

FILED  
Court of Appeals  
Division III  
State of Washington  
8/2/2019 1:16 PM

NO. 36441-1-III

COURT OF APPEALS, DIVISION III  
OF THE STATE OF WASHINGTON

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STATE OF WASHINGTON, Respondent,

v.

JAVIER GILES, Appellant.

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BRIEF OF RESPONDENT

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**I. ASSIGNMENT OF ERROR**

Mr. Giles' sole assignment of error claims, broadly, that the State presented insufficient evidence to support his convictions

**II. ISSUE PRESENTED BY ASSIGNMENT OF ERROR**

The only issue on appeal, according to Mr. Giles' briefing, is "whether the State presented sufficient evidence to prove Giles' identity as the driver of the vehicle."

**III. STATEMENT OF THE CASE**

On November 29, 2019, Javier Giles was charged by information with felony driving under the influence, second degree driving while license suspended or revoked, driving a vehicle without ignition interlock device, and hit and run – unattended vehicle. CP 6-7. These charges flowed from an incident on November 24, 2017, in the City of Yakima.

At approximately 9:00 p.m. on November 24, 2017, Tara Sampson was with her husband Brian who was driving their vehicle home from a restaurant after the couple had dinner. VRP 122-23. She saw what appeared to be a dark green Ford vehicle driving fast, and then take a fishtailing turn from 12<sup>th</sup> to Alder street. VRP 123. Ms. Sampson was concerned that the fishtailing car would hit a parked car on Alder street. VRP 123. Ms. Sampson was familiar with the usual location of the parked car because she

lives on Alder street. VRP 123. Ms. Sampson briefly lost sight of the vehicle at the turn and did not personally witness a collision when the vehicle fishtailed around the corner. VRP 123. When the vehicle she and her husband occupied reached the stop sign at the intersection with Alder, she observed the dark Ford being driven away from where it appeared to have collided with the car she knew was usually parked there. VRP 123.

While Ms. Sampson and her husband followed the dark Ford vehicle, which was leaving the scene of the accident, she called 911 to report the incident. She observed that the vehicle had a distinctive sheet of plastic covering a missing window on the driver's side. VRP 123-24. Ms. Sampson described the vehicle as "[d]riving erratic. It was all over the place." VRP 125. Ms. Sampson and her husband remained on the line with 911 and followed the fleeing vehicle until they eventually lost sight of it, at which time they were told by the 911 dispatcher to head home. VRP 127-28.

That same evening, Mary Edmondson was home watching television at approximately 9:00 p.m. when she heard a "big bang." VRP 133. She looked out in front of her house and saw a dark SUV up against her red Mercury Topaz. VRP 133-35. She observed the vehicle backing up to leave the scene of the collision. VRP 135. She believed the driver to be male because his hair was not long. VRP 135. Mary Edmondson did not testify to having seen anyone other than the driver in the vehicle. VRP 132-

40. When she examined her vehicle, she noticed that the left front fender and wheel of her vehicle were caved in, and the tire had been flattened by the collision. VRP 136-37.

Officers John Guju, Scott Gronewald, and Patrick Schad were working as law enforcement officers in the City of Yakima on November 24, 2017. VRP 147; 178; 192. They participated in the response to the hit and run incident involving Ms. Edmondson's vehicle that was reported by Tara Sampson. Officers Guju and Gronewald attempted to intercept the fleeing vehicle based on information they had about its direction of travel in relationship to their respective locations at the time of the call. VRP 150-51; 179.

Officer Guju located a Ford Explorer which matched the vehicle description he received from dispatch parked at 602 East Yakima, the location of a closed business formerly called "The Depot." VRP 151. He was driving a marked patrol vehicle and was the first officer to arrive. VRP 155. Upon arrival, Officer Guju observed a group of five to ten people gathered at the front entrance to the building near where the Explorer was parked, many of whom appeared transient/homeless. VRP 155. As Officer Guju's vehicle approached the people, a single person among those gathered there walked away from him. VRP 155. The subject's behavior

was odd to the officer because none of the other people tried to leave as he arrived. VRP 155.

Officer Guju identified himself as a police officer and told the man who was walking away from him that he was no longer free to leave. VRP 157. The subject ignored the officer's command to stop and continued to walk away. VRP 157. Although he had not been asked any questions or accused of a driving offense, the subject said, "I wasn't driving." VRP 157. During his encounter with the subject, Officer Guju recognized him as Javier Giles on the basis of previous contacts with him involving an Explorer. VRP 156. As Javier Giles was walking away from Officer Guju, Officer Gronewald arrived. VRP 184-85. Officer Gronewald intercepted Mr. Giles to assist with detaining him. VRP 185. At this time, Officer Schad arrived on scene as well to assist Officers Guju and Gronewald with detaining Mr. Giles. VRP 193-94.

