THIRD DIVISION
September 30, 2013

No. 1-11-1587

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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.	)	10 MC 4002988
	)	
DIMITRI WOODS,	)	The Honorable
	)	Gregory R. Ginex,
Defendant-Appellant.	)	Judge Presiding.
	)	

JUSTICE PUCINSKI delivered the judgment of the court.
Justice Lavin concurred in the judgment.
Justice Fitzgerald Smith dissented.

ORDER

¶ 1 HELD: The State failed to prove that the defendant was guilty of resisting or obstructing a peace officer beyond a reasonable doubt because the State failed to prove that the police officer was engaged in an authorized act. The police officer was not effectuating an

arrest, the encounter was not consensual, and the officer did not have a reasonable articulable suspicion for a proper stop under *Terry v. Ohio*, 392 U.S. 1 (1968). The officer was attempting to stop defendant and his brother when they were riding their bicycles on their way home from the scene where his brother had been beaten and robbed. The officer did not provide any reasonable articulable suspicion where the only information the officer received was that two individuals left the scene of a fight on bicycles and no physical descriptions were given. The jury verdict of guilty was reversed and the defendant was acquitted.

¶ 2 BACKGROUND

¶ 3 On April 21, 2010, defendant, Dimitri Woods, went to the Walgreens at 4730 Butterfield in Hillside, Illinois, with his 14-year-old brother, Davion. Davion was attacked and robbed by a group of five men in front of the Walgreens. Defendant came to his brother's rescue and the group of men dispersed. Defendant and his brother then left the scene on their bicycles and started riding home, which was about five blocks away from the Walgreens on Maple Lane.

¶ 4 Detective Daniel Pereda heard the dispatch on the police radio for Hillside officers responding to a fight in progress in the Walgreens parking lot. While Pereda was traveling to the Walgreens, at the corner of Clayton and Madison he observed two individuals riding their bicycles at a high rate of speed on Madison, one of them being defendant. Pereda knew defendant.[1] As defendant and his brother rode past on their bicycles, Pereda radioed dispatch to attempt to get a physical description of the individuals involved in the Walgreens fight, but was only told by a Sergeant Abanante at the scene that two "subjects" fled southbound on bicycles. Pereda was not told the individuals who fled were the perpetrators, and no physical description

[1] Due to a pretrial ruling, Detective Pereda was not allowed to testify as to how he knew defendant.

was given. Pereda testified he immediately got behind defendant and his brother and activated his lights and siren. However, defendant's brother Davion testified that he did not see any lights. Pereda was in an unmarked black SUV with tinted windows that had an interior light bar but did not have police "MARS" light bar on top.[2] Pereda was not in police uniform. He was wearing a black vest with carriers for magazines for his handgun.

¶ 5 Pereda yelled out the window to defendant and Davion to stop but they did not stop. According to Pereda, defendant said, "f*** you, I'm not stopping, hit me." Pereda did not testify that he ever identified himself as a police officer, or that he ever told defendant and his brother why he was trying to stop them. Pereda turned on Madison and followed defendant and Davion, who were riding their bicycles home. About a block and a half down Madison, at the intersection of Maple and Madison, defendant and Davion turned southbound on Maple and Pereda was able to drive the SUV around them and pulled into the driveway of defendant's home. Defendant was trying to get inside the house. Davion was scared and ran to the door to let their father know that someone followed them home.

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[2] The State at oral argument stated that there was a full "MARS" light bar on top of the SUV, but Pereda testified at trial that he was driving "a black Chevy Tahoe with lights on the *inside* but no police markings on the outside." (Emphasis added.) Regarding the light inside the vehicle, Pereda specifically testified that "[i]t's a full light bar on the *inside of the windshield* on the top, and we have strobes up on the front headlights as well as lights on the back." (Emphasis added.) On cross-examination, Pereda unequivocally testified that there are no lights on top of the vehicle, stating: "Not overhead, no."

¶ 6 Pereda ran after defendant on foot and grabbed him by his hooded sweatshirt on the back. Defendant threw his bicycle down to the ground and spun around and, according to Pereda "squared up" with Pereda, clenched his fist and took a step back. A responding sergeant arrived on the scene and had a taser pointed at defendant's chest. The sergeant was in full uniform. Pereda and the sergeant ordered defendant to get down to the ground, but according to Pereda, defendant "continued to say f*** you, I ain't doing sh**, f*** you, tase me." Defendant eventually lay down on the ground. Davion testified that he did not know Pereda was an officer until Pereda got out of the SUV and grabbed defendant and "put him on the ground." Davion testified that defendant went to the ground right away and did not fight Pereda or the sergeant at all.

