92105-9

SUPREME COURT or COURT OF APPEALS
DIVISION II

46168-4-II

OF THE STATE OF WASHINGTON

NO:

State of Washington, Respondent,

v

Charles Sorensen, Pro Se, Petitioner,

and

Charles Sorensen, Defendant.

MOTION FOR DISCRETIONARY REVIEW

Charles T. Sorensen 368871 First, MI, Last, DOC#

Hoh B14 Housing Unit

Olympic Correction Center Facility

11235 Hoh Mainline Address

Forks, WA 98331 City, St, Zip

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Table of Authorities

Washington Supreme Court

Washington Court of Appeals

Statutes

A. Identity of Petitioner.

Charles Sorensen, Petitioner, asks this court to accept review of the decision or parts of the decision designated in Part B of this motion.

B. Decision.

[Identify the decision or parts of decision which the party wants reviewed by the type of decision, the court entering or filing the decision, the date entered or filed, and the date and a description of any order granting or denying motions made after the decision such as a motion for reconsideration. The substance of the decision may also be described: for example, "The decision restrained defendant from using any of her assets for any purpose other than living expenses. Defendant is thus restrained from using her assets to pay fees and costs to defend against plaintiff's suit for a claimed conversion of funds from a joint bank account. "]

Petitioner asks this court to review Court of Appeals, Division II Unpublished Opinion in State v. Charles Thomas Sorensen No. 46168-4-II (slip Op. filed July 14, 2015.

A copy of the Opinion is in the Appendix at pages A-1 through 14.

C. Issues Presented for Review.

[Define the issues which the court is asked to decide if review is granted.]

1. A conviction for attempting to elude requires proof the accused person actually tried to elude the trooper. Here, the evidence did not show that Mr. Sorensen tried to flee from or avoid the trooper. Did the conviction for attempting to elude violate Mr. Sorensen's Fourteenth Amendment right to due process because the evidence failed to establish an essential element of the offense? RAP 13.4 (b)(1)(2)(3)

D. Statement of Case.

[Write a statement of the procedure below and the facts. The statement should be brief and contain only material relevant to the motion. If the motion is directed to a Court of Appeals decision, the statement should contain appropriate references to the record on review. If the motion is directed to a trial court decision, reference should be made to portions of the trial court record. Portions of the trial court record may be placed in the Appendix. Certified copies are not necessary. If portions of the trial court record are placed in the Appendix, the portions should be identified here with reference to the pages in the Appendix where the portions of the record appear.]

The State charged Sorensen with several offenses, including attempting to elude a pursuing police vehicle. Sorensen pleaded not guilty. A CrR 3.6 hearing on motion to suppress evidence was held on March 5, 2014. A memorandum opinion was filed on April 2, 2014 denying the motion. On April 14, 2014 the case proceeded to a stipulated fact bench trial. The trial court found Sorensen guilty as charged.

On October 30, 2013 at 9:50pm WSP trooper Joren Barraclough responded to a "one vehicle unknown injury collision." Report of Proceeding, March 5, 2014, (RP. 8). As the trooper approached the area he saw a truck with the front tires on the shoulder and bed in the westbound lane. (RP. 9) He observed this briefly before Sorensen finished backing out of the driveway (RP. 29) and proceeded normally down Sedgwick Road. (RP. 31). As the trooper passed Sorensen he observed brush attached to the bumper and performed a U-turn while activating his lights (RP. 9). There was no other traffic. (RP. 34). The trooper followed Sorensen for over two miles on Sedgwick. (Video - exhibit 3).

It was stipulated at some point Sorensen drove 5mph over the speed limit, failed to yield and wove within his lane. Clerk's Papers,

(CP 258 (8)). It was further stipulated that while on his way home while turning on Long Lake rd. he made a wide turn without signaling and almost went over a bank. (CP 258(9)). He drove a short while further on Long Lake before turning on Clover Valley rd. where he pulled over. (CP 258(10)).

In its Memorandum of Opinion, April 2, 2014 (CP 250-256) the trial court ruled that Sorensen was seized pursuant to Gantt when the trooper activated his lights. (CP 252). It further ruled the State's argued for exception to the warrantless seizure, a Terry stop, was not reasonable because there were insufficient articulable facts. (CP 252). However the court then introduced and ruled on its own argument for exception to the seizure under RCW 10.31.100. (CP 252). It found the warrantless seizure appropriate because it said Sorensen had "failed to comply with RCW 46.61.024 due to his fleeing and weaving in and out of lanes, there was probable cause to support an arrest for the violation of RCW 46.61.024". (CP 254-55).

E. Argument why review should be accepted.

[The argument should be short and concise and supported by authority. The argument should be directed to the considerations for accepting review set out in rule 2.3(b) for review of a trial court decision and rule 13.5(b) for review of a decision or the Court of Appeals.]

Did the appellate court err when it affirmed the trial courts evidentiary ruling that there was evidence to support an independant basis for the seizure? That Sorensen was fleeing?

The Supreme court reviews evidentiary rulings under an abuse of discretion standard. State v. Garcia 179 Wn. 2d 828 (2014). The untenable grounds basis for finding an abuse of discretion applies if trial court's factual findings are unsupported by the

record. State v. Lamb 175 Wn.2d 121, 285 P.3d 27 (2012).

In its Memorandum Opinion, April 2, 2014, the trial court ruled "where the defendant here failed to comply with RCW 46.61.024 due to his fleeing from the trooper and weaving in and out of lanes, there was probable cause to support an arrest for violation of RCW 46.61.024". (CP 254-55). However in the suppression hearing the only witness, trooper Barrackough, testified Sorensen failed to yield and was weaving within his lane. (Report of Proceeding, March 5, 2014 at 11).

In State v. Tarica 59 Wn. App. 368, 798 P.2d 296 (1990), the court held "police officer did not have sufficient evidence to support custodial arrest of defendant for attempting to elude a pursuing police vehicle, even though two traffic infractions officer viewed defendant commit were sufficient to support stop of defendant; defendant's exceeding speed limit by five miles per hour and straddling both lanes did not constitute crime of attempting to elude a pursuing police vehicle, and officers belief that defendant was trying to elude them was no more than an inarticulable hunch."

