

FILED
Court of Appeals
Division III
State of Washington
1/28/2020 8:00 AM

NO. 36782-7-III

COURT OF APPEALS, DIVISION III
OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,

Respondent,

v.

JOHN BRADLEY RAYMOND,

Appellant.

BRIEF OF RESPONDENT

David B. Trefry WSBA #16050
Senior Deputy Prosecuting Attorney
Attorney for Respondent

JOSEPH A. BRUSIC
Yakima County Prosecuting Attorney
128 N. 2d St. Rm. 329
Yakima, WA 98901-2621

TABLE OF CONTENTS

	PAGE
TABLE OF AUTHORITIES	ii-iii
I. <u>ASSIGNMENTS OF ERROR</u>	1
A. <u>ISSUES PRESENTED BY ASSIGNMENTS OF ERROR</u>	1
1. The evidence was insufficient to support the conviction for Attempting to Elude a Pursing Police Vehicle	1
2. The trial court erred when it refused to instruct the jury with the additional instruction defining “immediately”	1
B. <u>ANSWERS TO ASSIGNMENTS OF ERROR</u>	
1. The State supplied sufficient evidence to convict Raymond as charged.	1
2. The trial court did not commit error when it refused the additional instruction.	1
II. <u>STATEMENT OF THE CASE</u>	1
III. <u>ARGUMENT</u>	11
Response to allegation one – The evidence was insufficient to support the conviction.....	11
Response to allegation two – There was no error in the trial court’s refusal to further instruct the jury on the definition of immediately.	17
IV. <u>CONCLUSION</u>	21

TABLE OF AUTHORITIES

PAGE

Cases

Douglas v. Freeman, 117 Wn.2d 256, 814 P.2d 1160 (1991)..... 20

Petersen v. State, 100 Wn.2d 440, 671 P.2d 230 (1983) 19

State ex rel. Carroll v. Junker, 79 Wn.2d 26, 482 P.2d 775 (1971)..... 20

State v. Benn, 120 Wn.2d, 845 P.2d 289, cert. denied, 510 U.S. 944, 114 S.Ct. 382, 126 L.Ed.2d 331 (1993)..... 17

State v. Brooks, 45 Wn. App. 824, 727 P.2d 988 (1986) 13

State v. Brown, 132 Wn.2d 618, 940 P.2d 546 (1997), cert. denied, 523 U.S. 1007 (1998)..... 20

State v. Bucknell, 183 P.3d, 1080 (WA 2008)..... 11

State v. Dana, 73 Wn.2d 536-537, 439 P.2d 403 (1968) 19

State v. Delmarter, 94 Wn.2d 634, 618 P.2d 99 (1980)..... 13

State v. Drum, 168 Wn.2d 23, 225 P.3d 237 (2010)..... 12

State v. Engel, 166 Wn.2d 572, 210 P.3d 1007 (2009)..... 12

State v. Green, 94 Wn.2d, 220-21, 16 P.2d 628 (1980)..... 11

State v. Hill, 83 Wn.2d 558, 520 P.2d 618 (1974)..... 12

State v. Homan, 181 Wn.2d 105-06, 330 P.3d 182 (2014)..... 12

State v. Jackson, 137 Wn.2d 730, 976 P.2d 1229 (1999) 13

State v. Salinas, 119 Wn.2d 192, 829 P.2d 1068 (1992) 13

State v. Thomas, 150 Wn.2d 821, 83 P.3d 970 (2004)..... 12

State v. Tili, 139 Wn.2d 126, 985 P.2d 365 (1999) 20

Rules	
RCW 46.61.024	11

I. ASSIGNMENTS OF ERROR

A. ISSUES PRESENTED BY ASSIGNMENTS OF ERROR.

Appellant has raised two issues in this appeal. Those assignments of error can be summarized as follows:

1. The State presented insufficient evidence to prove the charge of attempting to elude a police vehicle.
2. The court denied Raymond his right to a fair trial by refusing to instruct the jury on the definition of “immediately.”

B. ANSWERS TO ASSIGNMENTS OF ERROR.

1. The State presented sufficient evidence for the jury to find Raymond guilty of attempting to elude a pursuing police vehicle as charged.
2. The trial court correctly denied Raymond’s request to instruct the jury on the term immediately. Raymond’s theory of the case precluded the need for this instruction.