¶ 7 Defendant was apprehended and charged with aggravated assault and resisting a peace officer. During the arrest, Pereda found marijuana but this evidence was suppressed and the arrest quashed by a different judge prior to trial. That judge had granted the defense motion to quash and suppress, finding there was no probable cause to "stop" defendant because there was no description whatsoever of the offenders involved in the Walgreens fight and there was no indication that defendant or his brother were doing anything illegal in riding their bicycles. The case proceeded on only the charges for aggravated assault and resisting or obstructing a peace officer.

¶ 8 At trial, the trial court excluded the Walgreens surveillance video. The defense theory was that defendant did not know Pereda was a police officer and was not trying to obstruct him but, rather, was fleeing the attackers and believed the attackers may have been in the SUV. The

court ruled that the video was irrelevant. The jury acquitted defendant of aggravated assault but convicted defendant of resisting or obstructing a peace officer. Defendant appealed.

¶ 9 On appeal, defendant asserts that (1) the variance between the allegations in the charging instrument for resisting or obstructing a peace officer and the proof at trial was fatal; (2) defendant was not proven guilty beyond a reasonable doubt; (3) the instructions submitted to the jury were improper; (4) the prosecutor made prejudicial statements in closing argument; and (5) the trial court erred in excluding the Walgreens surveillance video.

¶ 10 ANALYSIS

¶ 11 We first hold that although defendant was charged with resisting "arrest," whereas the evidence established Officer Pereda was not attempting to arrest defendant, this variance was not fatal. A recent Third District Appellate Court decision is on point and supports the State's non-fatal variance argument in this case, in that it specifically addresses the offense of obstructing a peace officer. *People v. Smith*, 2013 IL App (3d) 110477. In *Smith*, the court held that an actual arrest need not be established to support a conviction for obstructing a peace officer, although an arrest was alleged in the charging instrument. *Id.* ¶ 20. "[T]he State did not need to establish that defendant was under arrest to secure a conviction for obstructing a peace officer." *Id.* The *Smith* court held that the variance from the charging instrument did not mislead the defendant because he knew he was being issued a citation and that, thus, the officer was engaged in the execution of his official duties.

¶ 12 The same variance in this case, alleging an arrest in the charging instrument where there was no arrest, is not fatal. *Smith* makes clear that even if an arrest is specifically alleged as the

authorized act in the charging instrument, this is not fatal. This defeats defendant's argument that "[h]ad any one juror found that Pereda was not performing an arrest, *** then Woods should certainly have been acquitted of the offense." (Deft. Br. at 23). Any authorized act, whether it is an arrest or some other authorized act, can satisfy this element of the offense.

¶ 13 The issue in this case is not variance; it is insufficient proof of this element of the offense. The State failed to prove that Pereda was performing an authorized act. When considering a challenge to the sufficiency of the evidence in a criminal case, we are mindful that our function is not to retry the defendant. *People v. Sutherland*, 223 Ill. 2d 187, 242 (2006). Rather, "[i]n reviewing the sufficiency of the evidence in a criminal case, our inquiry 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 offense beyond a reasonable doubt." *People v. Baskerville*, 2012 IL 111056, ¶ 31 (citing *People v. Davison*, 233 Ill. 2d 30, 43 (2009) (quoting *Jackson v. Virginia*, 443 U.S. 307, 319 (1979)). "Under this standard, all reasonable inferences from the evidence must be allowed in favor of the State." *People v. Baskerville*, 2012 IL 111056, ¶ 31 (citing *People v. Martin*, 2011 IL 109102, ¶ 15). "We will not reverse a conviction unless the evidence is so improbable, unsatisfactory, or inconclusive that it creates a reasonable doubt of defendant's guilt." *People v. Collins*, 214 Ill. 2d 206, 217 (2005).

¶ 14 The offense of resisting or obstructing a peace officer under section 31-1 of the Criminal Code provides the following:

> "A person who knowingly resists or obstructs the performance by one known to the person to be a peace officer, firefighter, or correctional institution employee of any

authorized act within his official capacity commits a Class A misdemeanor." (Emphasis added). 720 ILCS 5/31-1(a) (West 2010).

