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Mar 02, 2016
Court of Appeals
Division III
State of Washington

No. 33597-6-III

IN THE COURT OF THE APPEALS
OF THE STATE OF WASHINGTON

DIVISION III

THE STATE OF WASHINGTON, Respondent

v.

CRYSTAL R. FUCHS, Appellant.

BRIEF OF RESPONDENT

ROBERT A. LEHMAN
Asotin County Deputy
Prosecuting Attorney
WSBA #47783

P. O. Box 220
Asotin, Washington 99402
(509) 243-2061

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I. ISSUES

1. DID THE STATE PRESENT SUFFICIENT EVIDENCE THAT THE DEFENDANT WAS THE DRIVER OF HER TRUCK TO CONVINC THE TRIER OF FACT BEYOND A REASONABLE DOUBT?

II. ARGUMENT

1. THE STATE PRESENTED MORE THAN SUFFICIENT EVIDENCE PROVING DEFENDANT WAS THE DRIVER OF HER TRUCK BEYOND A REASONABLE DOUBT.

III. STATEMENT OF THE CASE

The following statement of facts as they relate to the events charged is taken from Clerk's Papers (herein after CP), Report of Proceedings (hereinafter RP), and the trial court's written Finding of Fact and Conclusions of Law After Bench Trial (hereinafter Findings) entered on July 6, 2015.

FACTS

At about 1:20 A.M. on the morning of October 7, 2014, Officer Greg Adelsbach from the Clarkston Police Department was on patrol in the City of Clarkston in Asotin County, Washington. RP at 13.

Officer Adelsbach was in full uniform and in a fully marked patrol vehicle equipped with lights and sirens when he observed two cars which appeared to be racing and were traveling at a speed of 50 mph in a 25 mph zone, as determined by using his vehicle's radar. RP at 13-16. One of the racing vehicles, a red Toyota truck with a canopy, was registered to the Defendant, Crystal R. Fuchs.¹ RP at 19.

After observing the vehicles traveling at excessive speeds, Officer Adelsbach attempted to conduct a traffic stop on the red truck, belonging to the Defendant, by activating his overhead blue and red emergency lights. RP at 15. The truck failed to stop or yield to Officer Adelsbach. *Id.* Officer Adelsbach then activated his siren. *Id.* The truck still did not yield and proceeded to make abrupt turns at a high rate of speed. *Id.*

As Officer Adelsbach was pursuing the red truck, he observed the Defendant fail to yield or even slow down at two different stop signs. RP at 17. The Defendant was traveling at such a high rate of speed that Officer Adelsbach could not keep pace with the Defendant. RP at 15-17. Officer Adelsbach pursued the Defendant for several blocks. *Id.* Officer Adelsbach, fearing for the safety of persons or property in the neighborhood, began to turn off his siren and disengage from the pursuit. RP at 15. At that point, he noticed that

¹In accordance with RAP 10.4(e) Appellant, Crystal R. Fuchs, shall be referred to as Defendant in this brief.

the tail lights of the Defendant's truck had become stationary, indicating that the Defendant had stopped. RP at 17.

Officer Adelsbach caught up with the Defendant's truck, which had crashed at the corner of Eighth Street and Chestnut Street in Clarkston, Washington. *Id.* The Defendant's truck had gone over the curb onto the sidewalk and there were fresh tire skid marks left from the truck. RP at 52. Officer Adelsbach parked his patrol vehicle behind the Defendant's truck with his emergency lights still activated. RP at 18.

When Officer Adelsbach approached the Defendant's truck, he found that the truck was still running with the keys in the ignition, but the Defendant was no longer in the truck. RP at 19. He did not see anyone in the area, so he radioed to other units in the area to be on the lookout for a person on foot who might have been driving the truck. RP at 18. Clarkston Police Officer Michael Babino, as well as at least one deputy from the Asotin County Sheriff's Office, drove around the area and searched for people on foot but found no one. RP at 21.

The door to the Defendant's truck was unlocked, so Officer Adelsbach searched inside the truck in an attempt to determine who had been driving the truck. RP at 18. Inside the truck, he found the Defendant's purse with her identification inside. RP at 19. He also found Defendant's cell phone, which was playing music.

RP at 20, 103-04. Officer Adelsbach observed that there were also two pairs of sunglasses of the type that a female would wear on the dashboard of the Defendant's truck. RP at 20, 56-57. The driver's seat was positioned all the way forward toward the steering wheel. Id. This indicated to the officers that whomever had been driving the truck had to be of shorter stature, not much more than five feet tall. Id. The Defendant's identification indicated that she is five foot and one inch tall. RP at 57.

