2022 IL App (3d) 200049-U

Order filed June 22, 2022

IN THE

APPELLATE COURT OF ILLINOIS

THIRD DISTRICT

2022

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the Circuit Court
	)	of the 14th Judicial Circuit,
	)	Rock Island County, Illinois
Plaintiff-Appellee,	)	
	)	Appeal No. 3-20-0049
v.	)	Circuit No. 18-CF-490
	)	
KPANGBALA B. BLAMAH,	)	Honorable
	)	Gregory G. Chickris,
Defendant-Appellant.	)	Judge, Presiding.

JUSTICE DAUGHERITY delivered the judgment of the court.
Presiding Justice O'Brien and Justice McDade concurred in the judgment.

ORDER

¶ 1 *Held*: Evidence at trial was insufficient to prove defendant guilty beyond a reasonable doubt of aggravated fleeing or attempting to elude a peace officer.

¶ 2 Defendant, Kpangbala B. Blamah, appeals his conviction for aggravated fleeing or attempting to elude a peace officer. He argues that the evidence was insufficient to establish his guilt beyond a reasonable doubt. We vacate in part and modify the judgment.

¶ 3 I. BACKGROUND

¶ 4 The State charged defendant by indictment with aggravated fleeing or attempting to elude a peace officer, a Class 4 felony (625 ILCS 5/11-204.1(a)(1) (West 2018)). The matter proceeded to a jury trial on June 5, 2019.

¶ 5 Officer Andrew Lawler of the Rock Island Police Department testified that he was on patrol at approximately 5:19 p.m. on May 10, 2018. He was in his uniform and operated a marked squad vehicle. He parked his vehicle on 9½ Street facing south, watching the gas station at the end of the street that was known for drug activity. Lawler was able to view the westbound traffic on 21st Avenue from this position. Lawler observed a Buick Lacrosse with tinted side windows travelling westbound toward 9th Street. It was the only vehicle on the road at that time. It was traveling 25 to 30 miles per hour as it approached and passed Lawler. The weather conditions were clear and sunny. Lawler had an unimpeded view of the interior of the Buick as it approached him. He was able to observe that defendant was the driver and sole occupant of the Buick, recognizing him from prior contacts. Lawler identified defendant in open court, indicating he looked substantially the same in court as he did in the vehicle that day.

¶ 6 Lawler ran both the license plate of the Buick and defendant's name which took him several seconds to complete. The Buick was not registered to defendant. Defendant had an outstanding warrant for his arrest and his driver's license was revoked. Lawler pulled out behind defendant who was, at that time, no more than 500 feet ahead of him. Lawler observed defendant disregard the stop sign at 21st Avenue and 9th Street. Defendant began to accelerate away quickly, crossing 9th Street and continuing down 21st Avenue. Lawler employed his emergency lights as he approached the stop sign. His dash camera video footage was admitted and published for the jury. It captured the red and blue lights flashing against the stop sign as he drove past. Lawler activated his siren as he crossed 9th Street and continued down 21st Avenue.

¶ 7 The speed limit on 21st Avenue was 30 miles per hour. Lawler testified that he was travelling 50 miles per hour pursuing defendant, and that defendant was travelling faster because Lawler "couldn't even get close to the car as [he] accelerated away." He indicated that the speedometer in his squad vehicle is certified, however, no other evidence was admitted as to its certification. The dash camera video showed a speed readout of 49 miles per hour for Lawler's vehicle. Lawler indicated there was a delay on the readout. He maintained 49 to 50 miles per hour speed for one or two seconds before discontinuing the pursuit, as it was apparent to him that defendant was not going to stop. Lawler maintained that he would have been able to stop defendant had he not disregarded the stop sign and that he did not come close to matching defendant's speed.

¶ 8 The jury found defendant guilty. Defendant was sentenced to an extended term of four years' imprisonment. Defendant appeals.

¶ 9 II. ANALYSIS

¶ 10 Defendant argues that the State failed to prove him guilty beyond a reasonable doubt of aggravated fleeing or attempting to elude a peace officer. Specifically, defendant contends that the evidence was insufficient to prove beyond a reasonable doubt that: (1) he was the driver of the vehicle, (2) Lawler's emergency lights were red and blue as required by statute, (3) defendant willfully fled, and (4) defendant fled from Lawler at 21 miles per hour or more over the applicable speed limit.

