Supreme Court No. 92179-2
COA No. 71938-6-1-I

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,

Respondent,

v.

ANDREW FORD SMITH,

Petitioner.

ON APPEAL FROM THE SUPERIOR COURT
OF SKAGIT COUNTY

The Honorable Michael E. Rickert

PETITION FOR REVIEW

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A. IDENTITY OF PETITIONER

Andrew Ford Smith is the petitioner herein, was the appellant in Court of Appeals No. 71938-6-I.

B. COURT OF APPEALS DECISION

Mr. Smiths seeks review of the Court of Appeals decision dated July 20, 2015, in which the Court rejected Mr. Smith's arguments that he did not drive recklessly for purposes of the crime of Eluding a pursuing police vehicle.

C. ISSUE PRESENTED ON REVIEW

To prove Eluding, the State was required to prove that Mr. Smith drove recklessly – i.e., in a rash or heedless manner – after being given a signal to stop. Here, the Court of Appeals used dictionary definitions of words used in the proper judicial definition of "reckless" in a manner that effectively reduces the requirements of guilt to Eluding to mere avoidance of the officer, and/or committing traffic violations.

Was the evidence sufficient to convict, requiring reversal?

D. STATEMENT OF THE CASE

Andrew Smith was charged with Attempting to Elude a Pursuing Police Vehicle based on events on March 18, 2012. CP 1-2 (information), CP 3-5 (affidavit of probable cause); 5/12/14RP

at 52-68. According to Sedro Woolley resident Brian Gaylord, Mr. Smith drove his Ford Explorer up to the Gaylords' home and behaved strangely. When told that he needed to leave, Mr. Smith re-entered his Explorer and backed out of the driveway. 5/12/14RP at 55, 60-61.

Mr. Gaylord's daughter, Bree, called 911 to report this conduct. 5/12/14RP at 71, 74-75. Bree noted that Mr. Smith's limp was more prominent than usual. 5/12/14RP at 74-75. She also explained that Mr. Smith had been having a relationship with her mother, until she died recently.[1] 5/12/14RP at 73.

Skagit County Sheriff's Deputy Christopher Dodds took the dispatch based on the 911 call and looked for Mr. Smith's vehicle in the area. He located the Ford Explorer driving westbound on State Route 520. 5/12/14RP at 80-83. See Part D., infra.

After being taken into custody for alleged Eluding and DUI, Mr. Smith did not do any field test, Drug Recognition Expert evaluation, or BAC test. 5/13/14RP at 48-50, 77 (testimony of Deputy John Hendrickson). Deputy Hendrickson detected no odor of intoxicants about Mr. Smith. 5/13/14RP at 46-47. The jury found

[1] Mr. Gaylord admitted that while Mr. Smith was on the property, Gaylord may have threatened to shoot Smith with his gun. 5/12/14RP at 68.

Mr. Smith guilty of Eluding but acquitted him on the DUI charge. 5/13/14RP at 154; CP 48, 49. He was subsequently sentenced to a standard range term. 5/15/14RP at 162-63. CP 51-61.

Mr. Smith appealed. CP 62. The Court of Appeals rejected his argument that the evidence was insufficient. Appendix A.

E. ARGUMENT

THE STATE FAILED TO PROVE EVERY ELEMENT OF ATTEMPTING TO ELUDE A POLICE VEHICLE.

The State must prove every essential element of the crime of Eluding beyond a reasonable doubt, including reckless driving following a signal to stop.

(i). Supreme Court review is warranted under RAP 13.4(b)(1) and (2). Review by this Court is warranted because the Court of Appeals decision is in conflict with State v. Roggenkamp, 153 Wn.2d 614, 622, 106 P.3d 196 (2005) (defining "reckless manner" as used in RCW 46.61.520 and 46.61.522) and State v. Randhawa, 133 Wn. 2d 67, 76-78, 941 P.2d 661, 665-66 (1997) (holding merely that speeding does not by itself more likely than not establish recklessness).

(ii). There must be reckless driving after the officer's signal to stop is made. In order for Mr. Smith to be convicted of Attempting to Elude, the State was required to prove the crime

beyond a reasonable doubt, and reversal is required if there was insufficient evidence on any element. In re Winship, 397 U.S. 358, 90 S. Ct. 1068, 25 L. Ed. 2d 368 (1970); U.S. Const. amend. 4.