The trial court repeatedly alledged Sorensen "fled" or was fleeing" CP 251 (3), 255 (1), 256 (5), yet does not refer to any evidence or testimony in the record of this. It also claimed "the defendant continued to refuse to stop his vehicle", (CP 255 (28)), yet the trooper testified he did stop (CP 11) and the court does not say at what point it was shown Sorensen had knowledge of the trooper to "refuse" to stop. In State v. Tandecki 120 Wn. App 303, 84 P.3d 1262 (2004) citing State v. Stayton 39 Wn. App. 49-50, 691 P.2d 596 (1984) the court ruled there can be no attempt to elude unless there is the prerequisite knowledge that there is a pursuing police

vehicle. There can be no willful failure to stop unless there is the prerequisite knowledge that a statutorily appropriate signal has been given by a statutorily appropriate police officer. The trooper was in an unmarked car with concealed lights at night (RP 16).

The court also asserts that Sorensen was "attempting to avoid the officer" (CP 255(29)) but does not say where in the record the evidence supports this assertion. In the only testimony / evidence related to this, the one witness, trooper Barraclough testified Sorensen failed to yield to him, not flee or avoid him. (RP 11). In State v. Bauer 92 Wn. 2d 162, 595 P.2d 544, (1979), the court held presumption may be used to shift initial burden of producing evidence regarding element of crime to defendant, but may not operate to relieve prosecution of its burden of persuasion on that element by proof beyond reasonable doubt.

F. Conclusion,

[State the relief sought if review is granted. For example: "This court should accept review for the reasons indicated in Part E and modify the restraining order to permit defendant to use her assets to pay fees and costs incurred in defending plaintiff's suit for conversion."]

This court should accept review for the reasons indicated in Part E because the evidence was insufficient to prove that Mr. Sorensen attempted to elude as an element of RCW 46.61.024, His conviction must be reversed and the charge dismissed with prejudice.

Dated this 10 day of August, 2015.

Respectfully submitted:

By: Charles Sorensen
[Name of Petitioner]

G. Appendix

1. Unpublished Opinion. Court of Appeals. July 14, 2015. pg. 1-14
2. Report of Proceedings (RP). Evidentiary Hearing. March 5, 2014
   pg. 1, 8, 9, 11, 16, 29, 31, 34
3. Memorandum Opinion. Superior Court. April 2, 2014
   pg. 1-7 clerks Papers (CP) 250-256
4. Verdict on Submission of Stipulated Facts. April 14, 2014
   pg. 2 Clerk Paper (CP) 258

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

STATE OF WASHINGTON, Respondent, v. CHARLES THOMAS SORENSEN, Plaintiff.	No. 46168-4-II UNPUBLISHED OPINION

JOHANSON, C.J. — Charles Thomas Sorensen appeals his stipulated facts trial convictions for felony driving under the influence (DUI), attempting to elude a pursuing police vehicle, second degree driving while license suspended or revoked, operation of a motor vehicle without ignition interlock device, and obstructing a law enforcement officer. He argues that (1) the evidence was insufficient to support the attempting to elude conviction because it did not establish that he was driving in a reckless manner, (2) the trial court erred in denying his CrR 3.6 motion to suppress, and (3) the trial court erred in ordering him to pay certain legal financial obligations (LFOs). In a statement of additional grounds for review[1] (SAG), Sorensen raises additional issues related to the denial of the suppression motion and sufficiency of the evidence to support the attempting to elude conviction. We hold that (1) the evidence was sufficient to support the attempting to elude

[1] RAP 10.10.

conviction, (2) the trial court did not err in denying the suppression motion, and (3) Sorensen waived his challenge to the LFO requiring him to pay costs for his appointed counsel. We affirm the convictions, but we accept the State's concession that the trial court's imposition of an LFO requiring Sorensen to pay a $100 contribution to the Kitsap County expert witness fund was error and remand to the trial court to strike this LFO.

FACTS

I. BACKGROUND[2]

At about 9:50 PM, on October 30, 2013, Jack Kimbrel was stopped at a stop sign located at the intersection of Sedgwick and Banner Road when he observed Sorensen drive around his vehicle, across Sedgwick, and off the roadway. Kimbrel called 911 and reported the collision.

Trooper Joren Barraclough arrived at Sedgwick and Banner Road 10 minutes later and saw Sorensen attempting to drive his truck out of what appeared to be a ditch. When Sorensen backed out onto Sedgwick, Trooper Barraclough observed grass and branches hanging from the truck's bumper. There was no traffic on Sedgwick at this time.

Sorensen then drove westbound on Sedgwick Road. Trooper Barraclough believed Sorensen had been involved in a collision and wanted to check to be sure Sorensen was able to drive. The trooper also believed that Sorensen had committed the traffic infractions by blocking the roadway and by driving with his wheels off the roadway. Accordingly, Trooper Barraclough activated his lights and attempted to stop Sorensen.

[2] The background facts are drawn from the stipulated facts.

Instead of stopping, Sorensen continued down Sedgwick at 50 m.p.h. while weaving within the lane and touching both the fog and centerlines. The speed limit in this area was 45 m.p.h. Trooper Barraclough continued to follow and turned on his siren when they approached Long Lake Road. Instead of stopping, Sorensen made a wide turn without signaling and nearly drove over an embankment. While driving down Long Lake Road, Sorensen continued to weave within the lane; he also crossed the fog line and the centerline. Sorensen then turned onto Clover Valley Road and stopped about 2.7 miles from where the pursuit started. Trooper Barraclough had pursued Sorensen for approximately three minutes.

After Sorensen stopped, he refused to comply with Trooper Barraclough's order to exit his vehicle. When Sorensen finally left his vehicle, he continued to refuse to comply with the trooper's instructions. Sorensen also appeared to be intoxicated. Following his arrest, officers advised him of his *Miranda*[3] rights, and Sorensen told them that although he had seen the trooper's lights and heard the siren, he did not stop because he did not want to get in trouble and was just trying to get home. A blood test later showed that Sorensen's blood alcohol level was .27.[4]

II. PROCEDURE

The State charged Sorensen with several offenses, including attempting to elude a pursuing police vehicle. Sorensen pleaded not guilty.

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[3] *Miranda v. Arizona*, 384 U.S. 436, 86 S. Ct. 1602, 16 L. Ed. 2d 694 (1966).

[4] Although Sorensen was required to have an ignition interlock device, his truck was not equipped with one. Additionally, his driver's license had been revoked.

