

71146-6

71146-6

NO. 71146-6-I

COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION I

STATE OF WASHINGTON,
Respondent,
v.
CAROLYN RICHARDSON,
Appellant.

APPEAL FROM THE SUPERIOR COURT FOR KING COUNTY
THE HONORABLE PATRICK OISHI

BRIEF OF RESPONDENT

DANIEL T. SATTERBERG
King County Prosecuting Attorney

MAFÉ RAJUL
Senior Deputy Prosecuting Attorney
Attorneys for Respondent

King County Prosecuting Attorney
W554 King County Courthouse
516 3rd Avenue
Seattle, Washington 98104
(206) 296-9650

RECEIVED
JAN 15 11 15 AM '11
CLERK OF COURT
KING COUNTY SUPERIOR COURT
CLERK

TABLE OF CONTENTS

	Page
A. <u>ISSUES PRESENTED</u>	1
B. <u>STATEMENT OF THE CASE</u>	2
1. PROCEDURAL FACTS	2
2. SUBSTANTIVE FACTS	3
C. <u>ARGUMENT</u>	7
1. ANY ALLEGED ERROR IN THE TRIAL COURT'S INSTRUCTIONS TO THE JURY WAS INVITED	8
2. HIT AND RUN IS NOT AN ALTERNATIVE MEANS CRIME AS TO THE DUTIES A DRIVER IS REQUIRED TO FULFILL.....	10
3. THERE IS SUFFICIENT EVIDENCE IN THE RECORD TO SUPPORT RICHARDSON'S FELONY HIT AND RUN CONVICTION	18
D. <u>CONCLUSION</u>	23

TABLE OF AUTHORITIES

Page

Table of Cases

Washington State:

City of Seattle v. Patu, 147 Wn.2d 717,
58 P.3d 273 (2002)..... 9

State v. Boyer, 91 Wn.2d 342,
588 P.2d 1151 (1979)..... 9

State v. Delmarter, 94 Wn.2d 634,
618 P.2d 99 (1980)..... 19

State v. Green, 94 Wn.2d 216,
616 P.2d 628 (1980)..... 18

State v. Henderson, 114 Wn.2d 867,
792 P.2d 514 (1990)..... 8

State v. Hickman, 135 Wn.2d 97,
954 P.2d 900 (1998)..... 17

State v. Klimes, 117 Wn. App. 758,
73 P.3d 416 (2003)..... 11

State v. Linehan, 147 Wn.2d 638,
56 P.3d 542 (2002)..... 13

State v. Owens, 180 Wn.2d 90,
323 P.3d 1030 (2014)..... 11, 12, 15

State v. Perebeynos, 121 Wn. App. 189,
87 P.3d 1216 (2004)..... 19, 20

State v. Peterson, 168 Wn.2d 763,
230 P.3d 588 (2010)..... 12, 13, 14, 15

State v. Salinas, 119 Wn.2d 192,
829 P.2d 1068 (1992)..... 19

<u>State v. Smith</u> , 159 Wn.2d 778, 154 P.3d 873 (2007).....	12
<u>State v. Studd</u> , 137 Wn.2d 533, 973 P.2d 1049 (1999).....	9
<u>State v. Sutherland</u> , 104 Wn. App. 122, 15 P.3d 1051 (2001).....	19
<u>State v. Thomas</u> , 150 Wn.2d 821, 83 P.3d 970 (2004).....	20
<u>State v. Ware</u> , 111 Wn. App. 738, 46 P.3d. 280 (2002).....	19
<u>State v. Winings</u> , 126 Wn. App. 75, 107 P.3d 141 (2005).....	9

Statutes

Washington State:

RCW 9A.56.020	13
RCW 46.52.020.....	8, 10, 11, 14, 15, 16, 19

Other Authorities

11A Wash. Prac., Pattern Jury Instr. Crim. WPIC 97.01 (3d Ed).....	8
---	---

A. ISSUES PRESENTED

1. Under the invited error doctrine, a defendant may not create error at trial and then complain about it on appeal. Here, Richardson proposed the to-convict jury instruction that she is now challenging. Is this Court precluded from reviewing her challenge to the instruction?

