STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

AKIN ABOABA MARTINS,

Defendant-Appellee.

UNPUBLISHED
November 28, 2006

No. 263893
Washtenaw Circuit Court
LC No. 04-001234-FH

Before: White, P.J., and Zahra and Kelly, JJ.

PER CURIAM.

Defendant was convicted, following a bench trial, of operating a motor vehicle while under the influence of liquor (OUIL), MCL 257.625(1), operating a motor vehicle without a valid license, MCL 257.301(1), and third-degree fleeing and eluding a police officer, MCL 750.479a(3). The trial court sentenced defendant to serve concurrent terms of three days' jail incarceration for the conviction of driving without a license, and two years' probation each for the OUIL and fleeing and eluding convictions, along with fines and costs. Defendant appeals as of right, challenging the sufficiency of the evidence in support of his fleeing and eluding conviction, and asserting that the trial court failed to properly consider his theory of defense to the OUIL charge. We disagree with both assertions, and affirm. This appeal is being decided without oral argument in accordance with MCR 7.214(E).

When reviewing the sufficiency of evidence in a criminal case, a reviewing court must view the evidence of record in the light most favorable to the prosecution to determine whether a rational trier of fact could find that each element of the crime was proved beyond a reasonable doubt. *People v Herndon*, 246 Mich App 371, 415; 633 NW2d 376 (2001). Review is de novo. *Id.*

The arresting officer testified that he was on duty, in full uniform, and driving a police car that was marked as such, except that it was a "slick top," meaning that its emergency lights were on the front grill rather than atop the car. The officer spotted defendant's vehicle traveling "extremely fast" in a location where the posted speed limit was thirty-five miles per hour. The officer sped up to position himself behind defendant's car, following defendant's still-speeding vehicle into an even slower speed zone. When about fifty feet from defendant, the officer activated his blue and red emergency lights, but defendant's vehicle then accelerated, running two stop signs without making any attempt to slow for them. The officer caught up with defendant, who continued for a short time at a low rate of speed, failing to observe a third stop

sign, then pulled over. According to the officer, defendant did not obey commands to exit the vehicle, and had to be forcibly removed.

Defendant argues that to flee is to run away, as if from a pursuer, and to elude is to avoid capture or detection, and argues that both terms suggest affirmative action, not a mere failure to submit. However, the distinction between active evasion and passive noncompliance substantially disappears when the actor is situated in a moving vehicle. Moreover, the evidence suggests not just that defendant continued driving in disregard of the police, but that he sped up and failed to observe stop signs, and that when he finally stopped, he left his vehicle only when forced to do so.

Further, the officer testified that defendant admitted noticing his lights, and stated that he failed to stop because he was having an anxiety attack. There is no evidence to suggest that defendant failed to appreciate that the flashing lights signaled a police car. Defendant's admissions thus indicate an awareness of flashing lights likely indicating police activity, and a wilful decision to try to disregard their command and evade their authority.

Defendant next asserts that the trial court gave inadequate consideration to his defense. We disagree. Defendant asserts that, upon being placed in the police car for transport to the station, he detected an order of chemicals, which caused him to vomit, that he was given a Breathalyzer test, without being allowed to clean his mouth, and that the presence in defendant's mouth of vomit residue rendered the test unreliable.

The two Breathalyzer tests indicated blood alcohol levels of .17 and .19.[1] Defendant, however, testified that the only alcohol he had consumed that day was a single glass of wine. In finding defendant guilty of OUIL, the trial court explained said:

> [T]he defendant . . . indicated that he had consumed one glass of wine. . . . Certainly what was observed of the Defendant at the time was that . . . he did not get out of the vehicle at all [until] he was essentially removed by the police officers. According to [the arresting officer's] testimony, that his eyes were blood shot and red. He had trouble standing. His speech was slurred and therefore, was placed in the police car. Subsequently, there was a PBT and the PBT really has no value to this Court other than as a—I suppose a rebuttal to the potential claim being raised by defense that in fact there was some object or some other substance in the Defendant's mouth at the time of the Data Master which would impede the Data Master's test. The Court finds that the Data Master . . . was properly maintained, had been certified and checked on the very day that this incident occurred . . . . Two tests were subsequently performed after a twenty minute observation period.
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> * * *

[1] The legal limit for drivers is "0.08 grams or more per 100 milliliters of blood, per 210 liters of breath, or per 67 milliliters of urine." MCL 257.625(1)(b).

> And I will note that even thought the Officer testified that . . . he normally waits twenty minutes this . . . test was not begun until . . . twenty-seven minutes after the time of the initial observation. . . . The Court's been presented with no evidence that would lead the Court to conclude that the fact that someone has vomited at least twenty-seven minutes before automatically invalidates such a test. . . . The Court's been presented with no law or any other evidence that would lead the Court to conclude that the test was not properly performed. The Data Master test does in fact support a finding that the Defendant was intoxicated at the time of his arrest . . . .

Defendant argues that these comments indicate that the trial court did not adequately consider the defense theory that vomiting residue interfered with the test. We disagree.

Although a court trying a case without a jury is obliged to "find the facts specially," and "state separately its conclusions of law," MCR 2.517(A)(1), "[b]rief, definite, and pertinent findings and conclusions on the contested matters are sufficient, without overelaboration of detail or particularization of facts," MCR 2.517(A)(2). A court is thus not obliged to announce its acceptance or rejection of every proposition put forward. See *Fletcher v Fletcher*, 447 Mich 871, 883; 526 NW2d 889 (1994).

In this case, however, the trial court did address defendant's theory that his having vomited negatively affected the accuracy of a Breathalyzer test, and rejected it, observing that it had been "presented with no evidence that would lead the Court to conclude that the fact that someone has vomited at least twenty-seven minutes beforehand automatically invalidates such a test.". On appeal, defendant points to no such evidence that was submitted to the trial court, but instead argues that "[i]t is well known that vomit is one of the factors affecting the accuracy of a breath test."[2]

Defendant points out that 1999 AC, R 325.2655(2)(b) states that a subject "may be administered a breath test on a preliminary breath alcohol test instrument only after it has been determined that the person has not smoked, regurgitated, or placed anything in his or her mouth for at least 15 minutes." But the rule was followed in this instance, because, as the trial court observed, defendant's vomiting occurred more than fifteen minutes before the tests were administered. The defense could, and did, argue that vomit residue in defendant's mouth disturbed the test results, but, in the absence of specific evidence that this was the case, and in the face of considerable evidence supporting that defendant was, in fact, under the influence, the trial court was within its rights in acknowledging and rejecting that argument.

[2] Defendant incorporates into his brief statements from various texts calling into question the accuracy of Breathalyzer (or Datamaster) tests, but these texts were not put into evidence at trial, and so now do not warrant consideration on appeal. MCR 7.210(A) ("Appeals to the Court of Appeals are heard on the *original* record." [Emphasis added.]).

Affirmed.

/s/ Helene N. White
/s/ Brian K. Zahra
/s/ Kirsten Frank Kelly