When near Javier Giles, all three officers detected the odor of alcohol coming from him. VRP 159; 186; 195. Officers Guju and Gronewald both testified that Mr. Giles' speech was slurred. VRP 159; 186. Their observations have significance because each of the three officers had training and experience in detecting impaired drivers at the basic law enforcement academy; and Officers Guju and Gronewald had additional

training from a specialized DUI investigation course called ARIDE<sup>1</sup>. VRP 148-49; 174-75; 191.

During a pat-down search of Mr. Giles, Officer Guju discovered a Ford-branded car key on a lanyard around his neck. VRP 159. Officer Guju tried the key in the door of the Explorer at the scene, and it worked to lock and unlock its doors. VRP 159-60. While detained by the officers, Mr. Giles repeatedly claimed he had not been driving and was yelling expletives at them. VRP 194. After the pat-down search of Mr. Giles, he was detained in Officer Schad's patrol vehicle while the officers continued their investigation. VRP 195.

Because the officers believed that Mr. Giles had been driving while under the influence of alcohol, they were required to impound his vehicle. VRP 160. An investigation into the Ford Explorer at the scene revealed that it was registered to Javier Giles. VRP 162. During a search of the vehicle, officers located 3 Steel Reserve cans and a fifth of Johnny Walker on the front passenger seat floorboard. VRP 162, 165. Officer Guju did not see a functional ignition interlock device in the Explorer. VRP 165. During the search, Officer Guju detected a strong odor of alcoholic intoxicants coming from inside the vehicle, even when it was unoccupied. VRP 168.

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<sup>1</sup> ARIDE stands for "Advanced Roadside Impaired Driving Enforcement." VRP 175

When Officer Schad returned to his vehicle where Javier Giles was detained, he smelled a strong odor of alcohol. VRP 196-97. Mr. Giles' eyes were bloodshot, which Officer Schad testified was an additional indication that Mr. Giles consumed alcohol. VRP 197-98. When asked if he had consumed alcohol, Mr. Giles admitted he had, but claimed he only consumed one beer. VRP 198. Mr. Giles refused to submit to a portable breath test at the scene, and Officer Schad did not ask him to perform field sobriety tests because he felt it was unsafe to let Mr. Giles out of the handcuffs. VRP 198.

Officer Schad arrested and transported Mr. Giles to jail. VRP 199-200. During transportation, he heard what sounded like Mr. Giles kicking the inside of the patrol vehicle. VRP 199. At the jail, after the implied consent process, Javier Giles refused to submit to an evidentiary breath test. VRP 203-206. After Mr. Giles' refusal to submit to the evidentiary breath test, his blood was drawn pursuant to a search warrant at 3:27 a.m. VRP 208-15. The blood was tested by Dawn Sklerov of the toxicology laboratory to be .091 grams per 100 milliliters. VRP 263.

At trial, the State presented the above facts, and the defense focused solely upon the lack of direct evidence of driving. Defense counsel's only questions of the two civilian eyewitnesses and responding officers involved whether any of them specifically saw Mr. Giles driving the car. VRP 131;

139; 168; 188; 216. The defense did not cross examine the toxicology witness who presented the blood results. VRP 272. At halftime, the defense moved to dismiss counts 1-3 for lack of evidence that Mr. Giles was the driver; and the trial court denied that motion. VRP 274-75. After denial of the halftime motion to dismiss, the defendant did not call any witnesses. VRP 279. The jury found the defendant guilty of all charges, and he timely appealed.

#### **IV. ARGUMENT**

At trial, the State proved beyond a reasonable doubt that, on November 24, 2017, Javier Giles drove his Ford Explorer in the City of Yakima. The State proved that he drove while he was under the influence of, or affected by, alcohol. The State proved his license was suspended and not eligible for reinstatement and that his car lacked a functioning ignition interlock device as required by the Department of Licensing. The State proved that Mr. Giles was in an accident with an unattended vehicle and failed to locate its owner or leave written notice of his name and address.

The scope of this appeal is narrow because Giles challenges only the sufficiency of the evidence identifying him as the driver of the vehicle. (Appellant's Brief, p. 4 "The sole issue on appeal is whether the State presented sufficient evidence to prove Giles' identity as the driver of the

vehicle.”). The Appellant does not assign error to the jury’s determination that he was under the influence of or affected by alcohol, that his license was suspended and not eligible for reinstatement, that his Ford Explorer did not have a functioning interlock device, or that the driver of the Ford Explorer did not stop at the scene of the accident to locate its owner or leave written notice of the driver’s name and address. His sole contention is that the State did not prove he was the driver.

This Court’s inquiry into the sufficiency of the evidence involves ascertaining “whether, after viewing the evidence in a light most favorable to the State, any rational trier of fact could have found the essential elements of the charged crime beyond a reasonable doubt.” *State v. Rempel*, 114 Wn.2d 77, 82 (1990) (citing *State v. Green*, 94 Wn.2d 216, 221 (1980)). This approach protects the constitutional standard of proof beyond a reasonable doubt. *Green*, at 221.