2. An alternative means crime is one by which the criminal conduct may be proved in a variety of ways through the commission of distinct acts. Felony hit and run requires a driver involved in an accident that resulted in injury or death to provide relevant information at the scene, or if people at the scene are not in condition to receive such information and no police officer is present, the driver must then immediately report the accident to the closest police station. Is the failure to fulfill the duty to provide the required information, whether at the scene or by going to the closest police station, one single act?

3. A defendant is guilty of the crime of felony hit and run if she drives a vehicle and is involved in an accident resulting in injury to a person, and with knowledge of the accident, she fails to stop and return to the scene in order to provide her name, address, vehicle license number and driver's license, and to render

reasonable assistance to any person injured. If information is sufficient to cause a reasonable person in the same situation to believe that an accident occurred, the trier of fact may infer that the defendant had knowledge of the accident. Here, Richardson struck T.A. and drove over T.A.'s body with her front and rear wheel, and dragged T.A. and her bicycle underneath her car. T.A. sustained three pelvic and five hand fractures, and multiple facial abrasions; the bicycle was destroyed as the car rolled over it. Richardson did not stop at the scene to provide the required information or assistance to T.A. Is there substantial evidence in the record to support Richardson's felony hit and run conviction?

B. STATEMENT OF THE CASE

1. PROCEDURAL FACTS

The State charged the defendant, Carolyn Richardson, with felony hit and run. CP 1-2. A jury trial was held in May of 2013 before the Honorable Patrick Oishi. The jury found Richardson guilty as charged. 3RP 496-97.¹ The trial court imposed a standard range sentence. CP 34-39. Richardson now appeals.

¹ The Verbatim Report of this jury trial consists of three volumes referenced in this brief as follows: 1RP (May 29 and May 30, 2013); 2RP (June 3, 2013); and 3RP (June 4, June 5, and July 12, 2013).

2. SUBSTANTIVE FACTS

On November 1, 2012, at about 7:40 a.m., T.A., a twelve-year-old girl, was riding her new bicycle to school. 3RP 313-14, 316-17. T.A. was wearing a bright red hoodie with a bright red backpack stuffed with books. 3RP 323. Although it was early in the morning and somewhat dark, the streets were well-lit by streetlights. 2RP 138-39, 280-81. It was cloudy and "sprinkling." 2RP 274, 292; 3RP 323.

T.A. was familiar with this route because she had ridden it between 10 and 20 times to go to school. 3RP 318. As T.A. pulled out of the parking lot of a park to continue to school, she saw a truck on the street. 3RP 324. The truck was blocking the sidewalk so T.A. stopped for the truck to pass. 3RP 322-23, 326-27, 29. After the truck turned, T.A. looked both ways and began pedaling. 3RP 330. Once T.A. was about halfway into the intersection, Richardson struck her. 3RP 330.

According to T.A., Richardson was driving fast, faster than the truck. 3RP 331. T.A. indicated that Richardson stopped a few seconds, looked in the opposite direction from T.A., but did not look in T.A.'s direction. 3RP 331-32. As Richardson drove away, she pulled T.A. along with her bike under the car. 3RP 332-33. T.A.

felt the tire of the car running over her hips and her hand. 3RP 333. Upon impact, the car rolled T.A. causing her to be faced down on the street. 3RP 336. As Richardson continued driving, the car dragged T.A., and then T.A. felt the second tire driving over her lower back. 3RP 336. Richardson applied her brakes and then drove away leaving T.A. lying in the middle of the street. 1RP 125; 2RP 278, 286; 3RP 338. After Richardson took off, T.A. yelled, "Stop, stop." 2RP 279; 3RP 343.