A. SUPPRESSION MOTION

Sorensen moved to suppress all evidence in the case, arguing that he was unlawfully seized when Trooper Barraclough activated his emergency lights. At the suppression hearing, Trooper Barraclough testified for the State, and Kimbrel testified for Sorensen.

Trooper Barraclough testified that on the night of the incident, he was dispatched to a call reporting a "[o]ne vehicle unknown, injury collision." Report of Proceedings (RP) (Mar. 5, 2014) at 8. The dispatcher did not provide a description of the vehicle involved.

Trooper Barraclough arrived at the scene approximately 10 minutes later. When he arrived, he saw a white truck facing northbound in the westbound lane; the truck's bed was blocking the westbound lane. The truck's front tires were off the roadway and on the shoulder in "a slight depression" or "ditch." RP (Mar. 5, 2014) at 9. The truck reversed out of the ditch and continued westbound toward the trooper. There was no other traffic at this time.

As the truck approached, Trooper Barraclough noticed "some branches and leaves and everything that had been stuck on the front bumper of the truck." RP (Mar. 5, 2014) at 9-10. When the truck passed him, the trooper turned around, followed the truck, and turned on his emergency lights in an attempt to stop the truck.

Trooper Barraclough testified that he wanted to stop the truck because it "had been traveling with its wheels off the roadway and also been blocking the roadway." RP (Mar. 5, 2014) at 10. He further testified that because he had been dispatched to a "collision," he wanted to be sure the driver was okay and there was no other property damage. The trooper believed the truck had been in an accident because its wheels had been off the roadway in the ditch and there was brush in the truck's bumper.

When the truck did not stop, Trooper Barraclough turned on his siren. The truck still did not stop. While driving behind the truck, the trooper observed it "continually cross[ ]" the center and fog lines and weave within its lane. RP (Mar. 5, 2014) at 11. Based on this, the trooper concluded that the driver was likely impaired. When the truck finally stopped, the trooper determined that Sorensen was the driver.

Kimbrel testified that he had made the 911 call reporting "an accident on Sedgwick," in which the vehicle had "hit a ditch" or a hill. RP (Mar. 5, 2014) at 54, 59. He stated that he was stopped at the intersection of Banner and Sedgwick when Sorensen drove around him, crossed Sedgwick, and "smashed into a driveway." RP (Mar. 5, 2014) at 55. He told the 911 dispatcher the vehicle was a Toyota truck.

Based on this testimony, the trial court issued a memorandum opinion denying the motion to suppress. The trial court found that (1) the initial seizure, which occurred when the trooper first activated his emergency lights, was not a valid *Terry*[5] stop, but (2) the seizure became lawful because the trooper later had probable cause to believe that Sorensen had violated RCW 46.61.024, the attempting to elude statute.

B. STIPULATED FACTS BENCH TRIAL AND SENTENCING

The case proceeded to a stipulated facts bench trial. Based on the facts set out above, the trial court found Sorensen guilty as charged.

After the trial court signed the findings of fact and conclusions of law, defense counsel advised the trial court that he had an order appointing counsel for appeal, that Sorensen had

[5] *Terry v. Ohio*, 392 U.S. 1, 88 S. Ct. 1868, 20 L. Ed. 2d 889 (1968).

previously been found indigent, and that Sorensen was still indigent and would not be able to afford any costs related to an appeal. Neither the parties nor the court mentioned ability or inability to pay LFOs. The trial court imposed LFOs, including $1,135 for his court-appointed counsel, and $100 "Contribution-Kitsap County Expert Witness Fund [Kitsap County Ordinance 139.1991]." Clerk's Papers (CP) at 307 (alteration in original).

Sorensen appeals his convictions and the court-appointed counsel and witness fund contribution LFOs.

ANALYSIS

Sorensen argues that (1) the evidence was insufficient to support the attempting to elude conviction, (2) the trial court erred when it denied his motion to suppress, and (3) the trial court erred in imposing certain LFOs. In his SAG, he raises additional issues related to the sufficiency of the evidence and the trial court's denial of the suppression motion.

I. SUFFICIENCY OF THE EVIDENCE: ATTEMPTED ELUDING

Sorensen first argues that the evidence was insufficient to support the attempting to elude conviction because the State failed to establish beyond a reasonable doubt that he was driving in a reckless manner. In his SAG, he further argues that the evidence was insufficient because the State failed to establish beyond a reasonable doubt that he was "attempting to elude" the trooper. These arguments fail.

A. STANDARD OF REVIEW

We review sufficiency of the evidence claims for whether, when viewing the evidence in the 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. Homan*, 181 Wn.2d 102, 105,

330 P.3d 182 (2014). A sufficiency challenge admits the truth of the State's evidence and all reasonable inferences drawn from it. *Homan*, 181 Wn.2d at 106 (citing *State v. Salinas*, 119 Wn.2d 192, 201, 829 P.2d 1068 (1992)).

B. RECKLESS MANNER

RCW 46.61.024(1) provides in part,

> 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.

(Emphasis added.) "[D]riving 'in a reckless manner' means 'driving in a rash or heedless manner, indifferent to the consequences.'" *State v. Roggenkamp*, 153 Wn.2d 614, 622, 106 P.3d 196 (2005) (quoting *State v. Bowman*, 57 Wn.2d 266, 270, 271, 356 P.2d 999 (1960)).

Sorensen asserts that the evidence showed only that he (1) drove 50 m.p.h. in a 45 m.p.h. speed zone, (2) he wove within his lane, touching the center and fog lines, (3) he made a wide turn without signaling and almost drove over an embankment, and (4) he subsequently drove over the center and fog lines.[6] And he argues that "[i]n the absence of any other vehicle or pedestrian traffic, this evidence is insufficient to prove that [he] drove in a reckless manner" because it did not establish "rash or heedless driving" or "show indifference to consequences." Br. of Appellant at 9.

[6] Sorensen also notes that the evidence showed he drove through a stop sign and off the roadway prior to the trooper's arrival. Because these things happened before the pursuit, they are irrelevant to the attempted eluding charge, and we do not consider these facts.

Sorensen cites no authority establishing that the reckless driving must place any person or property in actual danger.[7] Thus, Sorensen does not show that the absence of other vehicles or pedestrians precludes a finding that he drove in a reckless manner. Furthermore, even under the higher willful and wanton standard,[8] the State is not required to prove that anyone else was actually endangered by Sorensen's conduct. *State v. Whitcomb*, 51 Wn. App. 322, 327, 753 P.2d 565 (1988).

