

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,
Plaintiff-Appellee,

UNPUBLISHED
December 11, 2012

v

ADAM MATTHEW KOVAC,
Defendant-Appellant.

No. 308020
Gratiot Circuit Court
LC No. 11-006276-FH

Before: TALBOT, P.J., and MARKEY and RIORDAN, JJ.

PER CURIAM.

Adam Matthew Kovac appeals as of right his jury trial conviction of third degree fleeing and eluding.¹ Kovac was sentenced to serve 90 days in jail, with credit for three days served, and one year of probation.² We affirm.

Kovac was arrested on July 12, 2011, after he failed to stop when pursued by a St. Louis police officer in a fully marked patrol car with its emergency lights activated. Kovac indicated at trial that he saw the officer's patrol car before the attempted traffic stop while it was parked in the police department parking lot, however, he did not see the officer's car a few moments later when it was behind him with its emergency lights activated.

Kovac argues that because no evidence was presented to contradict his trial testimony that he was unaware that the officer had attempted to stop him, the prosecution failed to prove two of the elements of the offense and thus his conviction was against the great weight of the evidence. We disagree. Review of this unpreserved issue "is limited to plain error affecting [Kovac's] substantial rights."³

¹ MCL 257.602a(3).

² Kovac was to initially serve 30 days in jail and the additional 60 days of jail time was waived if Kovac successfully completed probation.

³ *People v Musser*, 259 Mich App 215, 218; 673 NW2d 800 (2003).

The trial court appropriately instructed the jury that fleeing and eluding requires proof of the following six elements:

First, that the police officer was in uniform and was performing his lawful duties and was operating a car that was marked as a patrol unit. Second, that the defendant was driving a motor vehicle. Third, that the officer ordered the defendant to stop his vehicle. Fourth, that the defendant knew of the officer's order, signal, to stop his vehicle. Fifth, that the defendant refused to obey that order by trying to flee or avoid being caught. And, sixth, some portion of this violation took place in an area where the speed limit was 35 miles per hour or less.⁴

“The test to determine whether a verdict is against the great weight of the evidence is whether the evidence preponderates so heavily against the verdict that it would be a miscarriage of justice to allow the verdict to stand.”⁵ We find that Kovac's conviction was not against the great weight of the evidence as ample evidence was presented to prove the fourth and fifth elements of the crime beyond a reasonable doubt. On the night of the incident, Kovac had been patronizing a local bar and grill. Kovac left the bar around its closing time, but returned approximately five minutes later with the officer following behind him. One other bar patron was still present when Kovac returned, and testified at trial that he saw police lights outside before he saw Kovac “come flying through the door.” The patron further testified that Kovac told him, “[T]hey're coming after me because I've got an off taillight and so just don't say nothing.” Thus, the witness's testimony supports that Kovac saw the patrol car's emergency lights while he was still in traffic, and that he was aware that the lights were a visual order to stop his vehicle.⁶

Additionally, one of the servers who was working at the bar and grill that evening testified that Kovac told her “[T]hey're after me, it's my out taillight,” upon returning to the establishment. She further testified that Kovac told her to “play it cool” if the policeman, whose lights she could see flashing from inside the restaurant, came inside. The arresting officer testified that while he and Kovac traveled to the jail after Kovac's arrest, Kovac told him that he had not been fleeing and eluding arrest; rather, he was trying to “avoid[] being harassed again.” Thus, the jury could reasonably conclude that Kovac was aware that a police officer had ordered

⁴ MCL 257.602a(1), (3)(b).

⁵ *Musser*, 259 Mich App at 218-219.

⁶ See MCL 257.602a(1).

him to stop his vehicle, and he deliberately refused to do so.⁷ Accordingly, reversal is not warranted.⁸

Affirmed.

/s/ Michael J. Talbot
/s/ Jane E. Markey
/s/ Michael J. Riordan

⁷ *Id.*

⁸ *Musser*, 259 Mich App at 218-219.