In this case, after Deputy Dodds followed Smith for a period of time and then activated his squad car's lights, he followed Mr. Smith as the Ford Explorer then made a simple U-turn on Metcalf and passed him in the opposite direction. 5/12/14RP at 87-89. There was no testimony that a high rate of speed was being driven at this juncture. Mr. Smith "then proceeded up to the area past the stop line partially into the eastbound lane of SR 520 and came to a stop." 5/12/14RP at 88.

Deputy Dodds pulled directly behind the Explorer and parked, then walked up to the driver's side window. 5/12/14RP at 88-89. Mr. Smith refused to shut his vehicle down despite the Deputy's requests; then, he drove away from the deputy, and performed a U-turn crossing into SR 520 and drove south on Metcalf. 5/12/14RP at 89-90. As Deputy Dodds returned to his squad car, Smith "continued to travel down Metcalf Street at a very slow speed towards the police department area." 5/12/14RP at 91.

With assistance from Sergeant Greg Adams, who had arrived on the scene in his vehicle, Deputy Dodds positioned his

own vehicle as Smith started turning around again. The officers forced Smith to stop in a parking stall with a wheel up against the curb. 5/12/14RP at 91-92.

Mr. Smith reacted angrily and threateningly when the officers attempted to have him exit the Explorer, so the Deputies tased him. 5/12/14RP at 98-99. Thereafter he was arrested. 5/12/14RP at 99.

(iii). Insufficient evidence. This is insufficient evidence of Eluding. Eluding requires reckless driving following a signal to stop by the officer. RCW 46.61.024(1). Certainly, a jury might be within the bounds of sufficiency to find recklessness, because other facts showed that when the Deputy initially spotted Smith, Mr. Smith conducted a left turn off of SR 520 (turning from westbound to southbound on the new street) and that turn caused the "traffic that was on State Route 520 that was traveling eastbound . . . to come to a stop as Mr. Smith's vehicle crossed over in front of them to travel south [on Metcalf]." 5/12/14RP at 87.

However, at that juncture, Deputy Dodds had <u>not yet signaled</u> the Ford Explorer to stop. Mr. Smith's abrupt left turn from SR 520 onto Metcalf was what *caused* Deputy Dodds to activate his lights. 5/12/14RP at 87. On direct examination, the deputy testified:

Q: When you saw the vehicle do that, what was the very next thing you did?
A: At that time I activated my emergency lights and siren.

5/12/14RP at 87.

Although the State would later argue that Mr. Smith drove recklessly after the Deputy's signal to stop, the evidence did not establish recklessness. The phrase "in a reckless manner" means to drive in a "rash or heedless manner, indifferent to the consequences." State v. Roggenkamp, 153 Wn.2d 614, 622, 106 P.3d 196 (2005) (defining "reckless manner" as used in RCW 46.61.520 and 46.61.522) (quoting State v. Bowman, 57 Wn.2d 266, 270–71, 356 P.2d 999 (1960)); see also State v. Ridgley, 141 Wn. App. 771, 781, 174 P.3d 105 (2007).

The jury was so instructed. CP 45 (Instruction no. 12); see CP 29-30 (Defendant's supplemental proposed jury instructions, citing WPIC 90.05).

Here, though, Deputy Dodds repeatedly confirmed that the left turn he deemed dangerous was before the deputy activated his squad car's lights, and thereafter, Mr. Smith drove at a "very slow speed." 5/12/14RP at 87, 91, 116-17, 122-23.

But after he was signaled to stop, although Mr. Smith may have committed further traffic infractions such as a U-turn, Mr.

Smith did not drive recklessly. Deputy Dodds made clear that if Mr. Smith's U-turn when he drove away from him as he stood at the side of the Ford had been potentially dangerous, or even a traffic infraction, he would have noted it. 5/12/14RP at 121-22. There were no pedestrians or other drivers in the area where Mr. Smith slowly drove his vehicle after briefly stopping for the deputy. 5/12/14RP at 124.

Sergeant Adams testified that he saw Mr. Smith drive away from Deputy Dodds; Smith then "slowly made a U-turn and started heading south on Metcalf street." 5/13/14RP at 10-12. There were no cars in the area when Mr. Smith made the U-turn. 5/12/14RP at 19. Smith was going slowly enough that Sergeant Adams simply drove in front of him and forced the Explorer to come up against a curb and stop. 5/13/14RP at 10-11.