The trial court could have reasonably concluded that weaving within a lane or driving a mere five m.p.h. over the speed limit was not driving in a reckless manner, but that was not all the trooper observed. Sorensen also turned without signaling in a manner that nearly caused him to drive over an embankment, crossed over both the fog and center lines of the roadway, and was driving while intoxicated. Although he was not driving at highly excessive speeds, these additional facts demonstrated that he was unable to safely control his vehicle, which put other persons and property at risk of harm. These facts would allow a rational trier of fact to conclude that Sorensen was driving in a rash or heedless manner, indifferent to the consequences. Accordingly, Sorensen failed to establish that there was insufficient evidence that he drove in a reckless manner and this argument fails.

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[7] The case he cites for support, *State v. Naillieux*, 158 Wn. App. 630, 643-45, 241 P.3d 1280 (2010), is inapposite because it addresses the sufficiency of a charging document, not the sufficiency of the evidence.

[8] *State v. Ridgley*, 141 Wn. App. 771, 781, 174 P.3d 105 (2007) ("reckless manner" standard contemplates a lesser mental state than that of the "willful or wanton" standard).

C. ATTEMPT TO ELUDE

In his SAG, Sorensen further argues that the evidence did not prove that he was "attempting to elude" the trooper. He asserts that at best he failed to yield, that he was just on his way home, that there was no evidence that he was attempting to flee or avoid the trooper, and that he pulled over on his own accord.

RCW 46.61.024(1) requires that the State prove that the defendant "dr[ove] his or her vehicle in a reckless manner *while attempting to elude* a pursuing police vehicle." (Emphasis added.) Sorensen's statement that he did not stop despite seeing the trooper's lights and hearing the siren because he did not want to get in trouble is sufficient to support a finding that Sorensen was attempting to elude. Accordingly, this argument fails.

II. MOTION TO SUPPRESS

Sorensen next argues that the trial court erred in denying his motion to suppress. He asserts that the trial court improperly concluded that although Trooper Barraclough did not initially have authority to attempt to seize him (Sorensen), his act of fleeing in a reckless manner provided an independent basis for the seizure. In his SAG, Sorensen further contends that the trial court erred in denying the suppression motion because it considered whether he was "attempting to avoid" rather than "attempting to elude" the trooper and because there could have been other reasons that he failed to immediately stop his vehicle. These arguments fail.

A. STANDARD OF REVIEW

We review a trial court's decision on a motion to suppress to determine whether the findings are supported by substantial evidence and whether those findings, in turn, support the conclusions of law. *State v. O'Neill*, 148 Wn.2d 564, 571, 62 P.3d 489 (2003). We defer to the

trier of fact on "issues of conflicting testimony, credibility of witnesses, and the persuasiveness of the evidence." *State v. Thomas*, 150 Wn.2d 821, 874-75, 83 P.3d 970 (2004). We review conclusions of law de novo. *State v. Johnson*, 128 Wn.2d 431, 443, 909 P.2d 293 (1996).

B. INDEPENDENT BASIS FOR SEIZURE

Sorensen argues that the trial court erred in finding that the seizure was supported by an independent basis, namely his reckless flight. We disagree.

"The constitutional right to be free from unreasonable searches and seizures does not create a constitutional right to react unreasonably to an illegal detention." *State v. Mather*, 28 Wn. App. 700, 703, 626 P.2d 44 (1981); *see also State v. Kolesnik*, 146 Wn. App. 790, 810, 192 P.3d 937 (2008); *State v. Duffy*, 86 Wn. App. 334, 340, 936 P.2d 444 (1997). Regardless of whether the initial attempt to stop Sorensen was illegal, reckless flight is prohibited; it is the nature of the defendant's behavior after the police initiate the stop that is at issue, not whether the trooper had the authority to make the stop in the first instance. *State v. Malone*, 106 Wn.2d 607, 611, 724 P.2d 364 (1986); *Duffy*, 86 Wn. App. at 340-41; *State v. Brown*, 40 Wn. App. 91, 96-97, 697 P.2d 583 (1985). Thus, the trial court did not err when it concluded that Sorensen's act of fleeing in a reckless manner provided an independent basis for the seizure.

Sorensen argues that unlike in *Duffy*, he did not drive with a wonton and willful disregard for the lives or property of others. We acknowledge that *Duffy* and the other relevant cases refer to the "wanton or wilful disregard for the lives or property of others" standard that was applicable under former RCW 46.61.024(1983), whereas here we rely on the "reckless manner" standard that applies under the current version of RCW 46.61.024. *See Malone*, 106 Wn.2d at 611; *Duffy*, 86 Wn. App. at 340; *Mather*, 28 Wn. App. at 703; LAWS OF 2003 ch. 101, § 1. Although the "reckless

manner" standard contemplates a lesser mental state than that of the "willful or wanton" standard, *State v. Ridgley*, 141 Wn. App. 771, 781, 174 P.3d 105 (2007), reacting in a reckless manner is still an unreasonable reaction to an illegal detention.

Sorensen also argues that the evidence must still be suppressed despite his refusal to comply with an unlawful stop order. He contends that as in *State v. Gatewood*, 163 Wn.2d 534, 541, 182 P.3d 426 (2008), he did not respond by assaultive behavior or by endangering life or property, so his response did not provide an independent basis for a constitutional seizure. Sorensen's reliance on *Gatewood* is misplaced. *Gatewood* did not involve an attempt to elude a pursuing police vehicle, it involved contact with a pedestrian. 163 Wn.2d at 537-38. Additionally, *Gatewood* did not involve *any* flight or allegedly reckless behavior; thus, "it was not necessary [for the officers] to take swift measures." 163 Wn.2d at 541. Here, in contrast, Sorensen was in a vehicle and he continued to drive away from the trooper in a reckless manner despite the officer signaling him to stop. Although Sorensen was not driving at an excessive speed, his weaving within his lane, his crossing the center and fog lines, his apparent inability to negotiate a simple turn, and his apparent "impairment" was reckless and justified intervention regardless of the validity of the initial contact. Thus, the trial court did not err in denying Sorensen's motion to suppress.

