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NOVEMBER 7, 2011

29845-1-III Court of Appeals
 Division III
COURT OF APPEALS State of Washington

DIVISION III
OF THE STATE OF WASHINGTON

STATE OF WASHINGTON, RESPONDENT

v.

AUSTIN L. CURTISS, APPELLANT

APPEAL FROM THE SUPERIOR COURT
OF GRANT COUNTY

APPELLANT'S BRIEF

Janet G. Gemberling
Attorney for Appellant

GEMBERLING & DOORIS, P.S.
PO Box 9166
Spokane, WA 99209
(509) 838-8585

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A. ASSIGNMENT OF ERROR

1. The State presented insufficient evidence to support the conviction.

B. ISSUE

1. The defendant, who was intoxicated, drove his vehicle on a windy dirt road, late at night, at high speeds, passing three vehicles in about a minute-and-a-half. During that time a law enforcement officer had activated his emergency lights and attempted to overtake the speeding vehicle. Was the evidence that the defendant acted willfully sufficient to support his conviction for attempting to elude a pursuing police vehicle?

C. STATEMENT OF THE CASE

The State charged Austin Curtiss with attempting to elude a police vehicle and driving while intoxicated. (CP 1) The charges were based on events that occurred in the early morning hours of April 17, 2010. (CP 1)

Testimony at trial showed that Mr. Curtiss, driving a Jeep Cherokee, was the fourth of four vehicles that drove past Officer Jason Snyder on Sand Dunes Road. (RP 41) Officer Snyder is a Fish and

Wildlife Officer with the Washington Department of Fish and Wildlife. (RP 38) The officer was parked in a rural area where the road is unpaved and unlit. (RP 42) The officer pulled onto the road and began following the jeep. (RP 42-43)

As the Jeep approached a spillway, Officer Snyder saw it overtake and pass a white vehicle. (RP 43) Officer Snyder passed the white vehicle and immediately after that the officer activated his emergency lights. (RP 44) In the next minute the jeep passed two other cars on this very windy road. (RP 46-47) Then the jeep came to a paved, lit area and came up behind another Fish and Wildlife vehicle that had pulled onto the road ahead of it and activated its emergency lights. (RP 50-52) At that point the Jeep pulled off the road within three to four hundred yards. (RP 52-53)

The pursuit extended over a distance of less than a mile-and-a-half, and during this time Mr. Curtiss drove at speeds well in excess of sixty miles per hour. (RP 47, 49)

The driver was identified as Austin Curtiss. (RP 53) Overwhelming evidence showed that Mr. Curtiss was intoxicated. (RP 54) Officer Snyder arrested him for driving while intoxicated. (RP 57)

D. ARGUMENT

1. THE EVIDENCE WAS INSUFFICIENT TO PROVE THAT MR. CURTISS ACTED WILLFULLY IN FAILING TO STOP.

Evidence is sufficient to support a conviction if, when viewed in the light most favorable to the State any rational trier of fact could have found the essential elements of the crime charged beyond a reasonable doubt. *State v. Drum*, 168 Wn.2d 23, 34–35, 225 P.3d 237 (2010).

The offense of attempting to elude is defined by statute:

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, shall be guilty of a class C felony.

RCW 46.61.024. Thus, one of the essential elements of eluding is that the defendant willfully failed or refused to immediately bring the vehicle to a stop after being given a signal to do so. RCW 46.61.024; *see State v. Stayton*, 39 Wn. App. 46, 49, 691 P.2d 596 (1984), *review denied*, 103 Wn.2d 1026 (1985). “[T]he driver must be a person who ‘willfully fails or refuses to immediately bring his vehicle to a stop’ The willful failure to do so implies knowledge that a signal has been given. *State v. Duffy*, 86 Wn. App. 334, 340, 936 P.2d 444, 447 (1997). A defendant acts willfully if he acts knowingly with respect to a material

element of the offense. See *State v. Sisemore*, 114 Wn. App. 75, 78, 55 P.3d 1178 (2002); *State v. Clowes*, 104 Wn. App. 935, 944, 18 P.3d 596 (2001).

No rational trier of fact could find beyond a reasonable doubt that an intoxicated individual driving at high speed on a winding dirt road while passing at least three other vehicles in the space of about one minute would know that he was being signaled to stop prior to completing this dangerous maneuver. Throughout the time that Officer Snyder was pursuing him, Mr. Curtiss's attention was necessarily focused on the windy gravel road and vehicles ahead of him. Officer Snyder told the jury "It's – it's a windy enough road that at that point I was pretty much focused just on being safe myself." (RP 47)

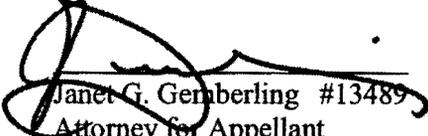
The evidence showed Mr. Curtiss drove while intoxicated, and that he drove recklessly. But the State failed to present evidence that he knew, prior to the time when he saw the officer in front of him with activated emergency lights, that he had been signaled to stop. And at that time he promptly brought his vehicle to a stop.

D. CONCLUSION

The conviction for attempting to elude a pursuing police vehicle should be reversed and dismissed.

Dated this 7th day of November, 2011.

GEMBERLING & DOORIS, P.S.



Janet G. Gemberling #13489
Attorney for Appellant

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON,

DIVISION III

STATE OF WASHINGTON,)	
)	
Respondent,)	No. 29845-1-III
)	
vs.)	CERTIFICATE
)	OF MAILING
AUSTIN L. CURTISS,)	
)	
Appellant.)	

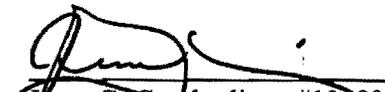
I certify under penalty of perjury under the laws of the State of Washington that on November 7, 2011, I served a copy of the Appellant's Brief in this matter by email on the following party, receipt confirmed, pursuant to the parties' agreement:

D. Angus Lee
dlee@co.grant.wa.us

I certify under penalty of perjury under the laws of the State of Washington that on November 7, 2011, I mailed a copy of the Appellant's Brief in this matter to:

Austin L. Curtiss
1232 Vandenburg
8953 B Tinker Loop
Moses Lake, WA 98837

Signed at Spokane, Washington on November 7, 2011.


Janet G. Gemberling #13489