2018 IL App (1st) 153471-U

Nos. 1-15-3471 & 1-16-1762 (consolidated)

Order filed May 11, 2018

Fifth Division

IN THE

APPELLATE COURT OF ILLINOIS

FIRST DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County.
	)	
v.	)	No. 14 CR 18124
	)	
CARLOS VALDEZ,	)	Honorable
	)	Gregory Robert Ginex,
Defendant-Appellant.	)	Judge, presiding.

JUSTICE LAMPKIN delivered the judgment of the court.
Justices Hall and Rochford concurred in the judgment.

O R D E R

¶ 1 *HELD*: The evidence was sufficient to establish defendant was under the influence of alcohol at the time in question and, therefore, was guilty of aggravated driving under the influence. The evidence additionally supported a finding of guilt for aggravated fleeing or attempting to elude a peace officer. Defendant's confrontation clause rights were not violated by

the admission of his certified driving abstract to establish his guilt for aggravated driving with a revoked license.

¶ 2 Following a bench trial, defendant, Carlos Valdez, was convicted of aggravated driving under the influence (DUI), aggravated fleeing or attempting to elude a peace officer, aggravated driving while his license was revoked, obstructing identification, resisting a peace officer, reckless driving, and driving with squealing tires. Defendant was sentenced to a total of seven years' imprisonment. On appeal, defendant contends the State failed to prove him guilty beyond a reasonable doubt of aggravated DUI where the evidence did not establish he was under the influence at the time in question. Defendant additionally contends the State failed to prove him guilty beyond a reasonable doubt of aggravating fleeing or attempting to elude a peace officer where the State did not show the police activated red or blue oscillating lights in an effort to stop him as required by the statute. Defendant finally contends his confrontation clause rights were violated when the State introduced his certified driving abstract to establish his guilt for aggravated driving with a revoked license. Based on the following, we affirm.

¶ 3 FACTS

¶ 4 The trial evidence demonstrated that, on August 23, 2014, around 8:20 p.m., Melrose Park Police Officers Jesus Tejeda and Steve Pesce were on patrol in their marked vehicle when they observed defendant driving toward them. As both vehicles approached an intersection from opposite directions, defendant suddenly turned in front of the police vehicle, forcing Officer Pesce to slam on the brakes. The officers proceeded to follow defendant, who drove through a number of stop signs at a high rate of speed. The officers activated their emergency lights, siren, and used their horn in an effort to curb defendant's vehicle. Nevertheless, defendant continued

driving at a high rate of speed, failing to observe the posted stop signs, and nearly crashed into two sets of pedestrians. Defendant eventually drove onto a driveway and stopped his vehicle behind a large fence and shrubbery. When the officers apprehended defendant, they observed three empty beer cans on the driver's side floor of his vehicle and an unopened case of beer on the front passenger's seat. Defendant had a "moderate" smell of alcohol on his breath and his eyes appeared bloodshot. Defendant refused to perform field sobriety tests on the scene and later refused again while at the police station. Defendant also refused to take a breathalyzer test.

¶ 5 Officer Tejeda testified that he had been a Melrose Park police officer for 11 years. On the date in question, he was dressed in his uniform and was riding in a "fully marked" police vehicle as a passenger while Officer Pesce, his partner, drove. According to Officer Tejeda, the police vehicle did not have "Mars lights" on the top of the car, but the lights were "everywhere else[:] the back windows, the lights, the front, the grill [and] the bar in front."

¶ 6 While driving westbound on 19th Avenue, Officer Tejeda observed defendant driving alone, heading eastbound on 19th Avenue. As the vehicles approached an intersection, defendant turned in front of the police car onto 20th Avenue. Defendant's tires screeched and Officer Pesce "slammed on the brakes to prevent a collision." Officer Pesce then followed defendant's vehicle onto 20th Avenue. Officer Tejeda observed defendant disregard a stop sign at 20th Avenue and Rice Street. In response, Officer Pesce activated his emergency lights and siren, using several different tones of the siren. Officer Pesce additionally used the vehicle's horn; however, defendant failed to curb his vehicle. Instead, defendant increased his speed and proceeded through two additional stop signs on 20th Avenue without stopping. The officers continued pursuing defendant, who zigzagged through the neighborhood by turning left on Walton Street,

turning right on 22nd Avenue, and then turning left on Augusta Street where he had to "swerve[] to the left" to avoid a vehicle stopped at the intersection of Augusta Street and 23rd Avenue. Defendant turned left onto 23rd Avenue and drove toward Lake Street. Officer Tejeda observed a woman crossing the street with a baby stroller. The woman hurried when she heard defendant's vehicle approaching. Defendant was forced to swerve to avoid hitting the woman and her stroller.