C. Related SAG Issues

In his SAG, Sorensen further asserts that the trial court erred in denying the suppression motion because it found that he had "attempted to avoid" rather than attempted to elude the trooper. Sorensen also asserts that the trial court failed to consider whether he failed to stop for some reason other than an attempt to elude the trooper.

But, as we discuss above, the focus of the court's analysis was on whether Sorensen's actions when he failed to stop were reckless, not on his reasons for failing to stop. *See Malone*, 106 Wn.2d at 611. Thus, the motive the trial court ascribed to Sorensen was irrelevant to whether the stop was illegal and these arguments fail.

Sorensen also appears to assert that the trial court erred in denying the suppression motion because it improperly relied on Sorensen's behavior immediately before the stop and ignored the fact the initial "seizure" was unlawful. Whether the trooper was justified in attempting to stop Sorensen when the trooper first attempted to initiate the stop became irrelevant once Sorensen engaged in reckless actions. As we note above, regardless of whether the initial attempt to stop Sorensen was illegal, reckless flight is prohibited; it is the nature of the defendant's behavior after the police initiate the stop that is at issue, not whether the trooper had the authority to make the stop in the first instance. *Malone*, 106 Wn.2d at 611; *Duffy*, 86 Wn. App. at 340. Accordingly, this argument also fails.

III. LFOs

Sorensen next argues that the imposition of an LFO requiring him to contribute to the Kitsap County expert witness fund should be stricken because it was not authorized by statute. The State concedes that this cost should be stricken. We accept this concession.

Sorensen further argues that the trial court erred in requiring him to pay for his court-appointed attorney without first considering his present or future ability to pay and that this violates his right to counsel. He admits that Washington courts have not required judicial determination of actual ability to pay before ordering such payment. But citing *Fuller v. Oregon*, 417 U.S. 40,

45, 94 S. Ct. 2116, 40 L. Ed. 2d 642 (1974), Sorensen argues that this construction of RCW 10.01.160(3)[9] violates the right to counsel.[10]

Subject to certain exceptions that do not apply here, we may decline to review any issue not raised below. RAP 2.5(a); *State v. Blazina*, 182 Wn.2d 827, 834, 344 P.3d 680 (2015) ("Each appellate court must make its own decision to accept discretionary review" under RAP 2.5(a)). Arguably, Sorensen's attempt to frame this issue as a constitutional issue is an attempt to argue that this is a manifest constitutional error that we may address despite his failure to object. RAP 2.5(a). But our Supreme Court's requirement of an individualized determination as to the defendant's ability to pay at the time of sentencing was based on the applicable statute, not the constitution.[11] *Blazina*, 182 Wn.2d at 839; *see State v. Blank*, 131 Wn.2d 230, 239-42, 930 P.2d 1213 (1997). Therefore, we hold that the trial court in this case committed no constitutional error when it required Sorensen to pay fees for his appointed counsel, and Sorensen cannot establish a

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[9] RCW 10.01.160(3) provides, "The court shall not order a defendant to pay costs unless the defendant is or will be able to pay them. In determining the amount and method of payment of costs, the court shall take account of the financial resources of the defendant and the nature of the burden that payment of costs will impose."

[10] In a footnote, Sorensen also suggests that this approach also raises equal protection concerns because retained counsel must advise a client in advance of fees and costs, while there is no such obligation for appointed counsel. RPC 1.5(b). We do not address this issue because Sorensen fails to present any relevant argument or citation to legal authority. RAP 10.3(a)(6).

[11] Although Sorensen argues that Washington courts have misinterpreted *Fuller*, we are bound by express authority from our Supreme Court. *See State v. Watkins*, 136 Wn. App. 240, 243, 148 P.3d 1112 (2006).

manifest constitutional error. Accordingly, we decline to address this argument under RAP 2.5(a).[12]

We affirm the convictions but remand to the trial court to strike the LFO requiring Sorensen to pay a $100 contribution to the Kitsap County expert witness fund.

A majority of the panel having determined that this opinion will not be printed in the Washington Appellate Reports, but will be filed for public record in accordance with RCW 2.06.040, it is so ordered.

Johanson, C.J.
JOHANSON, C.J.

We concur:

Bjorgen, J.
BJORGEN, J.

Melnick, J.
MELNICK, J.

[12] In a footnote, Sorensen also asserts, "[T]he costs of operating the state crime lab were not 'specially incurred by the state in prosecuting' Mr. Sorensen. RCW 10.01.160(2)." Br. of Appellant at 20 n.9. We do not address this issue because Sorensen fails to present any relevant argument or citation to legal authority. RAP 10.3(a)(6).

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON

IN AND FOR THE COUNTY OF KITSAP

STATE OF WASHINGTON, Plaintiff, vs. CHARLES SORENSEN, Defendant.	No. 13-1-01268-3 COA No. 46168-4-II

VERBATIM REPORT OF PROCEEDINGS
EVIDENTIARY HEARING

March 5, 2014
Honorable Jay B. Roof
Department No. 5
Kitsap County Superior Court

APPEARANCES

For the State: Jennifer Koo
Deputy Prosecuting Attorney

For the Defendant: David LaCross
Cross, LaCross & Murphy

The Defendant: Charles Thomas Sorensen

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without it.

MS. KOO: Thank you, Your Honor.

(Recording played.)

THE COURT: Yeah, we're going to need a copy of that.

BY MS. KOO:

Q. Did you hear that, Trooper Barraclough?

A. Yes, I did.

Q. Does that jog your memory a little bit?

A. It does.

Q. Do you remember what you were dispatched to?

A. Yes.

Q. What was that?

A. One vehicle unknown, injury collision.

Q. What did you do after you received the dispatch?

A. I signed en route and was en route to the scene.

Q. Where was the scene?

A. The scene was at Sedgwick and Banner.

Q. Are you familiar with that area?

A. Not terribly familiar, but I've driven through a couple times.

Q. So where were you coming from then?

A. Tremont.

Q. And what direction were you traveling?

A. Been traveling eastbound.

Q. How long did it take you to drive out to Sedgwick after responding to the dispatch?
A. Approximately ten or so minutes.
Q. Do you recall if that stretch of road is particularly well lit?
A. There are some street lights. It's pretty dark, though, at night.
Q. So once you were on Sedgwick, what did you see?
A. I was approaching Banner, I was heading eastbound on Sedgwick. As I was coming up the hill there towards Banner, I observed a white pickup truck that was facing northbound in the westbound lane. The front of its tires were off the roadway on the shoulder. It was a slight depression, you could say a ditch. The bed of the pickup was in the westbound lane blocking the lane.
Q. What else did you observe?
A. As I continued approaching the scene, I observed the pickup reverse out of the ditch and then continue traveling westbound coming directly at me -- in its correct lane, but coming towards me.
Q. Did you observe anything strange about the vehicle as you were driving past it?
A. I noticed there were some branches and leaves and everything that had been stuck on the front bumper of

