

FILED
Dec 30, 2015
Court of Appeals
Division III
State of Washington

No. 33597-6-III

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

STATE OF WASHINGTON,

Respondent,

v.

CRYSTAL RAIN FUCHS,

Appellant.

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

The Honorable Scott D. Gallina

BRIEF OF APPELLANT

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A. INTRODUCTION

A truck belonging to Crystal Fuchs attempted to elude the Clarkston Police. None of the officers could identify anything about the driver, who was gone when the police found the truck. Nevertheless, Ms. Fuchs was charged and convicted of attempting to elude based on this evidence without more. Ms. Fuchs asks this Court to reverse her conviction.

B. ASSIGNMENTS OF ERROR

1. The State failed to prove that Crystal Fuchs attempted to elude the police.
2. The State failed to prove that Crystal Fuchs drove recklessly.
3. The State failed to prove that Crystal Fuchs was guilty of first degree negligent driving.
4. To the extent it is found to be a finding of fact, and in the absence of substantial evidence, the trial court erred in entering Conclusion of Law After Bench Trial 1, finding Ms. Fuchs guilty of attempting to elude.
5. To the extent it is found to be a finding of fact, and in the absence of substantial evidence, the trial court erred in entering

Conclusion of Law After Bench Trial 2, finding Ms. Fuchs guilty of reckless driving.

6. To the extent it is found to be a finding of fact, and in the absence of substantial evidence, the trial court erred in entering Conclusion of Law After Bench Trial 3, finding Ms. Fuchs guilty of negligent driving in the first degree.

C. ISSUE PERTAINING TO ASSIGNMENTS OF ERROR

Due process requires the State prove every essential element of the charged offenses beyond a reasonable doubt. The driving offenses charged here required the State prove that Crystal Fuchs was the driver of the vehicle involved. Here the pursuing officer candidly admitted he could not identify anything about the driver and the remaining evidence produced by the State failed to prove Ms. Fuchs was the driver. Is Crystal Fuchs entitled to reversal of her convictions with instructions to dismiss?

D. STATEMENT OF THE CASE

In the early morning hours of October 7, 2014, Clarkston Police Officer Greg Adelsbach was working radar enforcement when he saw two cars going at roughly the same speed approaching him. RP 12-14. One vehicle was a maroon pick-up truck and the other was a silver

passenger car. RP 14. The officer decided to stop the pick-up truck, but it sped away from him when he turned on his emergency lights and siren. RP 15. The officer discontinued his pursuit when the truck failed to stop at stop signs, but he continued to follow the truck at a distance. RP 17.

Officer Adelsbach lost sight of the truck briefly then saw brake lights. RP 17. The officer continued to where he saw the brake lights and came upon the pick-up truck stopped but the engine still running with no one inside. RP 17-19. The doors were unlocked and there was no one around. RP 18. Inside the truck the officer found a purse which contained Crystal Fuchs's identification. RP 19. According to the officer, the driver's seat was pushed all the way forward, indicating a smaller person in height driving the truck. RP 20. A check of the license plate indicated the registered owner was Crystal Fuchs. RP 53. Officer Adelsbach admitted that he was unable to identify the driver of the truck or determine if the driver was male or female, tall or short, thin or stout, during the pursuit. RP 33.

Clarkston Officer Michael Bambino arrived to assist Officer Adelsbach. RP 50. When the officers had concluded their investigation of the truck, Officer Bambino was driving away when he came upon

Ms. Fuchs walking several blocks away from the abandoned truck. RP 57. Officer Bambino described Ms. Fuchs as being “fairly short in stature” leading him to conclude that she was the driver of the truck. RP 57.

When asked, Ms. Fuchs told the officer that her truck had been stolen at the ZipTrip convenience store in Lewiston and she was walking to her boyfriend’s house. RP 23, 58-59. Officer Adelsbach noted Ms. Fuchs smelled of alcohol and Ms. Fuchs admitted she had had a “few beers.” RP 26. The officer also noted that the knees of Ms. Fuchs’s pants were wet and had grass clippings on them. RP 26.

Ms. Fuchs was subsequently charged with attempting to elude, reckless driving and first degree negligent driving. CP 19-21. Ms. Fuchs waived her right to a jury trial and the matter was tried to the bench. CP 29.

At trial, Ms. Fuchs admitted the truck was hers and testified that she met her ex-husband at the ZipTrip in Lewiston to give him some medication he needed. RP 100-01. When she went into the ZipTrip, she left the doors of the truck unlocked, windows down, and keys in the ignition. RP 103. When she returned to her truck, it was gone. RP 106. Ms. Fuchs was unable to call the police because her cellular phone was

also inside the truck. RP 107. As a result, she was walking to her boyfriend's house when she was stopped by the police. RP 108-10.

The trial court found Ms. Fuchs guilty as charged. CP 67-68; RP 165-66.

E. ARGUMENT

The State failed to prove Ms. Fuchs was the driver of the truck pursued by the Clarkston Police.

1. *The State bears the burden of proving each of the essential elements of the charged offense beyond a reasonable doubt.*

The State is required to prove each element of the crime charged beyond a reasonable doubt. U.S. Const. amend XIV; *Apprendi v. New Jersey*, 530 U.S. 466, 471, 120 S.Ct. 2348, 147 L.Ed.2d 435 (2000); *In re Winship*, 397 U.S. 358, 364, 90 S.Ct. 1068, 25 L.Ed.2d 368 (1970).