¶ 7 Defendant continued driving on Lake Street for a short while before turning back onto Rice Street. Defendant increased the speed of his vehicle to the point that it was difficult for the officers to follow. As defendant approached 16th Avenue, Officer Tejeda observed defendant "los[e] control" of his vehicle in order to avoid a family that was crossing the street. The family jumped onto the sidewalk and defendant drove on the grass and sidewalk. When defendant returned his vehicle to the street, he was driving at such a high rate of speed that Officer Pesce did not match the speed due to safety concerns. Officer Tejeda, however, never lost sight of defendant's vehicle. Officer Tejeda stated that he observed defendant disregard at least seven stop signs. Ultimately, defendant disregarded a stop sign located at 12th Avenue and Division Street and turned onto a driveway behind some shrubbery and a large fence. Defendant stopped the vehicle and turned off the lights and ignition, but remained inside. Officer Pesce parked the police vehicle directly behind defendant's vehicle.

¶ 8 The officers proceeded to conduct a "felony stop," meaning they did not approach defendant's vehicle, but rather issued verbal commands from a covered position for safety purposes. Initially, Officer Pesce yelled commands in English; however, defendant failed to comply. Officer Tejeda then issued commands to defendant in Spanish, Tejeda's native

language. Defendant still did not respond, so the officers approached defendant's vehicle. Additional officers had arrived on the scene as well. Defendant exited his vehicle and inquired in Spanish, "[w]hy are you stopping me?" Defendant did not require assistance to stand and was not swaying. Tejeda instructed defendant, in Spanish, to place his hands behind his back, but defendant refused. Instead, defendant pulled his hands away from Tejeda. Officer Tejeda characterized defendant as "resisting [his] commands to be placed in handcuffs" by pulling and pushing each time the officers attempted to restrain him. At the time, Officer Tejeda was "really close" to defendant and smelled "a moderate odor of alcohol coming from [defendant's] mouth." Officer Tejeda also observed defendant's eyes were bloodshot. Defendant eventually was handcuffed and Officer Tejeda read him his *Miranda* rights. According to Officer Tejeda, defendant refused to perform a field sobriety test. Officer Tejeda testified that he observed three empty beer cans on the driver's side floor of defendant's vehicle, including one 12 ounce can and two 24 ounce cans. Officer Tejeda additionally observed an unopened case of beer on the passenger's seat. Defendant reported that he "only had a couple of beers."

¶ 9 Defendant was transported to the police station by another officer. Later, Officers Tejeda and Pesce spoke to defendant at the police station. At that time, defendant again refused to perform a field sobriety test and refused to take a breathalyzer test. Defendant failed to produce any identification and stated that his name was "Pablo Valdez." After running defendant's fingerprints through the police database, defendant was correctly identified as Carlos Valdez.

¶ 10 Officer Tejeda testified regarding his experience observing intoxicated persons and his professional training in observing signs of impairment. Officer Tejeda opined that defendant was under the influence of alcohol on the date in question to the extent that he was unable to safely

operate a vehicle. Tejeda's opinion was based on defendant's erratic driving, defendant's failure to stop, defendant's fleeing and hiding in a driveway, defendant's odor of alcohol, defendant's admissions, and defendant's refusal to perform the field sobriety and breathalyzer tests.

¶ 11 On cross-examination, Officer Tejeda testified that he did not include the fact of defendant's bloodshot eyes in his police report.

¶ 12 Following Officer Tejeda's testimony, the State requested leave to enter defendant's certified driving abstract demonstrating defendant's driving privileges were revoked on the date in question. The abstract contained the following standardized language:

> "This official record is received directly from the Secretary of State's Office via computer link-up system. This is to certify, to the best of my knowledge and belief, after a careful search of my records, that the information set out herein is a true and accurate copy of the captioned individual's driving record; identified by driver's license number, and I certify that all statutory notices required as a result of any driver control actions taken have been properly given."

