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Minn. Stat. § 480A.08, subd. 3 (2016).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A17-0234**

State of Minnesota,
Respondent,

vs.

Bruce Edward Canady,
Appellant.

**Filed December 4, 2017
Affirmed
Connolly, Judge**

Sherburne County District Court
File No. 71-CR-16-845

Lori Swanson, Attorney General, St. Paul, Minnesota; and

Kathleen A. Heaney, Sherburne County Attorney, George R. Kennedy, Assistant County Attorney, Elk River, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Julie Loftus Nelson, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Connolly, Presiding Judge; Jesson, Judge; and Florey,
Judge.

UNPUBLISHED OPINION

CONNOLLY, Judge

Appellant challenges his conviction for failing to stop following a collision with an unattended vehicle, arguing that the evidence was not sufficient to allow the jury to reach its verdict because appellant's testimony contradicted the officer's testimony. Because the weight and credibility of witnesses is for a jury to determine, we affirm.

FACTS

In June 2016, a peace officer who knew appellant Bruce Canady's driver's license had been revoked saw appellant's vehicle being driven on a road. The officer positioned his squad car to pursue the vehicle, which drove away at a high speed. The officer then activated his squad-car lights to signal that the vehicle should stop. The vehicle entered a trailer park with a posted speed limit of 10 mph at about 50 mph, and the officer activated his siren. The officer continued to pursue the vehicle as it turned out of the trailer park, ran into an unoccupied car parked in the adjacent street, drove past several vacant parking spaces, turned into another street, and passed several more vacant parking spaces before stopping. Appellant was identified as the driver of his vehicle.

He was charged with fleeing a peace officer in a motor vehicle, driving after revocation, and failing to stop following collision with an unattended vehicle. Appellant pleaded guilty to driving after revocation, and, following a jury trial, was found guilty of fleeing a peace officer in a motor vehicle and failing to stop following collision with an unattended vehicle. He was sentenced to 21 months in prison.

Appellant challenges his conviction of failing to stop following collision with an unattended vehicle on the ground that the jury lacked sufficient evidence to find him guilty.

D E C I S I O N

[O]n review of a criminal conviction, [this court] will construe the record most favorably to the state and will assume the evidence supporting the conviction was believed and the contrary evidence disbelieved. This is especially true where resolution of the case depends on conflicting testimony, because weighing the credibility of witnesses is the exclusive function of the jury.

State v. Pieschke, 295 N.W.2d 580, 584 (Minn. 1980). “The weight and credibility of the testimony of individual witnesses is for the jury to determine.” *State v. Moore*, 438 N.W.2d 101, 108 (Minn. 1989).

The statutory definition of appellant’s offense provides that:

The driver of any motor vehicle involved in a collision shall immediately stop the vehicle at the scene of the collision, or as close to the scene as possible, and reasonably investigate what was struck. If the driver knows or has reason to know the collision resulted in damage to any unattended vehicle, the driver must either locate and notify the driver or owner of the vehicle of the name and address of the driver and registered owner of the vehicle striking the unattended vehicle, report this same information to a peace officer, or leave in a conspicuous place in or secured to the vehicle struck, a written notice giving the name and address of the driver and of the registered owner of the vehicle doing the striking. The stop must be made without unnecessarily obstructing traffic.

Minn. Stat. § 169.09, subd. 4 (2016). Appellant argues that his conduct did not meet this definition because he “immediately stop[ped] at the scene of the collision, or as close to the scene as possible” and “testified that he stopped his vehicle as soon as was practical after the collision.”

But the testimony of the officer who was pursuing appellant when the collision occurred conflicted with appellant's testimony. The officer was questioned:

Q: . . . [W]hat happen[ed] next?

A: [Appellant's] vehicle turns southbound through the trailer court. It's a fairly long drive. And the trailers are close to that drive. So we proceeded southbound through the trailer court and came out to 7th Street southeast.

Q: . . . How fast were you going on that road?