II. STATEMENT OF THE CASE

Mr. Michael Martin the manager of the Yakima County GIS Department testified regarding the information that was sent from Deputy Paganelli’s patrol vehicle during this pursuit. RP 131-32. His testimony covered a map which was admitted that showed the route of the pursuit and a portion of that map set out the time and the speed of the deputy’s vehicle at each time. RP 133-7. His testimony was that Dep. Paganelli was initially travelling north on North Wenas Road, it began to slow and

then slowed rapidly, turned around and then headed south on North Wenas Road. RP 133-34. The deputy's vehicle went from 39 mph to a stop, the lowest actual speed recorded was 7 mph. RP 137-8. The highest record speed for Dep. Paganelli's patrol vehicle was 80 mph. RP 137.

He also testified that the road was not straight and that there was vegetation on the side of North Wenas Road where this elude occurred. RP 142-3.

Deputy Justin Paganelli was working patrol around midnight on April 21, 2017. He was driving a fully marked police car, a Ford Interceptor SUV. In the car with the deputy was his K9 partner. The SUV had overhead lights, lights on the front grill and lights on the back window. Deputy Paganelli testified that he had been involved in approximately 30-35 "self-initiated" pursuits, been a participant in between 45 and 50 pursuits in total. He was wearing his standard issue police uniform. RP 146-7. 148

His vehicle was equipped with both a multidirectional radar for the front and the back and also a hand-held LIDAR unit. The Deputy is certified to operate both of these radars. RP 147-8.

The deputy was patrolling on North Wenas between Brathovde Road and Ames Road. The deputy was familiar with this area because he patrolled it nearly every day. The posted speed limit on this road is 40

MPH. RP 149-50. His testimony what that he did not remember any inclement weather and that the area is “pretty much pitch black...[t]here’s no streetlights out there.” RP 150, 176. As previously testified to, the SUV being operated by Deputy Paganelli has a GPS unit that tracks its movement and sends out a signal every ten seconds recording speed, location and general direction of travel. RP 150.

The deputy testified as to the travel of his vehicle from 11:50 p.m. on April 20 (the VRP indicates “a.m.”) until 12:04 a.m. on April 21, 2017. At 12:03 a.m. the deputy was on North Wenas headed towards the town of Selah. At that time, he observed a vehicle he testified “...appeared to be going at a high rate of speed. I looked at my radar display. It displayed 78 miles per hour in a 40 zone.” The defendant was far enough away that the deputy “...had enough time to stop (his) vehicle, wait(ing) for him to pass and then turn around and perform a traffic stop.” RP 151, 172-3. He testified that this section of the road has two corners and in between kind of straightens out. The Deputy was at the southern end and could see the defendant “just prior to the corner.” PR 151-2. The deputy kept his radar on during while he was driving, and the unit has both forward and rear facing capability and it displays the speed as the deputy is driving. Once again, the defendant’s speed was 78 mph. RP 152, 175. The deputy agreed with Raymond’s counsel when counsel stated that Raymond was

“...flying by you.” RP 174. The speed is posted in the section of road traveled by the defendant. RP 153. Deputy Paganelli confirmed that the section of the road the defendant was traveling had corners and it curved. He testified that common practice would be to slow in this section to avoid sliding off the roadway and causing an accident. RP 155-6.

The deputy testified that he had pull his patrol vehicle over and was stopped before the defendant passed his location. The deputy had already determined that he was going to stop the speeding vehicle and had activated his emergency lights and siren before the defendant passed the location were the deputy was pulled over and stopped. He further testified that as the defendant passed his location, he did not see any brake lights activate on the defendant’s car. RP 156. The deputy testified that the defendant showed no signs of slowing down and in fact appeared to be speeding up. The deputy lost sight of the defendant through a section of the road that was a corner and that he was able to again see the defendant’s car after coming out of that second corner, at which time the officer was traveling at 57 miles per hour. RP 158

Soon after this section of the road the deputy’s speed was down to 31 miles per hour. He testified that at that time he was observing Raymond quickly slow down at what later turned out to be Raymond’s home address. The decrease in speed was so severe that the deputy

observed that the defendant's car slid from the pavement onto the gravel driveway, sliding sideways, and almost hitting a fence. RP 159-60

The deputy was still a distance behind Raymond's vehicle as that car entered the drive-way. The deputy testified that he finally caught up with Raymond's vehicle after it had entered the driveway to his residence and had come to a stop in front of that home. RP 159. By the time the deputy came up behind Raymond's vehicle Raymond had turned off the headlights.

