

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,
Plaintiff-Appellee,

UNPUBLISHED
March 27, 2014

v

REUBEN CRAWFORD,

No. 313963
Washtenaw Circuit Court
LC No. 11-001920-FH

Defendant-Appellant.

Before: RONAYNE KRAUSE, P.J., and FITZGERALD and WHITBECK, JJ.

PER CURIAM.

Defendant Reuben Crawford appeals as of right his bench trial convictions of operating a motor vehicle while intoxicated, third offense MCL 257.625(1), MCL 257.625(9)(c) (count one); third-degree fleeing and eluding, MCL 257.602a(3) (count two); possession of less than 25 grams of heroin, MCL 333.7403(2)(a)(v) (count three); and operating a motor vehicle with a suspended license, MCL 257.904(3)(a) (count four). After a bench trial, defendant was convicted and sentenced as a habitual offender, fourth offense, MCL 769.12, to three years of probation for counts one through three; a term of one year in jail with the possibility of release to residential treatment after eight months, with one day credit applied, for count one; and one day in jail, with one day's credit applied, for count four. The sentences are concurrent to one another. We affirm.

On appeal, defendant first argues that there was insufficient evidence to convict him of operating a motor vehicle while intoxicated and third-degree fleeing and eluding. We disagree.

Questions regarding sufficiency of the evidence at a bench trial are reviewed de novo. *People v Lanzo Const Co*, 272 Mich App 470, 473; 726 NW2d 746 (2006) (citation omitted). “The evidence is viewed in a light most favorable to the prosecution to determine whether the trial court could have found that the essential elements of the crime were proven beyond a reasonable doubt.” *Id.* at 474 (citation omitted). “This Court will not interfere with the trier of fact’s role of determining the weight of the evidence or the credibility of witnesses.” *People v Kanaan*, 278 Mich App 594, 619; 751 NW 57 (2008).

Defendant’s sole challenge to the sufficiency of the evidence relates to his identity as the driver of the vehicle in question while it attempted to evade the police. Identity is an element of every offense. *People v Yost*, 278 Mich App 341, 356; 749 NW2d 753 (2008). Upon “view[ing] the evidence in a light most favorable to the prosecution,” *People v Johnson*, 460 Mich 720, 723;

597 NW2d 73 (1999), the record contains sufficient evidence for a rational trier of fact to conclude beyond a reasonable doubt that defendant drove the vehicle. A police officer testified that defendant drove away from his patrol car at a speed in excess of 60 miles per hour, in a 35 mile per hour zone, at which time the officer signaled for defendant to stop. The officer never saw defendant and his passenger switch seats and he observed defendant exit from the driver's side door after the pursuit. A different man exited from the passenger's side. Defendant subsequently reentered the driver's door and drove further. A second officer witnessed defendant do so. Details of the officers' testimony were corroborated by video recordings taken from their patrol cars. Further, defendant's passenger testified that defendant was the driver of the vehicle. While defendant testified and claimed he was not the driver, he admitted that he was so intoxicated that he could not remember what happened. Being mindful that we do not interfere with the fact-finder's "assessment of the weight and credibility of witnesses or the evidence," *People v Dunigan*, 299 Mich App 579, 582; 831 NW2d 243 (2013), we conclude that the evidence was sufficient to prove beyond a reasonable doubt that defendant drove the vehicle when the police attempted to stop it under color of law.

Defendant also asserts that he should not have been convicted of operating a motor vehicle while intoxicated because, although he undisputedly drove the vehicle after it was stopped at a nearby gas station, he drove the vehicle in the best interests of public safety. This issue is not properly presented because it is not raised in the statement of questions presented. MCR 7.212(C)(5). Ordinarily, no issue will be considered that is not set forth in the statement of questions presented. *People v Anderson*, 284 Mich App 11, 16; 772 NW2d 792 (2009). Moreover, the issue is entirely abandoned. *People v Kelly*, 231 Mich App 627, 640-641; 588 NW2d 480 (1998). Even if considered we find it without merit, based on defendant's testimony at trial.

Defendant finally argues that his conviction for possession of less than 25 grams of heroin should be reversed because that charge was added to the information by way of an improper amendment. We disagree.

We "review a trial court's decision to grant a motion to amend the information for an abuse of discretion." *People v Unger*, 278 Mich App 210, 221; 749 NW2d 272 (2008) (citation omitted). "An abuse of discretion occurs when the court chooses an outcome that falls outside the range of reasonable and principled outcomes." *Id.* at 217 (citation omitted).

"Both MCL 767.76 and MCR 6.112(H) authorize a trial court to amend an information before, during, or after trial." *People v McGee*, 258 Mich App 683, 686; 672 NW2d 191 (2003). MCL 767.76 provides that "[t]he court may at any time before, during or after the trial amend the indictment in respect to any defect, imperfection or omission in form of substance or of any variance with the evidence." MCL 767.76 is, however, inapplicable when an amendment adds a new offense. *McGee*, 258 Mich App at 688-689. Nevertheless, even when MCL 767.76 is inapplicable, an information can be amended to add new charges by way of MCR 6.112(H). *Id.* at 689. MCR 6.112(H) provides that "[t]he court before, during, or after trial may permit the prosecutor to amend the information unless the proposed amendment would unfairly surprise or prejudice the defendant." We have previously held that a defendant has sufficient time to prepare a defense when a trial court permits the prosecution to add an additional charge to an information more than a month before trial. *People v Russell*, 266 Mich App 307, 317; 703 NW2d 107 (2005).

We conclude that the trial court did not abuse its discretion in granting the prosecution's motion to amend the information because the added charge did not cause defendant to suffer unfair surprise or prejudice. The record shows that defendant had almost two months' notice of the possession of less than 25 grams of heroin charge. Because he had sufficient notice that the prosecution amended the information to add the additional charge, see *Russell*, 266 Mich App at 317, he has not suffered "unfair[] surprise," *McGee*, 258 Mich App at 689. Moreover, although defendant asserts that he was prejudiced because his counsel had only a few weeks to prepare a defense to the possession of heroin charge, the evidence of defendant's guilt was overwhelming and "defendant did not articulate below and fails to articulate on appeal how added time to prepare . . . would have benefited the defense." *Id.* at 693.

Affirmed.

/s/ Amy Ronayne Krause

/s/ E. Thomas Fitzgerald

/s/ William C. Whitbeck