It is true that the Court of Appeals held in State v. Whitcomb, 51 Wn. App. 322, 753 P.2d 565 (1988), that in order to prove that an individual attempted to elude a pursuing police vehicle, "[t]he State need not prove that anyone else was endangered by the defendant's conduct, or that a high probability of harm actually existed." Rather, the State need only show that the defendant engaged in certain conduct, "from which a particular

disposition or mental state . . . may be inferred." State v. Whitcomb, 51 Wn. App. at 327.

(iv). Court of Appeals error. In this case, the Court of Appeals recited facts showing that Mr. Smith (after he was signaled to stop) continued driving and went past a "stop line" and came to a stop partially in the eastbound lane of State Route 20 [and then] with the Officer standing right at his driver's side window trying to talk to him, "put his vehicle into drive and made another U-turn." Appendix A (decision, at pp. 2-3, 7).

The Court of Appeals, citing these facts, characterized Mr. Smith's argument on appeal as essentially that one must be driving at an excessive rate of speed to be deemed "reckless," and used dictionary definitions of rah sand heedless to hold that Mr. Smith's conduct fit the jury instructions' definition of reckless as "driving in a rash or heedless manner, indifferent to the consequences."

But this was error. The Court defined and applied the law in a manner that allows conviction for the felony crime of Eluding based on

> (a) mere refusal to stop, which is already an element of the crime, such that the Court's reasoning effectively eviscerated the recklessness requirement;
> and/or
> (b) committing routine traffic violations.

This criteria for sufficiency reduces the necessary proof of the crime in a manner that fails to satisfy the crime of Eluding under the statute, RCW 46.61.024(1), which was set forth for the jury:

> [a]ny driver of a motor vehicle who willfully fails or refuses to immediately bring his or her vehicle to a stop and who drives his or her vehicle in a reckless manner while attempting to elude a pursuing police vehicle, after being given a visual or audible signal to bring the vehicle to a stop, shall be guilty of a class C felony.

CP 43-44 10, 11.

Here, Mr. Smith did not drive in a rash or heedless manner, showing indifference to the consequences of driving, unless the crime of Eluding is proved by the failure to stop itself, or by the committing of traffic violations while failing to stop. Arguably, Mr. Smith might have been guilty of failing to obey a signal from the Deputies under RCW 46.61.022 (A person is guilty of failing to obey an officer if he willfully fails to stop when requested or signaled to do so by a person reasonably identifiable as a law enforcement officer); see State v. Gallegos, 73 Wn. App. 644, 652, 871 P.2d 621 (1994) (failure to obey a police officer is a lesser included offense of Eluding). But there can be no attempt to elude contrary to law unless the driver drives in the proscribed manner *after* the officer

gives an appropriate signal. State v. Stayton, 39 Wn. App. 46, 49, 691 P.2d 596 (1984).

(v). Reversal. The absence of proof beyond a reasonable doubt of an element of the crime requires reversal and dismissal. Jackson, 443 U.S. at 319; North Carolina v. Pearce, 395 U.S. 711, 717, 89 S. Ct. 2072, 23 L. Ed. 2d 656 (1969), reversed on other grounds by Alabama v. Smith, 490 U.S. 794, 109 S. Ct. 2201, 104 L. Ed. 2d 865 (1989); State v. Green, 94 Wn.2d 216, 221, 616 P.2d 628 (1980). Reversal and dismissal are required here.

F. CONCLUSION.

Based on the foregoing, Mr. Smith respectfully requests this Court accept review, and reverse the judgment of conviction of the trial court.

DATED this 12 day of August, 2015.

Respectfully submitted,

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Appendix A - Decision

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,	)	DIVISION ONE
Respondent,	)	No. 71938-6-I
v.	)	UNPUBLISHED OPINION
ANDREW FORD SMITH,	)	
Appellant.	)	FILED: July 20, 2015

DWYER, J. — Andrew Smith appeals from the judgment entered on a jury's verdict finding him guilty of attempting to elude a pursing police vehicle. Smith challenges the sufficiency of the evidence to support the jury's verdict, contending that insufficient evidence was adduced to establish that he drove "in a reckless manner" after the police officer activated his vehicle's emergency lights. Smith also contends that the trial court's allowance of testimony opining that Smith "was under the influence of something," and a reference to Alcoholics Anonymous, an objection to which was sustained and the evidence ordered stricken, constitute reversible error. We reject Smith's contentions, concluding both that sufficient evidence was adduced at trial and that he fails to establish an entitlement to appellate relief with regard to the allegedly improper testimony. Consequently, we affirm.

