

NOTICE

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2017 IL App (4th) 141009-U

NO. 4-14-1009

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED

January 13, 2017

Carla Bender

4th District Appellate Court, IL

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from
Plaintiff-Appellee,)	Circuit Court of
v.)	Livingston County
HARRY R. KOULAKES,)	No. 13CF239
Defendant-Appellant.)	
)	Honorable
)	Robert M. Travers,
)	Judge Presiding.

JUSTICE KNECHT delivered the judgment of the court.

Justice Steigmann concurred in the judgment.

Justice Appleton dissented.

ORDER

¶ 1 *Held:* The State presented sufficient evidence to sustain defendant's conviction of aggravated fleeing on September 13, 2013.

¶ 2 In September 2013, the State charged defendant, Harry R. Koulakes, with one count for aggravated fleeing, a Class 4 felony (625 ILCS 5/11-204.1(a)(1) (West 2012)). In September 2014, a jury found defendant guilty. In November 2014, the court sentenced defendant to 60 days in jail and 2 years' probation.

¶ 3 Defendant appeals, arguing the State failed to prove him guilty beyond a reasonable doubt because no evidence showed defendant was aware a police officer was in pursuit of his vehicle. We affirm.

¶ 4 **I. BACKGROUND**

¶ 5 In September 2013, the State charged defendant with one count of aggravated

fleeing or attempting to elude a peace officer, a Class 4 felony (*id.*), based upon allegations a police officer attempted to stop defendant's motorcycle on Illinois Route 47, but defendant refused to obey and accelerated in an attempt to flee on September 13, 2013.

¶ 6 At a jury trial in January 2014, the following testimony was presented at trial.

¶ 7 A. Testimony of Mark Scott

¶ 8 Officer Mark Scott of the Dwight police department testified he was patrolling Route 47 the night of September 13, 2013. He was parked in an unmarked car near the intersection of 2200 North Road and Route 47. At around 8:15 p.m., he observed a motorcycle heading north on Route 47 at a high rate of speed. He used his radar gun and detected the motorcycle was travelling at 75 miles per hour as it headed north toward him.

¶ 9 Scott pulled his vehicle up to Route 47 and turned on his headlights. As the motorcycle passed, Scott observed the motorcycle was red, a "crotch-rocket," and had two riders. He saw the driver and passenger both wore helmets and black and gray jackets, respectively. Scott followed the motorcycle and accelerated to catch up, eventually reaching a speed of 120 miles per hour. The motorcycle was still pulling away. Scott passed Officer Ryan Donovan, who was pulled over and conducting a traffic stop at approximately 2300 North Road.

¶ 10 Scott testified he turned his red emergency lights and sirens on after he passed Donovan, but the motorcycle kept pulling away. Scott went another mile before he was forced to a stop because of engine problems. He called ahead to Dwight and had police on the lookout for a red "crotch-rocket" motorcycle with two riders.

¶ 11 Scott became aware Officer John Hoy stopped a motorcycle in Dwight. Another officer gave Scott a ride from his vehicle to Hoy's location, just past 3100 North Road. Once there, he saw defendant's motorcycle and believed it was the same as the one he had been chas-

ing. It was a red "crotch-rocket" with two passengers wearing black and grey jackets. He had seen no other motorcycles that night.

¶ 12 B. Testimony of John Hoy

¶ 13 Officer John Hoy of the Dwight police department testified he was in the middle of town when informed to be on the lookout for a red motorcycle headed to Dwight on Route 47 the night of September 13, 2013. Hoy made his way to Route 47 and spotted a motorcycle fitting the description over the radio. He conducted a traffic stop of the motorcycle at approximately 8:20 p.m. The motorcycle pulled over immediately. He observed one rider was wearing a black jacket and the other was wearing a gray jacket.

¶ 14 C. Testimony of Ryan Donovan

¶ 15 Officer Ryan Donovan of the Livingston County sheriff's department testified he was conducting a traffic stop at 8:15 p.m. when he heard a motorcycle coming toward him on Route 47. He looked up from writing a warning ticket and saw a motorcycle go by with Scott's vehicle following it. Donovan had not seen any other motorcycles on Route 47 that night.

¶ 16 Donovan testified he quickly finished writing his ticket and got in his car to follow Scott. He found Scott's vehicle broken down on the side of the road and checked on him. After hearing a motorcycle had been stopped near Dwight, Donovan drove to Hoy's location.