A. I turned on my siren and the vehicle continued to fail to yield.
Q. While you're driving behind the vehicle, did you make any observations?
A. I did. The vehicle continually crossed the center line and also the fog line on the right shoulder multiple times, weaving within its lane.
Q. So based upon what you saw there, did you form an opinion as to the condition of the driving?
A. I did.
Q. What was that opinion?
A. My opinion was that he was possibly impaired.
Q. Did the driver eventually stop?
A. He did.
Q. Where did he stop?
A. It was shortly after turning right onto Clover Valley Road, I believe.
Q. Where did this begin and where did it end?
A. This began at Sedgwick and Banner and led westbound on Sedgwick until we turned left onto Long Lake, and then a short while after that we turned right onto Clover Valley.
Q. After the truck stopped at Clover Valley, did you contact the driver?
A. I did.

Q. So you received what you thought -- prior to having your memory refreshed today was what? What did you believe you were responding to?
A. The one car, vehicle in a ditch.
Q. Was there any description of that vehicle?
A. No.
Q. So you didn't know whether it was a car, truck, a motorcycle, you had no idea, right?
A. No further description.
Q. And you responded though, you indicate to your dispatch -- Right? Correct? That you're going to respond?
A. That's correct.
Q. And when you responded to this, did you go to it at a normal speed? Did you have your lights on -- when I say, "lights," I mean your overhead lights?
A. No, it was a normal speed.
Q. I probably misstated overhead lights. You were driving in an unmarked car; is that correct?
A. That's correct.
Q. So you had the lights in the dash and the lights in the rear and the rear window?
A. That's correct.
Q. Not in the front window?
A. I have some in the front window near the rearview

A. I didn't see it --
Q. I'm not trying to trick you.
A. I didn't see it exactly in the driveway.
Q. All right.
A. I don't recall seeing the driveway.
Q. Let's go back to -- you went there that night and then you went back there the next day, right?
A. That's correct.
Q. And you went back a third day too, right?
A. That's correct.
Q. After going back there, the additional two times, looking at the video, going through the interview with me are you able -- and observing the one tire off to the left of the driveway, one tire mark, right? So Mr. Sorensen's vehicle, as you observed it, can you say where it was now?
A. I could say it was there on the driveway with the tire off the roadway, but I can't say if he was backing out of the driveway or if he had been driving on Sedgwick and ended up there. I can't say which way he came from.
Q. Fair enough.

We can place his vehicle as being -- except for one tire -- in the driveway, right?

A. That's correct. Off the roadway.

A. That's correct.
Q. And it didn't go into your lane of traffic, correct?
A. That's correct.
Q. All right. It stayed in his lane of traffic and then it pulled forward, right?
A. It continued going westbound.
Q. If somebody was backing out of a driveway and going to go down Sedgwick, going westbound, that's how you would expect a vehicle to do that, correct?
A. Sure.
Q. There was nothing unusual about that, right?
A. His vehicle -- the tire was off the roadway and as he passed me, there was brush.
Q. But as far as the operation of his vehicle as he pulled -- backed out onto Sedgwick and headed westbound, nothing unusual about how that was done, right?
A. Not about that part.
Q. As you observed that, that's how somebody would back out of a driveway and head westbound on Sedgwick, right?
A. Sure.
Q. And then as he's heading down Sedgwick going westbound and you at that time observed the brush on his vehicle, right?

that you had certain reasons that you decided to stop Mr. Sorensen's vehicle, right?

A. That's correct.

Q. In the interview that I did of you, you indicated that was because he had wheels off the roadway, right?

A. That's correct.

Q. And that he was blocking traffic?

A. Yes.

Q. My question is, was there was any traffic?

A. Not that I could see.

Q. I'm going to change course here in a little bit.

We talked earlier, there's two Banner roads, right?

A. That's correct.

Q. The Banner Road that you observed Mr. Sorensen's vehicle at, close to, is the one that you approached first, right?

A. That's correct.

Q. The next Banner Road would be about a couple hundred yards down or quarter mile down the road, right?

A. Correct.

Q. You never went there, right?

A. That's correct.

Q. You didn't have any idea as to which Banner Road this

SUPERIOR COURT OF THE STATE OF WASHINGTON
FOR KITSAP COUNTY

STATE OF WASHINGTON, Plaintiff, v. CHARLES THOMAS SORENSEN, Defendant.	No. 13-1-01268-3 **MEMORANDUM OPINION**

THIS MATTER comes before the Court on Defendant's CrR 3.6 Motion to Suppress Physical, Oral or Identification Evidence.

FACTUAL BACKGROUND

On October 30, 2013, the defendant was charged with willfully failing or refusing to immediately bring his vehicle to a stop, pursuant to RCW 46.61.024, and with driving under the influence. On the date in question, Trooper Barraclough ("Trooper") was dispatched to a "vehicle in a ditch" from a "collision" on Sedgwick and Banner Road at approximately 10:00 p.m. Upon arriving at the intersection of Sedgwick and Banner Road roughly 10 minutes following the dispatch, he saw a truck in a ditch-like area off to the side of the road at the intersection where the dispatcher said the collision occurred 10 minutes prior. The Trooper observed branches stuck underneath the bumper of the truck, giving

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him, as the State argues, reason to believe that the truck had been involved in a collision. The Trooper then got behind the truck and turned on his police emergency lights. The defendant then fled in his car, traveling at 50 mph, weaving in and out of the centerlines, making turns without turn signals, and almost crossing over an embankment.[1] After failing to yield to emergency lights, the Trooper turned on his siren, but to no avail. Ultimately the defendant was apprehended and charged.

The defendant has now brought this CrR 3.6[2] Motion to Suppress Physical, Oral or Identification Evidence, claiming that there were insufficient facts to support a proper *Terry* stop in investigating the car accident. Further, he argues that there was an improper seizure of his vehicle due to the fact that his alleged eluding of the officer was not attenuated from the primary taint of the improper *Terry* stop. He requests that the court suppress evidence attained as a result of the seizure and arrest. A hearing on the issue was held on March 28, 2014. Under the rule, the court must now enter written findings of fact and conclusions of law.

