

No. 1-12-3033

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).

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.	)	Nos. 37413940
	)	37413941
	)	37413942
	)	37413943
)	
KEITH LEWIS,	)	Honorable
	)	John D. Turner,
Defendant-Appellant.	)	Judge Presiding.

JUSTICE LAVIN delivered the judgment of the court.
Justices Hyman and Mason concurred in the judgment.

O R D E R

¶ 1 **Held:** Evidence sufficient to sustain defendant's convictions for speeding and street racing; defendant's conviction for speeding vacated under one-act, one-crime rule.

¶ 2 Following a bench trial, defendant Keith Lewis was found guilty of speeding 40 miles per hour (mph) or more in excess of the speed limit, street racing, improper lane usage, and failure to

signal, and sentenced to concurrent terms of 12 months' conditional discharge as to all convictions, as well as assessed \$660 in fines. On appeal, defendant contends that the evidence was insufficient to prove him guilty of speeding 40 mph or more in excess of the speed limit and of street racing. In the alternative, he contends that his convictions for speeding and street racing violate the one-act, one-crime doctrine. He thus requests that we remand his cause for the trial court to determine which of those two convictions should be vacated. We affirm defendant's street racing conviction and vacate his speeding conviction.

¶ 3 Defendant was charged by citation with speeding 40 mph or more in excess of the speed limit, street racing, improper lane usage, and failure to signal in relation to an incident that occurred in the early morning hours of November 20, 2011. At that time, a state trooper observed defendant and another car speeding on the interstate, as well as engaging in other traffic violations. Following a successful pursuit, the trooper stopped defendant and issued the above mentioned citations.

¶ 4 At trial, Illinois state trooper Aaron French testified that at approximately 1:10 a.m. on November 20, 2011, he was on patrol while in uniform and driving an unmarked car. He was traveling northbound in the middle lane of three lanes of traffic on I-94, just south of 158th Street, when two vehicles went past on either side of him at a high rate of speed. One of the cars was a black Mercedes, and the other one was a green BMW. Trooper French attempted to catch up to the vehicles, and, in the process, accelerated to over 120 mph. He continued driving at that speed for a little over a mile, from 159th Street to just before 147th Street, but both vehicles were still pulling away from him. During that time, the drivers of both vehicles swerved around other cars four or five times, failed to use their turn signals, and kept "about the same pace as each other." Trooper French was able to catch up to the vehicles when they were exiting at 147th

Street, and, when the vehicles were stopped at a stop light, Trooper French activated his emergency lights and used his public announcement speaker to instruct the drivers to pull into the White Castle parking lot at 147th Street. The driver of the Mercedes, who Trooper French identified in court as defendant, followed his instructions, and pulled into a parking spot. The other driver drove through the parking lot and exited back onto the roadway.

¶ 5 Trooper French further testified that he then approached defendant and asked him why he was driving so fast. Defendant responded that he had seen the green BMW go past him, and he "just tried to keep up the speed with him." Trooper French issued citations to defendant for street racing and for speeding 100 mph in a 55 mph zone.¹ He wrote the ticket for 100 mph because he "figured [he] had no speed on him besides for them pulling away from [him] as [he] was doing 120 mph, so [he] figured at some point in time, they had to be doing 100 mph."

¶ 6 On cross-examination, Trooper French testified that at the time of the incident, traffic was moderate and that both vehicles passed him at approximately the same time on either side of him, traveling parallel to each other. After the vehicles passed him, they remained "neck and neck." Trooper French testified that although he does not calibrate his own speedometer, that it is calibrated at every service. Although he had a radar unit in his vehicle, he was not able to use it to determine defendant's rate of speed because in order to do so, he would have to be going slower than the other vehicles. Initially, he was driving with the flow of traffic, which was "probably" 70 mph. Trooper French acknowledged that he did not know exactly how fast he was traveling at the time the vehicles sped past him. When the Mercedes and BMW were on the exit ramp, they were slowed down by other vehicles on the ramp.

¹ Although Trooper French did not testify regarding any additional citations, the record shows that he also issued citations for improper lane usage and failure to signal.

¶ 7 On redirect examination, Trooper French testified that he has been a trooper for three years and has done traffic patrol on every work day. He has driven a car at 100 mph before, and is familiar with how objects look when they pass by traveling at 100 mph.

¶ 8 The State rested and defendant moved for a directed verdict. In doing so, counsel argued that the evidence was insufficient to show that defendant had been traveling at 100 mph because his speed was not determined by a radar unit, Trooper French's testimony regarding his own speed was uncertain, and the trooper's estimation of defendant's speed was not based on proper "pacing." Counsel further argued that the evidence was also insufficient to show that defendant had been speed racing because his statement to Trooper French that he had been trying to keep up with the other driver was merely indicative that he was following someone and not that he was trying to race with or outdistance the other driver. The trial court denied defendant's motion.