David Nuon and Julie Binh, who were driving to work, witnessed the accident and stopped to assist T.A. 2RP 140, 275, 292. Nuon testified that when he first saw Richardson, Richardson was merging into traffic. 2RP 275. As Richardson sped away, Nuon and Binh could see somebody moving underneath Richardson's car. 2RP 275, 292. Nuon saw Richardson's car jump as if it had driven over a speed bump. 2RP 277.

Binh got out of the car to help T.A. and Nuon followed Richardson's car in an attempt to get her license plate. 2RP 278-79, 292-93. While Binh was tending to T.A., another driver called 911. 2RP 299-300; 3RP 338-39. Nuon followed Richardson for about three to four minutes, until he was able to write down the

license plate number. 2RP 283. Nuon then returned to the scene.
2RP 283.

Kent Police Officer Kellams responded to the accident.
1RP 124. When he arrived, the fire department was assisting T.A.
1RP 125. T.A.'s bicycle was on the roadway. 1RP 125. The
handlebars were turned clockwise, there was damage to the rear
tire and wheel, one of the pedals was missing, the shaft was
broken, and there were scuffs on the gearshifts, the control cables,
and the seat. 1RP 126; 2RP 158-59. Officer Kellams contacted
Nuon and Binh. 2RP 140. Nuon gave Officer Kellams the license
plate of the car. 2RP 141, 284.

A check with the Department of Licensing revealed
Richardson was the registered owner of the car. 2RP 160. Officer
Kellams went to Richardson's home and workplace but was unable
to locate her. 2RP 162.

Richardson's husband learned of the accident and called
Richardson to ask her about it. 3RP 418. After speaking with her
husband, Richardson called the police and drove to the Kent Police
Department. 2RP 163, 211-12; 3RP 419-20. While at the police
station, Richardson told Sergeant Constant that she was late that
morning, and in a hurry to go to teach her aerobics class. 2RP 215,

217. Richardson told Sergeant Constant that she thought she had hit a muffler. 2RP 216-17. Richardson also claimed she had looked in the rearview mirror and didn't see anything, then looked behind her and didn't see anything, so she went to teach her class. 2RP 216-17. Likewise, Richardson told Officer Kellams that traffic was backed up and after turning she thought she had hit a muffler. 2RP 165.

While at the police station, Richardson underwent an examination by a drug influence evaluation expert, Officer Dexheimer. 2RP 263. Officer Dexheimer did not note any signs of impairment. 2RP 265. Richardson told Officer Dexheimer that she thought she had hit the curb or a muffler. 2RP 267. Officer Kellams photographed Richardson's car, including the undercarriage. 2RP 170. Officer Kellams noticed that the car had an abrasive mark at the bottom corner, and a dent and a crack on the front bumper. 2RP 170, 172-73. Officer Kellams also observed numerous scrapes underneath the car, and a black mark that looked like it was caused by a tire. 2RP 174-76. There was also damage to the muffler, which in Officer Kellams' opinion, was fresh damage. 2RP 177, 201.

Dr. Gatewood, an emergency medicine doctor, tended to T.A. at Harborview Medical Center that morning. 2RP 225, 234. T.A. had facial abrasions, consistent with having been dragged on the road. 2RP 238, 249; 3RP 342. T.A. sustained three fractures of her pelvis, and five fractures of her hand. 2RP 239-40, 242-43. T.A. had tire marks in her lower back. 2RP 247; 3RP 334.

Richardson testified at trial and said she was a group fitness instructor, and on the day of the accident, she was on her way to teach an aerobics class. 3RP 403-04, 06. Although Richardson had told Sergeant Constant that she was running late for class and in a hurry, at trial she indicated she was right on time. 2RP 217; 3RP 410. Richardson testified that when she ran over T.A., she believed she had driven over a hubcap or a muffler or road debris. 3RP 415. Richardson claimed she looked behind her and in the mirrors, and since she did not see anything, she kept driving. 3RP 415.