¶ 15 To prove obstruction of a peace officer, the State is required to prove the following elements: "(1) defendant knowingly obstructed a peace officer; (2) the officer was performing an authorized act in his official capacity; and (3) defendant knew he was a peace officer." *People v. Baskerville*, 2012 IL 111056, 32 (citing 720 ILCS 5/31-1(a) (West 2006)). We find the State's evidence at trial was insufficient as a matter of law on the second element and failed to prove any authorized act by Pereda.

¶ 16 The fourth amendment to the United States Constitution and article I, section 6, of the Illinois Constitution protect citizens from unreasonable searches and seizures. U.S. Const., amend. IV; Ill. Const. 1970, art. I, § 6. Illinois courts employ a three-tiered analysis to examine interactions between law-enforcement officials with private citizens: (1) arrests, which must be supported by probable cause; (2) brief investigative detentions, or "*Terry*[3] stops," which must be supported by reasonable, articulable suspicion of criminal activity; and (3) encounters that do not involve any coercion or detention, also referred to as "consensual encounters," which do not implicate the fourth amendment. *People v. Hopkins*, 235 Ill. 2d 453, 471 (2009); *People v. Luedemann*, 222 Ill. 2d 530, 544 (2006).

¶ 17 In this case, there was no proof of any "authorized act." First, Pereda was not effecting an arrest of defendant when he attempted to stop him at the inception of the encounter. The motion

[3] *Terry v. Ohio*, 392 U.S. 1 (1968).

to suppress court ruled that Pereda did not have "probable cause" to "stop" defendant at the time he seized him. After hearing Pereda's testimony at the pre-trial motion to suppress, the court found as follows:

> "In this particular case the Court has to look at whether or not there is probable cause to stop the individuals. In this particular case you have a description. There is not even a description. When I went back and had the court reporter read back, simply that the Sergeant was on the scene and gave a description that there were two subjects that fled on bicycles. Not even that those subjects were involved in the altercation.
>
> Taking that aside, the description lacked any race, lacked any sex, no physical description of what anybody was wearing. The Court feels that would be analogous to a description going out that two people involved in an incident were walking. It doesn't give the officers probable cause to stop all people walking. Or if the description said they were in a vehicle. That alone does not rise to probable cause to stop an individual.
>
> * * *
>
> *** We have no description of the individuals involved. The race was not stated. No clothing were [sic] stated. No sex of the individual was stated of the people involved [sic].
>
> For that reason the Court does not find there was sufficient probable cause to stop said individual. Motion to suppress will be granted."

¶ 18 Although the trial court apparently conflated the probable cause and *Terry* stop standards in finding there was no "probable cause" to "stop" defendant, the court's ruling clearly found "no

probable cause," and so it was the law of the case. "The law of the case doctrine generally bars relitigation of an issue previously decided in the same case." *People v. Sutton*, 233 Ill. 2d 89, 100 (2009) (citing *People v. Tenner*, 206 Ill. 2d 381, 3953 (2002)). The court had already determined there was no probable cause.

¶ 19 Moreover, at trial, Pereda specifically testified he was *not* arresting defendant:

"Q: ***

And when you originally turned on your siren, did you just want to talk with the Defendant about what possibly happened at Walgreens?

A: Yes, I did.

Q: *** [O]n April 21, 2010, did you arrest him for anything that happened at Walgreens?

A: No.

Q: You arrested him for the aggravated assault and the resisting, right?

[Defense Counsel]: Objection.

THE COURT: Overruled.

[Pereda]: That's correct.

***

Q: Which is unrelated to anything that happened at Walgreens, correct?

A: Correct."

¶ 20 The evidence also established that the encounter undisputedly was not consensual, as defendant refused to stop for Pereda. Cases involving consensual encounters between civilians

and police fall under the third tier of civilian-police encounters as set forth by the Illinois Supreme Court and do not constitute a seizure and do not require articulable suspicion. However, the law is clear that in such circumstances the individual must actually agree and consent to the encounter. *Luedemann* held that "a police officer does not violate the fourth amendment merely by approaching a person in public to ask questions *if the person is willing to listen*." (Emphasis added.) *Luedemann*, 222 Ill. 2d at 549 (citing *United States v. Drayton*, 536 U.S. 194, 200 (2002); *People v. Love*, 199 Ill. 2d 269, 278 (2002)). This was not the circumstance with defendant. Defendant did not agree to stop for Pereda and instead continued riding his bicycle home.