ANALYSIS

The issue here is whether or not the court may suppress evidence of the defendant violating a statute criminalizing a defendant's refusal to stop to a police officer's commands and in doing so driving in a reckless manner, when the initial basis for the officer's stop was not legally sound under the *Terry* standard. The defendant argues that the evidence of the statutory violation is fruit of the poisonous tree since it evolved from the improper *Terry* stop.

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[1] See Report of Investigation, p. 2.

[2] "(a) Pleadings. Motions to suppress physical, oral or identification evidence, other than motion pursuant to rule 3.5, shall be in writing supported by an affidavit or document setting forth the facts the moving party anticipates will be elicited at a hearing, and a memorandum of authorities in support of the motion. Opposing counsel may be ordered to serve and file a memorandum of authorities in opposition to the motion. The court shall determine whether an evidentiary hearing is required based upon the moving papers. If the court determines that no evidentiary hearing is required, the court shall enter a written order setting forth its reasons. (b) Hearing. If an evidentiary hearing is conducted, at its conclusion the court shall enter written findings of fact and conclusions of law." CrR 3.6.

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First, the court must consider whether or not there was an unreasonable seizure under the Fourth Amendment of the Washington Constitution if there was insufficient evidence to support a finding of reasonable suspicion that would have justified a *Terry* stop.

"A seizure under article I, section 7 occurs when, due to an officer's use of physical force or display of authority, an individual's freedom of movement is restrained and the individual would not believe that he is free to leave or decline a request." *State v. Beito*, 147 Wash.App. 504, 508, 195 P.3d 1023 (2008). The activation of a patrol car's emergency lights constitutes a display of authority such that defendant is seized under the Washington Constitution. *State v. Gantt*, 163 Wash.App. 133, 141, 257 P.3d 682 (2011). Generally, warrantless seizures are per se unreasonable, unless the state can prove that the seizure falls into a narrow exception where a warrant is not required. *State v. Doughty*, 170 Wn.2d 57, 61, 239 P.3d 573 (2010). One of the exceptions allowing for a warrantless seizure is the *Terry* Stop. [3] Alternatively, another exception to the general illegality of warrantless seizures is when there is probable cause under RCW 10.31.100.[4]

Here, the moment the Trooper turned on his emergency lights, the defendant was seized pursuant to *Gantt*. However, the Trooper's warrantless seizure was not reasonable under *Terry* because there was insufficient articulable facts to support a finding of reasonable suspicion that the vehicle had been involved in the car accident. Nevertheless,

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[3] Under *Terry*, which has been adopted by Washington State, a traffic stop is considered an investigative detention and such detention, no matter how brief, must be justified at its inception. *State v. Ladson*, 138 Wash.2d 343, 350, 979 P.2d 833 (1999). Pursuant to the *Terry* standard, if the investigating officer had "'specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant that intrusion,'" then the officer may stop the vehicle. *State v. Kennedy*, 107 Wash.2d 1, 5, 726 P.2d 445 (1986)(quoting *Terry v. Ohio*, 392 U.S. 1, 21, 88 S.Ct. 1868, 20 L.Ed 2d 889 (1968)). The reasonableness of the officer's suspicion is determined by the totality of the circumstances known to the officer at the time of the stop. *State v. Glover*, 116 Wash.2d 509, 514, 806 P.2d 760 (1991). An officer's reasonable suspicion cannot be based on information supplied by an informant unless the tip possesses sufficient "indicia of reliability," i.e., if police are able to corroborate details of the tip that suggest the presence of criminal activity and if the information was obtained in a reliable fashion. *Kennedy*, 107 Wash.2d at 7. Thus, when an officer's observations corroborate information disseminated by police dispatch and give rise to a reasonable suspicion of criminal activity, the officer may make an investigative stop under *Terry*. *State v. Randall*, 73 Wash.App. 225, 230, 868 P.2d 207 (1994).

[4] "A police officer having probable cause to believe that a person has committed or is committing a felony shall have the authority to arrest the person without a warrant." RCW 10.31.100.

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the warrantless seizure was appropriate pursuant to RCW 10.31.100 because probable cause existed that the defendant had violated RCW 46.61.024, a class C felony. Therefore, the defendant was still obligated by law to pull over. Under RCW 46.61.024(1):

> "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."

The defendant argues that the ultimate seizure was unlawful because the initial attempt by the officer to seize the defendant for a *Terry* stop was unsupported by the law. To support his argument, the defendant cites *State v. Mendez*, 137 Wash.2d 208, 224, 970 P.2d 722 (1999), for the proposition that once an "individual is seized, no subsequent events or circumstances can retroactively justify the seizure." However, *Mendez* had nothing to do with violating the statute RCW 46.61.024. Rather, *State v. Duffy*, 86 Wash.App. 334, 936 P.2d 444 (1997), *State v. Malone*, 106 Wash.2d 607, 724 P.2d 364 (1986), and *State v. Mather*, 28 Wash.App. 700, 703 626 P.2d 44 (1981) all dealt with violations of that statute, and thus their holdings are more instructive on this narrow issue.

While the defendant is correct in that the moment the emergency lights were turned on, there was not sufficient evidence to support a finding of "reasonable suspicion" under *Terry*, this is not dispositive of the case. The impropriety of the reason for the initial stop does not necessarily mean that the ultimate arrest for the defendant's driving in eluding the trooper was fruit of the poisonous tree.

When considering whether to admit evidence obtained indirectly from a constitutional violation, the question is whether, granting establishment of the primary illegality, the evidence sought to be admitted came by exploitation of that illegality or,

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instead, by means sufficiently distinguishable to be purged of the primary taint. *State v. Pittman*, 49 Wash.App. 899, 901,746 P.2d 846 (1987)(citing *Wong Sun v. United States*, 371 U.S. 471, 484 83 S.Ct. 407 9 L.Ed2d 441 (1963). The burden is on the State to demonstrate a sufficient attenuation from the illegal conduct to dissipate its taint. *State v. Childress*, 35 Wash.App. 314, 316, 666 P.2d 941 (1983).