C. ARGUMENT

Richardson argues that the trial court erred in instructing the jury on the “uncharged alternative” for the crime of hit and run. Richardson’s argument should be rejected for two reasons. First,

Richardson invited the alleged error by proposing the jury instruction she is now complaining about. Second, hit and run is not an “alternative means” crime for the reasons Richardson suggests.²

1. ANY ALLEGED ERROR IN THE TRIAL COURT'S INSTRUCTIONS TO THE JURY WAS INVITED.

Richardson claims on appeal that although trial counsel did not object to the instruction, she can raise the issue on appeal because it raises a claim of manifest error affecting a constitutional right. App. Br. 6. This argument is meritless because Richardson proposed the instruction.

It is well established that a defendant may not set up an error in the trial court and then complain of it on appeal. State v. Henderson, 114 Wn.2d 867, 869-71, 792 P.2d 514 (1990). This doctrine applies to proposed jury instructions, even where the to-convict instruction omitted an essential element of the crime and

² The comments on WPIC 97.01 indicate this offense may be committed by alternate means, and the resulting sentence will vary, requiring a special verdict form. 11A Wash. Prac., Pattern Jury Instr. Crim. WPIC 97.01 (3d Ed). This comment relates to RCW 46.52.020(4)(a)-(c) delineating the class of crime committed depending on whether the accident caused injury, caused death, or involved striking the body of a deceased person.

the error was of constitutional magnitude. City of Seattle v. Patu, 147 Wn.2d 717, 721, 58 P.3d 273 (2002) (the court is bound by precedent to apply invited error doctrine even in the case of a constitutionally deficient to-convict jury instruction); State v. Boyer, 91 Wn.2d 342, 343-45, 588 P.2d 1151 (1979) (declining to reach a constitutional issue when the instruction given is one which the defendant himself proposed); State v. Studd, 137 Wn.2d 533, 546, 973 P.2d 1049 (1999). Thus, under the invited error doctrine, this Court is precluded from reviewing jury instructions where the defendant has proposed an instruction or agreed to its wording. State v. Winings, 126 Wn. App. 75, 89, 107 P.3d 141 (2005).

Here, Richardson invited the alleged error of which she now complains. Richardson proposed and filed jury instructions, including the wording on the to-convict instruction which stated in relevant part:

(c) Give her name, address, insurance company, insurance policy number and vehicle license number, and exhibit her driver's license, to any person struck or injured, *or if none of the persons specified are in condition to receive the information and no police officer is present, immediately report the accident to the nearest office of the police, give her name, address, insurance company, insurance policy*

number, and vehicle license number and exhibit her driver's license, after fulfilling all other obligations insofar as possible on her part to be performed;

Supp ____, Sub #22; Appendix A (italics added). The State recommended the same instruction. The trial court instructed the jury on the to-convict instruction proposed by both parties.³ CP 21-22; 3RP 452-55. Because Richardson proposed the same language she now complains about, any alleged error from the language in the instructions regarding the duty a person must fulfill was invited. This Court is precluded from reviewing Richardson's claim.

2. HIT AND RUN IS NOT AN ALTERNATIVE MEANS CRIME AS TO THE DUTIES A DRIVER IS REQUIRED TO FULFILL.

Richardson argues that her conviction for felony hit and run must be reversed because an uncharged alternative means of committing this crime was submitted to the jury. Specifically, Richardson contends that she was charged only with the primary duties under RCW 46.52.020(3), but the jury was instructed on an

³ Richardson objected only to instruction number three, the burden of proof instruction. 3RP 454; CP 7.

alternative duty to report under RCW 46.52.020(7).⁴ App. Br. 6. But the jury was not instructed that it could convict on either alternative means or duties. Instead, the instructions added an element – an additional duty – requiring the State to prove that Richardson did neither act. Richardson’s argument should be rejected.