Defense counsel did not object.

¶ 13 The trial court found defendant guilty of aggravated DUI, aggravated fleeing or attempting to elude a peace officer, aggravated driving while his license was revoked, obstructing identification, resisting a peace officer, reckless driving, and driving with squealing tires. In so doing, the trial court stated:

> "The Court has had a chance to listen to the testimony of the officer and has judged his credibility and h[a]s judged him in light of the exhibits and all of the testimony thus far.

***

The testimony that this Court heard was that the officer was driving as a passenger, with a fellow officer; that the defendant was coming opposite. And with all respect ***, I don't believe that it was sketchy at all about failure to yield. The officer recited precisely what the law in Illinois is. Someone is on a thoroughfare proceeding, you have the right of way. If someone cuts in front of them, that is failure to yield. Now, they didn't cause an accident but that's clearly a traffic offense of the Vehicle Code. The officers would then have a right to proceed and stop the vehicle.

As the officer proceeded, he indicated that the defendant had made several turns, and at least, I counted, eight stop signs the defendant failed to stop at. The officer was very candid in that he couldn't be sure. He didn't keep actual tabulation but he talked about specific intersections and specific locations where there were traffic control devices and stop signs. The defendant blew right through them.

He also indicated that there was the erratic driving, not only of that, but after the officers put on the siren and the emergency lights, several different tones of the siren, they followed the defendant; and the defendant kept turning and moving in other directions down the streets in Melrose Park. He went 50 feet or so, turned on a stop sign, then turned on another street. He failed to stop despite all of this. At one point the defendant had to brake to avoid striking another vehicle. There was no contact but the officers again tried to stop the defendant. The defendant failed to stop and comply with the directives of the officer.

On Lake Street there were two or three stop signs he disregarded. One, there was a female walking with a baby stroller; and she basically screamed and stopped. The

defendant actually swerved around her based on the speed he was going, blew another stop sign, apparently had gone up on the grass at one point and on the sidewalk.

Then as the officers are following him, he picks up speed, fails to listen to the officers and their valid commands, and then at one point pulls into a driveway attempting to hide from the officers. There is shrubbery there. There is a driveway there.

Officers respond, give him commands to come out. The officer indicated, Officer Tejeda, that he gave the defendant commands in Spanish. Other officers arrived on [the] scene. They had to bring the defendant out. The defendant said, why are you stopping me? There was a physical confrontation. The defendant was attempted to be cuffed. He pulled away and pushed away from the officers. The defendant was cuffed, was offered field sobriety tests, refused those. Later on apparently the officer offered them again in the station, which he refused. He refused the breathalyzer.

Upon contact with the defendant the officer did indicate a moderate odor of alcohol but he also indicated that there were three cans of beer, two 24-ounce cans, one 12-ounce can, which you seen [*sic*] in the exhibits the State brought to the Court's attention and introduced into evidence. And there also is a 24 pack of Bud Light, although it is unopened and it is in the passenger seat.

The defendant, when he is brought in, has an odor of alcohol, although it is moderate, and is cuffed immediately, brought to the station, and then gives the name of Pablo Valdez. And the officers are proceeding with tickets in the name of—going to proceed with Pablo Valdez. And then they run his name and fingerprints, and he comes back as Carlos.

In the officer's opinion he has seen, in his opinion, triple digit people, hundreds maybe of driving under the influence. He believed in his opinion that the defendant was under the influence based on his erratic driving, the odor of alcohol, the defendant's admission that he had several beers, his refusal and his total contact with the defendant.

So accordingly based on the totality of the evidence, as to the charge of aggravated fleeing and eluding the defendant is found guilty.

As to the charge of aggravated driving while [his] license [was] revoked, clearly the People's No. 9 in evidence shows the defendant has been revoked for some time, and there is a finding of guilty as to that.

As to giving a false name to try to attempt to conceal who he really was, there is a finding of guilty of obstruction.

As to the pushing and shoving that occurred when he refused to be cuffed, there is a finding of guilty of resisting.