I

On March 18, 2012, Smith drove to Brian Gaylord's house in his green Ford Explorer. When confronted by Gaylord, Smith asserted that he needed to

relieve himself, at which time Smith appeared to urinate in Gaylord's goat pen. Gaylord questioned Smith, threatened to call the police, and eventually escorted Smith back to Smith's vehicle and told him that he needed to leave. Smith then slowly, but erratically, backed out of Gaylord's driveway, taking 10 minutes to back out of the quarter-mile-long driveway, despite the fact that the driveway was circular and Smith could have easily driven forward to leave the property.

Gaylord's daughter, Bree Gaylord, was also at his residence that day and became concerned after seeing Smith go behind the shop and appear to urinate in the goat pen. After Gaylord and Smith walked out from behind the shop, Bree called 911. Officer Dodds was dispatched in response to Bree's 911 call and passed Smith's green Ford Explorer going in the opposite direction on State Route 20. Dodds turned his fully marked patrol car around and began to follow Smith's vehicle. Dodds followed Smith for two to four miles on State Route 20, during which time Dodds observed Smith's vehicle cross the double yellow center line on two occasions. As they approached Metcalf Street, Smith's vehicle made an abrupt move into the center lane and made a left turn southbound on Metcalf Street, without signaling, causing eastbound traffic on State Route 20 to come to a stop. Dodds then contemporaneously activated both his vehicle's emergency lights and siren.

Smith did not stop his vehicle but, rather, continued south on Metcalf Street, eventually making a U-turn, passing Dodds vehicle, and proceeding north. Dodds followed Smith, continuing the pursuit until Smith went past a "stop line" and came to a stop partially in the eastbound lane of State Route 20. Dodds

exited his patrol vehicle and made contact with Smith at the driver's side door of Smith's vehicle. There was loud music blaring from Smith's vehicle and Smith ignored multiple requests from Dodds to turn off the music and to turn off his ignition. Instead, while Dodds was standing at the driver's side window, Smith put his vehicle into drive and performed a U-turn, crossing into State Route 20 and continuing south on Metcalf Street. Dodds returned to his patrol vehicle and recommenced his pursuit of Smith.

Meanwhile, a nearby officer, Sergeant Adams, joined the pursuit in a fully marked patrol vehicle with its emergency lights activated. Smith's vehicle continued down Metcalf Street at a slow rate of speed. Adams maneuvered his vehicle in front of Smith's vehicle, and Dodds positioned his vehicle behind Smith's, boxing Smith in. Dodds and Adams eventually forced Smith's vehicle to a stop in front of the Sedro-Woolley Police Department. Dodds proceeded to take Smith into custody.

Smith was charged by information with attempting to elude a pursuing police vehicle and with driving under the influence. A jury returned a guilty verdict as to the charge of attempting to elude a pursuing police vehicle; however, Smith was found not guilty of driving under the influence. Smith was sentenced to two months of incarceration and ordered to pay various amounts of fines and assessments. He now appeals.

II

Smith contends that insufficient evidence was adduced at trial to support the jury's finding that he was driving recklessly after Officer Dodds activated his

patrol vehicle's emergency lights. This is so, he asserts, because the phrase "in a reckless manner" means to drive in a "rash or heedless manner, indifferent to the consequences," which Smith avers requires a high rate of speed, and he was not speeding. We disagree.

The relevant statute sets forth the offense of attempting to elude a pursuing police vehicle, in pertinent part, as being committed by:

> Any driver of a motor vehicle who willfully fails or refuses to immediately bring his or her vehicle to a stop and who drives his or her vehicle in a reckless manner while attempting to elude a pursuing police vehicle, after being given a visual or audible signal to bring the vehicle to a stop.

RCW 46.61.024(1).