Generally, an alternative means crime is one by which the criminal conduct may be proved in a variety of ways. The legislature has not defined what constitutes an alternative means crime or designated which crimes are alternative means crimes. State v. Owens, 180 Wn.2d 90, 95, 323 P.3d 1030 (2014). Instead, each case must be evaluated on its own merits. State v. Klimes, 117 Wn. App. 758, 769, 73 P.3d 416 (2003). One guiding principle provides that the alternative means doctrine does not apply to mere

⁴ The State alleged that, on or about November 1, 2012, Richardson was knowingly involved in an accident resulting in injury to another person and she failed to carry out all of the following duties:

- (1) Immediately stop her vehicle at the scene of the accident or as close thereto as possible;
- (2) Immediately return to and remain at the scene until all duties are fulfilled;
- (3) Give her name, address, insurance company, insurance policy number, vehicle license number and exhibit her driver’s license to any person struck or injured or the driver of or any occupant attending any vehicle collided with; and
- (4) Render any person injured in the accident reasonable assistance...

CP 1-2.

definitional instructions; a statutory definition does not create a “means within a means.” State v. Smith, 159 Wn.2d 778, 787, 154 P.3d 873 (2007) (jury instructions setting forth three common law definitions of assault did not constitute alternative means of committing the crime of assault in whichever degree charged). The use of a disjunctive “or” in a list of methods of committing the crime *does not* necessarily create alternative means of committing the crime. State v. Peterson, 168 Wn.2d 763, 769, 770, 230 P.3d 588 (2010).

In Owens, our Supreme Court concluded that first degree trafficking in stolen property describes only two alternative means to commit the crime because there are only two distinct types of conduct: knowingly initiating, organizing, planning, financing, directing, managing, or supervising the theft of property for sale to others; or knowingly trafficking in stolen property.⁵ 180 Wn.2d at 99. The Court reasoned,

It would be hard to imagine a single act of stealing whereby a person ‘organizes’ the theft but does not ‘plan’ it. Likewise, it would be difficult to imagine a situation whereby a person ‘directs’ the theft but does

⁵ Owens argued, and the court of appeals agreed, that trafficking in stolen property described eight alternative means: “knowingly (1) initiating, (2) organizing, (3) planning, (4) financing, (5) directing, (6) managing, or (7) supervising the theft of property for sale to others, or (8) knowingly trafficking in stolen property.” Owens, 180 Wn.2d at 97.

not 'manage' it. Any one act of stealing often involves more than one of these terms. Thus, these terms are merely different ways of committing one act, specifically stealing.

Id.

Similarly, in Peterson, the defendant was convicted for failing to register as a sex offender. On appeal, he argued that the failure to register statute created an alternative means crime because the crime can be committed by failing to register after (1) becoming homeless, (2) moving between residences in one county, or (3) moving between counties. 168 Wn.2d at 769. Our Supreme Court held, however, that the statute did not create alternative means because an individual's conduct in each of the three scenarios did not vary significantly; the statute prohibited the single act of moving without providing the proper notice. Id. at 770.

By contrast, theft *does* include alternative means because it may be committed by for instance, (1) wrongfully obtaining or exerting control over another's property or (2) obtaining control over another's property through color or aid of deception. RCW 9A.56.020(1); State v. Linehan, 147 Wn.2d 638, 644-45, 647, 56 P.3d 542 (2002). The alternative means available to accomplish theft describe *distinct acts* that amount to the same crime. That is,

one can accomplish theft by wrongfully exerting control over someone's property or by deceiving someone to give up their property. In each alternative, the offender takes something that does not belong to him, but his *conduct* varies significantly. The failure to register statute, however, contemplates a *single act* that amounts to failure to register: the offender moves without alerting the appropriate authority. Peterson, 168 Wn.2d at 770. His conduct is the same—he either moves without giving notice or he does not. Id.