¶ 9 Defendant testified that he was on his way to work at the time of the incident, and he was not following anyone at that time. Although he admitted that he had been speeding, he denied that he had been traveling at 100 mph, and estimated that he had been traveling at between 75 and 80 mph. Defendant did not know if he passed Trooper French, and the first time defendant noticed him was when the trooper pulled alongside him at the stop light by the exit, near White Castle.

¶ 10 The court found defendant guilty of speeding 40 mph or more in excess of the speed limit, street racing, improper lane usage and failure to signal. In doing so, the court stated that Trooper French's testimony that he approached a speed of 120 mph, but the distance between his vehicle and the two vehicles he was pursuing continued to increase, showed that those two vehicles were traveling faster than the trooper's vehicle. The court subsequently sentenced defendant to a term of 12 months' conditional discharge as to each conviction, and assessed \$660

in fines against him. On appeal from that judgment, defendant does not contest that he was speeding on the night of the incident, but argues that the evidence was insufficient to show that he was speeding 40 mph or more in excess of the speed limit.

¶ 11 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).

¶ 12 To sustain defendant's conviction for speeding, the State had to prove that he was traveling 40 mph or more in excess of the applicable maximum speed limit. 625 ILCS 5/11-601.5(b) (West 2010). The speed limit in this case was 55 mph, thus the State had to prove that defendant was traveling at least 95 mph.

¶ 13 It has been held that an officer's estimate of the speed at which defendant was traveling is sufficient to sustain a conviction for speeding. *People v. Hampton*, 96 Ill. App. 3d 728, 730 (1981). Here, Trooper French testified that he was traveling at approximately 70 mph when defendant's car passed him at a high rate of speed. Trooper French further testified that he began to pursue defendant, and, although his speedometer reflected that he was traveling at approximately 120 mph for a little over a mile, defendant's vehicle was still pulling away from

him. Trooper French thus estimated that defendant's speed at this time reached at least 100 mph. Viewing this evidence in the light most favorable to the prosecution (*Siguenza-Brito*, 235 Ill. 2d at 224), we find that it was sufficient to show that defendant's speed at the time of the incident was 100 mph (*Hampton*, 96 Ill. App. 3d at 730), which was a speed 40 mph or more in excess of the speed limit, and he was thus found guilty beyond a reasonable doubt.

¶ 14 Defendant, however, maintains that the evidence was insufficient in that Trooper French's conclusion regarding his speed was nothing more than an inconclusive and unreliable estimation. He points out that Trooper French did not use a radar unit to determine his speed, that the trooper acknowledged that he did not know exactly how fast he was traveling at the time the two vehicles initially sped past him, and argues that the amount of time the trooper observed him speeding was only about 60 seconds, and no evidence was presented that the trooper "paced" him. The record shows that these arguments regarding weaknesses in the evidence were presented to, and rejected by, the trier of fact, and thus they are unpersuasive. *People v. Baugh*, 358 Ill. App. 3d 718, 737 (2005). It was for the trier of fact to resolve any conflicts or inconsistencies in the evidence, and we have no basis here to substitute our judgment for that of the trial court. *Campbell*, 146 Ill. 2d at 374-75, 389.

¶ 15 In making our determination, we have considered defendant's argument that an officer's testimony that in his estimation a defendant was traveling at a "high rate of speed" fails to meet the burden of proof to show that a defendant is speeding even where that burden is a preponderance of the evidence standard. In so arguing, defendant relies upon *City of Rockford v. Custer*, 404 Ill. App. 3d 197, 200 (2010), in which the reviewing court discounted the officer's estimation because he had not quantified the defendant's estimated speed. 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*, Trooper French did not merely testify that defendant had been traveling at a high rate of speed, but rather quantified defendant's estimated speed at 100 mph, which was well over 40 mph over the 55 mph speed limit.

Accordingly, *Custer* is inapplicable to the case at bar.

¶ 16 We further note that defendant points out that although Trooper French testified that his speedometer was calibrated at every service, no evidence was presented as to the frequency of those calibrations or the qualifications of the person performing them. To the extent defendant is relying on this as a basis for his insufficiency of the evidence argument, we note that this argument does not relate to the sufficiency of the evidence, but rather, to the foundation for Trooper French'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 post-trial motion. *Id.*

¶ 17 Defendant also challenges the sufficiency of the evidence to sustain his conviction for street racing. In so arguing, he correctly points out that there was no indication of which subsection of the Illinois Vehicle Code (Code) (625 ILCS 5/11-506(c) (West 2010)) he allegedly violated, given that no subsection was listed in the citation he was issued, and no mention of a particular subsection was made at trial. However, we may affirm the trial court's judgment on any basis supported by the record. *Alpha School Bus Co., Inc. v. Wagner*, 391 Ill. App. 3d 722, 734 (2009); *People v. Merz*, 122 Ill. App. 3d 972, 976 (1984).

