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Supreme Court No. 95694-4
COA No. 75678-8-1

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,

Respondent,

v.

JUSTIN SHANE TILAND,

Petitioner.

PETITION FOR REVIEW

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A. IDENTITY OF PETITIONER/DECISION BELOW

Justin Shane Tiland requests this Court grant review pursuant to RAP 13.4 of the unpublished decision of the Court of Appeals in State v. Tiland, No. 75678-8-I, filed March 5, 2018. A copy of the Court of Appeals' opinion is attached as an appendix.

B. ISSUE PRESENTED FOR REVIEW

To prove a person is guilty of attempting to elude a pursuing police vehicle, the State must prove beyond a reasonable doubt the person was driving a motor vehicle and not merely riding in it. Here, the State charged Justin Tiland with attempting to elude a pursuing police vehicle, but the police officers saw no one inside the car when they caught up to it after it had crashed into a light pole, paperwork found inside the car had someone else's photograph on it, and Tiland consistently maintained he was not driving the car. Did the State fail to prove beyond a reasonable doubt that he was driving the car?

C. STATEMENT OF THE CASE

One afternoon in December 2015, two Marysville police officers were dispatched to the parking lot of the Windsor Square Apartments in Marysville on a "suspicious circumstances" call. RP 31-

32, 46. When Officer Bryant Gerfin arrived, he saw two men wandering around the parking lot. RP 33.

Gerfin contacted the men and asked for their names. RP 33-34. One of the men, Justin Tiland, readily provided his name and date of birth. RP 33, 66. The other man seemed very nervous and was reluctant to give his name. RP 66. At Tiland's urging, the man finally said he was "Jesus Gonzales." RP 34, 67. Gerfin later learned that was not his real name. RP 34. His name was "Sienfuegos." RP 76.

Gerfin told the men why he was there. RP 34. The men said they were happy to leave and started walking toward a white Cadillac. RP 34. They got into the car and drove toward the exit. RP 35.

Gerfin thought he saw Tiland get into the driver's seat and the other man get into the passenger seat. RP 35. But both men had dark hair and facial hair of some sort. RP 57.

Gerfin provided the men's names to dispatch. RP 34. He was told that Tiland's driver's license was suspended. RP 35. Gerfin radioed that information to Sergeant Adam Vermeulen, who was just pulling into the parking lot. RP 87, 93. Vermeulen had already learned from dispatch that the Cadillac's registration was expired. RP 90.

As Vermeulen passed the Cadillac on its way out of the parking lot, he thought he saw Tiland in the driver's seat. RP 92. He could not see if anyone else was in the car. RP 92.

Vermeulen turned his car around and followed the Cadillac out onto the street. RP 36-37. Gerfin got into his car and followed behind Vermeulen and the Cadillac. RP 38-40.

Vermeulen activated his emergency lights but the Cadillac did not stop or slow down. RP 42. Instead, it accelerated. RP 42. Both Vermeulen and Gerfin activated their sirens. RP 42. The Cadillac still did not slow down but continued to accelerate. RP 43.

At some point, the Cadillac turned onto a busy four-lane road. RP 45. It was passing traffic by driving in the center turn lane. RP 99. Other cars had to swerve to get out of the way. RP 47. Gerfin reached a speed of 80 miles per hour and still the Cadillac continued to pull away from them. RP 47.

The officers terminated their pursuit and slowed down to the speed limit. They turned off their lights and sirens. RP 48, 101. The Cadillac drove away and the officers lost sight of it. RP 48.

Sometime later, the officers approached an intersection and saw that the Cadillac had collided with a light pole. RP 49. No one was

inside the car. RP 49. The police apprehended Tiland and Sienfuegos a short distance away. RP 50-51.

Tiland told the officers repeatedly and insistently that he was not driving the Cadillac. RP 51-52, 103, 112. He was sitting in the passenger seat when the car collided with the light pole. RP 52. He elaborated, "No Mexican is going to let me drive their Cadillac. Come on, Man." RP 83-84.

No other witnesses identified Tiland as the driver of the Cadillac. RP 121-22, 155, 166.

The police found a document inside the car with a photograph of Sienfuegos on it. RP 146, 185. The police did not attempt to retrieve any fingerprints from the car in order to prove Tiland was driving it. RP 140.

Tiland was charged with one count of attempting to elude a pursuing police vehicle. CP 62. The jury found him guilty as charged. CP 42-43. The Court of Appeals affirmed. Appendix.

D. ARGUMENT WHY REVIEW SHOULD BE GRANTED

This Court should grant review and reverse the Court of Appeals because the State did not prove beyond a reasonable doubt that Tiland was driving the car that allegedly eluded the police.

It is not a crime to ride as a passenger in a car that is driven by someone who fails to stop after being signaled to stop by a pursuing police vehicle. Only the driver of the car can be guilty of the crime of attempting to elude a pursuing police vehicle. Here, Tiland repeatedly insisted he was not driving the Cadillac and was only riding in it as a passenger. The State did not prove beyond a reasonable doubt that in fact Tiland was driving the car.