Similarly, felony hit and run is not an alternative means crime in the manner that Richardson suggests. A person commits the crime of felony hit and run when:

A driver is involved in an accident resulting in the injury to or death of any person or involving striking the body of a deceased person shall immediately stop such vehicle at the scene of such accident or as close thereto as possible but shall then forthwith return to, and in every event remain at, the scene of such accident until he or she has fulfilled the requirements of subsection (3) of this section; every such stop shall be made without obstructing traffic more than is necessary.

RCW 46.52.020(1). The relevant portion of subsection (3) provides that the driver involved in the accident,

[S]hall give his or her name, address, insurance company, insurance policy number, and vehicle

license number and shall exhibit his or her vehicle driver's license to any person struck or injured or the driver or any occupant of, or any person attending, any such vehicle collided...

RCW 46.52.020(3). And if none of the persons specified are in condition to receive the information and no police officer is present,

the driver of any vehicle involved in such accident after fulfilling all other requirements of subsections (1) and (3) of this section insofar as possible on his or her part to be performed, shall forthwith report such accident to the nearest office of the duly authorized police authority and submit thereto the information specified in subsection (3) of this section.

RCW 46.52.020(7).

As in Owens and Peterson, the crime of hit and run does not involve alternative means because it describes one act: the failure to fulfill the driver's statutory duties. The State needs to prove only that one of the duties was not fulfilled, the actus reus of the crime is the failure to do them all.

The jury instruction here simply mirrored the language in the statute requiring the exchange of information between people who are involved in an accident, whether it is to a person at the scene, or to the closest police station. Just as the failure to register as a sex offender amounts to a single act – the failure to register – whether it is because the person became homeless, or moved

within the county, or moved outside of the county, the failure to provide the required information at the scene of an accident or at the closest police station amounts to a single act: failure to provide identification. Thus, this Court should hold that the various duties a person has to fulfill after an accident does not make felony hit and run an “alternative means” crime.

Even if felony hit and run is an alternative means crime in the way in which Richardson suggests, her claim fails. Richardson argues that the to-convict instruction included an additional alternative means of committing the crime because it added the language of the required duty that in the event that a person at the scene is not in condition to receive information, and there is no police officer on the scene, the driver must report the accident to the closest police station. RCW 46.52.020(7); CP 21-22.

Although Richardson is correct that this language was in the to-convict instruction but not included in the charging document, this language did not include an *additional distinct act or conduct* on the part of Richardson. Instead, it listed a different way that Richardson could have complied with her single duty to provide information. As such, including it in the jury instruction did not

provide the State with an additional way of convicting Richardson, i.e., prove beyond a reasonable doubt that she did not report to the police station. Instead, it required the State to prove an additional uncharged element, i.e., prove beyond a reasonable doubt that she did not provide information at the scene AND that she did not report it to the closest police station. Accordingly, the jury instruction added to the State's burden of proof.

When the State adds an element to the crime, it is then required to prove the additional element beyond a reasonable doubt. State v. Hickman, 135 Wn.2d 97, 954 P.2d 900 (1998). Here, the State proved beyond a reasonable doubt that she failed to provide information at the scene AND that she failed to immediately report the accident to the nearest police station. Richardson admitted as much in her testimony; she said she did not know she had hit someone, so she simply proceeded on her way. 3RP 415. Thus, despite the additional duty incorporated in the jury instructions, the State proved beyond a reasonable doubt that Richardson committed the crime of felony hit and run.

3. THERE IS SUFFICIENT EVIDENCE IN THE RECORD TO SUPPORT RICHARDSON'S FELONY HIT AND RUN CONVICTION.

Richardson does not appear to challenge on appeal the fact that there was an accident that resulted in severe injury to T.A. Neither does Richardson dispute the fact that she did not stop at the scene. Instead, Richardson argues that there is not sufficient evidence in the record to sustain her felony hit and run conviction because the evidence taken in a light most favorable to the State does not support the conclusion that she knew that she had been involved in the accident. App. Br. 8. Because knowledge may be inferred from circumstantial evidence, there is substantial evidence in the record to establish that Richardson knew she had run over T.A. and her argument should be rejected.

