

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

RICKY ALLEN BUCHANAN,

Defendant-Appellant.

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UNPUBLISHED

May 11, 2001

No. 219578

Oakland Circuit Court

LC No. 98-162203-FH

Before: Gage, P.J., and Cavanagh and Wilder, JJ.

PER CURIAM.

Defendant appeals by right his convictions of third-degree fleeing or eluding a police officer, MCL 750.479a(3); MSA 28.747(1)(3), operating a motor vehicle with an unlawful blood alcohol level (UBAL), MCL 257.625; MSA 9.2325, and operating a motor vehicle with a suspended license, MCL 257.904; MSA 9.2604. He was sentenced as a fourth habitual offender, MCL 769.12; MSA 28.1084, to concurrent terms of 1-1/2 to 10 years' imprisonment for the fleeing or eluding conviction, one year for the UBAL conviction, and one year for the driving with a suspended license conviction. We affirm.

On July 10, 1998, defendant, driving at a high rate of speed, cut off Officer Troy of the Pontiac Police Department, disregarded a stop sign and made a left turn. Officer Troy radioed for backup. Responding to Officer Troy's request, Officers Sitar and Laplace began following defendant. Defendant eventually turned onto Going street and stopped in front of his house. Troy then pulled his vehicle behind defendant's van and Sitar and Laplace pulled their vehicle in front of defendant's van. The three officers then got out of their cars. Although the officers were wearing civilian clothes, Troy and Sitar were wearing chains with police badges around their necks. The officers informed defendant that they were police officers and asked him to turn his vehicle off. In response, defendant put his van in reverse, backed up toward Troy, put the van in drive, made a sharp left turn, jumped the curve and drove away. The officers returned to their respective vehicles and began following defendant. Defendant was observed by the officers as "fish-tailing," recklessly turning corners, driving at a high rate of speed and running stop signs. Defendant was eventually stopped when uniformed officers requested by Sitar joined in the chase and blocked defendant's travel. After being placed under arrest, the officers observed that defendant smelled of intoxicants, was glassy-eyed and non-responsive. The police also

determined that defendant was driving on a suspended license, was a parole absconder, and had a blood alcohol level between .14 and .16.

Defendant first contends that there was insufficient evidence to support his conviction of fleeing or eluding a police officer because the evidence failed to show that he refused to obey a clear signal to stop his vehicle. He asserts that he did not receive a clear signal to stop his vehicle until after a marked vehicle was directly behind him, at which time he immediately obeyed this signal by pulling into a parking lot and stopping his van. We disagree.

In determining whether sufficient evidence has been presented to sustain a conviction, this Court must view the evidence in a light most favorable to the prosecution and determine whether a rational trier of fact could have found that the essential elements of the crime were proven beyond a reasonable doubt. *People v Nowack*, 462 Mich 392, 411; 614 NW2d 78 (2000); *People v Jaffray*, 445 Mich 287, 296; 519 NW2d 108 (1994).

For defendant to be convicted of third-degree fleeing or eluding, the following must be proven beyond a reasonable doubt: (1) the law enforcement officer must have been in uniform and performing his lawful duties and his vehicle must have been adequately identified as a law enforcement vehicle, (2) defendant must have been driving a motor vehicle, (3) the officer, with his hand, voice, siren, or emergency lights must have ordered defendant to stop, (4) defendant must have been aware that that he had been ordered to stop, (5) defendant must have refused to obey the order by trying to flee from the officer or avoid being caught, which conduct could be evidence by speeding up his vehicle or tuning off the vehicle's lights among other things, and (6) some portion of the violation must have taken place in an area where the speed limit was thirty-five miles an hour or less, or defendant's conduct must have resulted in an accident or collision, or defendant must have been previously convicted of certain prior violations of the law as listed in MCL 750.479a(3)(c); MSA 28.747(1)(3)(c). *People v Grayer*, 235 Mich App 737, 741; 599 NW2d 527 (1999). The prosecution must also demonstrate that defendant refused to obey by trying to flee or avoid capture. *Id.* at 742.

Here, the evidence indicated that defendant continued driving at a high rate of speed, in excess of a thirty-five mile an hour speed limit, even after a marked police vehicle activated its overhead lights and only pulled into a parking lot because two other police vehicles blocked defendant's path. The evidence also indicated that defendant was driving with an unlawful blood alcohol level, had a suspended license, and was a parole absconder, which supports an inference that he was intentionally trying to evade the police. Thus, viewed most favorably to the prosecution, the evidence was sufficient to enable a rational trier of fact to conclude beyond a reasonable doubt that defendant was guilty of fleeing or eluding a police officer. MCL 750.479a(3); MSA 28.747(1)(3); *Grayer, supra* at 741-742.

Defendant also contends that the trial court erred by excluding evidence that he was assaulted by the police, in particular, that his head hit the ground during his arrest, causing his mouth to bleed, which, in turn, could have rendered the breathalyzer test invalid. Again, we disagree. The decision whether to admit evidence is left to the discretion of the trial court. *People v Brown*, 239 Mich App 735, 749; 610 NW2d 234 (2000); *People v Taylor*, 195 Mich App 57, 60; 489 NW2d 99 (1992). We find an abuse of discretion only when an unprejudiced

person, considering the facts on which the court acted, would say there was no justification or excuse for the ruling. *Id.*; *Taylor, supra*.

In the instant case, the record reveals that the court ruled that the issue of police brutality was not relevant and could not be emphasized at trial. Nonetheless, the court permitted the jury to view a videotape that depicts defendant's head hitting the ground during his arrest. In addition, the court allowed defendant to challenge the results of the breathalyzer tests by indicating that blood was present in his mouth, which was the reason defendant sought the admission of this evidence. Accordingly, we find that this issue is without merit because the trial court allowed defendant to challenge the breathalyzer test results. Further, the trial court properly ruled that alleged police brutality of defendant was not relevant because it was not material to the determination of whether defendant committed the crimes he was accused of and did not make any facts of consequence more or less probable that it would be without the evidence. Cf MRE 401; *People v Mills*, 450 Mich 61, 66-67; 537 NW2d 909 (1995).

Affirmed.

/s/ Hilda R. Gage  
/s/ Mark J. Cavanagh  
/s/ Kurtis T. Wider