To prove the crime, the State was required to prove beyond a reasonable doubt that: (1) Tiland drove a motor vehicle; (2) he was signaled to stop by a uniformed police officer by hand, voice, emergency light, or siren; (3) the signaling police officer's vehicle was equipped with lights and siren; (4) Tiland willfully failed or refused to immediately bring the vehicle to a stop after being signaled to stop; and (5) while attempting to elude a pursuing police vehicle, Tiland drove his car in a reckless manner. CP 53; RCW 46.61.024(1).

Constitutional due process required the State to prove these elements beyond a reasonable doubt. In re Winship, 397 U.S. 358, 364,

90 S. Ct. 1068, 25 L. Ed. 2d 368 (1970); Jackson v. Virginia, 443 U.S. 307, 316, 99 S. Ct. 2781, 61 L. Ed. 2d 560 (1979); State v. Green, 94 Wn.2d 216, 221, 616 P.2d 628 (1980); U.S. Const. amend. XIV; Const. art. I, § 3. To find the elements beyond a reasonable doubt, the trier of fact must “reach a subjective state of near certitude of the guilt of the accused.” Jackson, 443 U.S. at 315.

Although the Court presumes the truth of the State’s evidence and draws all reasonable inferences from it, the existence of a fact cannot rest upon guess, speculation, or conjecture. State v. Colquitt, 133 Wn. App. 789, 796, 137 P.3d 892 (2006).

Here, the State’s evidence that Tiland was driving the Cadillac does not rise to a level beyond guess, speculation, or conjecture. Tiland repeatedly insisted he was not the driver. RP 51-52, 103, 112. In fact, the officers who were following the Cadillac did not see him get out of the driver’s seat. RP 49. The officers lost sight of the car when they terminated their pursuit and the Cadillac drove away from them. RP 48. When the officers caught up to the Cadillac after it had crashed into a pole, no one was inside. RP 49.

The State presented no fingerprint evidence to prove that in fact Tiland was the driver. RP 140. A document found inside the car had

Sienfuegos' picture on it, not Tiland's. RP 146, 185. This suggests that the car belonged to Sienfuegos. Likely, he was the one driving it.

Tiland reasonably explained to the officers that Sienfuegos would not have *allowed* him to drive his car. He said, "No Mexican is going to let me drive their Cadillac. Come on, Man." RP 83-84.

Gerfin and Vermeulen said they thought they saw Tiland driving the car out of the parking lot. RP 35, 92. But the officers could easily have confused Tiland with Sienfuegos. Both men had dark hair and facial hair. RP 57.

Several other witnesses observed the Cadillac on the road but none of them identified Tiland as the driver. RP 121-22, 155, 166.

In sum, the evidence presented to prove that Tiland was actually driving the Cadillac is speculative at best. This is not sufficient to sustain the State's burden. Colquitt, 133 Wn. App. at 796. Because the State did not prove the elements of the crime beyond a reasonable doubt, the conviction must be reversed and the charge dismissed.

E. CONCLUSION

For the reasons provided, this Court should grant review and reverse.

Respectfully submitted this 26th day of March, 2018.

A handwritten signature in cursive script that reads "Maureen M. Cyr". The signature is written in black ink and is positioned above a horizontal line.

MAUREEN M. CYR (WSBA 28724)
Washington Appellate Project - 91052
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APPENDIX

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IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,)	No. 75678-8-1
)	
Respondent,)	DIVISION ONE
)	
v.)	
)	
JUSTIN SHANE TILAND,)	UNPUBLISHED
)	
Appellant.)	FILED: <u>March 5, 2018</u>
)	

Cox, J. – Justin Tiland appeals his conviction for attempting to elude a pursuing police vehicle. Because the evidence is sufficient to prove that he was driving the vehicle that attempted to elude the police, we affirm his conviction.

On December 20, 2015, around 1:30 p.m., Officer Bryant Gerfin was called to an apartment parking lot on a “suspicious circumstances” call concerning two men and a white Cadillac. When he arrived, he saw two men wandering around the parking lot, and he asked for their names. Tiland provided his name and date of birth. The other man seemed very nervous and gave a false name. He was later identified as Guillermo Sienfuegos. After speaking with Officer Gerfin for about three minutes, the two men walked to a white Cadillac parked in the lot. Tiland waved at Officer Gerfin, got into the driver’s seat of the Cadillac, and drove away.

Officer Gerfin ran a license check and learned that Tiland's license was suspended. At the same time, Sergeant Adam Vermeulen was driving into the lot. He learned that the registration on the Cadillac had expired.

Both officers were in fully-marked patrol cars, and they began to follow the Cadillac, attempting to pull it over. The officers activated the lights and sirens on their patrol cars.

The speed limit was 25 m.p.h., but even with the officers following at 40 m.p.h., the Cadillac pulled away. Despite heavy traffic, Tiland went through intersections without stopping and swerved into oncoming traffic. The Cadillac reached speeds close to 80 m.p.h. and Sergeant Vermeulen called off the pursuit as too dangerous. Tiland drove away, out of sight.

Officer Gerfin and Sergeant Vermeulen soon found the Cadillac, a few blocks away. It had been driven over a curb and sidewalk and crashed into a light pole. The car was empty, but the officers found Tiland and Sienfuegos nearby.