The deputy further testified "I could see his brake lights. He was still a little ways ahead of me. I was trying to catch up. I could see the brake lights activated and the vehicle slid sideways. It was a gravel driveway. He was going too fast to enter that driveway at those speeds... Once he was in the driveway, it appeared that he had turned off the headlights. The car was blacked out." The vehicle continued to move down the long driveway with the lights blacked out driving towards the house. RP 159-60. Deputy Paganelli testified that he estimated the pursuit covered approximately one mile and that during the pursuit Raymond never attempted to slow down or stop until he was at his own driveway. RP 165. 100

The car came to a halt in front of the residence and the door flew open. The deputy did not know whose residence they were at. He drew

his pistol because he did not know what Raymond was doing or why Raymond was trying to hide from the deputy. He ordered Raymond to place his hands on top of the vehicle which he complied with initially, however Raymond continued to place his hands back inside the car. RP 161, 182. This continued and finally the deputy made it up to the car door and grabbed Raymond's hand, took him out of the vehicle, put him on the ground and placed him under arrest. The deputy testified the reason he drew his weapon was "[d]ue to the circumstances and the time of day. It was a completely dark driveway. I was by myself. Due to the fact what he had just done, that he failed to stop for emergency vehicle, lights and siren activated, the fact that he blacked out heading down the driveway. I had no idea what he was doing. He was not complying with my commands." RP 161-62. Deputy Paganelli testified that the driveway was completely dark and there may have been a porch light on at the residence. That even after he had parked his patrol vehicle, he had left the emergency lights on. RP 162, 181. Raymond kept stating to the deputy that it was his property and that he was not going to jail. RP 164.

Deputy Paganelli identified numerous photograph exhibits of the area of the pursuit. Some of these pictures identified other roads which entered in to North Wenas road and identified at least one location on the shoulder of that road where Raymond could have safely pulled over.

When asked if Raymond could have safely pulled over at that location the deputy testified “[t]here was (sic) plenty of places.” RP 166. There were other places along the route of the pursuit, Ranchette Lane, Oakwood Lane and initially right near where the deputy had pulled over, turned his lights and siren on and waiting for the defendant’s car to pass him. RP 166-67.

On cross examination Deputy Paganelli was asked about the response by Raymond to the question the deputy asked when Raymond was finally stopped. The deputy asked why Raymond was going so fast and why he was running from the deputy. The deputy agreed that Raymond denied running from the deputy and state he was in his driveway and he was just going home. RP 169. A later exchange between defense counsel and Dep. Paganelli resulted in the following:

A. Like I said, I lost sight of him between the first corner and the second corner due to how fast he was going. He had rounded the first or the second corner prior to me being able to turn around and catch up with him.

Q. You're saying his speed increased from 78 miles per hour?

A. Yes. My lights were on. It was clear that he had observed me, and he had sped up instead of slowing down.

Q. When he passes you, you clock him at 78. How fast did he go from that point?

A. I estimated his speed near 100 miles per hour by the time he rounded that second corner and got on the straightaway.

Q. You testified that he nearly wrecked when he turned

into his driveway.

A. Yes.

Q. And he slid sideways into his driveway?

A. Yes.

Q. His driveway is gravel, right?

A. Yes.

Q. Were there slide marks in the driveway?

A. I believe there were at the very beginning of the driveway.
RP 184-5

Raymond's son testified. He stated that he was at home on the night of this incident. That the lighting in the front of the house was just a porch light which was not very bright. RP 198. He testified that he was playing video games with his gaming headset on but one ear was not completely covered. He stated he heard his father come down the driveway the normal 5 miles per hour. He stated that the first thing that drew his attention was "the siren lights" he then states "I did not hear any siren" he almost immediately states again "I started seeing the siren lights coming down the driveway...I kind of glanced over and I didn't go outside, just hearing to see (sic) what was going on." RP 200, 214-5 On redirect Raymond's son testified there was a gap between the time his father came down the driveway and when the police car came down that same driveway. "I can't describe how many minutes, probably like two to five give or take...there was a good gap of time." RP 223.