Division Two has held, and we agree, that for the offense of attempting to elude a pursuing police vehicle the phrase "'in a reckless manner'" means "'driving in a rash or heedless manner, indifferent to the consequences.'" State v. Ridgley, 141 Wn. App. 771, 781, 174 P.3d 105 (2007) (quoting State v. Roggenkamp, 153 Wn.2d 614, 621-22, 106 P.3d 196 (2005)). In no case has the definition of "driving in a rash or heedless manner, indifferent to the consequences" been reduced down to a requirement that the behavior include driving at a high rate of speed. See e.g., State v. Randhawa, 133 Wn.2d 67, 78, 941 P.2d 661 (1997) (speed was a factor but was explicitly held to not be dispositive; "although it was essentially undisputed that Randhawa was speeding, we cannot say with substantial assurance that the inferred fact of reckless driving flowed from the evidence of speed alone"); Ridgley, 141 Wn.

App. at 775-76 (speed may have been a factor but not indicated to be dispositive).

Additionally, when interpreting statutes, "we 'must not add words where the legislature has chosen not to include them.'" Lake v. Woodcreek Homeowners Ass'n, 169 Wn.2d 516, 526, 243 P.3d 1283 (2010) (quoting Rest. Dev., Inc. v. Cananwill, Inc., 150 Wn.2d 674, 682, 80 P.3d 598 (2003)). The relevant statute does not mention speed.

> Any driver of a motor vehicle who willfully fails or refuses to immediately bring his or her vehicle to a stop and who drives his or her vehicle in a reckless manner while attempting to elude a pursuing police vehicle, after being given a visual or audible signal to bring the vehicle to a stop.

RCW 46.61.024(1).

Nor does the accepted judicial definition of "in a reckless manner"—"driving in a rash or heedless manner, indifferent to the consequences"—reference the driver's rate of speed. Thus, we refuse to reduce "driving in a rash or heedless manner, indifferent to the consequences" down to a requirement that the prohibited behavior necessarily includes driving at a high rate of speed.

"When a statutory term is undefined, the court may look to a dictionary for its ordinary meaning." In re Estate of Blessing, 174 Wn.2d 228, 231, 273 P.3d 975 (2012) (citing State v. Gonzalez, 168 Wn.2d 256, 263, 226 P.3d 131 (2010)); accord, State v. Rodgers, 146 Wn.2d 55, 62, 43 P.3d 1 (2002). The dictionary definition of "rash" is: "characterized by or proceeding from lack of deliberation or caution" and "imprudently involving or incurring risk." WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY 1883 (2002). The dictionary definition of "heedless" is:

"inattentive, unmindful, careless, unobservant, [or] oblivious." WEBSTER'S, supra, at 1049.

The due process clauses of the federal and state constitutions, U.S. CONST. amend. XIV; WASH. CONST. art. I, § 3, require that the State prove each element of a crime beyond a reasonable doubt. Apprendi v. New Jersey, 530 U.S. 466, 476-77, 120 S. Ct. 2348, 147 L. Ed. 2d 435 (2000). "[T]he critical inquiry on review of the sufficiency of the evidence to support a criminal conviction must be . . . to determine whether the record evidence could reasonably support a finding of guilt beyond a reasonable doubt." Jackson v. Virginia, 443 U.S. 307, 318, 99 S. Ct. 2781, 61 L. Ed. 2d 560 (1979). "[T]he relevant question is whether, after viewing the evidence in the light most favorable to the prosecution, *any* rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." Jackson, 443 U.S. at 319.

A claim of evidentiary insufficiency admits the truth of the State's evidence and all reasonable inferences from that evidence. State v. Kintz, 169 Wn.2d 537, 551, 238 P.3d 470 (2010); State v. Salinas, 119 Wn.2d 192, 201, 829 P.2d 1068 (1992). Circumstantial evidence and direct evidence can be equally reliable. State v. Delmarter, 94 Wn.2d 634, 638, 618 P.2d 99 (1980). We defer to the jury on questions of conflicting testimony, credibility of witnesses, and the persuasiveness of the evidence. State v. Killingsworth, 166 Wn. App. 283, 287, 269 P.3d 1064 (2012).

The jury was instructed that to convict it must find "[t]hat while attempting to elude a pursuing police vehicle, the defendant [Smith] drove his vehicle in a reckless manner." Jury Instruction 11. The jury was further instructed that "[t]o operate a motor vehicle in a reckless manner means to drive in a rash or heedless manner, indifferent to the consequences." Jury Instruction 12.

