

FILED
AUGUST 1, 2016
Court of Appeals
Division III
State of Washington

COURT OF APPEALS
STATE OF WASHINGTON
DIVISION III

STATE OF WASHINGTON,)	NO. 338550
Respondent,)	
)	
vs.)	
)	
BRANDON O. KEELE,)	
Appellant.)	

RESPONDENT'S BRIEF

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A. Assignment of Error:

Respondent, State of Washington, assigns no errors to this matter and responds only to the issue presented by Defendant.

B. Statement of the Case:

What started out as a traffic stop for speeding at around midnight on October 4, 2014, turned into a high speed chase for several miles, and ended in the ramming of a trooper's vehicle. Defendant was convicted by a jury of assault in the second degree, attempting to elude a pursuing police vehicle with an endangerment of others enhancement, and malicious mischief in the first degree. CP 1. This timely appeal follows.

The State will focus on the evidence surrounding the identity of the defendant as the driver, the lone issue raised in this appeal thus far.

Trooper Leon Legros. Trooper Legros, having stopped the speeding vehicle on State Route 2 near Leavenworth, stood next to the partially rolled-down passenger window and directly observed the driver while asking for his license, registration and insurance. RP 139-42. Legros also observed the passenger and noted the

stark differences between the two: the driver was nearly bald and clean shaven, and the passenger had a full, very blonde beard. RP 142. Legros also observed the driver was wearing a black shirt and black shorts. RP 141. The driver was ordered out of the vehicle, and Trooper Legros personally observed the driver fully exited from the vehicle before he got back into the vehicle and fled. RP 143.

Later at the place where the fleeing, now abandoned car was located near East Wenatchee (RP 156), Trooper Legros retrieved Mr. Jeffrey Morris' expired driver's license from within the vehicle which matched the passenger. RP 148 – 49. Other paperwork found within the vehicle identified Mr. Morris as the registered owner. Trooper Legros later viewed Department of Licensing (DOL) photos of both the defendant and the passenger, and Legros immediately recognized the defendant as the driver. RP 150.

Trooper Legros positively identified the defendant in court as the driver he observed on the side of the road. RP 146.

Trooper Mark Dufour. Trooper Dufour picked up the chase near Cashmere (RP 91), and first observed both the driver and the passenger smiling in their rearview and side mirrors during the

pursuit. RP 98-100. Dufour described the driver as clean shaven, wearing a ball cap and a black shirt. RP 101.

Dufour recounted to the jury his second opportunity to see the defendant as follows:

“ ... I'm ready to tell radio, and then I look over to my left and I realize it's a driveway to a house. It's just – It's a parking pad up to a house and I realize the reverse lights come on, it's too late for me, I can't – and he's – the tires are, are smoking backwards, you know, he's spinning backwards, I have just enough time to cover up, I put my hands up over the side of my head, his car hits me and now they're right next to me, the car's kind of up on an embankment next to me and I, I probably have just a couple of feet between me and the passenger, he's got this startled look on his face, and I can see the Defendant sitting behind the wheel and he's lost his hat by now and he's clean shaven and he's trying to, he's trying to put the car in forward gear. RP 105.

RP 105.

Trooper Dufour was able to directly see the defendant behind the wheel of the vehicle a third time, when, after smashing into the trooper's vehicle a second time, the fleeing vehicle got temporarily high-centered and stuck on an embankment after smashing into the trooper's car a second time. RP 106. The suspect vehicle is found abandoned a short time later. RP 107.

When Mr. Morris is located and brought back to Trooper Dufour's location, Dufour recognized Morris as the passenger. RP 109-10. As Dufour is listening to Mr. Morris being interviewed by

another officer he overhears the defendant's name and retrieves a DOL photo of defendant and recognizes defendant as the driver. RP 110.

Trooper Dufour positively identified the defendant in court as the driver of the fleeing vehicle that rammed him. RP 107.

Trooper Kirk Schneider. Trooper Schnieder testified that when he showed Mr. Morris a DOL photo of the defendant, Morris responded that he was 80% sure defendant was the driver. RP 196.

Jeffrey Morris. Mr. Morris acknowledged he was the passenger (RP 167), but he denied knowing who the driver was, denied that defendant was the driver, and denied that he identified the defendant as the driver to the investigating troopers (RP 165). Morris testified he did not know the defendant very well. RP 164. Although Morris acknowledged giving a statement to law enforcement (RP 172), he denied identifying defendant as the driver (RP 174-75). Mr. Morris' recorded statement was played for the jury wherein Mr. Morris mentions defendant's name or something very similar. Id.

