

Circuit Court for Baltimore City  
Case No. 822305001

UNREPORTED  
IN THE APPELLATE COURT  
OF MARYLAND\*

No. 398

September Term, 2023

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CURTIS AUSTIN

V.

STATE OF MARYLAND

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Wells, C.J.,  
Friedman,  
Wilner, Alan M.  
(Senior Judge, Specially Assigned),

JJ.

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Opinion by Friedman, J.

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Filed: August 9, 2024

\*This is an unreported opinion. This opinion may not be cited as precedent within the rule of stare decisis. It may be cited for persuasive value only if the citation conforms to MD. RULE 1-104(a)(2)(B).

Appellant, Curtis Austin, was convicted of fleeing and eluding police. Austin has appealed from this conviction, arguing that the evidence that he committed the crime was insufficient. The State concedes error. We agree and, therefore, reverse.

### FACTS

We recite only those facts that are necessary to resolve the legal question presented.<sup>1</sup> The evidence presented by the State established that an automatic license plate reader alerted the Baltimore police that a car that had been reported stolen could be found on Saratoga Street near the (World-Famous) Lexington Market. By the time the police arrived, Austin was out of the car and on the street. When the police saw him (and more importantly, when he saw the police), Austin broke into a run. He was caught, handcuffed, and arrested. There was no evidence that at any time in this interaction did a police officer order Austin to stop.

Austin was convicted of fleeing and eluding the police in violation of Section 21-904 (b) of the Transportation Article (“TR”) of the Maryland Code.<sup>2</sup> He was sentenced to 10 months incarceration and then noted this timely appeal.

### ANALYSIS

This case requires an analysis of the governing statute, TR § 21-904 (b). Here’s the text of the statute:

If a police officer gives a visual or audible signal to stop and the police officer is in uniform, prominently displaying the

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<sup>1</sup> Austin presents three questions, but because we find the evidence insufficient, we need not reach the other two.

<sup>2</sup> Austin was acquitted of all other charges.

police officer’s badge or other insignia of office, a driver of a vehicle may not attempt to elude the police officer by:

- (1) Willfully failing to stop the driver’s vehicle;
- (2) Fleeing on foot; or
- (3) Any other means.

TR § 21-904 (b) (emphasis added). The caselaw is clear: to violate the statute, at the time that a police officer gives a signal to stop, the defendant must be the driver of a vehicle. *See Washington v. State*, 200 Md. App. 641, 656 (2011) (“The crime can only be committed by a driver”). Here, however, there was no evidence that the police gave Austin a signal to stop while he was a driver. Indeed, neither police officer who testified at trial stated that they had actually seen Austin driving the vehicle at any time. By the time they arrived on the scene, Austin was indisputably a pedestrian. Moreover, although the jury might reasonably infer that a police officer gave him an order to stop at some point, it could not have been given, if at all, until after Austin had left the car and was no longer a driver. As a result, the evidence was insufficient as a matter of law to establish that Austin committed the crime of which he was convicted.

**JUDGMENT OF THE CIRCUIT COURT  
FOR BALTIMORE CITY REVERSED;  
COSTS ASSESSED TO THE MAYOR AND  
CITY COUNCIL OF BALTIMORE.**