In *Duffy*, out of caution that there might be a domestic dispute after witnessing a verbal altercation between the defendant and his wife, the officer signaled his police lights and the defendant responded by fleeing in his car. After driving recklessly, the defendant ultimately crashed into a vehicle and was apprehended after a chase on foot. The defendant was charged with a DWI and one count for eluding the police officer under RCW 46.61.024. The defendant moved to dismiss the eluding charge, arguing that the officer's emergency lights were not legally authorized, and thus his seizure was improper. Therefore, the defendant asserted, evidence of his response to the improper seizure, by driving away in the manner that he did, must be suppressed as fruit of an unlawful seizure. *Id.* at 339. In holding that RCW 46.61.024 does not mandate that the initially attempted stop be legal, the court stated:

> "The trial court erred when it dismissed the charge of attempting to elude based on its finding there was no probable cause for the initial stop. The court should have focused its attention on the conduct of Mr. Duffy in response to the stop and whether there was probable cause to support an arrest pursuant to RCW 46.61.024. The lower court erred in requiring the State to show probable cause for the initial stop." *Id.* at 341.

The issue under RCW 46.61.024(1), is the "nature of the defendant's behavior after the police initiate a stop, not whether the officer has the authority to make the stop." *Malone*, 106 Wash.2d at 611(citing *State v. Brown*, 40 Wash.App. 91, 94, 697 P.2d 583 (1985)). Thus, although there may not have been probable cause for the initial stop regarding the collision, when the defendant here failed to comply with RCW 46.61.024 due

to his fleeing from the Trooper and weaving in and out of lanes, there was probable cause to support an arrest for the violation of RCW 46.61.024.

Indeed, the Supreme Court of Washington has noted that "The modern trend has been toward requiring submission to a known peace officer, even when the arrest is unlawful, in the interest of keeping the peace." *Malone*, 106 Wash.2d at 612 (quoting W. Keeton, D. Dobbs, R. Keeton, & D. Owen, *Prosser and Keeton on Torts* § 26, at 156 (5th ed. 1984)). In *Malone*, the Supreme Court held, in agreement with the Court of Appeals, that "the police power can lawfully extend to prohibiting flight from an unlawful detention where that flight indicates a wanton and willful disregard for the life and property of others." *Id.* (citing *Mather*, 28 Wash.App. at 703). Thus, "the constitutional right to be free from unreasonable searches and seizures does not create a constitutional right to react unreasonably to an illegal detention." *Mather*, 28 Wash.App. at 703.

In sum, if the state meets its burden in establishing the elements for the crime of eluding, the defendant may not attempt to suppress evidence of that crime based on the fact that the officer did not initially have the authority to attempt to seize the defendant.

To convict a defendant of the crime of attempting to elude, three elements must be shown to have occurred in the proper sequence. *Duffy*, 86 Wash.App. at 340(citing *State v. Stayton*, 39 Wash.App. 46, 49, 691 P.2d 596 (1984). The sequence of elements must be: (1) a uniformed police officer whose vehicle is appropriately marked must give the potentially errant driver of a motor vehicle a visual or audible signal to bring the vehicle to a stop, (2) the driver must be a person who wilfully fails or refuses to immediately bring his vehicle to a stop, and (3) while attempting to elude a pursuing police vehicle, the driver drives his vehicle in a manner indicating a wanton or wilful disregard for the lives or property of others . *Stayton*, 39 Wash.App. at 49.

Here, all three elements are met. First, the Trooper was a uniformed police officer who, in his police vehicle, turned on his emergency lights to provide a visual signal to bring the vehicle to a stop. After failing to yield to his lights, the Trooper turned on his siren, but the defendant continued to refuse to stop his vehicle. Last, while attempting to avoid the officer, the defendant began crossing over into the centerlines, turning without

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turn signals, and almost went over an embankment. This behavior is adequate proof of wanton or at least wilful disregard for the lives or property of others.

CONCLUSION

In conclusion, the requisite elements for a finding of attempting to elude have been met. Therefore, the ultimate seizure was proper, given that the defendant fled from the Trooper's attempted *Terry* stop, and did so in reckless manner. It is of no consequence that the initially attempted *Terry* stop was ultimately going to be unlawful, because *Duffy*, *Malone* and *Mather* hold that this is not material. Defendants motion is **DENIED.**

Dated: This 11 day of April, 2014.

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Orchard, Washington at approximately 9:50 PM.

(3) Jack Kimbrel was stopped at the stop sign located at the intersection of Sedgwick and Banner Road when he observed the defendant drive around his vehicle, drive straight across Sedgwick, and drive off the roadway. Kimbrel called 911 and reported the collision.

(4) Trooper Barraclough was dispatched to a "vehicle in ditch/collision" and responded to Sedgwick and Banner Road at approximately 10:00 PM where he observed the defendant attempting to drive himself out of what the trooper believed to be a ditch.

(5) When the defendant backed out onto Sedgwick, Trooper Barraclough observed grass and branches hanging from underneath the bumper of the defendant's vehicle as he drove westbound on Sedgwick Road. Photo attached and incorporated by reference herein.

(6) There was no traffic on Sedgwick when the trooper initially observed the defendant's vehicle backing onto Sedgwick.

(7) Trooper Barraclough activated his lights and attempted to pull the defendant over. The trooper believed the defendant had been involved in a collision and wanted to check if the defendant was okay to drive. The trooper also believed the defendant had committed the traffic infractions of blocking the roadway and driving with wheels off the roadway.

(8) The defendant failed to yield to the trooper and continued driving down Sedgwick at 50 mph while weaving within the lane and touching both the fog and centerlines. The speed limit on Sedgwick is 45mph.

(9) Trooper Barraclough turned on his siren while approaching Long Lake Road where defendant, without signaling, made a wide turn and almost drove over an embankment. While driving down Long Lake Road, defendant continued to weave within the lane and crossed both the fog and centerlines.

(10) The defendant continued to drive down Long Lake Road and turned onto Clover Valley Road, where he came to a stop.

(11) The pursuit lasted for approximately 3 minutes and spanned approximately 2.7 miles.

(12) When KCSO Deputy Mark Gundrum arrived on scene to assist, the defendant was still in his vehicle and was not complying with the trooper's demands to exit the vehicle.

(13) Eventually, the defendant exited the vehicle and turned to face Trooper Barraclough and refused to turn around and put his hands up as ordered by the trooper.

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