Clearly the defendant squealed tires in front of the police officers. There is a finding of guilty as to that.

All of the evidence does indicate that the defendant was driving in a reckless manner with a willful and wanton disregard for the safety of himself or others. Therefore, there is a finding of guilty of reckless driving.

As to the aggravated driving under the influence of alcohol, the defendant is seen to have failed to stop on several occasions, blew stop signs, almost hit a pedestrian, almost struck another vehicle. There is an odor of alcohol. There is an admission. There is [*sic*] the beer cans. And therefore, there is also a finding of guilty of the charge of driving under the influence of alcohol under 11-501(a)(2)."

¶ 14 At defendant's sentencing hearing, the State argued in aggravation that defendant was eligible for a class 2, nonprobationable sentence on the aggravated DUI conviction where it was his fourth conviction. In addition, defendant was on probation for one of his aggravated DUI convictions at the time of sentencing and had two convictions for driving while his license was revoked. The State further argued that defendant had a fleeing and attempting to elude charge and a driving with a revoked license charge pending when he was arrested in the underlying case. In mitigation, defense counsel argued that he had three children and he took care of his girlfriend's three children. Defendant was sentenced to seven years' imprisonment for the aggravated DUI conviction and separate three-year prison terms for the aggravated fleeing or attempting to elude a peace officer and the aggravated driving while his license was revoked convictions, both to run concurrent to the seven-year term. Defendant was sentenced to 364-day terms of imprisonment, which were deemed as time-served, for the obstructing, resisting, and reckless driving convictions. A "straight conviction" was entered for defendant's driving with squealing tires conviction.

¶ 15 This appeal followed.

¶ 16 ANALYSIS

¶ 17 I. Sufficiency of the Evidence

¶ 18 Defendant contends the State failed to prove him guilty of aggravated DUI beyond a reasonable doubt where the evidence did not demonstrate he was under the influence at the time in question and failed to prove him guilty of aggravated fleeing or attempting to elude the police where the evidence did not establish the officers signaled him to stop by using red or blue lights as required by the statute.

¶ 19 A challenge to the sufficiency of the evidence requires a reviewing court to determine "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." (Emphasis in the original.) *Jackson v. Virginia*, 443 U.S. 307, 319 (1979). It is not the reviewing court's function to retry the defendant or substitute its judgment for that of the trier of fact. *People v. Evans*, 209 Ill. 2d 194, 209 (2004). Rather, it is for the trier of fact to assess the credibility of the witnesses, determine the appropriate weight of the testimony, and resolve conflicts or inconsistencies in the evidence. *People v. Tenney*, 205 Ill. 2d 411, 428 (2002). Moreover, the trier of fact "is not required to disregard inferences that flow from the evidence, nor is it required to search out all possible explanations consistent with innocence and raise them to a level of reasonable doubt." *People v. McDonald*, 168 Ill. 2d 420, 447 (1995). In order to overturn a judgment, the evidence must be "so unsatisfactory, improbable or implausible" to raise a reasonable doubt as to the defendant's guilt. *People v. Slim*, 127 Ill. 2d 302, 307 (1989).

¶ 20 A. Aggravated DUI

¶ 21 We first address defendant's sufficiency of the evidence argument related to his aggravated DUI conviction. To establish aggravated DUI, as charged, the State must demonstrate the defendant was in physical control of a motor vehicle while under the influence of alcohol (625 ILCS 5/11-501(a)(2) (West 2014)). Defendant does not challenge that he was in physical control of the vehicle; therefore, the challenge before us is whether he was under the influence of alcohol. To prove a defendant was under the influence of alcohol, the State must show the defendant's ability to operate a motor vehicle was impaired by the consumption of alcohol. *People v. Eagletail*, 2014 IL App (1st) 130252, ¶ 36.