Raymond took that stand and testified. He stated that he drove home from gambling and that he was "...going a pretty good speed..." He saw a car parked on the side of the road passed it and went down the road turning into his driveway. RP 227 Raymond admitted that he was driving up to 130 miles per hour on the way home. RP 228. He testified that he continued that this speed was through the area just before where the officer testified, he had been pursuing Raymond. RP 228-9 Raymond admitted that when he passed this car parked on the side of the road he noticed there was a light bar on top. He stated that no lights came on after he drove past this parked police car. RP 229. He stated that he never saw emergency lights as he drove home. He did see those lights after he was parked in front of his house for maybe a minute or two. He stated that he never heard any siren. RP 229-30. He stated that he slowed to about 5 or maybe 10 or 15 miles per hour to get into his narrow driveway. RP 231. He next thing he knew was the deputy was yelling at him to put his hands up and then he was pulled from the car. RP 231.

On cross examination he stated he saw headlights first coming into his driveway then when the vehicle was half way down the driveway, he saw its emergency lights. RP 233-34. He confirmed that while driving home on North Wenas he was traveling at 130 miles per hour. He stated that by the time he saw Dep. Paganelli he had already slowed down. RP

237-38. He admitted that he had seen the deputy on the side of the road and saw the light bar on the top of the police car. RP 238. He stated that he slowed down in this area and agreed that he was going 78 miles per hour as he went through the area where he had seen the deputy even though he knew the posted speed limit was 40 miles per hour. He went on to testify “The vehicle was parked on the left-hand side of the road below Oakwood Road. I went around him. His lights did not come on, no headlights on, no sirens, no lights at all.” RP 240. He then went on to state that after he had gone by the office it appeared to him that the police vehicle never moved from its location. RP 240-41.

Raymond’s trial counsel stated the following in his opening “John did not notice the emergency lights until they were coming down the driveway, never heard a siren. John was not trying to elude. He was just going home. Thank you. RP 128

He closed this case stating

Where was John Raymond when the officer got there? He's in his car. He's there. He's parked. He's home. If you think about it, 13 seconds, it's such a short period of time. I mean, count 0 to 13. Think about how fast that is. It's a very short gap of time.

It is reasonable that he wouldn't see the lights. They have to prove beyond a reasonable doubt that he had knowledge that those lights were activated. RP 268

III. ARGUMENT.

1. Response to allegation one – The evidence was insufficient to support the conviction for Attempting to Elude a Pursing Police Vehicle including the specific element of recklessness.

In this appeal Raymond challenges the sufficiency of the evidence presented and whether that evidence supports jury's determination that he committed the crime of Attempting to elude a pursuing police vehicle. RCW 46.61.024. And further challenges the trial court's ruling denying Raymond's request to have an instruction of the definition of "immediately" read to the jury.

The facts presented to the jury in this case were without a doubt sufficient to meet the test set forth in, State v. Bucknell, 183 P.3d 1078, 1080 (WA 2008) "In reviewing a sufficiency of the evidence challenge, the test is whether, after viewing the evidence in a light most favorable to the jury's verdict, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. State v. Green, 94 Wn.2d 216, 220-21, 16 P.2d 628 (1980)."

To determine whether sufficient evidence supports a conviction, this court will view the evidence in the light most favorable to the prosecution and determine whether any rational fact finder could have found the elements of the crime beyond a reasonable doubt. State v.

Engel, 166 Wn.2d 572, 576, 210 P.3d 1007 (2009). When a defendant is claiming insufficient evidence, the defendant admits the truth of the State's evidence and all reasonable inferences that can be drawn from it. State v. Drum, 168 Wn.2d 23, 35, 225 P.3d 237 (2010). This court will not address certain aspects of the trial, deferring to the trier of fact on issues of conflicting testimony, witness credibility, and the persuasiveness of the evidence. State v. Thomas, 150 Wn.2d 821, 874-75, 83 P.3d 970 (2004). State v. Homan, 181 Wn.2d 102, 105-06, 330 P.3d 182 (2014). "Substantial evidence" is evidence sufficient to persuade a fair-minded person of the truth of the asserted premise. Homan, 181 Wn.2d at 106.