¶ 17 D. Testimony of Robert Koulakes

¶ 18 Robert Koulakes, defendant's son, testified he was a student at the University of Illinois in Champaign-Urbana and defendant came to drive him home for a weekend visit on September 13, 2013. Defendant arrived on his motorcycle, which was red with black accents. Robert was dressed in jeans and a gray and cream sweater. Robert's helmet was all black and defendant's was black and had a dragon design and silver sparkles. Robert was riding on the

back, arms around defendant, as they made their way home to the Chicago suburbs.

¶ 19 Robert testified he was sleepy on the night in question and did not recall many of the night's details. They drove down a four-lane highway but eventually turned off of it. He then remembers stopping at least once. At one point, they pulled into gas station or truck stop so defendant could clean his helmet off. Robert believed they were lost and defendant was checking his global positioning system (GPS). They began riding again, defendant knocking him on the helmet every so often to make sure he was awake. The bike made at least another turn. Robert could not see the speedometer, but the motorcycle did not accelerate much because he did not have to tighten his grip around defendant. From what he sensed, they were going a constant speed of 50 to 55 miles per hour. Had they been going faster, Robert testified he would not have been able to hold on.

¶ 20 They had been driving again for half an hour or more before Hoy pulled them over. Robert noticed the lights when Hoy pulled the motorcycle over, but he had not heard a siren or seen flashing lights before then.

¶ 21 E. Testimony of Defendant

¶ 22 Defendant testified, on September 13, 2013, he drove from his home in Plainfield and picked up his son from school in Champaign-Urbana. Defendant was wearing a black jacket and a black helmet with silver dragons on it. He made the trip to Champaign-Urbana twice before, but he was not familiar with the route back to Plainfield. He exited Champaign-Urbana on the interstate and eventually exited onto Route 47. He kept driving northward, making a couple of stops at service stations along the way. Turning out of the second station, he lost his bearings and accidentally turned west. He got directions and turned north onto a side road. He hit a dead end and checked his phone's GPS. He then turned east on 2600 North Road, deciding to return

to Route 47.

¶ 23 Before reaching Route 47, according to defendant, a motorcycle passed at a high rate of speed and was heading west. He reached Route 47 soon after and proceeded north. A few minutes later, he saw the flashing lights of Hoy's vehicle and pulled over. Prior to then, defendant had not heard sirens or seen flashing lights of any kind. He denied ever going over 70 miles per hour, stating he would never endanger his son by going 120 miles per hour.

¶ 24 F. Stipulated Admission of Video and Ensuing Events

¶ 25 Following closing arguments, the jury found defendant guilty. In October 2014, defendant filed a motion for a new trial. Defendant asserted the State failed to offer sufficient evidence Scott's vehicle ever exhibited flashing lights or emitted an audible horn or signal in attempting to pull defendant over, noting Scott's testimony was contradicted by Donovan's dashboard camera's video, as such signals were absent therein. The trial court denied defendant's motion.

¶ 26 This appeal followed.

¶ 27 II. ANALYSIS

¶ 28 On appeal, defendant argues the State failed to prove him guilty beyond a reasonable doubt of aggravated fleeing because it offered insufficient evidence defendant drove his motorcycle at a rate of speed at least 21 miles over the legal speed limit after becoming aware of any visual or audible signal to stop. We affirm

¶ 29 A. Standard of Review

¶ 30 "When reviewing a challenge to the sufficiency of the evidence in a criminal case, the relevant inquiry is whether, when 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. Ngo*, 388 Ill. App. 3d 1048, 1052, 904 N.E.2d 98, 102 (2008) (quoting *People v. Singleton*, 367 Ill. App. 3d 182, 187, 854 N.E.2d 326, 331 (2006)).

The trier of fact has the responsibility to determine the credibility of witnesses and the weight given to their testimony, to resolve conflicts in the evidence, and to draw reasonable inferences from the evidence. *People v. Jackson*, 232 Ill. 2d 246, 281, 903 N.E.2d 388, 406 (2009). "[A] reviewing court will not reverse a criminal conviction unless the evidence is so unreasonable, improbable[,] or unsatisfactory as to create a reasonable doubt of the defendant's guilt." *People v. Rowell*, 229 Ill. 2d 82, 98, 890 N.E.2d 487, 496-97 (2008).