¶ 22 "Intoxication is a question of fact and may be proved in a number of ways." *People v. Love*, 2013 IL App (3d) 120113, ¶ 35. Circumstantial evidence may be used to satisfy the State's burden. *Eagletail*, 2014 IL App (1st) 130252, ¶ 36. "Circumstantial evidence is proof of certain facts and circumstances from which the fact finder may infer other connected facts which usually and reasonably follow from the human experience and is not limited to facts that may reasonably have alternative, innocent explanations." *People v. Diaz*, 377 Ill. App. 3d 339, 345 (2007). Moreover, the testimony of a single, credible police officer alone may sustain a DUI conviction. *People v. Phillips*, 2015 IL App (1st) 131147, ¶ 15. Courts have found that testimony establishing a defendant's breath smelled of alcohol and his or her eyes were bloodshot is relevant in demonstrating the influence of alcohol. *Love*, 2013 IL App (3d) 120113, ¶ 35. Additionally, a defendant's refusal to submit to chemical testing (*id.*) or to perform sobriety tests (*People v. Roberts*, 115 Ill. App. 3d 384, 387-88 (1983)) can be used as evidence of consciousness of guilt.

¶ 23 Defendant argues the evidence was insufficient to support his conviction. Defendant insists that "the manner in which [he] drove, while dangerous and highly illegal, required a degree of alertness and precision that would have been nearly impossible to achieve while intoxicated on alcohol." Defendant maintains he showed no signs of impairment and the mere consumption of alcohol, as evidenced by his breath, his eyes, and the beer cans in his car, are not enough to establish intoxication.

¶ 24 After reviewing the evidence in a light most favorable to the State, we find a rational trier of fact could have found beyond a reasonable doubt that defendant was under the influence of alcohol at the time in question. Officer Tejeda testified that he observed defendant engage in

reckless behavior and erratic driving at high speeds while repeatedly disobeying traffic signs and signals throughout both commercial and residential neighborhoods. Defendant initially turned in front of the officers' marked police vehicle causing Officer Pesce to slam on the brakes to avoid a collision. Then, while leading the officers on the car chase, defendant had to swerve around a stopped vehicle, nearly struck a woman walking with a stroller, nearly drove into a family that was forced to jump out of his way, and lost control of his vehicle requiring him to swerve up onto the grass and sidewalk. When defendant found a partially obstructed driveway to stop his vehicle, he hid inside the vehicle and disregarded the officers' commands. When he finally exited the car, defendant curiously asked, "why are you guys stopping me?" While refusing the officer's attempt to handcuff defendant by pushing and pulling his hands, Officer Tejeda detected a moderate odor of alcohol on defendant's breath and observed defendant's eyes were bloodshot. Defendant's vehicle contained 60 ounces of empty beer cans on the floor along with an unopened case of beer on the passenger seat and defendant admitted he "had a couple of beers." Defendant, however, refused to perform field sobriety tests on two occasions and refused a breathalyzer exam. Officer Tejeda opined, based on his 11 years on the job, his training "observing signs of impairment," and his contact with intoxicated persons hundreds of times, that defendant was under the influence of alcohol at the time of his arrest. We conclude the totality of the evidence was sufficient to sustain defendant's conviction.

¶ 25 Our conclusion is supported by other cases wherein similar evidence has been found sufficient to sustain DUI convictions. In *People v. Weathersby*, 383 Ill. App. 3d 226 (2008), the defendant was pulled over for a suspected suspended license. The officer testified to observing the defendant with glassy eyes, thick-tongued speech, and a smell of alcohol. *Id*. at 229. The

defendant had a 22-ounce bottle of malt liquor in his vehicle that was three-quarters empty. The defendant admitted the malt liquor belonged to him and that he had "had a few" drinks. The defendant also refused to take a breathalyzer test. *Id*. at 230. In *People v. Gordon*, 378 Ill. App. 3d 626 (2007), the police pursued the defendant in connection with a call for a possibly intoxicated driver in a stolen vehicle. The defendant was observed driving erratically with his head bobbing up and down. *Id.* at 629. The defendant refused to curb his vehicle, attempted to evade the police, and ultimately crashed into the police officers' vehicle. His eyes were bloodshot and watery; he had a strong odor of alcohol; he swayed back and forth when attempting to walk; and his speech was mumbled. *Id*. at 630. In addition, there were empty beer cans on the floor of the defendant's vehicle.

