id.* at 200. The court further noted that courts that have sustained speeding convictions based solely on an officer's estimate of defendant's speed have done so only where the officer's estimates were at least 10 mph over the applicable speed limit. *Id.* at 200-01. Here, unlike *Custer*, Officer Stremplewski did not merely testify that defendant had been traveling at a high rate of speed, but rather, quantified defendant's estimated speed. More importantly, unlike the officer in *Custer*, Officer Stremplewski's estimation of defendant's speed was based upon his speedometer readings during the incident, and not solely upon his visual observation of defendant's vehicle. Accordingly, *Custer* is inapplicable to the case at bar.

¶ 13 Defendant also maintains that the evidence was insufficient in that no evidence was presented regarding the accuracy of Officer Stremplewski's speedometer. However, although defendant attempts to couch this argument as one based on the sufficiency of the evidence, in actuality it is an argument related to the foundation for Officer Stremplewski's testimony regarding his speedometer readings at the time of the incident, which pertains to the admissibility of that evidence. *People v. Muhammad*, 398 Ill. App. 3d 1013, 1017 (2010). Accordingly, such

an argument can be waived, and here defendant has done so by failing to raise it at trial or in a posttrial motion. *Id.* Additionally, because defendant has failed to argue for plain error review, we honor his forfeiture of this issue. *People v. Hillier*, 237 Ill. 2d 539, 545-46 (2010).

¶ 14 In the alternative, defendant argues, the State concedes, and we agree that his mittimus should be corrected to accurately reflect the offense of which he was convicted. The record shows that defendant's conviction for aggravated fleeing or attempting to elude a police officer was based on 625 ILCS 5/11-204.1(a)(1), which involves his rate of speed during his flight or attempt to elude. However, the mittimus erroneously reflects that defendant's conviction was pursuant to 625 ILCS 5/11-204.1(a)(2), which involves causing bodily injury to an individual during his flight or attempt to elude.

¶ 15 Where the sentence reflected in the mittimus conflicts with the sentence imposed by the trial judge, as set out by the report of proceedings, the report of proceedings controls. *People v. Peeples*, 155 Ill. 2d 422, 496 (1993). Pursuant to Supreme Court Rule 615(b)(1) (eff. Aug. 27, 1999), and our authority to correct a mittimus without remand (*People v. Magee*, 374 Ill. App. 3d 1024, 1035 (2007)), we direct the clerk of the circuit court to correct the mittimus to reflect that defendant's conviction was pursuant to 625 ILCS 5/11-204.1(a)(1).

¶ 16 For the foregoing reasons, we affirm the judgment of the circuit court of Cook County.

¶ 17 Affirmed, mittimus corrected.