When claiming insufficiency of the evidence, the defendant admits the truth of the State’s evidence and all inferences that can reasonably be drawn therefrom. The appellate court must view the evidence in a light most favorable to the State and determine whether a rational trier of fact could have found the essential elements of the charge proved beyond a reasonable doubt.

*State v. Myers*, 133 Wn.2d 26 (1997) (citing *State v. Salinas*, 119 Wn.2d 192, 201 (1992)). “In determining the sufficiency of the evidence,

circumstantial evidence is not to be considered any less reliable than direct evidence.” *State v. Delmarter*, 94 Wn.2d 634, 638 (1980) (citing *State v. Gosby*, 85 Wn.2d 758 (1975)). “While a conviction may be sustained solely on circumstantial evidence, the circumstances must be unequivocal and inconsistent with innocence. *State v. Weaver*, 60 Wn.2d 87, 88 (1962) (citing *State v. James*, 58 Wn.2d 383, 363 (1961). Reviewing courts “defer to the jury ‘on issues of conflicting testimony, credibility of witnesses, and the persuasiveness of the evidence.’” *State v. Andy*, 182 Wn.2d 294, 303 (2014) (quoting *State v. Thomas*, 150 Wn.2d 821 (2004)).

Competent evidence supported the jury’s determination that Mr. Giles was driving his vehicle on November 24, 2017, in the City of Yakima:

- Officers located the vehicle at night, parked at a closed business within minutes after two witnesses reported seeing a vehicle matching its description leaving the scene of a collision with a parked car. VRP 122-23; 133-35; 150-51.
- Officer Guju recognized Javier Giles from previous contacts involving a Ford Explorer, the same type of vehicle as was found at the scene where Mr. Giles was present shortly after the reported motor vehicle accident. VRP 156.
- Javier Giles evinced consciousness of guilt by trying to leave the location of his parked vehicle when officers arrived; and by spontaneously denying having driven the vehicle before any officer asked a single question or did anything to indicate they were investigating an offense involving a motor vehicle. VRP 155-57.
- The vehicle was registered to Javier Giles, and the address on the registration matched the address on his driver’s license. VRP 162-65.

- When Javier Giles was located near the vehicle, he had its key in his possession. VRP 158-60.
- The only other people present at the scene appeared transient/homeless, and no person testified that any of them claimed ownership of the vehicle or took an interest in it when the officers searched and impounded the vehicle. VRP 155.

Very little argument is needed to establish the significance of the foregoing evidence. When considering whether sufficient corroborative evidence existed to render admissible a defendant's admission to driving a vehicle, Division Two acknowledged that "where there is evidence that the registered owner was involved in, or at the scene of, the accident, *it is reasonable to infer that the registered owner was the driver.*" *Bremerton v. Corbett*, 42 Wn.App. 45, 51, fn. 7 (1985) (emphasis added) (citing *State v. Komoto*, 40 Wn.App. 200 (1985); (*State v. Smith*, 31 Or.App. 321, 570 P.2d 409 (1977); *State v. Campbell*, 44 Or.App. 3, 604 P.2d 1266 (1980)). Here, Mr. Giles was near his parked vehicle shortly after the vehicle had fled from the location of an accident. In addition to his presence near the vehicle which was registered to him, the fact that he possessed the key to the vehicle further supports the jury's reasonable, non-speculative inference that he was the person who had been driving the vehicle before it was parked at that location.

The inference that Mr. Giles was the driver of the vehicle is even more reasonable and non-speculative in light of the consciousness of guilt revealed by his attempted flight from the scene and unsolicited denial of having driven the vehicle. Discussing evidence of flight as consciousness of guilt, the Washington Supreme Court wrote:

The rationale of the principle is that flight is an instinctive or impulsive reaction to a consciousness of guilt **or is a deliberate attempt to avoid arrest and prosecution.** The law makes no nice or refined distinction as to the manner or mode of flight, and the range of circumstances which may be shown as evidence of flight is broad. However, the circumstance or inference of flight must be substantial and real. It may not be speculative, conjectural, or fanciful.

*State v. Bruton*, 66 Wn.2d 111, 112-13 (1965) (citations omitted) (emphasis added). Division One employed an analytical framework for assessing whether evidence of flight manifests consciousness of guilt:

[T]he probative value of evidence of flight as circumstantial evidence of guilt depends upon the degree of confidence with which four inferences can be drawn: (1) from the defendant's behavior to flight; (2) from flight to consciousness of guilt; (3) from consciousness of guilt to consciousness of guilt concerning the crime charged; and (4) from consciousness of guilt concerning the crime charged to actual guilt of the crime charged.