¶ 26 Defendant asserts that he was alert and functional when arrested, exhibiting no signs of speech impairment or difficulty walking or standing. Defendant, therefore, argues the evidence could not support a finding of intoxication. Defendant cites *People v. Williams*, 3 Ill. App. 3d 1036 (1972), for support. In *Williams*, the officer, who was responding to an accident involving the defendant, testified that the defendant had a strong smell of alcohol on his breath, bloodshot eyes, and was swaying and staggering, but his speech was fair, the color of his face was normal, he was cooperative, his clothes appeared orderly, and he exhibited "no abnormal behavior." *Id*. at 1037. The officer admitted he did not know how defendant normally spoke, walked, or turned. The officer opined the defendant was "moderately" affected by the alcohol. *Id*. The defendant, however, testified that he struck a parked car after swerving to avoid a speeding taxi. *Id.* at 1038. The defendant admitted he had been in a bar for 20 minutes prior to the accident and consumed one highball, but insisted he was not under the influence of alcohol. Instead, he explained he was

"shook up" from the accident. The individual whose car was struck by the defendant testified that she was with him for approximately one and a half hours while waiting for the police and she did not smell any alcohol on his breath. *Id*. This court found the evidence was insufficient to support the defendant's DUI conviction where the only uncontradicted evidence presented of his intoxication was his own statement that he had one highball. *Id.* at 1039. However, the consumption of an alcoholic beverage is not enough to establish intoxication. *Id*. This court noted that the officer could only testify to the defendant's condition one and a half hours after the defendant was driving. *Id*.

¶ 27 In contrast to *Williams*, the evidence supporting defendant's conviction here included more "facts and circumstances from which the fact finder may infer other connected facts which usually and reasonably follow from the human experience and is not limited to facts that may reasonably have alternative, innocent explanations." *Diaz*, 377 Ill. App. 3d at 345. Critically, Officer Tejeda's testimony was uncontradicted. Moreover, Officer Tejeda's observations were clear and demonstrated, unlike the defendant in *Williams*, that defendant's behavior was far from normal. In sum, we find the evidence was sufficient to sustain defendant's conviction for aggravated DUI.

¶ 28 B. Aggravated Fleeing or Attempting to Elude a Peace Officer

¶ 29 Next, we turn to defendant's contention that the State failed to sufficiently prove him guilty of aggravating fleeing or attempting to elude a peace officer. Section 11-204(a) of the Illinois Vehicle Code (625 ILCS 5/11-204(a) (West 2014)) provides, in relevant part:

> "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, willfully 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." 625 ILCS 5/11-204(a) (West 2014).

¶ 30 Defendant argues that all the requisite elements of the statute were not met where the evidence failed to demonstrate the officers displayed red or blue lights while attempting to curb his vehicle. More specifically, defendant insists Officer Tejeda's testimony regarding the police vehicle's "Mars lights" or "emergency lights" did not prove red or blue lights were exhibited. Instead, where it is undisputed that the police vehicle did not have lights on the roof, defendant argues it is purely speculative to assume the Mars lights on the side, front, and back of the vehicle were red or blue as required to sustain his conviction.

¶ 31 There is no dispute that Officers Tejeda and Pesce were in uniform at the time in question (*cf. People v. Williams*, 2015 IL App (1st) 133582; *People v. Murdock*, 321 Ill. App. 3d 175 (2001)), that they were in a fully marked police vehicle, or that the vehicle's sirens and horns were being used to direct defendant to stop his vehicle. Officer Tejeda did not testify to the color of the "Mars lights" or "emergency lights" engaged to direct defendant to stop his vehicle. The "Mars lights" or "emergency lights" in this case were located, not on the police vehicle's roof, but were "everywhere else[:] the back windows, the lights, the front, the grill [and] the bar in front." The question before us is whether it can be inferred, based on the evidence provided, that

the lights used in this case satisfy the statute, such that they were "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 2014).

