STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED April 27, 2004
v	No. 245899 Jackson Circuit Court
LOREN DEPREE GREENE, Defendant-Appellant.	LC No. 02-003923-FH

Before: Bandstra, P.J., and Sawyer and Fitzgerald, JJ.

PER CURIAM.

Following a jury trial, defendant was convicted of third-degree fleeing and eluding a police officer, MCL 750.479a(3), and driving while license suspended, MCL 257.904. The trial court subsequently sentenced defendant, as a fourth-offense habitual offender, MCL 769.12, to a term of three to fifteen years' imprisonment for his fleeing and eluding conviction. The trial court also imposed a term of sixty days in jail for defendant's conviction of driving while license suspended. Defendant appeals as of right. We affirm.

Defendant first argues that the evidence at trial was insufficient to support his conviction of third-degree fleeing and eluding. We disagree. In determining whether sufficient evidence has been presented to sustain a conviction, a reviewing court must view the evidence in a light most favorable to the prosecution and determine whether any rational trier of fact could have found that the essential elements of the crime were proven beyond a reasonable doubt. *People v Wolfe*, 440 Mich 508, 515; 489 NW2d 748 (1992). This standard of review is deferential; the reviewing court is required to draw all reasonable inferences and make credibility choices in support of the jury verdict. *People v Nowack*, 462 Mich 392, 400; 614 NW2d 78 (2000).

In *People v Grayer*, 235 Mich App 737, 741; 599 NW2d 527 (1999), this Court set forth the six elements necessary to establish third-degree fleeing and eluding under MCL 750.479a(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 the 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, which conduct could be evidenced by

> speeding up his vehicle or turning 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 the defendant's conduct must have resulted in an accident or collision, or the defendant must have been previously convicted of certain prior violations of the law . . . .

Defendant challenges only the evidence to support the third of these elements, i.e., that "the officer, with his hand, voice, siren, or emergency lights must have ordered the defendant to stop." *Id*. Specifically, defendant asserts that the police officer from which he was alleged to have fled, Officer Charles Brandt of the Jackson Police Department, acknowledged at trial that he failed to direct defendant to stop in the manner required by MCL 750.479a(3). In support of this argument, defendant cites a limited portion of the testimony offered by Brandt during cross-examination. However, after reviewing the entirety of Brandt's trial testimony, we find defendant's challenge of the sufficiency of the evidence on this element to be without merit.

At trial, Brandt testified that while parked along Pleasant Street in a fully-marked patrol car, he observed defendant pass by, driving a motor vehicle without wearing a seatbelt. According to Brandt, after passing, defendant looked back at the officer, and then continued down Pleasant Street. As Brandt attempted to turn his patrol car around in order to stop defendant for the seatbelt violation, the officer observed defendant fail to stop for a stop sign while turning off of Pleasant Street onto Teneyck Street. After turning his vehicle around, Brandt proceeded toward the stop sign at the intersection of Pleasant and Teneyck streets, at which time he activated his overhead lights. As the officer turned onto Teneyck Street, he observed defendant fail to stop at a second stop sign located at the intersection of Teneyck and Elm streets, where defendant nearly collided with another vehicle. Brandt then attempted to follow defendant, whom the officer estimated was traveling at a speed of approximately sixty miles per hour within a zone posted for travel at only twenty-five miles per hour, until defendant turned onto either East or Page street, after which the officer could no longer see defendant's vehicle. Brandt testified that he was approximately only two blocks behind defendant at the time he lost sight of defendant's vehicle, which was the only other vehicle on Teneyck Street at that time.

After losing sight of defendant, Brandt turned off his overhead lights and continued to drive around the area, looking in driveways and parking lots for defendant's vehicle. While stopped at an intersection, Brandt was approached by a citizen who indicated that he had seen defendant park his vehicle at a local bakery and then alight on foot. After traveling to the bakery, Brandt found defendant's vehicle parked behind the bakery, after which he placed a radio call requesting that other officers in the area "be on the lookout" for an individual matching defendant's description. Defendant was apprehended and arrested by another officer within minutes of Brandt's radio call. Following his arrest and advice of rights by Brandt, defendant was asked why he fled from the officer. According to Brandt, defendant responded by explaining that "he saw [Brandt] backing up, that he knew [Brandt] was going to stop him on a traffic stop, that he knew he had some warrants, and that he didn't want to go to jail."