After Officer Dodds activated his vehicle's patrol lights, Smith repeatedly ignored Dodds's presence and continued driving. A jury could find that Smith's ignorance demonstrated a state of being that was, at a minimum, "inattentive, unmindful, . . . [or] oblivious," thus establishing that he drove heedlessly. WEBSTER'S, supra, at 1049. Furthermore, after Dodds had exited his vehicle and made contact with Smith, and with Dodds standing right next to Smith's vehicle, Smith put his vehicle into drive and made another U-turn. A jury could find this to be an action blatantly taken with an "indiffere[nce] to the consequences." When viewed in the light most favorable to the State, sufficient evidence was adduced to support the jury's conclusion that Smith drove "in a rash or heedless manner, indifferent to the consequences."[1]

III

Smith contends that the trial judge improperly allowed three instances of testimony opining on Smith's intoxication level. He asserts that testimony stating that Smith was "under the influence of something," along with a stricken

[1] Although not necessary for affirmance, sufficient evidence was also adduced that Smith drove in a rash manner. Smith made a U-turn in the middle of Metcalf Street, drove north, and did not come to a stop until he was partially into the eastbound lane of State Route 20, thereby exposing himself to the possibility of a collision and obstructing traffic. Thus, a jury could find that Smith demonstrated a "lack of deliberation or caution" and "imprudently involv[ed] or incur[ed] risk" sufficient to conclude that he drove rashly. WEBSTER'S, supra, at 1883.

reference to Alcoholics Anonymous, require reversal. This is so, he maintains, because testimony that he "was under the influence of something," was not a valid opinion as to his intoxication but, rather, was an opinion on his guilt, and it is improper to opine on the defendant's guilt. Smith further asserts that the only value to the testimony regarding Alcoholics Anonymous was to prove "the character of a person in order to show action in conformity therewith," and thus was impermissible pursuant to ER 404(b). We disagree.

"Generally, no witness may offer testimony in the form of an opinion regarding the guilt . . . of the defendant." State v. Demery, 144 Wn.2d 753, 759, 30 P.3d 1278 (2001). However, Smith is appealing his conviction for attempting to elude a pursuing police vehicle. Intoxication is not an element of attempting to elude a pursuing police vehicle. Nor is intoxication a dispositive indicator of whether Smith drove in a "rash or heedless manner, indifferent to the consequences," while attempting to elude a pursuing police vehicle. Therefore, testimony that Smith was "under the influence of something" did not constitute an opinion on his guilt. Smith does not establish an entitlement to appellate relief on this claim of error.

With regard to the reference to Alcoholics Anonymous, the experienced trial judge properly sustained the defendant's objection and ordered that the objectionable testimony be stricken, thereby "cur[ing] any error recognized by defense counsel at trial." State v. Fisher, 4 Wn. App. 512, 514, 483 P.2d 166 (1971). Appellate relief is not warranted.

Finally, even if there were error, the alleged error was harmless. "'Evidentiary error is grounds for reversal only if it results in prejudice. An error is prejudicial if, "within reasonable probabilities, had the error not occurred, the outcome of the trial would have been materially affected." Improper admission of evidence constitutes harmless error if the evidence is of minor significance in reference to the evidence as a whole.'" In re Detention of Post, 145 Wn. App. 728, 748, 187 P.3d 803 (2008) (citations omitted) (quoting State v. Neal, 144 Wn.2d 600, 611, 30 P.3d 1255 (2001)), aff'd, 170 Wn.2d 302, 241 P.3d 1234 (2010). As previously established, testimony that Smith was "under the influence of something" was not an opinion on his guilt of the charge of attempting to elude a pursuing police vehicle—the only count on which he was convicted and the count from which his appeal is taken. Further, the jury found Smith not guilty of driving under the influence. While the testimony that Smith was "under the influence of something" clearly applied to the DUI charge, the jury's not guilty verdict plainly indicates that it paid little heed to the testimony. Any error was harmless.

Affirmed.

We concur:

DECLARATION OF FILING AND MAILING OR DELIVERY

The undersigned certifies under penalty of perjury under the laws of the State of Washington that on the below date, the original document **Petition for Review to the Supreme Court** to which this declaration is affixed/attached, was filed in the **Court of Appeals** under **Case No. 71938-6-I**, and a true copy was mailed with first-class postage prepaid or otherwise caused to be delivered to the following attorney(s) or party/parties of record at their regular office or residence address as listed on ACORDS:

☒ respondent Erik Pedersen
Skagit County Prosecuting Attorney

☐ petitioner

☐ Attorney for other party

MARIA ANA ARRANZA RILEY, Legal Assistant
Washington Appellate Project

Date: August 17, 2015