The testimony of the State's witnesses conflicted with that of Raymond and his son. This court ruled in State v. Hill, 83 Wn.2d 558, 520 P.2d 618 (1974), "[t]he Court will still accord an "appropriate and substantial effect" to state court "resolutions of conflicts in evidence as to the occurrence or nonoccurrence of factual events and happenings." The reason given for this is the "trial judge and jury are closest to the trial scene and thus afforded the best opportunity to evaluate contradictory testimony." (Citations omitted)

Raymond's claim of insufficiency binds him to the evidence presented by the State's and all reasonable inferences drawn in favor of the State, with circumstantial evidence and direct evidence considered equally

reliable. State v. Salinas, 119 Wn.2d 192, 201, 829 P.2d 1068 (1992);
State v. Delmarter, 94 Wn.2d 634, 638, 618 P.2d 99 (1980). The
elements of a crime can be established by both direct and circumstantial
evidence. State v. Brooks, 45 Wn. App. 824, 826, 727 P.2d 988 (1986).
One is no less valuable than the other. All reasonable inferences are
drawn in favor of the State and strongly against the defendant. See State v.
Jackson, 137 Wn.2d 712, 730, 976 P.2d 1229 (1999).

The law Raymond was prosecuted under does not include a
minimum time-duration and/or minimum distance traveled before the law
can be charged. It does not set forth that the defendant must disregard the
lives and safety of one person or twenty. The law is fairly simple. If an
officer has met the elements which are often pro forma, lights and siren
on, fully marked police vehicle, in a full uniform, with proof of the county
and state of occurrence then the “only” thing left is whether the actions of
the person charged are:

- (4) That the defendant willfully failed or refused to immediately
bring the vehicle to a stop after being signaled to stop;
- (5) That while attempting to elude a pursuing police vehicle, the
defendant drove his vehicle in a reckless manner CP 13

This crime could theoretically be charged if the entire action took
place in a one or two block area. If the person who the officer has
signaled with his lights and sirens while in his or her fully marked police

vehicle and that person were to fail to stop and merely run back and forth within the one or two block area and those actions were at time and place where the lives of others or the lives of the person charged and/or the officer were a disregard of those lives and the safety of those people the entire elude could occur in a short period of time and the physical distance could be minimal

The constant drumbeat of defense counsel that it was “only” a few minutes and it was “only” a short distance is a tactic often employed but that tactic does not negate the level of proof needed for a jury to find a defendant guilty beyond a reasonable doubt in this case.

This defendant self-admitted to traveling about 130 miles per hour and was going 78 miles per hour when spotted by the officer. This was at midnight on a pitch-black two-lane rural road that had feeder roads coming into it. This road has twists and curves and corners. The deputy did not just see Raymond for the time of the chase, he saw him in the distance and clocked his speed at that time at 78 miles per hour, he activated at least some of his emergency lights as he sat on the side of the road and had his siren activated. And yet with all of that Raymond blew past the officer still at 78 miles per hour and continued that speed, no brake lights were observed through the twists and the corners, nor did he stop at any point before he raced off the road and down a driveway. Not

once according to the testimony did Raymond ever attempt to comply with the “order” given by the lights and siren of the police car chasing him through the night on this pitch black rural two-lane road, not once did he slow or attempt to pull to the side.

This testimony supports the two elements set out above. Raymond obviously knew the deputy was behind him; the record supports that Raymond did not, although he could have, stop until he was parked in front of his house. He claims that throughout this pursuit he had absolutely no knowledge the deputy was behind him.

Another facet of Raymond’s defense trial court theory and his theory in this appeal is that he was violating the law to such a degree that he did not have the opportunity to ever pull over. That his speed was so great, whether 130 mph or 78 mph, that the only place he could “immediately” pull over was at his drive way therefore the State did not prove he did violated this element of the crime.

The testimony of Raymond himself proves the element of “recklessness.” Again, the jury does not come into the court a blank page. The testimony presented to them by Raymond alone was that he was traveling back from a night at a casino seeing how fast he could get his car to go. He testified he was traveling about 130 miles per hour at midnight on a two lane rural road. This is the very definition of reckless. And the

jury was instructed that “To operate a motor vehicle in a reckless manner means to drive in a rash or heedless manner, indifferent to the consequences.” (Instruction 5, CP 14) There is no method on this planet that a person driving a car on an open rural highway at midnight traveling 130 miles per hour or even the 78 miles per hour clocked by the deputy has not met the definition given to the jury in Instruction 5.

Raymond’s story that he saw the deputy on the side of the road at midnight when he was speeding, that he went past him at this excessive speed on this dark unlit section of rural road and thereafter apparently never looked into his rear-view mirror or if he did, he did not see this deputy running at 100 miles per hour catching up to him nor did he see all of the emergency lights on and functioning defies logic and common sense. There is not a person on the roads who drives past an officer on the side of the road, even at legal speed, who does not then peer endlessly in the rearview mirror hoping that they do not see the lights. At no time did the deputy see brake lights indicating that Raymond was even considering pulling over or stopping at any time during this pursuit.