¶ 31 B. Aggravated Fleeing

¶ 32 The State charged defendant with the felony of aggravated fleeing or attempting to elude a peace officer in violation of subsection 11-204.1(a)(1) of the Illinois Vehicle Code (625 ILCS 5/11-204.1(a)(1) (West 2012)), which 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[.]"

¶ 33 Section 11-204(a) of the Vehicle Code defines a signal in this context:

"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."

625 ILCS 5/11-204(a) (West 2012).

¶ 34 The State presented testimony at defendant's trial establishing defendant exceeded the speed limit by more than 21 miles per hour after Scott's vehicle's emergency lights were activated. Scott testified the speed limit on Route 47 was 55 miles per hour. On the night he spotted the defendant, he used his radar gun from the side of the road at 2200 North Road and clocked defendant's speed at 78 miles per hour. Scott gave chase in his unmarked police car and accelerated up to 120 miles per hour while trying to catch up to defendant's motorcycle, but the motorcycle was still pulling away. While Scott did not turn his emergency lights and sirens on immediately, he testified he turned them on "[j]ust after [he] passed Deputy Donovan who had a traffic stop on Route 47 [at] approximately 2300 North Road." Scott stated he pursued defendant for approximately a mile with his lights and sirens activated before his car broke down.

¶ 35 Defendant argues Scott's testimony his sirens and lights were engaged was discredited by Donovan's dashboard video showing no visible lights or sirens as Scott passes in pursuit of defendant. Defendant cites the Illinois Supreme Court's decision in *People v. Kladis*, 2011 IL 110920, ¶ 28, 960 N.E.2d 1104, in which the court acknowledged the principle in *Scott v. Harris*, 550 U.S. 372, 380-81 (2007), that no reasonable jury could believe testimony "utterly discredited" by video evidence in the record.

¶ 36 In *Scott*, the Court held a video showing the defendant driving erratically "clearly contradict[ed]" his testimony to the contrary, and therefore, no reasonable jury could have be-

¶ 41 JUSTICE APPLETON, dissenting.

¶ 42 I respectfully dissent and would reverse defendant's conviction.

¶ 43 In my opinion, the State failed to sufficiently prove defendant guilty of aggravated fleeing or attempting to elude a police officer *beyond a reasonable doubt*. The evidence presented to the jury leaves *more* than a reasonable doubt defendant ever knew Scott was pursuing him with his lights and sirens activated. The fact defendant refused to stop for Scott, but immediately stopped for Hoy, tends to contradict facts sufficient to convict defendant. In fact, Scott's testimony that (1) he followed defendant's motorcycle for a mile without activating his lights and sirens; (2) only after passing Donovan's car, out of the view of the camera, did he activate his lights and sirens; and (3) he never was able to catch up to defendant before his car broke down negates proof of defendant's guilt.

¶ 44 The majority finds a reasonable trier of fact could have concluded beyond a reasonable doubt that Scott, in fact, turned on his emergency lights and siren after passing Donovan, but due to the direction of the camera, the video did not record the lights or the sound of the siren. This is so, according to the majority, even though the video recorded the sound of the motorcycle as it passed. Even accepting as true that the video was not able to record the sight and sound of Scott's lights and siren, the State failed to present *any* evidence that defendant was ever aware Scott was pursuing him. In other words, the State failed to present evidence that defendant wilfully "fle[d] or attempt[ed] to elude a peace officer, after being given a visual or audible signal by a peace officer." 625 ILCS 5/11-204.1(a)(1) (West 2012).

¶ 45 Further, the evidence actually negated the inference discussed in *People v. Trump*, 62 Ill. App. 3d 747, 748-49 (1978) (where the officer followed the defendant for over a mile in a marked patrol car with lights and siren activated, the jury could reasonably infer that the defend-

ant willfully attempted to elude the officer). Here, Scott's own testimony indicated he initially pursued defendant without lights and sirens, was never able to catch up to defendant, and only turned on his lights and sirens a minute before his vehicle broke down. From these facts, a jury could not reasonably infer defendant *knew* Scott was in pursuit and *willfully failed* to stop his motorcycle. *Cf. id.*

¶ 46 For these reasons, I would reverse defendant's conviction.