¶ 11 Challenges to the sufficiency of the evidence at trial are reviewed to determine whether any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. *People v. Baskerville*, 2012 IL 111056, ¶ 31; *People v. Collins*, 106 Ill. 2d 237, 261 (1985). In making this determination, we review the evidence in the light most favorable to

the State. *Baskerville*, 2012 IL 111056, ¶ 31. All reasonable inferences from the record in favor of the State will be allowed. *People v. Bush*, 214 Ill. 2d 318, 327 (2005). The trier of fact is not required to seek out or accept any "possible explanations consistent with innocence and raise them to a level of reasonable doubt." *People v. Campbell*, 146 Ill. 2d 363, 380 (1992). The relevant question is whether any rational trier of fact could have found the elements of the crime proven beyond a reasonable doubt. *People v. Pintos*, 133 Ill. 2d 286, 292 (1989). "A criminal conviction will not be set aside unless the evidence is so improbable or unsatisfactory that it creates a reasonable doubt of the defendant's guilt." *Collins*, 106 Ill. 2d at 261.

¶ 12 Section 11-204.1 of the Illinois Vehicle Code (Code) provides:

> "(a) The offense of aggravated fleeing or attempting to elude a peace officer is committed by any driver or operator of a motor vehicle who flees or attempts to elude a peace officer, after being given a visual or audible signal by a peace officer in the manner prescribed in subsection (a) of Section 11-204 of this Code, and such flight or attempt to elude:
>
> (1) 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 2018).

Section 11-204 of the Code provides:

> "(a) Any driver or operator of a motor vehicle who, having been given a visual or audible signal by a peace officer directing such driver or operator to bring his vehicle to a stop, wilfully fails or refuses to obey such direction, increases his speed, extinguishes his lights, or otherwise flees or attempts to elude the officer, is guilty of a Class A misdemeanor. The signal given by the peace officer may be by hand, voice, siren, red or blue light. Provided, the officer giving

> such signal shall be in police uniform, and, if driving a vehicle, such vehicle shall display illuminated oscillating, rotating or flashing red or blue lights which when used in conjunction with an audible horn or siren would indicate the vehicle to be an official police vehicle." *Id.* § 11-204(a).

¶ 13 Defendant argues that the State failed to prove four of the required elements beyond a reasonable doubt. We consider each challenged element in turn.

¶ 14 A. The Identification of Defendant

¶ 15 Defendant argues that Lawler's identification of defendant as the driver of the Buick is unreliable where, among other things, Lawler only had a second to view the driver of the Buick, the Buick's side windows were tinted, and Lawler was distracted.

¶ 16 Testimony of a single witness is sufficient to convict if the testimony is positive and the witness is credible. *People v. Smith*, 185 Ill. 2d 532, 541 (1999). Such testimony may be found insufficient only where the record compels the conclusion that no reasonable person could accept it beyond a reasonable doubt. See *id.* at 545; *People v. Schott*, 145 Ill. 2d 188, 206-07 (1991). While vague or doubtful identifications are insufficient to support a conviction, identification of the accused by a single eyewitness can support a conviction where that witness viewed the accused under circumstances allowing a positive identification. *People v. Lewis*, 165 Ill. 2d 305, 356 (1995).

> "[C]ircumstances to be considered in evaluating an identification include: (1) the opportunity the victim had to view the criminal at the time of the crime; (2) the witness' degree of attention; (3) the accuracy of the witness' prior description of the criminal; (4) the level of certainty demonstrated by the victim at the

identification confrontation; and (5) the length of time between the crime and the identification confrontation." *People v. Slim*, 127 Ill. 2d 302, 307-08 (1989).

¶ 17 Here, the evidence showed that Lawler was watching activity in the area of 21st Avenue near 9th Street. He was able to view westbound traffic on 21st Avenue from his position. Weather conditions were clear and sunny. Lawler was able to clearly view the interior of the Buick through the windshield as it approached him. He observed that defendant was the driver and only occupant of the Buick. He testified that he recognized defendant immediately and knew him from prior contacts. Lawler identified defendant in open court as the individual he saw driving that day, stating that he looked substantially the same in court as he did on the date of the offense. Lawler ran the Buick's license plate and defendant's name after he observed defendant and made the identification. This evidence supports a positive identification which the jury could find credible.

¶ 18 B. The Color of the Emergency Lights

¶ 19 Defendant argues that the State failed to prove that Lawler's emergency lights were red and blue where there was no testimony or other evidence admitted that disclosed the color of the lights.

¶ 20 Lawler testified that he was in uniform, in a marked squad vehicle, and had activated his sirens and emergency lights. He did not mention the color of the emergency lights during his testimony. Video from his dash camera was admitted and published to the jury. In that video, Lawler has his emergency lights activated as he passes the stop sign on 9th Street. The emergency lights reflect off the stop sign, visibly flashing red and blue.

