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5/26/2017
Court of Appeals
Division II
State of Washington

NO. 49241-5-II

THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION TWO

STATE OF WASHINGTON,

Respondent

v.

WALLACE GREENWOOD,

Appellant.

ON APPEAL FROM THE SUPERIOR COURT OF THE
STATE OF WASHINGTON FOR PIRECE COUNTY

APPELLANT'S REPLY BRIEF

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A. ARGUMENT IN REPLY

1. The insufficient evidence Mr. Greenwood drove in a reckless manner requires reversal of Mr. Greenwood's conviction for attempting to elude a pursuing police vehicle.

The government argues there was sufficient evidence to find Mr. Greenwood guilty of attempting to elude a pursuing police vehicle. Respondent's brief at 3. This Court should find otherwise.

RCW 46.61.024 requires proof the accused drove in a "reckless manner." For eluding, driving in a "reckless manner" means driving in a rash or heedless manner, indifferent to the consequences. *State v. Roggenkamp*, 153 Wn.2d 614, 622, 106 P.3d 196 (2005); *State v. Ridgley*, 141 Wn. App. 771, 781, 174 P.3d 105 (2007). This is more than mere negligent driving. *State v. Partridge*, 47 Wn.2d 640, 645, 289 P.2d 702 (1955) (operation of a motor vehicle in a reckless manner is "something more" than ordinary negligence).

While the evidence established Mr. Greenwood was speeding, speeding does not necessarily prove recklessness. *See State v. Randhawa*, 133 Wn.2d 67, 77-78, 941 P.2d 661 (1997). And while the evidence established the officer drove at one hundred miles an hour to catch up to Mr. Greenwood, the evidence did not establish Mr. Greenwood was driving that fast. Instead, the evidence established Mr.

Greenwood's motorcycle, lighter than the patrol vehicle, accelerated at a greater speed than did the officer's car, especially as the vehicles were accelerating up a hill. RP 254-55.

By the time the officer caught up to Mr. Greenwood, Mr. Greenwood had slowed to approximately fifteen to twenty miles an hour. RP 234. He made a wide turn through a stop sign onto a road which also had not traffic, which could be explained because of Mr. Greenwood's malfunctioning motorcycle. RP 238. The evidence did not establish Mr. Greenwood would not have crashed the motorcycle if he had been driving at a slower speed.

Where courts have found sufficient evidence of eluding, there has been clear evidence of recklessness beyond speedy. In *State v. Ratliff*, which the government relies on to argue otherwise, the defendant actually fishtailed his car, turned it around and then passed the officer coming within six inches of the officer's patrol car. *State v. Ratliff*, 140 Wn. App. 12, 14, 164 P.3d 516, 517 (2007). There must be "something more" than ordinary negligence. *Partridge*, 47 Wn.2d at 645.

Even though the government argues Mr. Greenwood could have killed a child, there was no evidence any children were ever put into

danger. Respondent's brief at 6. This Court should disregard this inflammatory argument. There was no evidence children were present late at night on January 26, 2016. To the contrary, the testimony established there were no other drivers or pedestrians around when this incident occurred. RP 260. In addition, this Court should disregard the government's inappropriate argument that Mr. Greenwood is a "recidivist felon" who received a "lenient sentence a judge took a chance on him receiving. But, so it goes." Respondent's brief at 7. These arguments appear to be for emotional appeal, and do not address the question of sufficiency.

Instead, this Court should find the court failed to prove Mr. Greenwood attempted to elude a pursuing police vehicle. Mr. Greenwood respectfully request that this Court reverse his conviction for attempting to elude a police officer.

2. The trial court abused its discretion by allowing Mr. Greenwood to be impeached with extrinsic evidence on whether he was aware of warrants when he was arrested, when he testified to his lack of memory regarding warrants.

The government also argues the trial court properly exercised its discretion in allowing Mr. Greenwood to be impeached on collateral matters. Respondent's brief at 7. This Court should find the trial court

abused its discretion in allowing Mr. Greenwood to be impeached on a collateral issue with extrinsic evidence and order a new trial.

