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Division II
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No. 53724-9-II

**COURT OF APPEALS, DIVISION II
STATE OF WASHINGTON**

STATE OF WASHINGTON, RESPONDENT

V.

BEAU NUGENT, APPELLANT

Appeal from the Superior Court of Mason County
The Honorable Monty D. Cobb, Judge

No. 18-1-00381-4

BRIEF OF RESPONDENT

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A. STATE'S COUNTER-STATEMENTS OF ISSUES
PERTAINING TO APPELLANT'S ASSIGNMENTS OF ERROR

1. The evidence shows that, while fleeing from the police, Nugent drove at an excessive speed on a dark, rainy night and wrecked his car, causing him to then drive southbound in the northbound lanes of Highway 101, where he abandoned his car and fled on foot as the car rolled on in a southbound direction in the northbound lanes, causing the northbound traffic to come to a stop. These facts are sufficient to support the jury's special verdict where the jury found that when running from the police Nugent endangered any person other than himself or the pursuing police officer.
2. The State concedes that Nugent's judgment and sentence erroneously contained boilerplate language that states that outstanding LFOs should bear interest until paid in full. Therefore, the State concedes that this case should be returned to the trial court for the trial court to strike the erroneous boilerplate language from judgment and sentence.

B. FACTS AND STATEMENT OF THE CASE

For the purposes of the issues raised in this appeal, the State accepts Nugent's statement of facts, except where additional or contrary facts are offered below in relation to the State's individual arguments in response to Nugent's assignments of error. RAP 10.3(b).

C. ARGUMENT

- 1) The evidence shows that, while fleeing from the police, Nugent drove at an excessive speed on a dark, rainy night and wrecked his car, causing him to then drive southbound in the northbound lanes of Highway 101, where he abandoned his car and fled on foot as the car rolled on in a southbound direction in the northbound lanes,

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causing the northbound traffic to come to a stop. These facts are sufficient to support the jury's special verdict where the jury found that when running from the police Nugent endangered any person other than himself or the pursuing police officer.

After finding Nugent guilty of attempting to elude a police vehicle as proscribed by RCW 46.61.024, the jury returned a special verdict as authorized by RCW 9.94A.834 finding that Nugent's crime of attempting to elude threatened any person, other than himself or the pursuing officer, with physical injury or harm. CP 49, 51. Nugent contends that the evidence is insufficient to sustain the jury's special verdict.

The State bears the burden of proving the special allegation beyond a reasonable doubt. RCW 9.94A.834(2). Evidence is sufficient to support a conviction if, viewing the evidence in the light most favorable to the State, any rational trier of fact can find the essential elements of the crime beyond a reasonable doubt. *State v. Salinas*, 119 Wn.2d 192, 201, 829 P.2d 1068 (1992). All reasonable inferences from the evidence are drawn in favor of the State and interpreted most strongly against the defendant. *Id.* A claim of insufficiency of the evidence "admits the truth of the State's evidence and all inferences that reasonably can be drawn therefrom." *Id.*

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Here, the evidence shows that while Nugent fled from police, he entered the northbound lane of US Hwy. 101 and traveled southbound in the northbound lane, causing on-coming traffic to come to a stop. RP 151, 165. Deputy Anderson testified that during the chase, Nugent lost control of his car, struck the center guardrail, “and ultimately ended up facing the wrong way on 101 and wrecked out into a ditch and slowly started rolling towards traffic.” RP 151. Deputy Anderson then saw Nugent running behind the vehicle as it continued to roll southbound in the northbound lanes of the highway. *Id.*

Deputy Helser, also, testified that Nugent drove the wrong way on the highway. RP 165. While Nugent’s vehicle rolled southbound in the northbound lanes of Hwy 101, Nugent jumped from the vehicle and ran on foot while allowing the vehicle to continue rolling down the highway on the wrong side of the road. RP 165-66. Nugent left the vehicle abandoned in the “middle of Hwy. 101[.]” RP 167. Deputy Helser explained that it was pouring down rain, and that “there was quite a few vehicles that were traveling northbound that had stopped – when we had stopped.” RP 168.

These facts show that the innocent public using Hwy. 101 was endangered by Nugent’s acts of attempting to elude the police. By driving the wrong way on the highway and abandoning his vehicle, causing traffic

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to come to a stop, Nugent created a very high risk that the unsuspecting traffic that was traveling north in the northbound lanes could easily have become involved in a collision with Nugent, with a police car, or with other innocent motorists who would be startled by the incident and would be forced to undertake sudden maneuvers to avoid collisions.

These facts are sufficient to support the jury's finding that Nugent's act of eluding the police threatened to cause physical injury or harm to a person other than Nugent or the pursuing police officer. *State v. Salinas*, 119 Wn.2d 192, 201, 829 P.2d 1068 (1992).

- 2) The State concedes that Nugent's judgment and sentence erroneously contained boilerplate language that states that outstanding LFOs should bear interest until paid in full. Therefore, the State concedes that this case should be returned to the trial court for the trial court to strike the erroneous boilerplate language from judgment and sentence.

RCW 10.82.090, as amended on March 27, 2018, requires that "[a]s of June 7, 2018, no interest shall accrue on nonrestitution legal financial obligations." Sentencing occurred in the instant case on July 1, 2019. CP 52. As a part of the judgment and sentence, the trial court ordered a \$500 victim assessment under RCW 7.68.035 but ordered no other legal financial obligations. The judgment and sentence erroneously

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included a pre-amendment, boilerplate statement that any outstanding LFOs would accrue interest until paid in full. CP 60.

Because the boilerplate language requiring the accrual of interest on the outstanding LFOs offends amended RCW 10.82.090, the State concedes that this case should be remanded to the trial court for the trial court to strike the boilerplate language that would otherwise appear to require the accrual of interest.

D. CONCLUSION

The evidence shows that on a dark, rainy night, while attempting to elude a pursuing police officer, Nugent wrecked his car on Highway 101 and then drove in the wrong direction in the oncoming lanes of the highway, where he abandoned his car in the middle of the oncoming lanes and ran away on foot, causing the oncoming drivers to come to a complete stop to avoid a collision. This evidence is sufficient to support the jury's verdict that Nugent endangered a person other than himself or the pursuing police officer while running from the police.

The judgment and sentence in this case contained boilerplate language stating that interest would accrue on any unpaid LFOs until they were paid in full. However, after a 2018 amendment to RCW 10.82.090,

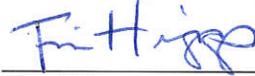
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nonrestitution LFOs no longer accrue interest. Therefore, the boilerplate language is erroneous and should be stricken from Nugent's judgment and sentence.

DATED: April 6, 2020.

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