In challenging the sufficiency of the evidence to support his conviction of third-degree fleeing and eluding, defendant relies on Brandt's acknowledgement during trial that he did not activate his overhead lights or otherwise signal defendant to stop until after defendant had turned from Pleasant Street onto Teneyck. Defendant characterizes this admission as a concession by

Brandt that "the police officer never signaled defendant by 'hand, voice, emergency light, or siren,'" as required by MCL 750.479a(3). However, when viewed in a light most favorable to the prosecution, the testimony summarized above was sufficient to support a rational trier of fact in concluding that Brandt in fact signaled defendant to stop in a manner required by the statute. Although Brandt's testimony indicates that he waited until approaching the intersection of Pleasant and Teneyck streets before activating his overhead lights, his testimony also indicates that he was able to briefly follow defendant down Teneyck Street after turning from Pleasant. While defendant denied during his testimony at trial ever seeing the officer following him, Brandt's ability to see defendant's vehicle, which was the only other vehicle traveling on Teneyck Street during the pursuit, was sufficient to support the jury's affirmative finding on the challenged element of the charged crime, i.e., that "the officer, with his hand, voice, siren, *or emergency lights* must have ordered the defendant to stop." *Grayer*, *supra* at 741 (emphasis added).

Defendant next argues that the trial court erred in granting the prosecution's request to alter CJI2d 13.6c, the standard criminal jury instruction on third-degree fleeing and eluding. Again, we disagree. We review claims of instructional error de novo. *People v Hubbard (After Remand)*, 217 Mich App 459, 487; 552 NW2d 493 (1996).

The alteration requested by the prosecution, and granted by the trial court, again concerns the third element of the crime of third-degree fleeing and eluding. With respect to this element, CJI2d 13.6c(4) provides that the prosecutor must prove "that the officer ordered the defendant to stop his vehicle." At the close of trial, the prosecution requested that this portion of the standard instruction be altered by replacing the word "ordered" with "directed." In support of this request the prosecution cited MCL 750.479a, which itself uses the latter of these words in defining the offense at issue here.[1] Citing the elements of the charged offense as espoused in *Grayer*, *supra*, counsel for defendant objected to the alteration and requested that the trial court instruct the jury in accordance with CJI2d 13.6c(4). However, after reviewing the text of MCL 750.479a, the trial court granted the prosecution's requested alteration.

We find no error in the trial court's alteration of the standard jury instruction to more closely reflect the language of the statute. Initially, we note that the standard criminal jury instructions are not binding authority. See *People v Petrella*, 424 Mich 221, 277; 380 NW2d 11 (1985). Moreover, "[a]s a general rule where the law governing a case is expressed in a statute, the court in its charge may, and in some jurisdictions, should, use the language of the statute . . . ." 75A Am Jur 2d, Trial, § 1132, pp 647-648. In any event, we find little, if any, distinction between the terms at issue here. The word "order" has been defined as "an

[1] MCL 750.479a provides, in relevant part, as follows:

> A driver of a motor vehicle who is given by hand, voice, emergency light, or siren a visual or audible signal by a police or conservation officer, acting in the lawful performance of his or her duty, ***directing*** the driver to bring his or her motor vehicle to a stop shall not willfully fail to obey that ***direction*** by increasing the speed of the vehicle, extinguishing the lights of the vehicle, or otherwise attempting to flee or elude the police or conservation officer. [Emphasis added.]

authoritative *direction* or instruction; command." Random House Webster's College Dictionary (1992), p 951 (emphasis added). The word "direct" has similarly been defined as "to give authoritative instructions to; command; *order* or ordain." *Id*. at 380 (emphasis added). That each of these words are used to define the other leaves little room for the claim of error advanced here by defendant. See *People v Bartlett*, 231 Mich App 139, 143-144; 585 NW2d 341 (1998) (instructions are not grounds for reversal if they fairly presented the issue to be tried and sufficiently protected the defendant's rights).[2]

Finally, defendant argues that because the prosecution failed to file its notice of intent to seek an enhanced sentence within the twenty-one day time period prescribed in MCL 769.13(1), the trial court erred in enhancing defendant's sentence under MCL 769.12.[3] Again, we disagree. The lower court record indicates that, as argued by the prosecution, such notice was filed within the relevant time period. Accordingly, defendant's claim in this regard is without merit.

We affirm.

/s/ Richard A. Bandstra
/s/ David H. Sawyer
/s/ E. Thomas Fitzgerald

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[2] Defendant also appears to argue that the trial court erred in failing to instruct the jurors in the manner by which such "order" or "direction" must be given, e.g., "by hand, voice, emergency light, or siren." MCL 750.479a. However, with the exception of his objection to the alteration of CJI2d 13.6c(4) just discussed, defendant expressly assented to the instructions given the jury. Accordingly, defendant has waived any other challenges to the jury instructions for purposes of appeal. *People v Carter*, 462 Mich 206, 214; 612 NW2d 144 (2000).

[3] MCL 769.13(1) provides:

> In a criminal action, the prosecuting attorney may seek to enhance the sentence of the defendant as provided under section 10, 11, or 12 of this chapter, by filing a written notice of his or her intent to do so within 21 days after the defendant's arraignment on the information charging the underlying offense or, if arraignment is waived, within 21 days after the filing of the information charging the underlying offense.