

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

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

ERIC D. SMITH,

Defendant-Appellant.

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UNPUBLISHED  
November 8, 2002

No. 234912  
Wayne Circuit Court  
LC No. 00-008040-01

Before: Hood, P.J., and Whitbeck, C.J., and O'Connell, J.

PER CURIAM.

Defendant Eric Smith appeals as of right his bench trial conviction of third-degree fleeing and eluding.<sup>1</sup> The trial court sentenced Smith to six months in jail, with credit for eighty-five days served. We affirm.

I. Basic Facts And Procedural History

At trial, Detroit Police Officer David Soli testified that, on May 9, 2000, at approximately 9:00 p.m., he was on a routine patrol on eastbound Mack Avenue with his partner, Officer Scott Pessina. Officer Pessina was driving the patrol car and Officer Soli was the passenger. The patrol car was a fully marked unit equipped with overhead lights. Specifically, the patrol car had the Detroit Police emblem on the side of the vehicle, spotlights on the driver's side, an overhead log light, and headlights that flash back and forth when activated.

While on patrol, the officers observed a gray, two-door Oldsmobile that did not have a license plate displayed. Not having a license plate displayed is a misdemeanor; therefore, the officers activated the overhead lights on their patrol car and attempted to pull over the vehicle. All the lights on the patrol car that could be activated were activated. According to Officer Soli, because the events in question took place around 9:00 p.m., it was dark outside and the lights were clearly visible.

The driver of the Oldsmobile refused to pull over even after the lights on the police car were activated. The officers then activated the car's siren. When the officers first came in contact with the vehicle, they were in Detroit on Mack Avenue between Gratiot and Pulford. However, they activated their siren one block later and followed the Oldsmobile at a distance of

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<sup>1</sup> MCL 2576029a(3).

one car length. The speed limit on Mack Avenue is thirty five miles an hour; the Oldsmobile never exceeded the speed limit. The Oldsmobile continued eastbound on Mack Avenue, which is an industrial/commercial area. The vehicle proceeded several blocks, turned right onto a residential street, and proceeded approximately fifty yards before stopping. Officer Soli noted that, throughout this “pursuit,” the driver of the Oldsmobile had opportunities to stop on the side of the road.

In total, Officers Soli and Pessina pursued the driver for six to eight blocks. During the pursuit, there were no other vehicles on the road. Once the vehicle was stopped, Officer Soli approached the passenger’s side of the vehicle while Officer Pessina approached the driver’s side. As soon as Officer Pessina came to the driver’s side, he noticed that Smith had his window rolled up. Therefore, he knocked on the window and ordered Smith out of the vehicle, but Smith did not comply with his order. Officer Pessina physically removed Smith from the driver’s seat and placed him under arrest. According to Officer Soli, Smith said he was aware that the police were behind him. Smith refused to provide any information about who he was and shouted obscenities at the officers while they were taking him to the Seventh Precinct. At the time of the incident, Smith had a suspended license and an outstanding traffic warrant for his arrest.

Officer Pessina’s testimony regarding the events that transpired on May 9, 2000, mirrored Officer Soli’s recollection of the events. The only notable difference is that Officer Pessina did not recall Smith stating he was aware of the squad car behind his vehicle, and he believed that Smith only traveled ten to fifteen yards after turning right onto the residential street.

## II. Sufficiency Of The Evidence

### A. Standard Of Review

Smith argues that there was insufficient evidence to support his conviction of third-degree fleeing and eluding.

### B. Fleeing And Eluding

When determining the issue of sufficiency of evidence in a criminal case, we view the evidence in the light most favorable to the prosecution and determine whether a rational trier of fact could have found the essential elements of the crime proven beyond a reasonable doubt.<sup>2</sup> Review de novo applies to this issue.<sup>3</sup> MCL 257.602a(3) states, in relevant part, “Except as provided in subsection (4) or (5), an individual who violates subsection (1) is guilty of third-degree fleeing and eluding, a felony . . . .” According to *People v Grayer*,<sup>4</sup> a conviction of third-degree fleeing and eluding<sup>5</sup> requires the prosecution to establish the following elements:

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<sup>2</sup> *People v Wolfe*, 440 Mich 508, 513-515; 489 NW2d 748, amended 441 Mich 1201 (1992).

<sup>3</sup> See *People v Hawkins*, 245 Mich App 439, 457; 628 NW2d 105 (2001).

<sup>4</sup> *People v Grayer*, 235 Mich App 737, 741; 599 NW2d 527 (1999).

<sup>5</sup> Referring to MCL 750.479a(1), (2), and (3), which are the same as MCL 257.602a(1), (2), and (3).

(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) the 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) the defendant must have been aware that he had been ordered to stop, (5) the defendant must have refused to obey the order by trying to flee from the officer or avoid being caught, . . . and (6) some portion of violation must have taken place in an area where the speed limit was thirty-five miles an hour or less, or the defendant's conduct must have resulted in an accident or collision, or the defendant must have been previously convicted of certain prior violations . . . .

Although Smith concedes there was sufficient evidence on all the other elements, he takes issue with the fifth element. Specifically, Smith relies on the fact that he was not speeding and that he traveled only a short distance to suggest that the prosecution failed to show sufficient evidence of his refusal to obey a police order. Smith's reliance on these factors is without merit because, as this Court stated in *Grayer*,<sup>6</sup> the statute does not require a specific rate of speed or a specific distance traveled to establish this element. Instead, the prosecutor need only show that a defendant demonstrated an intent to disobey the police.<sup>7</sup> Moreover, *Grayer* states the fifth element can be established through circumstantial evidence.<sup>8</sup>

In this case, we conclude that the trial court correctly found that there was sufficient evidence to prove third-degree fleeing and eluding beyond a reasonable doubt. The trial testimony, taken in the light most favorable to the prosecution, established that Smith refused to pull over even though he was being followed by a fully marked police car that had all of its lights activated and siren on. Smith admitted that he was aware of being followed by the police. Additionally, there were places for Smith to stop. When Smith finally came to a stop, he would not cooperate with the police. Smith would not roll down his window and identify himself, was verbally abusive to the police, and had to be physically removed from his vehicle. Viewing the evidence in the light most favorable to the prosecution, there was sufficient evidence to convict Smith of third-degree fleeing and eluding.

Affirmed.

/s/ Harold Hood  
/s/ William C. Whitbeck  
/s/ Peter D. O'Connell

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<sup>6</sup> *Grayer*, *supra* at 741-742.

<sup>7</sup> *Id.* at 742.

<sup>8</sup> *Id.* at 743-744.