¶ 18 Pursuant to the Code, "street racing," means any of the following:

"(1) The operation of 2 or more vehicles from a point side by side at accelerating

speeds in a competitive attempt to outdistance each other; or

(2) The operation of one or more vehicles over a common selected course, each starting at the same point, for the purpose of comparing the relative speeds or power of acceleration of such vehicle or vehicles within a certain distance or time limit; or

(3) The use of one or more vehicles in an attempt to outgain or outdistance another vehicle; or

(4) The use of one or more vehicles to prevent another vehicle from passing; or

(5) The use of one or more vehicles to arrive at a given destination ahead of another vehicle or vehicles; or

(6) The use of one or more vehicles to test the physical stamina or endurance of drivers over long-distance driving routes." 625 ILCS 5/11-506(c)(1-6) (West 2010).

Defendant maintains that Trooper French provided no testimony regarding any actions that would constitute street racing pursuant to any of the enumerated subsections. We disagree.

¶ 19 Trooper French testified that he was traveling in the middle lane of three lanes of traffic when defendant's car and the green BMW passed on either side of him at a high rate of speed, and that the cars were "neck and neck." Trooper French further testified that as he pursued the two vehicles, he watched as both vehicles swerved around other cars four or five times, failed to use their turn signals in doing so, and kept "about the same pace as each other." In viewing this evidence in the light most favorable to the prosecution (*Siguenza-Brito*, 235 Ill. 2d at 224), we find that the evidence presented was sufficient to show beyond a reasonable doubt that defendant was using his vehicle in an attempt to outgain or outdistance the green BMW, and was thus proven guilty of street racing pursuant to subsection (c)(3) of the Code.

¶ 20 In reaching this conclusion, we have considered defendant's argument that his statement to Trooper French that he was only trying to "keep up" with the green BMW shows that he was

not trying to outgain or outdistance it. We disagree. A trier of fact may discount the truthfulness of a defendant's self-serving statements. *People v. Dominique*, 86 Ill. App. 3d 794, 808 (1980). It was for the trier of fact to make credibility determinations and resolve any conflicts or inconsistencies in the evidence, and we have no basis here to substitute our judgment for that of the trial court. *Campbell*, 146 Ill. 2d at 374-75, 389.

¶ 21 Defendant next argues that his convictions for speeding and street racing violate the one-act, one-crime doctrine. Under the one-act, one-crime doctrine, a defendant may be convicted of only one crime resulting from a single act, and accordingly, where two convictions arise from the same physical act, sentence should be imposed on the more serious offense and the less serious offense should be vacated. *People v. Artis*, 232 Ill. 2d 156, 170 (2009). Here, defendant maintains, and the State concedes, that his convictions for speeding and street racing violate the one-act, one-crime doctrine because they were based on the same physical act.

¶ 22 The question remains which of those two convictions is the less serious offense. In making this determination, a court should compare the relative punishments for each offense, and, if the punishments are identical, a court should consider which offense has the most culpable mental state. *Artis*, 232 Ill. 2d at 170-71. Where the offenses have identical punishments and the same mental state, a reviewing court cannot determine which offense is the more serious one, and the matter should be remanded to the trial court to make that determination. *In re Samantha V.*, 234 Ill. 2d at 379-80.

¶ 23 Here, defendant maintains that this court must remand this matter to the trial court because the two convictions at issue have the same mental states and punishments. He maintains that speeding 40 mph or more in excess of the speed limit and street racing are both Class A misdemeanors that are subject to the same sentencing possibilities, and that both offenses are

absolute liability offenses and thus a defendant's intent or knowledge is immaterial to the question of guilt. The State asserts that remand is not necessary because it has the right to elect which conviction should be retained, and in this case, it elects the street racing conviction. We note that unlike a conviction for speeding 40 mph or more in excess of the speed limit, a street racing conviction is subject to a minimum fine of \$250 and mandatory revocation of the defendant's driver's license. Compare 625 ILCS 5/11-506(d)(1) (West 2010) (street racing); with 625 ILCS 5/11-601.5(b) (West 2010) (speeding). We accept the State's election and direct that the offense of speeding 40 mph or more in excess of the speed limit be vacated. *Artis*, 232 Ill. 2d at 170.

¶ 24 For the foregoing reasons, we affirm the judgment of the circuit court of Cook County finding defendant guilty of speeding 40 mph or more in excess of the speed limit and street racing, and vacate defendant's conviction for speeding 40 mph or more in excess of the speed limit because it violates the one-act, one-crime rule. We affirm the judgment of the court in all other respects.

¶ 25 Affirmed in part, vacated in part.