¶ 21 Nor was this encounter within the community caretaking exception, which is analytically distinct from consensual encounters and not within one of the tiers of police-civilian encounters and applies only when the officer is engaged in "community caretaking" functions completely unrelated to the detection of or investigation of a crime. See *Cady v. Dombrowski*, 413 U.S. 433, 441 (1973); *People v. McDonough*, 239 Ill. 2d 260, 269-70 (2010); *Luedemann*, 222 Ill. 2d at 548. It was undisputed and the evidence at trial established that in this case Pereda was specifically investigating the fight at Walgreens when he attempted to stop defendant.

¶ 22 The facts of this case leave only a *Terry* stop as a possible basis to authorize Pereda to stop defendant. We find, however, that the evidence was insufficient to establish a reasonable articulable suspicion necessary to authorize a *Terry* stop of defendant. The court's pre-trial motion to suppress ruling seems to indicate that there was no lawful basis for an investigatory *Terry* stop, although that portion of the ruling is unclear due to the court's use of the phrase

"probable cause" in discussing the "stop."

¶ 23 At oral argument, the State maintained that Pereda was engaging in an authorized act because he was conducting an investigation of the fight at Walgreens. Specifically, the State argued that a police officer investigating a crime can stop someone "to ask questions," and this is an authorized act. The State's argument is not an accurate statement of the law for investigatory *Terry* stops. As defense counsel argued, the officer in this case had no reasonable articulable suspicion that defendant himself had committed, or was committing, any crime.

¶ 24 Under *Terry v. Ohio*, 392 U.S. 1 (1968), an investigatory stop is permissible under the fourth amendment only if supported by reasonable articulable suspicion. A police officer can briefly detain a person for investigatory purposes for temporary questioning "if the officer reasonably believes that the person has committed, or is about to commit, a crime." *People v. Thomas*, 198 Ill. 2d 103, 109 (2001) (citing *Terry*, 392 U.S. at 22; *People v. Flowers*, 179 Ill. 2d 257, 262 (1997); *People v. Smithers*, 83 Ill. 2d 430, 434 (1980)). "The same standard is applied in determining the propriety of an investigatory stop under article I, section 6, of the 1970 Illinois Constitution (Ill. Const. 1970, art. I, § 6)." *Thomas*, 198 Ill. 2d at 109 (2001) (citing *People v. Tisler*, 103 Ill. 2d 226, 241-45 (1984)). Furthermore, the *Terry* standard has been codified in section 107-14 of the Code of Criminal Procedure of 1963. 725 ILCS 5/107-14 (West 2010); *Thomas*, 198 Ill. 2d at 109.

¶ 25 "The conduct constituting the stop under *Terry* must have been justified at its inception." *Thomas*, 198 Ill. 2d at 109. "A court objectively considers whether, based on the facts available to the police officer, the police action was appropriate." *Id*. In justifying an investigatory stop,

"the police officer must be able to point to specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant that intrusion." *Terry*, 392 U.S. at 21. In addition, the Supreme Court has defined "reasonable suspicion" as " 'a particularized and objective basis' for suspecting the person stopped of criminal activity." *Ornelas v. United States*, 517 U.S. 690, 696 (1996) (quoting *United States v. Cortez*, 449 U.S. 411, 417-418 (1981). "While 'reasonable suspicion' is a less demanding standard than probable cause and requires a showing considerably less than preponderance of the evidence, the fourth amendment requires at least a minimal level of objective justification for making the stop." *Illinois v. Wardlow*, 528 U.S. 119, 123 (2000) (citing *United States v. Sokolow*, 490 U.S. 1, 7 (1989)). " 'The officer must be able to articulate more than an 'inchoate and unparticularized suspicion or "hunch" ' of criminal activity." *Wardlow*, 528 U.S. 119, 123-24 (quoting *Terry*, 392 U.S. at 27).

¶ 26 Detective Pereda did not meet the requirements for a *Terry* investigatory stop. Accordingly, his attempt to force defendant to stop was not an authorized act, as required to demonstrate that defendant obstructed a police officer. Pereda did not testify that he ever had any reasonable articulable suspicion that defendant was committing, was about to commit, or had just committed an offense. Pereda never testified that he suspected defendant was one of the perpetrators of the fight at the Walgreens. Indeed, the only information Pereda had was that two "subjects" left the scene on their bicycles, not that the individuals on the bicycles were the suspects or perpetrators. There was no physical description given of the individuals involved in the fight, not even gender. At most, Pereda testified he "had a suspicion" where defendant and his brother were coming from when he saw them on their bicycles. The only evidence that was

adduced at trial was that Pereda knew defendant, and that Pereda obtained information that two "subjects" had fled the scene of the Walgreens on bicycles, not that those individuals were the offenders. Pereda did not provide sufficient articulable facts for why he stopped defendant, other than the fact that he had information two individuals left the scene on their bicycles, and defendant was riding his bicycle. Pereda never testified that he thought defendant may have been one of the perpetrators in the fight. When asked on direct examination whether Pereda just wanted to "talk" with defendant about what happened at Walgreens, he testified, "Yes, I did."