The government suggests Mr. Greenwood ignored testimony in arguing use of extrinsic evidence on a collateral issue was improper. Respondent's brief at 9. However, the same testimony the government asserted Mr. Greenwood claimed did not exist is quoted verbatim in the opening brief. Appellant's Opening brief at 13. The ruling based on this testimony is in fact this error that is argued is the abuse of discretion. *Id*. at 15.

Despite assertions in the respondent's brief to the contrary, Mr. Greenwood did not disavow knowledge of the warrant, but instead testified about his memory at the time of the incident. RP 322. Given the seriousness of his injuries, Mr. Greenwood's memory problems were understandable and should not have given the government the ability to use extrinsic evidence to impeach him.

And while the government argues Mr. Greenwood did not preserve his objections, the record demonstrates otherwise. RP 327. In fact, the government includes much of the colloquy in its brief relating to Mr. Greenwood's objection, including the court's response to Mr. Greenwood's objection. Respondent's brief at 8.

This Court should find the use of extrinsic evidence to prove Mr. Greenwood had warrants was an abuse of discretion. A party may not be impeached with a collateral issue that is not directly relevant to the trial issue." *State v. Aguirre*, 168 Wn.2d 350, 362, 229 P.3d 669 (2010) (citing *State v. Fakhouser*, 133 Wn. App. 689, 693, 138 P.3d 140 (2006) (additional citations omitted)); *see also State v. Oswalt*, 62 Wn.2d 118, 120-21, 381 P.2d 617 (1963).

Even though the prosecutor asserts a limiting instruction could have cured any error, this was not the argument made by Mr. Greenwood. Mr. Greenwood objected to the use of the collateral evidence. Instructions are only appropriate where the evidence is admitted for a proper purpose. Here, the collateral evidence regarding Mr. Greenwood's warrant status was not relevant to any element of the offense and should have been excluded. ER 608. "Impeachment of a witness through the use of a prior inconsistent statement is limited by the well-recognized and firmly established rule that the prior inconsistent statement may not concern matters collateral to the issues at trail." *State v. Carr*, 13 Wn. App. 704, 708, 537 P.2d 617 (1963) (citing *Oswalt*, 62 Wn.2d 118; *State v. Hall*, 10 Wn. App. 678, 519 P.2d 1305 (1974)).

Nor should this Court find the evidence of Mr. Greenwood's custody status to be harmless. Respondent's brief at 19. The government argues it was harmless because the jury knew Mr. Greenwood had prior convictions. But evidence of a prior conviction, appropriately used to impeach, and evidence of current warrant status, along with supervision, are not the same thing.

Allowing the government to focus on Mr. Greenwood's warrant status, including testimony from his community custody officer, demonstrated Mr. Greenwood was a fugitive, something courts take great effort to exclude. *See e.g. State v. Rodriguez*, 146 Wn.2d 260, 268, 45 P.3d 541 (2002) (citing *State v. Finch*, 137 Wn.2d 792, 846, 975 P.2d 967 (1999)). That Mr. Greenwood had a warrant should not have been heard by the jury. It was not relevant to an element of the offense and Mr. Greenwood's lack of memory regarding his conversations with the officers did not open the door. The court abused its discretion, affecting the outcome of the trial by allowing it to be refocused on whether Mr. Greenwood was a fugitive. Mr. Greenwood asks this Court to order a new trial.

B. CONCLUSION

Mr. Greenwood respectfully requests this Court reverse his conviction for attempting to elude a pursuing police vehicle because the government failed to establish sufficient evidence he drove recklessly. In the alternative, Mr. Greenwood requests this Court order a new trial because the trial court abused its discretion in allowing the prosecution to use impeach Mr. Greenwood on a collateral issue with extrinsic evidence.

DATED this 26 day of May 2017.

Respectfully submitted,

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IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION TWO

STATE OF WASHINGTON, Respondent, v. WALLACE GREENWOOD, Appellant.	)))))))))	NO. 49241-5-II

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