The State charged Tiland with attempting to elude a pursuing police vehicle and the aggravating factor of causing a threat of harm to another. The jury convicted him, and he was sentenced accordingly.

Tiland appeals.

SUFFICIENCY OF THE EVIDENCE

Tiland argues that there was insufficient evidence to support his conviction for attempting to elude a pursuing police vehicle. Specifically, he argues that

there was insufficient evidence to prove that he was driving the vehicle involved in the police pursuit. We disagree.

Due process requires the State to prove, beyond a reasonable doubt, every element of the crime charged.¹ “A sufficiency challenge admits the truth of the State’s evidence and accepts the reasonable inferences to be made from it.”² On review, we will consider both circumstantial and direct evidence as equally reliable and defer to the trier of fact on issues of conflicting testimony, witness credibility, and the persuasiveness of the evidence.³

“We will reverse a conviction ‘only where no rational trier of fact could find that all elements of the crime were proved beyond a reasonable doubt.’”⁴

To convict Tiland of attempting to elude a pursuing police vehicle, the State had to prove beyond a reasonable doubt that:

- (1) [Tiland] drove a motor vehicle;
- (2) [He] was signaled to stop by a uniformed police officer by hand, voice, emergency light, or siren;
- (3) [T]he signaling police officer’s vehicle was equipped with lights and siren;
- (4) [Tiland] willfully failed or refused to immediately bring the vehicle to a stop after being signaled to stop;
- (5) [W]hile attempting to elude a pursuing police vehicle, [Tiland] drove his vehicle in a reckless manner; and
- (6) [T]he acts occurred in the State of Washington.^[5]

¹ In re Winship, 397 U.S. 358, 364, 90 S. Ct. 1068, 25 L. Ed. 2d 368 (1970).

² State v. O’Neal, 159 Wn.2d 500, 505, 150 P.3d 1121 (2007).

³ State v. Thomas, 150 Wn.2d 821, 874-75, 83 P.3d 970 (2004).

⁴ State v. Fedorov, 181 Wn. App. 187, 194, 324 P.3d 784 (2014) (quoting State v. Smith, 155 Wn.2d 496, 501, 120 P.3d 559 (2005)).

⁵ Clerk’s Papers at 53; see RCW 46.61.024(1).

To prove the aggravating circumstances, the State had to prove beyond a reasonable doubt that “one or more persons,” other than Tiland or the pursuing officers, were “threatened with physical injury or harm” by Tiland’s actions when Tiland was attempting to elude the police vehicle.⁶

Tiland contends there was insufficient evidence to prove beyond a reasonable doubt that he was the driver. He relies on the fact that he repeatedly insisted that he was not the driver, that the officers did not see him get out of the driver’s seat, and that the car was empty when the officers found it crashed into a light pole. He also notes that a document inside the Cadillac had someone else’s photograph on it, there was no fingerprint evidence proving that he was the driver, and no witnesses other than the officers identified him as the driver. We are not persuaded.

In support of a finding that Tiland was driving during the police pursuit, Officer Gerfin testified that he and Tiland spoke for three minutes face-to-face, before Tiland turned and waved and got into the driver’s seat. Sergeant Vermeulen testified that Tiland was driving the Cadillac and passed by him such that the patrol car and the Cadillac were “door-to-door.” As the Cadillac passed by, Sergeant Vermeulen looked into the driver’s side window and saw Tiland shake his head. Sergeant Vermeulen testified that Tiland was driving slowly at that point, and he made eye contact with him.

⁶ Clerk’s Papers at 42; see RCW 9.94A.834.

Although Tiland argues that the officers did not see him exit the Cadillac, they both testified that they never lost sight of the Cadillac from the time it left the parking lot until the time they abandoned the pursuit.

Tiland argues that Officer Gerfin and Sergeant Vermeulen may have confused him with Sienfuegos because they both have dark hair and facial hair. However, Officer Gerfin testified that Sienfuegos is much larger than Tiland, and Sienfuegos had short, almost shaved hair while Tiland did not. He stated that the two men did not even look alike. When asked if it were possible he had been confused about who was driving, he said "no."

Sergeant Vermeulen also testified that the driver was a white male with a beard. He stated that he was sure that Tiland was driving and he could not have confused the two men.

In addition to the testimony of Officer Gerfin and Sergeant Vermeulen, the jury was shown a picture of Sienfuegos so it could determine whether he resembled Tiland. Finally, there was evidence that Tiland had an injury on his stomach that appeared consistent with the location of the steering wheel of the crashed vehicle.

Considering the evidence in the light most favorable to the State, substantial evidence supports the jury's findings, beyond a reasonable doubt, that Tiland committed the crime of attempting to elude a pursuing police vehicle. Substantial evidence also supports the jury's conclusion that while committing the crime, Tiland threatened others with physical injury.

We affirm the judgment and sentence.

COX, J.

WE CONCUR:

Schubler J

Cappelwick J

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. 75678-8-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:

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Date: March 26, 2018

WASHINGTON APPELLATE PROJECT

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