¶ 32 This court in *People v. Brown*, 362 Ill. App. 3d 374 (2005), dismissed an identical argument where the officer in that case testified he was driving a marked squad car and engaged the vehicle's siren as well as "emergency lights" when he gave the defendant chase. *Id*. at 379. Although the officer did not specify that the emergency lights were "illuminated oscillating, rotating or flashing red or blue lights," this court concluded that it reasonably could be inferred that the officer activated the squad's " 'illuminated oscillating, rotating or flashing red or blue lights' " when he activated the siren and gave chase, clearly giving defendant a visual sign to bring the [vehicle] to a stop." *Id*. In contrast, this court, in *Williams*, found section 11-204(a) of the Vehicle Code was not satisfied where the officer in that case was in "civilian dress." 2015 IL App (1st) 133582, ¶ 15. This court rejected the State's argument that because the officer activated the emergency lights and siren, the statute was satisfied where the defendant should have known that he was being pursued by the police. *Id*. ¶ 16. Applying the plain language of the statute, this court determined that the statute required evidence that the officer was in police uniform. See also *Murdock*, 321 Ill. App. 3d at 177 (finding the lack of testimony regarding the officer's attire failed to satisfy an essential element of the statute, *i.e.*, that the officer was in uniform).

¶ 33 We agree with *Murdock* that "[w]e are not free to rewrite the language of the legislature, which speaks for itself." *Id.* However, we find *Brown* applies in this case. With regard to the relevant language here, namely, the display of "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 2014)), it is clear that the lights and horn or siren are essential elements to establishing that the vehicle giving chase was an official police vehicle. In this case, we find it was reasonable to infer from the evidence that defendant was aware the officers were following him as he sped throughout the commercial and residential neighborhoods of Melrose Park. The officers were in a marked police vehicle, they were wearing police uniforms, they used a multi-tone siren, they engaged the horn, and they illuminated the "Mars lights" or "emergency lights" on the front, back, and sides of the vehicle. We, therefore, conclude the evidence was sufficient to support defendant's conviction for fleeing or attempting to elude a peace officer.

¶ 34 II. Confrontation Clause

¶ 35 Defendant finally contends his confrontation clause rights were violated where the State used his driving abstract to prove his guilt of aggravated driving with a revoked license. Defendant acknowledges that he failed to preserve his contention for our review. See *People v. Enoch*, 122 Ill. 2d 176, 186 (1988) (in order to preserve an error for review, the defendant must both object at trial and include the alleged error in a posttrial motion). Defendant, however, requests that we review his contention under the doctrine of plain error.

¶ 36 The plain error doctrine allows a reviewing court to reach a forfeited error affecting substantial rights under two circumstances: (1) where the evidence in the case is so closely balanced that the jury's guilty verdict may have resulted from the error and not the evidence; or (2) where the error is so serious that the defendant was denied a substantial right, and thus a fair trial. *People v. Herron*, 215 Ill. 2d 167, 178-79 (2005). The defendant bears the burden of

establishing plain error. *Id*. at 182. Before a court may conduct a plain error analysis, the record first must establish that an error occurred. *People v. Walker*, 232 Ill. 2d 113, 124 (2009).

¶ 37 The sixth amendment guarantees a defendant the right to confront the witnesses against him. U.S. Const., amend VI; Ill. Const. 1970 art. I, § 8. In *Crawford v. Washington*, 541 U.S. 36 (2004), the United States Supreme Court held it is a violation of the sixth amendment's confrontation clause to admit out-of-court testimonial statements of a witness unless the witness is unavailable for trial and there was a prior opportunity for cross-examination. *Id*. at 68. We review whether defendant's confrontation clause rights were violated, which is a question of law, *de novo. People v. Lovejoy*, 235 Ill. 2d 97, 138 (2009).

¶ 38 The *Crawford* court did not provide a comprehensive definition of what qualifies as "testimonial" evidence; however, the Supreme Court stated that such evidence would include, in relevant part, "statements that were made under circumstances which would lead an objective witness reasonably to believe that the statement would be available for use at a later trial." (Internal quotation marks omitted.) *Melendez-Diaz v. Massachusetts*, 557 U.S. 305, 310 (2009) (citing *Crawford*, 541 U.S. at 51-52). Therefore, "[b]usiness and public records are generally admissible absent confrontation not because they qualify under an exception to the hearsay rules, but because—having been created for the administration of an entity's affairs and not for the purpose of establishing or proving some fact at trial—they are not testimonial." *Id*.

