

STATE OF MICHIGAN  
COURT OF APPEALS

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

CARL SOLOMON IVY,

Defendant-Appellant.

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UNPUBLISHED

November 21, 2006

No. 262369

Kent Circuit Court

LC No. 04-004032-FH

Before: O’Connell, P.J., and White and Markey, JJ.

PER CURIAM.

Following a jury trial, defendant was convicted of fleeing and eluding police, MCL 750.479a(3), attempted disarming of a peace officer, MCL 750.479b(1), and resisting and obstructing, MCL 750.81d(1). Defendant was sentenced as an habitual offender, fourth offense, MCL 769.12, to 2 to 10 years’ imprisonment for fleeing and eluding, and 1 to 10 years’ imprisonment each for disarming a peace officer and resisting and obstructing. Defendant appeals as of right. We affirm.

Defendant first argues that the prosecutor failed to present sufficient evidence that the patrol vehicle he eluded was “identified as an official police . . . vehicle.” We disagree. “[W]hen determining whether sufficient evidence has been presented to sustain a conviction, a 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, amended 441 Mich 1201 (1992).

Here, the evidence indicated that defendant saw the police cruiser and its uniformed police officer approach from the opposite, oncoming lane and pass his parked, unlicensed car. The officer turned his head to check the license plate because the car matched the description of a recently stolen vehicle, and he decided to investigate further when he saw that the occupied car completely lacked a license plate. The officer began to execute a u-turn, but defendant, who knew he was driving on a suspended license and that the vehicle lacked a plate, had already sped away and turned right at the next corner. The officer abandoned the u-turn, took the next left turn, and then accelerated along a parallel path, eventually catching up with the defendant’s car.

Although the officer’s dark blue Crown Victoria did not have any decals or police insignias, the officer activated his siren and police lights, which consisted of dashboard lights,

grill lights, and external mirror lights that all flashed red and blue. The officer also activated his pulsating headlights. The cruiser was equipped with a visible shotgun and an external spotlight. Nevertheless, defendant testified that he did not initially recognize that he was being pursued by a police car and implausibly attributed his high speed and elusive driving to his general suspicion of the vehicle, nondescript annoyance, and heavy crack-cocaine intoxication. Defendant also admitted, however, that he eventually realized that the car chasing him was a police cruiser, but he continued fleeing. Defendant claimed that he decided to continue heading home without stopping because he was so close.<sup>1</sup> According to the officer's testimony, however, defendant continued to make fast turns, ignore street signs, and speed at more than fifty miles per hour through the residential area after he sped through the intersection where he later claimed he first recognized the car. In fact, defendant testified that he identified the pursuing vehicle as a police cruiser before he knocked over a roadside tree with his car, but he continued to flee the flashing and blaring vehicle after he hit the tree. After a few more turns, defendant eventually stopped at his house. The route of the pursuit led back almost to the spot where it began, because defendant was originally parked in front of his house when the officer first spotted his car.

In short, the jury heard evidence that the police cruiser was sufficiently decorated and outfitted so as to identify it as an official police vehicle, and that defendant recognized it as an official police vehicle, even without its lights on. As a lagniappe, defendant admitted that he prolonged the pursuit even after deducing from the car's lights, siren, and general appearance that it was a police cruiser. Under the circumstances, the prosecutor presented sufficient evidence that the cruiser was "identified as an official police . . . vehicle" when defendant received, and disregarded, the officer's various signals to pull over.

Defendant next argues that his trial counsel provided ineffective assistance by failing to object to the trial court's erroneous instruction regarding special markings on the police car. We disagree. Legal errors in jury instructions are reviewed de novo. *People v Hubbard (After Remand)*, 217 Mich App 459, 487; 552 NW2d 493 (1996). Here, the trial court instructed the jury that the "officer's vehicle doesn't have to be marked or otherwise emblazoned with decals or letters that say 'police' or anything comparable." However, the trial court added, "It's sufficient if . . . an average individual would have appreciated that that vehicle was a police vehicle. It doesn't matter how . . . ." Although the first sentence of the instruction was less than clear, the instruction as a whole correctly explained the statutory requirement that the vehicle must be "identified as an official police . . . vehicle." The instruction accurately conveyed the law's indifference to how the vehicle is identified, as long as it *is* identified as an official police vehicle. Therefore, the instruction adequately presented the legal issue, *People v Harris*, 190 Mich App 652, 664; 476 NW2d 767 (1991), and defense counsel did not provide ineffective assistance by failing to object to it. *People v Riley (After Remand)*, 468 Mich 135, 140; 659 NW2d 611 (2003).

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<sup>1</sup> Defendant also cited his knowledge that he was going to jail for driving on a suspended license without a license plate. He later testified that he also swallowed a bag of heroin after the pursuit as the officer walked up to his car, but this appears to have been a ruse to get him a trip to the hospital. The prosecutor's questions on this topic suggested that defendant may have used a similar ruse before to escape from a hospital after an arrest.

Affirmed.

/s/ Peter D. O'Connell

/s/ Helene N. White

/s/ Jane E. Markey