Officer Michael Babino responded to the location of Defendant's truck and also observed the positioning of the driver's seat. RP at 56-57. Officer Babino noted that the Defendant's truck has a manual transmission and it would have been nearly impossible to operate the Defendant's truck if the driver was much taller than five feet in height. Id.

Officer Babino attempted to operate the Defendant's cell phone to determine who the phone belonged to. In so doing he found that the Defendant's cell phone was locked and password protected, indicating that whomever had operated the phone would have known the password. RP at 54.

After Officer Babino cleared the scene of the crash, he drove west on Chestnut Street. RP at 57. At the intersection of Chestnut Street and Thirteenth Street in Clarkston, Officer Babino observed a female of shorter stature, approximately five feet tall, walking on the

sidewalk. *Id.* Believing that the female may have been involved in the pursuit and collision, Officer Babino activated his blue and red emergency lights on his fully marked patrol vehicle and stopped the female. *Id.*

The female identified herself as the Defendant, Crystal R. Fuchs. *Id.* Officer Adelsbach arrived on scene. RP at 22.

The Defendant stated that she was walking from Lewiston, Idaho to her boyfriend's house in Clarkston and pointed south down Thirteenth Street. RP at 58. After the officers noted to the Defendant that it was odd that she was found walking just a few blocks away from where her truck had crashed after the pursuit, the Defendant then stated that her truck had just been stolen from the Zip Trip gas station on Main Street in Lewiston, Idaho. RP at 59. The Defendant stated that she had met her estranged husband at the Zip Trip, so that her husband could buy her cigarettes. *Id.*

As the officers spoke with the Defendant, both officers noticed that the knee area of the Defendant's pants were wet and that she had a good amount of fresh grass clippings on her shoes, indicating to the officers that she had been kneeling in a damp, grassy area. RP at 27, 65. Both officers noted that the weather was dry and clear that day. *Id.* Both officers could also smell an odor of alcohol coming from the Defendant's breath. RP at 26, 66. The Defendant admitted to having consumed a couple of drinks earlier. RP at 26.

Officer Babino called the Zip Trip in Lewiston, Idaho, and spoke to the clerk who was working that morning. RP at 62. The clerk indicated that she remembered the Defendant being in the store earlier but could not recall the time. *Id.* The clerk was not alerted to the Defendant's truck being stolen and did not observe the truck that the Defendant drove. *Id.* The clerk also did not recall a male accompanying the Defendant. *Id.*

Procedural History

The Defendant was arrested by officers and taken to jail. The Defendant was charged by information with the crimes of Attempting to Elude a Pursuing police Vehicle, Reckless Driving, and Negligent Driving in the First Degree.

The Defendant, who was represented by a defense attorney and their supervising attorney, waived her right to a jury trial. This case was tried to the bench before Judge Galina on June 19, 2016. Clarkston Police Officers Adelsbach and Babino testified at trial to the above facts.

The Defendant's estranged husband, who was at the time of trial her ex-husband, testified that he was with the Defendant at the Zip Trip in Lewiston, Idaho, earlier that morning, but he did not see the Defendant's truck get stolen. RP at 129. He testified that he left the Zip Trip before the Defendant did. RP at 130.

The Defendant waived her Fifth Amendment right and chose to testify at trial. RP at 99. The Trial Court had opportunity to hear the testimony of the Defendant and to observe her as she testified. The Court found that the Defendant's testimony was not credible. RP at 164-66. The Defendant's testimony regarding her actions was so completely devoid of common sense as to be wholly incredible. *Id.* The Defendant testified that before going into the Zip Trip gas station, she observed two individuals outside the store who raised her suspicions. RP at 104-05. However, the Defendant then testified that she left her truck unlocked, her driver's side window rolled down, her cell phone playing music in the truck, and the keys in the ignition of her truck when she went into the store. RP at 103. The Defendant also testified that she threw her purse into the truck through the open driver's side window after exiting the store and then walked away from her truck to go talk to her husband. RP at 105. At that point the Defendant testified that one of the two people she had observed outside the store, a Native American female dressed in all black "gothic" clothing, got in her truck and drove off in it. RP at 106. The Defendant did not call the police from the Zip Trip or stop by the Lewiston Police Station or Clarkston Police Station, both of which were on the path she testified she walked along. RP at 107-08, 125.

At the conclusion of the bench trial, the Trial Court found the Defendant guilty on all counts. RP at 166. The Trial Court found

based upon circumstantial evidence that: 1) the truck observed by Officer Adelsbach belong to Defendant; 2) the driver's seat of the truck was set completely forward so that only someone of the Defendant's height, approximately five feet in height, would be able to operate the truck; 3) Defendant's wallet, cell phone, and sun glasses were in the truck; 4) no pedestrians or vehicles were observed at the scene where the truck came to a stop; 5) the first person located by the officers was Defendant, only a few blocks from where her truck was stopped; and 6) Defendant had wet spots on her knees and grass clippings indicating that she had been kneeling in grass. RP at 164-66.