¶ 27 We recognize that in limited circumstances, headlong flight in response to seeing an officer may lead to sufficient suspicion to justify a *Terry* stop. Evasive behavior is a pertinent factor in determining whether a reasonable suspicion exists, and unprovoked, headlong flight is the consummate act of evasion, regardless of where it occurs. *Illinois v. Wardlow*, 528 U.S. 119, 124 (2000). "It is not necessarily indicative of wrongdoing, but it is certainly suggestive of such." *Id*. Where a person is in a high crime area and engages in evasive behavior, the police are justified in suspecting that the person is involved in criminal activity, and that further investigation, in accordance with *Terry*, is warranted. *Wardlow*, 528 U.S. at 124-25. Furthermore, the Illinois Supreme Court has held that, even if the initial encounter would not justify a *Terry* stop, "[u]nprovoked flight in the face of a potential encounter with police may raise enough suspicion to justify the ensuing pursuit and investigatory stop." *Thomas*, 198 Ill. 2d at 113 (citing *Wardlow*, 528 U.S. at 124-25).

¶ 28 Notwithstanding these principles, the facts presented at trial do not involve a situation where the defendant engaged in headlong flight in response to seeing an officer. The evidence

established that defendant was already riding his bicycle at a high rate of speed, heading home after the attack and robbing of his brother when Pereda encountered him. Regardless of whether Pereda had his SUV's internal police lights or siren on, defendant did not take off in headlong flight in reaction to seeing Pereda, and Pereda did not testify that he suspected defendant was engaging in or had just engaged in committing a crime. At most, Pereda testified that he wanted to stop defendant to talk to him about what happened at the Walgreens parking lot. Pereda did not have any reasonable articulable suspicion to stop defendant. See also *People v. Moore*, 286 Ill. App. 3d 649, 654 (1997) (where an officer tries to stop a person without sufficient articulable facts to justify the stop, the person, by running away, does not obstruct an authorized act of the police officer).

¶ 29 We further note that defendant's verbal statements to Pereda did not constitute obstructing a police officer under section 31-1. That section does not prohibit a defendant from arguing with or verbally resisting an officer regarding the validity of the officer's action. *People v. Berardi*, 407 Ill. App. 3d 575, 582 (2011). " 'Verbal resistance or argument alone, even the use of abusive language, is not a violation of the statute.' " *Id*.

¶ 30 **CONCLUSION**

¶ 31 We hold the evidence in this case was insufficient to establish that Pereda was engaged in an authorized act, as required support defendant's conviction for obstructing a police officer. "If a court determines that the evidence is insufficient to establish the defendant's guilt beyond a reasonable doubt, the defendant's conviction must be reversed." *People v. Woods*, 214 Ill. 2d 455, 470 (2005) (citing *People v. Smith*, 185 Ill. 2d 532, 541 (1999); *People v. Olivera*, 164 Ill.

2d 382, 393 (1995). We therefore reverse the judgment entered on the verdict of guilty for obstruction of a peace officer and acquit defendant. In light of our determination, we need not address the parties' remaining arguments.

¶ 32 For the foregoing reasons, we reverse the trial court's judgment.

¶ 33 Reversed.

¶ 34 Justice Fitzgerald Smith, dissenting:

¶ 35 I respectfully dissent. Although I agree with the majority that the issue in this case is sufficiency of the evidence, rather than variance in the charging instrument and the evidence presented at trial, when viewing that evidence in the light most favorable to the State, I am compelled to conclude that there was ample evidence to permit the jury to find the defendant guilty of obstructing Officer Pereda.