*State v. Freeburg*, 105 Wn.App. 492, 498 (2001) (citing *United States v. Myers*, 550 F.2d 1036, 1049 (5th Cir. 1977)).

This Court can confidently infer that (1) Mr. Giles' behavior was "flight" because he promptly tried to leave the location as soon as Officer Guju arrived. The inference that his movement was "flight" was further supported by the fact that he continued to walk away when Officer Guju ordered him to stop. VRP 155-56. The Court can also infer that (2) Mr. Giles' flight manifested consciousness of guilt because, as he tried to flee the scene, Mr. Giles blurted out that he was not driving the vehicle, before having been asked a single question<sup>2</sup> about the vehicle or his activities related thereto. VRP 157. Mr. Giles' denial of having driven the vehicle further supports the inference that (3) his consciousness of guilt was related to guilt concerning the crimes charged. Mr. Giles' unsolicited denial of having driven the vehicle, offered while he was trying get away from officers at the scene, inextricably tied his flight to consciousness of guilt for a driving offense. An inference regarding Giles' (4) actual guilt concerning the crimes requires no meaningful effort. Mr. Giles first wanted to get away from the scene of the accident to avoid arrest and prosecution. He continued his effort to avoid arrest and prosecution by trying to get away from the

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<sup>2</sup> In *Bremerton v. Corbett*, Division Two assigned significance to the fact that a defendant's statement regarding driving comes before the individual is being questioned as a suspect in the driving-related crime. 45 Wn.App. at 50-51.

officers, dissociate himself from the vehicle, and avoid being tested for alcohol consumption. Once detained, he refused both the portable and evidentiary breath tests. VRP 198, 208. This Court can confidently view Mr. Giles' behavior when approached by officers as flight evidencing consciousness of guilt as to the charged crimes.

Contrary to the Appellant's assertion, the jury's determination that Mr. Giles was the driver of the vehicle was not speculative. Nor did it require some significant leap of logic. Appellant erroneously offers *State v. Salas*, 127 Wn.2d 173 (1995) and *State v. Danielson*, 37 Wn.App. 469 (1984), two cases in which circumstantial evidence was held sufficient to establish the identity of the driver, as if these two cases establish some quantum of evidence necessary to circumstantially prove that a person was driving a vehicle. (Appellant's brief pp. 5-8). *Salas* and *Danielson* are unavailing to the appellant because those cases merely outline two instances in which circumstantial evidence was sufficient to support a jury's verdict. The cases do not establish a "circumstantial evidence threshold" for evidence of driving. Notably, Giles fails to cite a single case where evidence, such as that discussed herein, was ever held insufficient to support a jury's determination that a defendant was the driver of the vehicle. As required in a criminal case, the circumstantial evidence presented against Giles was inconsistent with any theory of innocence and unequivocally

supported the jury's reasonable and non-speculative determination that he was the driver of the vehicle.

## **V. CONCLUSION**

This Court should affirm Mr. Giles' convictions because the State presented sufficient evidence to support the jury's determination that he was the driver of the vehicle; and the appellant has not presented any argument disputing the sufficiency of the other evidence presented at trial. Mr. Giles was the registered owner of the vehicle involved in a collision and was found near his damaged parked vehicle in possession of its key a short time after it had been observed by two witnesses leaving the scene of the collision. He revealed consciousness of guilt by fleeing the location of his parked vehicle when officers arrived and denying having driven the vehicle before any kind of inquiry was made by the responding law enforcement officers. All the evidence pointed to the reasonable conclusion that he was the driver of the vehicle. Moreover, his license was suspended and not eligible for reinstatement. He appeared intoxicated, admitted to consuming alcohol, alcohol was found in his parked vehicle, and his vehicle lacked a functioning ignition interlock device. A blood test revealed that his blood alcohol level was above the legal limit. Each of the jury's verdicts rested upon competent, non-speculative, proof beyond a reasonable doubt. This Court should affirm Mr. Giles' convictions.

Respectfully submitted this 2nd day of August, 2019.

A handwritten signature in black ink, appearing to be 'Bret Roberts', written over a horizontal line.

BRET ROBERTS, WSBA 40628  
Deputy Prosecuting Attorney

DECLARATION OF SERVICE

I, Bret Roberts, state that on August 2, 2019, by previous agreement of the parties, I emailed a copy of BRIEF OF RESPONDENT to Andrea Burkhart at andrea@2.arrows.net.

I certify under penalty of perjury under the laws of the state of Washington that the foregoing is true and correct.

DATED this 2<sup>nd</sup> day of August, 2019, at Yakima, Washington.



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**August 02, 2019 - 1:16 PM**

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**Filed with Court:** Court of Appeals Division III  
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**Appellate Court Case Title:** State of Washington v. Javier Giles  
**Superior Court Case Number:** 17-1-02319-7

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