¶ 21 Further, section 11-204(a) of the Code explains that the purpose of requiring use of a vehicle's "illuminated oscillating, rotating or flashing red or blue lights" with a siren is so that

they "would indicate the vehicle to be an official police vehicle." 625 ILCS 5/11-204(a) (West 2018). Even in the absence of the video, the testimony of the officer is sufficient to support a reasonable inference that he activated the squad vehicle's illuminated oscillating, rotating or flashing red or blue lights. See *People v. Brown*, 362 Ill. App. 3d 374, 379 (2005) (the officer drove a marked squad vehicle and engaged the squad's siren as well as the emergency lights when he pursued defendant, supporting a reasonable inference that the officer activated the squad's "illuminated oscillating, rotating or flashing red or blue lights" clearly giving defendant a visual signal to stop the vehicle).

¶ 22 C. The Required Mental State

¶ 23 Defendant argues that the State failed to prove that defendant willfully failed to obey the officer's signal to stop where Lawler delayed in pulling out behind the Buick and the Buick had executed a turn prior to the officer employing his lights and sirens. The evidence presented at trial established that defendant was travelling at a low rate of speed before he passed Lawler's stationary squad vehicle. His was the only vehicle on the street at that time. Lawler was in uniform in a marked police vehicle. Once Lawler pulled out behind defendant, defendant disobeyed the stop sign at 21st Avenue and 9th Street and began traveling at a high rate of speed. Lawler employed his lights and sirens and followed defendant as he crossed 9th Street. The evidence is sufficient to support a reasonable inference of knowledge that Lawler intended to stop him and thereby, a willful failure to stop, where defendant drove normally prior to passing Lawler and began driving more aggressively after Lawler pulled out behind him, disregarding a stop sign and driving at a much greater speed.

¶ 24 D. The Aggravating Factor

¶ 25 To establish the aggravating factor of the charged offense, the State had the burden of proving defendant's speed exceeded the maximum speed limit of 30 miles per hour by 21 miles per hour, *i.e.*, defendant's speed was at least 51 miles per hour. Lawler's testimony established that the applicable maximum speed was 30 miles per hour. His own speed reached 49 miles per hour according to the dash camera video and 50 miles per hour according to his speedometer. No evidence was presented regarding the certification of either instrument—if they were certified and when. The only evidence presented was Lawler's statement that the speedometer was certified.

¶ 26 Proof of a defendant's speed can be established by various means: by radar gun, stopwatch, pacing defendant's vehicle, or direct testimony of an officer. *People v. Lipscomb*, 2013 IL App (1st) 120530, ¶ 7. Lawler testified that he paced defendant's vehicle for a second or two at 50 miles per hour. It was his testimony that, at that point, Lawler "couldn't even get close to the car as [he] accelerated away." He did not indicate whether defendant's vehicle was pulling away from his, merely that he believed defendant was travelling faster than he was because he could not come close to the vehicle. He further testified that he did not come close to matching defendant's speed on 21st Avenue.

¶ 27 This evidence is insufficient to support the inference that defendant was travelling at least 51 miles per hour. There is no evidence that Lawler maintained a steady pace to be able to accurately verify the speed of defendant's vehicle, in fact, the evidence is the opposite. Lawler drove at 49 to 50 miles per hour for one or two seconds. After that, Lawler discontinued the pursuit and decelerated. One or two seconds is an insufficient amount of time to gauge the speed of defendant's vehicle. At best, the evidence supports an inference that defendant was driving 50 miles per hour, which is only 20 miles per hour over the speed limit in that area.

¶ 28 Thus, the State failed to prove beyond a reasonable doubt that defendant exceeded the maximum speed limit by 21 or more miles per hour. However, because this element was one of the aggravating factors under section 11-204.1, the evidence introduced at trial was sufficient to prove him guilty of the lesser included misdemeanor offense. See 625 ILCS 5/11-204 (West 2018). The maximum sentence for a Class A misdemeanor version of this offense is 365 days' imprisonment. 730 ILCS 5/5-4.5-55(a) (West 2018).

¶ 29 Accordingly, pursuant to Illinois Supreme Court Rule 615(b)(3), we vacate the felony conviction and enter a judgment of conviction on the charge of misdemeanor fleeing or attempting to elude a peace officer (625 ILCS 5/11-204(a) (West 2018)). Because defendant has already completed his sentence of four years' imprisonment, which exceeds the maximum sentence allowed for a Class A misdemeanor, pursuant to Illinois Supreme Court Rule 615(b)(4), we reduce defendant's sentence to 365 days, time served. See *Lipscomb*, 2013 IL App (1st) 120530, ¶¶ 12-13.

¶ 30 III. CONCLUSION

¶ 31 The judgment of the circuit court of Rock Island County is vacated in part and a modified judgment is entered.

¶ 32 Vacated in part; judgment modified.