The jury does not come into this case ignorant nor does the law ask the jury to set aside their personal knowledge and common sense. Raymond’s story was simply not believable.

The proffered defense was he was just going home. Raymond never addressed if he did or did not have a safe place to “immediately” pull off. His counsel questioning of the deputy honed in on the fact that the entire chase did not last long and the deputies report did not match his testimony. Raymond traveled nearly 2000 feet from when he saw the deputy to when he stopped. Clearly this is not “immediately.” RP 140-43

Raymond’s testimony was I just did not see the emergency lights of the officer in the pitch-black rural area where there were no other sources of lighting. The jury listened to the testimony of the State, the defendant and the defendant’s son and found that Raymond’s actions were such that beyond a reasonable doubt the State had proven the crime attempting to elude a pursuing police officer/vehicle.

2. Response to allegation two – The court did not err when it denied Raymond’s request for an additional instruction regarding the term “immediately.”

This court will review claimed instructional errors de novo, evaluating the instruction "in the context of the instructions as a whole." State v. Benn, 120 Wn.2d 631, 654-55, 845 P.2d 289, cert. denied, 510 U.S. 944, 114 S.Ct. 382, 126 L.Ed.2d 331 (1993). The instructions as a whole must provide an accurate statement of the law and allow each party to argue its theory of the case to the extent that it is supported by the evidence. Benn, 120 Wn.2d at 654, 845 P.2d 289.

Raymond argues that the court erred when it refused to instruct the jury regarding the term “immediately.” The defense here was that Raymond did not see or hear the deputy’s signals for him to pull over. Raymond took the stand and testified under oath that he did not hear a siren while he traveled this one mile and did not know that he was being followed at any point in time. His testimony was that his first observation of the deputy was after he had entered his driveway and was parked.

Therefore, the alleged failure on the part of the court of instruct was based on the facts presented or not presented by Raymond as well as the testimony from the State’s witnesses.

Raymond presented the trial court with his proposed instruction regarding the term “immediately” and took exception to the court’s refusal to instruct the jury. The following is the court’s statement regarding that proposal and the court’s refusal to give the instruction:

THE COURT: Mr. Webster, any exceptions to instructions given or not given?

MR. WEBSTER: Your Honor, the only exception is I had proposed to define immediately.

THE COURT: Yeah.

MR. WEBSTER: I cited case law.

THE COURT: State vs. Sherman.

MR. WEBSTER: Your Honor, my concern with that language, I don't think it's clear from the WPIC. I think a definition of immediately explains that it doesn't mean instantaneous. There's a little more grace there. I don't think that's clear from the jury instructions. That's why I proposed it. I think it defines it, I guess, better for the jury.

THE COURT: I read the Sherman case. Sherman did deal with the issue of whether immediately was vague, void of vagueness. The court ultimately decided that it was not. The circumstances there, what kind of drove that, the circumstances of the case are what drove that particular conclusion.

In this case, we have two versions of the events, the one with Deputy Paganelli and another one with Mr. Raymond. Under Deputy Paganelli's version, I mean, the issue whether the pulling over was immediately or not is really irrelevant.

Under Mr. Raymond's version of the events, he maintains that he didn't know he was being pursued. He didn't see any lights and hear a siren. So, you know, he simply went home and pulled into his driveway.

I don't think either scenario implicates this issue of whether the vehicle was pulled over immediately. It's not a situation where somebody is actually looking for a good place to pull over out of traffic or something like that.

That would implicate the Sherman case and the clarification of the term immediately. That isn't this case.