¶ 39 Defendant argues the admission of his driving abstract, dated September 14, 2015, from the Illinois Secretary of State, which bears the words "Court purposes" on the top and provides that revocation of his driver's license was in effect on August 23, 2014, violated his right to confrontation. Defendant asserts that the driving abstract was a testimonial statement generated

in preparation for his prosecution, and there was nothing in the record indicating that a witness from the Secretary of State was unavailable to testify or that his defense counsel had a prior opportunity to cross-examine a representative from that office. Defendant relies on *Melendez-Diaz* and *People v. Diggins*, 2016 IL App (1st) 142088, for support.

¶ 40 In *Melendez-Diaz*, the Supreme Court concluded that laboratory certificates stating that a substance the police seized from the defendant was cocaine were testimonial because they were created by analysts for trial and were "functionally identical to live, in-court testimony." *Melendez-Diaz*, 557 U.S. at 310-311. Because the analysts did not testify at trial, were not shown to be unavailable, and the defense counsel did not have a prior opportunity to cross-examine them, the admission of the certificates into evidence violated the defendant's confrontation rights. *Id*. at 311. In *Diggins*, this court relied on *Melendez-Diaz* to find that the defendant's confrontation rights were violated in his aggravated unlawful use of a weapon trial where the State introduced a "certified letter" from the Illinois State Police in order to prove the defendant lacked a Firearm Owners Identification (FOID) card. *Diggins*, 2016 IL App (1st) 142088, ¶ 16. The "certified letter" provided that the defendant's FOID card application had been denied prior to his arrest and, as of May 7, 2013, a date after the defendant's arrest but before his trial, "this office has no other record" pertaining to him. *Id*. ¶ 6. This court found the "certified letter" constituted an affidavit that was presumably created for the defendant's prosecution and, therefore, was a testimonial statement. *Id*. ¶ 16.

¶ 41 Turning to the case before us, we conclude that defendant's driving record was non-testimonial evidence. The Secretary of State's certification provided that "the information set out herein is a true and accurate copy of the captioned individual's driving record." Accordingly,

unlike the certificates at issue in *Melendez-Diaz* and the certified letter in *Diggins*, the certification in this case did not set forth the Secretary of State's personal knowledge of a fact necessary for defendant's conviction, namely, that his license had been revoked. Rather, the certification described the Secretary of State's knowledge as to the contents of defendant's driver's license file on the date of his arrest. The information contained within the driving abstract was collected prior to defendant's arrest and not in anticipation of his prosecution. As a result, the certification was not created for the purpose of establishing a fact at trial, and, thus, was not testimonial. In response to defendant's argument that the certification was testimonial because it contained the words "court purposes" on the top of the page and the date of trial, we disagree. This information merely indicates when and why the driving abstract was copied, but not that the abstract itself was *created* for defendant's prosecution. Because we have found the driving abstract was nontestimonial, we find there was no error in admitting it as evidence at defendant's trial. We, therefore, need not apply the plain error doctrine.

¶ 42 Defendant argues, in the alternative, that his trial counsel was ineffective for failing to object to the admission of his driving abstract. Under the rules established by the United States Supreme Court in *Strickland v. Washington*, 466 U.S. 668 (1984), to successfully present a claim of ineffective assistance of counsel, a defendant must demonstrate that his counsel's performance was deficient and that he was prejudiced as a result. *Id.* at 687. To show deficient representation, a defendant must establish his counsel's performance fell below an objective standard of reasonableness. *Id.* at 688. To demonstrate prejudice, the defendant must show there is a reasonable probability that, but for counsel's deficient representation, the result of the proceeding would have been different. *Id.* at 694. Because the defendant must satisfy both parts of the

Strickland test, if an ineffective assistance claim can be disposed of on the ground of lack of sufficient prejudice, a court need not consider the quality of the attorney's performance. *Id*. at 697.

¶ 43 We conclude that defendant cannot establish the second prong of *Strickland*. More specifically, where we have concluded that the admission of defendant's driving abstract was not a violation of his confrontation rights, defendant cannot establish he was prejudiced by defense counsel's failure to object to its admission on that basis. Defendant's ineffective assistance of counsel claim, therefore, must fail.

¶ 44 CONCLUSION

¶ 45 Based on the foregoing, we affirm the judgment of the trial court.

¶ 46 Affirmed.