A. Again, I . . . would estimate in excess of 50 miles an hour through there as well.

Q: Fifty miles an hour in a ten mile an hour zone?

A: Correct.

Q: At the end of that long roadway . . . is it marked with a traffic control device?

A: Yes.

Q: What is that traffic control device?

A: There is a stop sign.

Q: And as [appellant's] vehicle approached the stop sign did [it] stop at the stop sign?

A: No.

Q: What happened next?

A: [Appellant's] vehicle turned out onto 7th Street southeast eastbound, back towards the area we had [come from]. . . . And as it continued eastbound I saw there was an unoccupied parked car on the south side of 7th Street. Based on that maneuver and the speed that the vehicle exited the trailer park I suspected that some collision had taken place. But based on the rate that we were traveling at I didn't immediately observe any damage.

Q: And so it comes to a T, or the end of the road. Is that correct?

A: Yes.

Q: And so the parked car is at the end of that trailer court road or across the street from that. Is that fair?

A: It was across the street, yes.

Q: And the vehicle is hit. Did [appellant's] car stop immediately?

A: No.

Q: What happened next?

A: He quickly accelerated eastbound and then made a quick turn southbound onto 13th Avenue southeast

Q: And then what happened?

A: We were exceeding the speed limit again as I tried to catch up to him. And then I saw the brake lights start to come on and the brake lights were tapping. And then all of a sudden the vehicle just pulled over to the right side of the road and came to a stop.

.....

Q: . . . [W]ere there other opportunities for [appellant], were there open areas that [appellant] could have stopped?

A: Absolutely.

Q: Were there any other vehicles, or was traffic so heavy that he couldn't have stopped at any other place?

A: No.

.....

Q: And then did [appellant] stop right after he hit that car?

A: No.

Q: What did he do?

A: Accelerated away from me.

Q: And then did he pull over immediately after that?

A: No.

Q: And what did he do?

A: Made another quick turn south on 13th Avenue accelerating away from me again.

Q: Before he eventually pulled over?

A: Correct.

The videotape from the squad car corroborates the officer's testimony. It shows that, after the crash, appellant accelerated away from the scene past several vacant parking spaces, turned onto another street, and drove past more vacant parking spaces before he finally stopped his car. The video and the officer's testimony show that appellant did not "stop [his] vehicle at the collision, or as close to the scene as possible."

Appellant also argues that he did not need to comply with the statute's requirement to notify the owner of the unattended vehicle he struck because an officer witnessed the collision. But appellant offers no legal support for the view that a driver who is being pursued by a peace officer when he strikes an unattended vehicle is relieved of the statutory obligation to notify either the owner of the vehicle or the peace officer. Moreover, even though peace officers were present, the video from the squad car indicates that appellant did not mention the collision when being interrogated by them. The transcript indicates

that a peace officer first learned of the collision when the vehicle's owner reported that his vehicle had been hit and damaged. An officer who came to the scene to assist was questioned.

Q: . . . [W]ere you notified that as part of the pursuit that there was a vehicle that had been hit?

A: No, not at the time. There was no radio traffic about that until after the fact.

Q: . . . [B]ased on the information that you eventually received about a vehicle being hit, did you then go and inspect that vehicle?

A: Yes, I did, once I was approached by the victim of that vehicle that was hit. He advised that his vehicle was struck by the vehicle that we were pursuing. I went to go investigate that part of the investigation of the hit and run.

While appellant, having been detained and arrested, may not have been able to locate the driver or owner of the vehicle or to leave a note on the vehicle, he could certainly have complied with the statute by informing one of the peace officers at the scene that he had collided with an unoccupied parked car.

Assuming that the jury believed the officer's testimony and disbelieved appellant's, there was sufficient evidence to support the jury's verdict that appellant did not stop his vehicle at the scene of the collision or as close to the collision as possible and that he did not locate the driver, leave a note, or tell a peace officer that he had collided with a vehicle.

Affirmed.