Under the circumstances, I think giving the proposed instruction would be unnecessary and would simply serve to confuse the jury about the applicable law. That's why I didn't give it. RP 245-7

The law in this area is well settled. Jury instructions are sufficient if they correctly state the law, are not misleading, and allow the parties to argue their respective theories of the case. State v. Dana, 73 Wn.2d 533, 536-537, 439 P.2d 403 (1968). The trial court also is granted broad discretion in determining the wording and number of jury instructions. Petersen v. State, 100 Wn.2d 421, 440, 671 P.2d 230 (1983). "Instructions satisfy the requirement of a fair trial when, taken as a whole, they properly inform the jury of the applicable law, are not misleading, and permit the

defendant to argue his theory of the case." State v. Tili, 139 Wn.2d 107, 126, 985 P.2d 365 (1999). Discretion is abused when it is exercised on untenable grounds or for untenable reasons. State ex rel. Carroll v. Junker, 79 Wn.2d 12, 26, 482 P.2d 775 (1971). In wording jury instructions, trial courts have considerable discretion. State v. Brown, 132 Wn.2d 529, 618, 940 P.2d 546 (1997), cert. denied, 523 U.S. 1007 (1998). A jury instruction is sufficient if it properly informs the jury of the applicable law without misleading the jury and permits each party to argue its theory of the case. Id See Douglas v. Freeman, 117 Wn.2d 242, 256, 814 P.2d 1160 (1991).

There was no error on the part of the trial court when it refused to further instruct the jury. The instruction which were given clearly allowed Raymond to argue his theory of the case. That theory was that he simply heard and saw nothing. As set forth above:

Raymond admitted that when he passed this car parked on the side of the road he noticed there was a light bar on top.He stated that no lights came on after he drove past this parked police car. RP 229.

....He stated that he never saw emergency lights as he drove home. He did see those lights after he was parked in front of his house for maybe a minute or two. He stated that he never heard any siren. RP 229-30.

....He stated that he slowed to about 5 or maybe 10 or 15 miles per hour to get into his narrow driveway. RP 231.

....The next thing he knew was the deputy was yelling at him to put his hands up and then he was pulled from the

car. RP 231.

.....On cross examination he stated he say headlights first coming into his driveway then when the vehicle was half way down the driveway, he saw its emergency lights. RP 233-34.”

There could be no harm to his presentation of a defense when this instruction had nothing whatsoever to do with that theory.

IV. CONCLUSION

This defendant argues he should be afforded a benefit for having broken the law. His argument that the State did not prove he was acting recklessly is belied by his own words which demonstrate that he was traveling 130 mph and “slowed” to “only” 78 mph in a section of dark rural road in the middle of the night. That he was just going home and that is what he did, therefore traveling at this rate of speed where and when he did was not reckless.

He further argues that because he was violating the law to such a degree, that he traveled nearly 2000 feet in a matter of seconds, between the time that he saw the police officer’s vehicle and the time he stopped in his driveway that because it was “only” a few seconds he really did not have occasion to pull over or he did “immediately” stop when he was in his driveway parked. That his actions were innocent because he never saw the emergency lights nor heard the siren on the deputy’s car.

For the reasons set forth above this court should deny this appeal

and affirm the actions of the trial court.

Respectfully submitted this 27th day of January 2020,

By: s/ David B. Trefry
DAVID B. TREFRY WSBA #16050
Deputy Prosecuting Attorney
P.O. Box 4846, Spokane, WA 99220
Telephone: 1-509-534-3505
E-mail: David.Trefry@co.yakima.wa.us

I, David B. Trefry state that on January 27, 2020, I emailed a copy of the Respondent's Brief, to Ms. Tiffinie B. Ma at wapofficemail@washapp.org

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

DATED this 27th day of January, 2020 at Spokane, Washington.

s/ David B. Trefry
By: DAVID B. TREFRY WSBA# 16050
Deputy Prosecuting Attorney
P.O. Box 4846, Spokane, WA 99220
Telephone: 1-509-534-3505
E-mail: David.Trefry@co.yakima.wa.us

YAKIMA COUNTY PROSECUTORS OFFICE

January 27, 2020 - 5:28 PM

Transmittal Information

Filed with Court: Court of Appeals Division III
Appellate Court Case Number: 36782-7
Appellate Court Case Title: State of Washington v. John Bradley Raymond
Superior Court Case Number: 17-1-00766-3

The following documents have been uploaded:

- 367827_Briefs_20200127172753D3261744_9370.pdf
This File Contains:
Briefs - Respondents
The Original File Name was Raymond 367827 Brief.pdf

A copy of the uploaded files will be sent to:

- greg@washapp.org
- tiffinie@washapp.org
- wapofficemail@washapp.org

Comments:

Sender Name: David Trefry - Email: David.Trefry@co.yakima.wa.us
Address:
PO BOX 4846
SPOKANE, WA, 99220-0846
Phone: 509-534-3505

Note: The Filing Id is 20200127172753D3261744