It is not the role of the reviewing court to determine whether or not it believes the evidence at trial established guilt beyond a reasonable doubt; “[i]nstead the 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.” State v. Green, 94 Wn.2d 216, 221, 616 P.2d 628 (1980) (italics added). “[A]ll reasonable inferences from the evidence must be drawn in favor of the State

and interpreted most strongly against the defendant.” State v. Salinas, 119 Wn.2d 192, 201, 829 P.2d 1068 (1992).

The State must prove each element of the charged crime beyond a reasonable doubt. State v. Ware, 111 Wn. App. 738, 741, 46 P.3d. 280 (2002). To convict a person of felony hit and run, the State must prove beyond a reasonable doubt that the defendant knew she was involved in an accident. RCW 46.52.020(1); State v. Perebeynos, 121 Wn. App. 189, 192, 87 P.3d 1216, 1218 (2004). Thus, for the jury to convict Richardson of the crime of felony hit and run, the jury had to find (1) an accident resulting in death or injury to a person; (2) “failure of the driver of the vehicle involved in the accident to stop his vehicle and return to the scene in order to provide his name, address, vehicle license number and driver’s license and to render reasonable assistance to any person injured ... in such accident”; and (3) the driver’s knowledge of the accident. State v. Sutherland, 104 Wn. App. 122, 130, 15 P.3d 1051 (2001).

Direct and circumstantial evidence are given equal weight, including as to the evidence of knowledge. State v. Delmarter, 94 Wn.2d 634, 638, 618 P.2d 99 (1980); Perebeynos, 121 Wn. App. at 196. If information is sufficient to cause a reasonable person in the same situation to believe that a fact exists, the trier of fact may infer

that the defendant had knowledge. Perebeynos, 121 Wn. App. at 196.

Here, the severe injuries that T.A. sustained, the degree of damage to her bicycle, and the eyewitness testimony, establish that a reasonable person in Richardson's position would have known she had been involved in an accident. The simple fact that Richardson claimed ignorance of the accident does not mean she did not know she had struck and dragged T.A. Credibility determinations are reserved for the trier of fact, and an appellate court "must defer to the trier of fact on issues of conflicting testimony, credibility of witnesses, and persuasiveness of the evidence." State v. Thomas, 150 Wn.2d 821, 874-75, 83 P.3d 970 (2004).

Richardson argues that because T.A. was not wearing reflective clothing, it was dark and raining, and when she looked back after feeling a bump and did not see anything, it is reasonable for a person to conclude that she had not been involved in an accident. App. Br. 8. This claim has no merit.

First, T.A. testified that she was wearing a bright red hoodie with a bright red backpack stuffed with books. 3RP 323.

Second, the witnesses testified that although it was “morning dark,” the streets were well lit. Officer Kellams indicated that it was light enough that “you didn’t need a flashlight” and he could visually see what was going on. 2RP 138. Likewise, Nuon testified that it was light enough to see what was happening, specifically the girl being trapped under the car and then lying on the street. 2RP 280. And T.A. also indicated that it was between light and dark, but light enough to be able to see everything. 3RP 323.

Third, Richardson was the only person who claimed that it was “pouring down rain” to the point that she needed to have her windshield wiper at maximum speed. 3RP 412. T.A. testified that it was “sprinkling,” just a little bit of rain. 3RP 322. This was also confirmed by Nuon, who also said it was “sprinkling,” and by Binh who said that it was not a downpour, “just sprinkling.” 2RP 274, 292.