East Wenatchee Police Officer Carrie Knoupf. At around 9 a.m. that same day about six blocks from the chase scene, Officer

Knoupf responded to a complaint of a trespasser sleeping on an outside couch. RP 203. Knoupf described the person as wearing a dark sweat jacket, and dark-colored shorts, which were very dirty. RP 204. Knoupf described the sleeper as a white male with a shaved head and having new scratches on his head and hands. RP 205.

Knoupf contacted the sleeper and asked for his identification. The sleeper identified himself as Josh R. Taylor, with a date of birth of October 16th 1980. Knoupf asked the sleeper to leave and he did. RP 205-06. Later that day when Knoupf ran the sleeper's name through a law enforcement database she learned it had previously been used as an alias by the defendant. Knoupf looked up a booking photo of the defendant from the local jail and confirmed it was the sleeper. RP 209-10. Knoupf then became aware of the information about the events of the prior evening and contacted WSP. RP 211.

Officer Knoupf identified the defendant in court as the person she found sleeping on the couch near the vicinity of the chase scene. RP 208.

Defendant Bandon Keele. Defendant offered an alibi defense and denied being the driver (RP 259); but he testified that

he and Mr. Morris had several dealings (RP 252), including fights over girlfriends (RP 254), and previously borrowing and driving the same vehicle many times (RP 260), including driving that same vehicle near the town of Cashmere a few weeks prior to this particular occasion (RP 265).

C. Authority and Discussion:

The State has the burden of proving identity through relevant evidence. *State v. Huber*, 129 Wn.App. 499, 501, 119 P.3d 388 (2005). “The test for determining the sufficiency of the evidence is whether, after viewing the evidence in the light most favorable to the State, any rational trier of fact could have found guilt beyond a reasonable doubt.” *State v. Salinas*, 119 Wn.2d 192, 201, 829 P.2d 1068 (1992). “[A]ll reasonable inferences from the evidence must be drawn in favor of the State and interpreted most strongly against the defendant.” *Salinas*, 119 Wn.2d at 201. “A claim of insufficiency admits the truth of the State's evidence and all inferences that reasonably can be drawn therefrom.” *Salinas*, 119 Wn.2d at 201. The reviewing court must defer to the trier of fact on issues of conflicting testimony, credibility of witnesses, and the persuasiveness of evidence. *State v. Thomas*, 150 Wn.2d 821, 874–75, 83 P.3d 970 (2004).

In the instant case there is overwhelming direct identification evidence that defendant was the driver of the fleeing vehicle. The State presented two troopers who, from within close proximity of a few feet, directly observed defendant behind the wheel of the fleeing vehicle.

And, even though Mr. Morris recanted or denied his earlier identification of the defendant as the driver, the jury was allowed to consider Mr. Morris' identification of the defendant to the troopers as substantive evidence that defendant was the driver. See *State v. Grover*, 55 Wash.App. 923, 930, 780 P.2d 901 (1989).

The jury also heard the testimony of another officer who placed the freshly scratched up defendant near the scene several hours later. While this is not direct evidence of his driving, it is circumstantial evidence putting defendant near the scene which supports the troopers' testimony defendant was in the area; and it refuted defendant's alibi evidence. See *State v. Brown*, 128 Wash.App. 307, 313, 116 P.3d 400 (2005)(circumstantial evidence, along with other evidence, placing defendant in the proximity of the get-a-way car supported conviction).

D. Conclusion:

Based on the foregoing facts and authorities, the State respectfully requests this court to uphold the jury's verdict and dismiss this appeal.

Respectfully submitted this
1st day of August, 2016



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COURT OF APPEALS OF THE STATE OF WASHINGTON

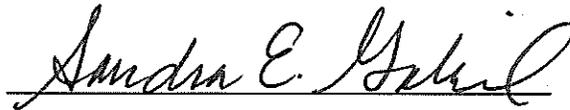
DIVISION III

STATE OF WASHINGTON,) NO. 338550
Plaintiff/Respondent)
)
vs.) AFFIDAVIT OF MAILING
)
BRANDON O. KEELE,)
Defendant/Appellant.)

STATE OF WASHINGTON)
: ss.
COUNTY OF DOUGLAS)

The undersigned, being first duly sworn on oath deposes and says: That on the 1st day of August, 2016, affiant deposited in the United States Mail at Waterville, Washington, postage prepaid thereon, an envelope containing a copy of this Affidavit and a copy of the Brief of the Respondent addressed to:

Brandon O. Keele
#847505
PO Box 777
Monroe, WA 98272



SUBSCRIBED AND SWORN to before me this 1st day of August, 2016.



NOTARY PUBLIC in and for the State
of Washington, residing at East
Wenatchee; my commission expires
02/26/2019.