

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

WILLIAM DAVID WILSON,

Defendant-Appellant.

UNPUBLISHED

August 1, 2000

No. 219562

Calhoun Circuit Court

LC No. 98-004277

Before: Gage, P.J., and Gribbs and Sawyer, JJ.

PER CURIAM.

After a jury trial, defendant was convicted of third-degree fleeing and eluding a police officer, MCL 750.479a(3); MSA 28.747(1)(3), and reckless driving, MCL 257.626; MSA 9.2326.¹ The court sentenced defendant to sixty days in jail and two years' probation. Defendant appeals as of right, and we affirm.

Defendant contends that insufficient evidence supported his convictions because the trial court improperly admitted a police officer's hearsay statement of third party identification, and that no other evidence established his identity as the driver of the vehicle that sped away from an attempted traffic stop. Defendant concludes that therefore the trial court erroneously denied his motion for directed verdict concerning the fleeing and eluding and reckless driving counts. We review de novo defendant's directed verdict claim based on allegedly insufficient evidence, considering all evidence presented in the light most favorable to the prosecution to determine whether a rational trier of fact could find the essential elements of the crime proved beyond a reasonable doubt. *People v Jolly*, 442 Mich 458, 466; 502 NW2d 177 (1993); *People v Mayhew*, 236 Mich App 112, 124; 600 NW2d 370 (1999).

Defendant failed to object to the officer's testimony regarding the vehicle passenger's description of defendant, and therefore failed to preserve this issue for appeal. MRE 103(a)(1); *People v Grant*, 445 Mich 535, 545-546; 520 NW2d 123 (1994). We nonetheless observe that the trial court's admission of the officer's third party identification testimony constituted plain error because the

¹ The trial court granted defendant's motion for directed verdict of acquittal with respect to a count of operating with a suspended or revoked license. MCL 257.904; MSA 9.2604.

testimony represented inadmissible hearsay. *Grant, supra* at 548-549. In light of the fact that the identification statement's declarant did not testify at trial and was not subject to cross examination, the requirements of MRE 801(d)(1)(C) were not satisfied. *People v Malone*, 445 Mich 369, 377; 518 NW2d 418 (1994).

Reversal of defendant's convictions is not required, however, because sufficient evidence other than the officer's third party identification testimony established defendant's identity as the vehicle's driver. *People v Carines*, 460 Mich 750, 774; 597 NW2d 130 (1999) (noting that the existence of plain error may require reversal only when "the defendant is actually innocent or the error seriously affected the fairness, integrity, or public reputation of [the] judicial proceedings"). The testimony of three Battle Creek Police Officers established the following relevant facts. Officer Matthew Robinson observed in the early morning hours a red Camaro "doing doughnuts" in city intersections. Robinson attempted to stop the Camaro by utilizing his police cruiser's flashers, spotlight and siren, but the Camaro sped away. Robinson chased the Camaro, which he estimated traveled at sixty-five miles per hour through a posted twenty-five mile per hour speed limit, before Robinson slowed to successfully navigate a corner. When Robinson negotiated the corner and passed through a cloud of dust, he arrived directly behind the Camaro, which had left the road and settled in a wooded area.

Robinson observed that the Camaro's driver's side door was open and saw an individual still inside the Camaro slide from the passenger side to the driver side, then exit the Camaro. Robinson also heard another individual running into the woods. Robinson obtained the Camaro driver's description from the passenger, then radioed the description to other officers. On the basis of Robinson's report of his whereabouts and the direction of the suspect's flight, Officers Martin Brown and Anthony Perin arrived to establish a perimeter around the woods. Within five minutes of Robinson's report, the officers observed defendant walking from the direction of the woods. Brown and Perin never observed anyone else in the area. Robinson, Brown and Perin all agreed that defendant matched the description the Camaro's passenger provided.²

Thus, while defendant correctly argues that no one witnessed him driving or exiting the Camaro, the aforementioned facts represent a sufficient basis from which the jury reasonably could have concluded that defendant indeed attempted to elude and recklessly drove away from Officer Robinson. *Jolly, supra* ("Circumstantial evidence and reasonable inferences drawn therefrom may be sufficient to prove the elements of a crime."). In light of the evidence properly introduced by the prosecutor, we conclude that the trial court correctly denied defendant's motion

² Although the substance of what the passenger told Robinson (the particular's of the driver's description and the driver's name and age) is hearsay, the facts that Robinson received a description and that defendant matched that description do not qualify as inadmissible hearsay. MRE 801, 802.

for directed verdicts of acquittal regarding the third-degree fleeing and eluding and reckless driving charges.

Affirmed.

/s/ Hilda R. Gage

/s/ Roman S. Gibbs

/s/ David H. Sawyer