

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).

2012 IL App (3d) 110330-U

Order filed November 27, 2012

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

A.D., 2012

THE PEOPLE OF THE STATE OF
ILLINOIS,

Plaintiff-Appellee,

v.

ARNELL EWING,

Defendant-Appellant.

) Appeal from the Circuit Court
) of the 12th Judicial Circuit,
) Will County, Illinois,
)
) Appeal Nos. 3-11-0330 and 3-11-0331
) Circuit Nos. 08-CF-3006, 09-TR-1219, 09-
) TR-1220, 09-TR-1223, and 09-TR-1225
)
) Honorable
) Amy Bertani-Tomczak,
) Judge, Presiding.

JUSTICE CARTER delivered the judgment of the court.
Justices McDade and Wright concurred in the judgment.

ORDER

¶ 1 *Held:* (1) The State proved defendant's guilt beyond a reasonable doubt; and (2) the indictment was sufficient to apprise defendant of the offense charged.

¶ 2 Defendant, Arnell Ewing, was convicted of aggravated fleeing or attempting to elude a peace officer (625 ILCS 5/11-204.1(a)(4) (West 2008)) and four counts of disobeying a traffic control device (625 ILCS 5/11-305 (West 2008)). On appeal, defendant argues that: (1) the State failed to prove his guilt beyond a reasonable doubt; and (2) the indictment was insufficient to

apprise him of the charged offense. We affirm.

¶ 3

FACTS

¶ 4 Defendant was charged by indictment with aggravated fleeing or attempting to elude a police officer and several other traffic offenses. With regard to the fleeing charge, the indictment alleged that on December 18, 2008, defendant:

"drove a 1990 Buick LeSabre with Illinois registration number G856599 upon Western Avenue in Park Forest, Will County, Illinois and having been signaled by a peace officer in a marked squad car via visual and audible signal, namely overhead lights, directing said driver to bring his vehicle to a stop, wilfully failed or refused to obey such direction, and in fact such flight involved disobedience of 2 or more official traffic control devices, in violation of Chapter 625, Section 5/11-204.1(a), of the Illinois Compiled Statutes, 2008[.]"

¶ 5 The case proceeded to a bench trial. Officer William Busse testified that he was a Forest Park police officer. On the evening of December 18, 2008, he was conducting surveillance in an unmarked car on a gas station in Crete when he observed a blue Buick drive up. Busse was familiar with the vehicle and its owner, defendant, from an interaction he had six days earlier. Busse left the gas station at the same time as defendant and turned so that his car was directly in front of defendant. Eventually, Busse made a u-turn to position his car behind defendant. Busse's car did not have a radar speed detector, but he paced defendant and felt that defendant was exceeding the posted speed limit. Busse activated his red and blue oscillating lights. Defendant slowed down and pulled into the right, northbound lane, but he did not stop. Busse turned his siren on intermittently as he pursued defendant through several intersections. Busse

recalled that defendant disobeyed five traffic control devices. Defendant stopped briefly on Minocqua Street, but continued to flee as Busse approached. Busse's pursuit ended when Corporal Sheets took over the chase.

¶ 6 Busse testified that on the night of the incident, he had a "vest on[,]" and "black sleeves, black pants" with "police" on the uniform. The State inquired whether "police" was written on Busse's uniform, and Busse responded "[y]es. My vest has my badge and says my name."

¶ 7 At the conclusion of Busse's testimony, the case proceeded to closing arguments. The trial court found defendant guilty of aggravated fleeing or attempting to elude a police officer and four counts of disobeying traffic control devices. The court sentenced defendant to one year in prison.

¶ 8 ANALYSIS

¶ 9 I. Sufficiency of the Evidence

¶ 10 Defendant argues that the State failed to prove beyond a reasonable doubt that the pursuing officer was wearing a police uniform. Defendant contends that the present case is similar to *People v. Murdock*, 321 Ill. App. 3d 175 (2001), where the court held that the State failed to prove that the pursuing officer was wearing a uniform.

¶ 11 The relevant question in 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. Collins*, 106 Ill. 2d 237 (1985). To convict a defendant of aggravated fleeing or attempting to elude a peace officer, the State must prove that a driver of a motor vehicle flees or attempts to elude a peace officer, after being given a visual or audible signal by a peace officer while in

police uniform, and such flight or attempt to elude involves disobedience of two or more official traffic control devices. 625 ILCS 5/11-204, 11-204.1(a)(4) (West 2008).

¶ 12 In the present case, defendant only argues that the State failed to prove that Busse was wearing a police uniform. We find that defendant's contention is not supported by the record. Unlike *Murdock*, the record contains evidence that the pursuing officer was wearing a uniform. *Cf. Murdock*, 321 Ill. App. 3d 175 (fleeing or eluding case remanded where there was no evidence in the record that the pursuing officer was wearing a uniform). Here, the State elicited testimony that Busse was wearing black sleeves, black pants, and a vest. Busse indicated that his uniform had the word "police" on it, and his vest displayed his badge and name. Although Busse was not wearing a patrol officer's uniform, we find that his clothing was a uniform within the meaning of the statute. We conclude that the State proved that defendant committed the offense of aggravated fleeing or eluding a peace officer.

¶ 13 II. Sufficiency of the Charging Instrument

¶ 14 Defendant argues that the indictment failed to allege the necessary element that the officer was wearing a police uniform and therefore prejudiced the preparation of his defense.

¶ 15 The sufficiency of the charging instrument presents a question of law which we review *de novo*. *People v. Rowell*, 229 Ill. 2d 82 (2008). An indictment, attacked for the first time on appeal, is sufficient where it "apprised the accused of the precise offense charged with sufficient specificity to prepare his defense and allow pleading a resulting conviction as a bar to future prosecution arising out of the same conduct." *People v. Gilmore*, 63 Ill. 2d 23, 29 (1976).

¶ 16 We find that the present indictment was sufficient to apprise defendant of the charge of aggravated fleeing or attempting to elude a peace officer. The indictment stated the date and

location of the charged offense. It also described the offense that defendant was alleged to have committed and provided a statutory citation. Thus, defendant had sufficient notice of the offense, the base factual allegations, and a statutory citation to enable him to prepare a defense.

¶ 17

CONCLUSION

¶ 18 For the foregoing reasons, the judgment of the circuit court of Will County is affirmed.

¶ 19 Affirmed.