The Trial Court further found Defendant's testimony to not be credible. RP at 164. The Trial Court specifically noted that it did not find Defendant's explanation for how she arrived at the location she was contacted by officers to stand up to common sense. RP at 165. Further noting that the "thief" the Defendant claimed took her truck drove it on the exact route that the Defendant commonly drives to get to her boyfriend's house. *Id.* After fairly considering all the evidence the Trial Court concluded that the circumstantial evidence presented left the Trial Court with an abiding belief in the truth of the charges. RP at 166.

IV. DISCUSSION

The Defendant has asserted that the evidence presented at trial was insufficient to prove the Defendant was the driver of her truck beyond a reasonable doubt. At trial, the State must prove every element of the charges 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) (*citing In re Winship*, 397 U.S. 358, 364, 90 S.Ct. 1068, 25 L.Ed.2d 368 (1970)). A claim of insufficiency of the evidence raises the question of “[w]hether, after viewing the evidence in *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) (*Emphasis added*). By asserting an insufficiency of the evidence claim, the Defendant *admits the truth of all of the State’s evidence and all reasonable inferences drawn therefrom*. State v. Salinas, 119 Wn.2d 192, 201, 829 P.2d 1068 (1992) (*Emphasis added*).

The Court should defer to the fact-finder on issues of determining credibility of witnesses, conflicting testimony, and the persuasiveness of the evidence. State v. Thomas, 150 Wn.2d 821, 874-75, 83 P.2d 970 (2004) (*citing State v. Camarillo*, 115 Wn.2d 60, 71, 794 P.2d 850 (1990)); State v. Cord, 130 Wn.2d 361, 367, 693

P.2d 81 (1985)). The identity of a criminal defendant is a question of fact for the fact-finder and

any relevant fact, either direct or circumstantial, which would convince or tend to convince a person of ordinary judgment in carrying on his everyday affairs, of the identity of a person should be received and evaluated.

State v. Hill, 83 Wn.2d 558, 560, 520 P.2d 618 (1974). Identity of a person based upon circumstantial evidence is no less credible than one based upon direct evidence. State v. Gosby, 85 Wn.2d 758, 766, 539 P.2d 680 (1975):

[W]hether direct evidence or circumstantial evidence is more trustworthy and probative depends upon the particular facts of the case and no generalizations realistically can be made that one class of evidence is per se more reliable than the other class of evidence.

Id. “[M]any times circumstantial evidence may be more probative or reliable.” *Id.*

THE EVIDENCE PRESENTED AT TRIAL WAS MORE THAN SUFFICIENT TO GIVE A TRIER OF FACT AN ABIDING BELIEF THAT THE DEFENDANT WAS THE DRIVER OF HER TRUCK.

While the Defendant raises six assignments of error in their appeal, there is only one question before this Court: Did the State prove beyond a reasonable doubt that the Defendant was the driver

of her truck when Officer Adelsbach attempted to pull the Defendant's truck over on October 7, 2014?

The Defendant contends that the State did not meet its burden because there is no direct evidence showing that the Defendant was the driver of her truck. The State did present a substantial amount of circumstantial evidence from which a reasonable trier of fact would conclude beyond a reasonable that the Defendant was the driver of her truck.

When the officers arrived at the Defendant's truck, officers found it still running, the key still in the ignition, Defendant's wallet still in the truck, Defendant's cell phone still in the truck, and the seat of the Defendant's truck was so far forward that only an individual of approximately five feet in height, the height of Defendant, would be able to operate the manual transmission. The first officer on scene did not observe anyone in close proximity of the truck. Several responding officers also did not observe anyone in the area, even though they were actively searching for the driver of the truck.

It was only after the officers finished impounding the Defendant's truck and were resuming patrol that Officer Babino observed the Defendant walking down the street mere blocks from where her truck was abandoned. Officer Babino noticed the Defendant because her height matched the height of the individual

who would have been able to drive Defendant's vehicle with the seat pulled as far forward as when it was abandoned. The Defendant's knees were wet and she had grass clipping on her knees and shoes. Both Officer Babino and Officer Adelsbach concluded that the most likely cause, based on their experience, was that Defendant had been kneeling in a yard or bushes hiding from the officers.