Lastly, the jury was entitled to disbelief Richardson’s claim that because she looked back after feeling the bump and did not see anything, she did not know she had hit somebody. In considering the damage to the bicycle and the injuries to T.A. it is highly improbable that Richardson thought it was a bump on the road or a muffler or debris. T.A.’s bicycle was destroyed. The

handlebars were turned clockwise, there was damage to the rear tire and wheel, one of the pedals was missing, the shaft was broken, and there were scuffs on the gearshifts, the control cables, and the seat. 1RP 126; 2RP 158-59. Moreover, there were significant signs in the undercarriage of Richardson's car, including a mark that looked like a tire, showing where the bicycle would have dragged, and likely made substantial noise. 2RP 174-76. And Nuon testified he saw Richardson's car bouncing as if it had driven over a speed bump. 2RP 277. Additionally, given the extent and severity of T.A.'s injuries it is improbable that Richardson did not know she had run over a person instead of simply a muffler or debris. T.A. described feeling the first tire running over her hips and hands, being rolled over, and as she was facing down and being dragged, feeling the second tire driving over her lower back. 3RP 332-33. This was corroborated by Dr. Gatewood's testimony regarding T.A.'s injuries. T.A. suffered three fractures to her pelvis and five to her hand. 2RP 239-40, 242-43. T.A.'s testimony was also corroborated by Nuon's testimony that he saw "the little girl under the car." 2RP 292.

In sum, there was sufficient evidence in the record to reach the conclusion that when Richardson pulled T.A. under her car,

drove over her body with the front and rear tires and dragged her, Richardson knew she had been in an accident. Thus, there is substantial evidence in the record to support a conviction for felony hit and run.

D. CONCLUSION

For all the foregoing reasons, the State respectfully asks this Court to affirm Richardson's conviction.

DATED this 16th day of June, 2014.

Respectfully submitted,

DANIEL T. SATTERBERG
King County Prosecuting Attorney

By: 
MAFÉ RAJUL, WSBA #37877
Senior Deputy Prosecuting Attorney
Attorneys for Respondent
Office WSBA #91002

Appendix A

Instruction No. _____

To convict the defendant of hit and run, each of the following elements of the crime must be proved beyond a reasonable doubt:

(1) That on or about November 1, 2012, the defendant was the driver of a vehicle;

(2) That the defendant's vehicle was involved in an accident resulting in injury to any person;

(3) That the defendant knew that she had been involved in an accident;

(4) That the defendant failed to satisfy her obligation to fulfill all of the following duties:

(a) Immediately stop the vehicle at the scene of the accident or as close thereto as possible;

(b) Immediately return to and remain at the scene of the accident until all duties are fulfilled;

(c) Give her name, address, insurance company, insurance policy number and vehicle license number, and exhibit her driver's license, to any person struck or injured;

Immediately report the accident to the nearest office of the police, give her name, address, insurance company, insurance policy number, and vehicle license number, and exhibit her driver's license, after fulfilling all other obligations insofar as possible on her part to be performed; and

(d) Render to any person injured in the accident reasonable assistance, including the carrying or making of arrangements for the carrying of such person to a physician or hospital for medical treatment if it is apparent that such treatment is necessary or such carrying is requested by the injured person or on her behalf; and

(5) That any of these acts occurred in the State of Washington.

If you find from the evidence that each of these elements has been proved beyond a reasonable doubt, then it will be your duty to return a verdict of guilty.

On the other hand, if, after weighing all the evidence, you have a reasonable doubt as to any one of these elements, then it will be your duty to return a verdict of not guilty.

WPIC 97.02 Hit and Run—Injury or Death—Elements

Certificate of Service by Mail

Today I deposited in the mail of the United States of America, postage prepaid, a properly stamped and addressed envelope directed to Suzanne Lee Elliott, the attorney for the appellant, at 1300 Hoge Building, 705 Second Avenue, Seattle, WA 98104, containing a copy of the BRIEF OF RESPONDENT, in STATE V. CAROLYN RICHARDSON, Cause No. 71146-6 -I, in the Court of Appeals, Division I, for the State of Washington.

I certify under penalty of perjury of the laws of the State of Washington that the foregoing is true and correct.

Dated this 16 day of June, 2014



Name
Done in Seattle, Washington

COURT OF APPEALS DIV. I
STATE OF WASHINGTON
2014 JUN 16 PM 2:59