¶ 36 In examining criminal convictions, we are bound by a strict standard of review. It is well settled that when considering a challenge to the sufficiency of the evidence supporting a conviction, we must determine whether, when viewing the evidence in the light most favorable to the State, *any* rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. *People v. Collins*, 214 Ill. 2d 206 (2005). What is more, it is axiomatic that the trier of fact, in this case the jury, rather than the reviewing court, is vested with the responsibility to make determinations regarding the credibility of witnesses, the weight to be given to their testimony, and the reasonable inferences to be drawn from the evidence presented. *People v. Ross*, 229 Ill. 2d 255 (2008). As such, as a reviewing court, we are permitted to set aside a defendant's conviction only when we find that the evidence was insufficient or so improbable or

unsatisfactory that a reasonable doubt exists as to the defendant's guilt. *People v. Ortiz*, 196 Ill. 2d 236 (2001).

¶ 37 To prove the defendant guilty of obstructing a peace officer, in the present case, the State was required to prove the following elements beyond a reasonable doubt: (1) that the defendant knowingly obstructed a peace officer; (2) that the officer was performing an authorized act in his official capacity; and (3) that the defendant knew he was a peace officer. *People v. Baskerville*, 2012 IL 111056, ¶ 32.

¶ 38 Considering the evidence presented at trial and any reasonable inferences stemming therefrom in the light most favorable to the State, contrary to the majority's opinion, I believe that all three elements of the crime were met. Officer Pereda responded to a radio dispatch about two "subjects" involved in a fight at a Walgreens on the corner of Clayton and Madison, fleeing the area southbound on bicycles. Although Officer Pereda had no physical description of the potential offenders, he did know they were fleeing southbound on bicycles and testified that these were the only individuals on bicycles that he observed in the area. After observing the two individuals riding their bicycles, Officer Pereda immediately followed them in his unmarked SUV and "turned [on] his lights and siren." At the very least, testimony at trial established that those lights consisted of "a full light bar on the top inside of the windshield" and "strobe lights on the front headlights and lights on the back of the SUV." Officer Pereda testified that as he pursued the two individuals he also rolled down his window and instructed the defendant to stop. Instead of stopping, however, the defendant continued to ride his bicycle and yelled obscenities at the officer. Under this record, I would conclude that although the officer may not have had

sufficient probable cause to arrest the two individuals, he was well within his investigatory authority to stop and briefly question them regarding the incident at Walgreens, which is exactly what he testified he intended to do. See *Terry v. Ohio*, 392 U.S. 1 (1968); see also *People v. Jones*, 245 Ill. 3d 302, 306-07 (1993); *People v. Holdman*, 73 Ill. 2d 213, 221 (1978).

¶ 39 In *People v. Thomas*, 198 Ill. 2d 103, 113 (2001) (citing *Illinois v. Wardlow*, 528 U.S. 119, 124 (2000)), our supreme court explicitly held that "unprovoked flight in the face of a potential encounter with police may raise enough suspicion to justify the ensuing pursuit and investigatory stop." Although the majority acknowledges our supreme court's holding in *Thomas*, it nevertheless concludes that because the defendant was already pedaling his bicycle at a high rate of speed when Officer Pereda approached him, he did not "take off in headlong flight in reaction to seeing Pereda." This position, however, is directly rebutted by the record, as Officer Pereda testified that instead of stopping his bicycle when instructed to do so, the defendant rode off, cursing back: "f**k you, I'm not stopping, him me."

¶ 40 The majority seems to forget that when reviewing the credibility of the witnesses, the weight to be given their testimony and the resolution of any conflicts in the evidence, a reviewing court may not "substitute its judgment for that of the trier of fact." *People v. Brooks*, 187 Ill. 2d 91, 131 (1999); see also *People v. Ross*, 229 Ill. 2d 255 (2008). In the present case, the jury apparently chose to believe Officer Pereda's testimony regarding what transpired between him and the defendant, and inferred therefrom that the defendant fled the scene when approached by the officer. Contrary to the majority's position, there is nothing in the record to suggest that the defendant was merely exercising the right to continue on his way, so as to create confusion

between the exercise of that right and a pure act of evasion. When considering Officer Pereda's testimony, and the reasonable inferences therefrom, in the light most favorable to the State (*i.e.*, that in pursuit of the defendant, the officer turned on his MARS lights and instructed the defendant to stop, that the defendant heard the officer's instruction, but instead fled on his bicycle, cursing back), I fail to see how the majority can conclude that there was insufficient evidence to find that the officer acted within the scope of his authority, so as to permit a finding of guilty. See *Thomas*, 198 Ill. 2d at 113; *Wardlow*, 528 U.S. at 124. For that reason, I must dissent.