In challenging the sufficiency of the evidence related to the identity of the Defendant as the driver of her truck, the Defendant admits that the above evidence presented at trial is true. Drawing all reasonable inferences from the above evidence in a light most favorable to the State, any rational trier of fact would conclude beyond a reasonable doubt that the Defendant was the driver of her truck.

The Defendant contends that evidence at trial also supported her story of events. The Defendant ignores one glaring fact about her testimony at trial: the trier of fact did not believe her and found that her testimony "just frankly is incredible." RP at 164-65.

Determining the credibility of witnesses, including a defendant, should be left to the trier of fact and should not be questioned on appeal. See Thomas, 150 Wn.2d at 874-75. This long standing rule is based upon the notion that only the trier of fact, who observed the witness in court, heard the inflections in their voice, and their body language is best placed to determine the credibility of the testimony.

See In re Sego, 82 Wn.2d 736, 739-40, 513 P.2d 831 (1973). In this case, the trier of fact found the Defendant's testimony that: 1) her truck was stolen by a woman of the exact same height as hers; 2) that the Defendant did not either go back to the Zip Trip or to a police station to report the theft; 3) that the "thief" traveled the exact same route the Defendant takes to her boyfriend's home; 4) and that the Defendant could travel by foot the distance from the Zip Trip to where she was contacted by Officer Babino in such a short time span to not be credible.

The Defendant further contends that the trier of fact improperly inferred that the Defendant had to be kneeling because of her wet knees and grass clippings because there was no testimony about the "condition of the soil anywhere around the location of the truck." The Appellant's Brief at 7. The Defendant's argument that the trier of fact's conclusion is speculative must fail. The trier of fact does not leave their common sense and everyday life experience at the door of the court room when ruling on a case. State v. Briggs, 55 Wn.App 44, 58, 776 P.2d 1347 (1989) (*citing United State v. Howard*, 506 F.2d 865, 867 (5th Cir. 1975)). It is clearly within the realm of common human experience that someone who kneels in grass, even on a dry day, can get wet spots on their knees and that grass clippings fall off of the body and shoes shortly after someone gets off of fresh cut

grass. This accusation that the trier of fact was speculating in their decision is baseless.

V. CONCLUSION

The Defendant was the driver of her truck when Officer Adelsbach attempted to pull her over on October 7, 2014. The truck belonged to her. Her keys were in the ignition. Her wallet was in her truck. Her cell phone was in her truck. She was found by Officer Babino only a few blocks away from where her truck was abandoned. Her knees were wet and she had grass clippings on her body, leading a reasonable person to conclude she had been kneeling in grass to hide from the officers.

The trier of fact did not find the Defendant's story of a woman, the exact same height as Defendant, stole her truck to be credible. That the "thief" drove Defendant's truck the exact same route that the Defendant would have driven is dubious at best. That this "thief" then disappears and the Defendant appears mere blocks from where her truck was abandoned, if true, would be a "coincidence" that beggars the imagination. As the trier of fact found, the Defendant's story is "incredible." The trier of fact weighted the Defendant's testimony and found her testimony to not be credible.

The Defendant is challenging the sufficiency of the evidence identifying the Defendant as the driver of her truck. The Defendant has admitted the truth of all of the State's evidence. The Court should draw all reasonable inferences from the State's evidence. All of the evidence is viewed in the light most favorable to the State. Any rational trier of fact would have found that all of the credible evidence shows beyond a reasonable doubt that the Defendant was the driver of her truck when Officer Adelsbach attempted to pull her over.

The State respectfully requests that the Court uphold the Defendant's convictions for Attempting to Elude a Police Vehicle, Reckless Driving, and Negligent Driving in the First Degree.

Dated this 2nd day of March, 2016.

Respectfully submitted,



ROBERT A. LEHMAN, WSBA #47783
Attorney for Respondent
Deputy Prosecuting Attorney for Asotin County
P.O. Box 220
Asotin, Washington 99402
(509) 243-2061

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DECLARATION OF SERVICE

DECLARATION

On March 2, 2016 I electronically mailed, with prior approval from the Washington Appellate Project, a copy of the BRIEF OF RESPONDENT in this matter to:

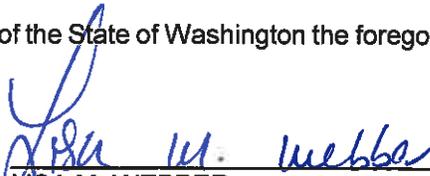
DAVID L. DONNAN
david@washapp.org

THOMAS KUMMEROW
tom@washapp.org

KATHLEEN A. SHEA
kate@washapp.org

I declare under penalty of perjury under the laws of the State of Washington the foregoing statement is true and correct.

Signed at Asotin, Washington on March 2, 2016.



LISA M. WEBBER
Office Manager