The standard the reviewing court uses in analyzing a claim of insufficiency of the evidence is “[w]hether, 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.” *Jackson v. Virginia*, 443 U.S. 307, 319, 99 S.Ct. 2781, 61 L.Ed.2d 560 (1979). A challenge to the sufficiency of evidence admits the truth of the State's evidence and all reasonable

inferences that can be drawn therefrom. *State v. Salinas*, 119 Wn.2d 192, 201, 829 P.2d 1068 (1992).

2. *There was no evidence produced that proved Ms. Fuchs was driving the truck when it was pursued by Clarkston Police.*

All three offenses for which Ms. Fuchs was charged were driving offenses, which required the State to prove that Ms. Fuchs was driving the truck. *See* RCW 46.61.024¹ (attempting to elude); RCW 46.61.500² (reckless driving); and RCW 46.61.5249³ (first degree negligent driving). The State failed to so prove.

¹ RCW 46.61.024(1) states:

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. The signal given by the police officer may be by hand, voice, emergency light, or siren. The officer giving such a signal shall be in uniform and the vehicle shall be equipped with lights and sirens.

² RCW 46.61.500(1) makes it a gross misdemeanor for “[a]ny person who drives any vehicle in willful or wanton disregard for the safety of persons or property.

³ RCW 46.61.5249(1)(a) states in relevant part:

A person is guilty of negligent driving in the first degree if he or she operates a motor vehicle in a manner that is both negligent and endangers or is likely to endanger any person or property, and exhibits the effects of having consumed liquor or marijuana or any drug or exhibits the effects of having inhaled or ingested any chemical, whether or not a legal substance, for its intoxicating or hallucinatory effects.

Here, the pursuing police officer candidly admitted he could identify nothing about the driver of the truck; not the sex, the height, or the physique of the person driving. RP 33. The remainder of the State's evidence failed to fill this gap.

In finding Ms. Fuchs guilty, the trial court relied on the fact truck belonged to Ms. Fuchs, there were sunglasses of a type worn by a woman, and the driver's seat was in a position for a person of short stature, such as Ms. Fuchs. CP 65-66. But all of these facts were consistent with Ms. Fuchs's argument that her truck had been stolen while she was at the ZipTrip. In fact a store clerk at the ZipTrip confirmed that Ms. Fuchs had been in the store that night. CP 67.

The trial court also relied on the officers' observation that the knees of Ms. Fuchs's pants were wet and had grass clippings on them, which the court inferred showed she had been kneeling in wet grass. CP 66. Although there was testimony that it was not raining that day, there was no testimony about the condition of the soil anywhere around the location of the truck or the location where Ms. Fuchs was stopped. This conclusion by the court was speculative at best.

In sum, the evidence established that a truck belonging to Ms. Fuchs, which she admitted owning, was seen pulling away from a

police car with emergency lights and siren activated, but no one observed the driver or could describe anything about the driver. This was simply not sufficient evidence to establish Ms. Fuchs was the driver. The State failed in its burden of proving Ms. Fuchs attempted to elude the police.

3. *Ms. Fuchs's convictions must be reversed with instructions to dismiss.*

Since there was insufficient evidence to support the convictions, this Court must reverse the conviction with instructions to dismiss. To do otherwise would violate double jeopardy. *State v. Crediford*, 130 Wn.2d 747, 760-61, 927 P.2d 1129 (1996) (the Double Jeopardy Clause of the United States Constitution “forbids a second trial for the purpose of affording the prosecution another opportunity to supply evidence which it failed to muster in the first proceeding.”), *quoting Burks v. United States*, 437 U.S. 1, 9, 98 S.Ct. 2141, 57 L.Ed.2d 1 (1978).

F. CONCLUSION

For the reasons stated, Ms. Fuchs asks this Court to reverse her convictions with instructions to dismiss.

DATED this 30th day of December 2015.

Respectfully submitted,

s/Thomas M. Kummerow

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DIVISION THREE**

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RESPONDENT,)	
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v.)	NO. 33597-6-III
)	
CRYSTAL FUCHS,)	
)	
APPELLANT.)	

DECLARATION OF DOCUMENT FILING AND SERVICE

I, MARIA ARRANZA RILEY, STATE THAT ON THE 30TH DAY OF DECEMBER, 2015, I CAUSED THE ORIGINAL **OPENING BRIEF OF APPELLANT** TO BE FILED IN THE **COURT OF APPEALS – DIVISION THREE** AND A TRUE COPY OF THE SAME TO BE SERVED ON THE FOLLOWING IN THE MANNER INDICATED BELOW:

[X] BENJAMIN NICHOLS, DPA ASOTIN COUNTY PROSECUTOR'S OFFICE PO BOX 220 ASOTIN, WA 99402-0220	(X) () ()	U.S. MAIL HAND DELIVERY _____
[X] CRYSTAL FUCHS 1129 13 TH ST #A CLARKSTON, WA 99403	(X) () ()	U.S. MAIL HAND DELIVERY _____

SIGNED IN SEATTLE, WASHINGTON THIS 30TH DAY OF DECEMBER, 2015.

X _____ 

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