

05466-7

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NO. 65466-7-1

COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION I

STATE OF WASHINGTON,

Respondent,

v.

DUANE BATES,

Appellant.

APPEAL FROM THE SUPERIOR COURT FOR KING COUNTY

THE HONORABLE REGINA S. CAHAN

BRIEF OF RESPONDENT

2011 JAN 31 09:11 AM
COURT OF APPEALS
DIVISION I

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A. ISSUE

1. Evidence is sufficient to support a conviction if, viewed in the light most favorable to the State, it permits any rational trier of fact to find the essential elements of the crime beyond a reasonable doubt. To prove attempting to elude a pursuing police vehicle, the State must prove that while attempting to elude police, the defendant drove in a rash or heedless manner indifferent to the consequences. The State presented evidence that during the eluding Bates ran through a red traffic light and a stop sign at speeds of 35 to 40 miles per hour in rainy wet conditions during a time when traffic was heavy and children were present in the area. Is this sufficient evidence to prove that Bates drove the stolen vehicle in a rash or heedless manner indifferent to the consequences?

B. STATEMENT OF THE CASE

On May 6, 2009, at approximately 3:00 in the afternoon, Officer Tami Honda was on patrol driving a marked patrol car in the city of Kent. RP 151-52. It was raining outside and traffic was heavy. RP 156 and 187. As she was driving, Officer Honda saw a van that had a broken passenger window and shards of glass in the

window frame. RP 152. Officer Honda also noticed that the driver would not make eye contact with her. RP 152. Officer Honda ran the van's license plate on her computer from her patrol car and learned that the van was stolen. RP 153. Officer Honda notified the police dispatcher about the stolen vehicle and she followed the van until back-up patrol officers arrived in the area. RP 156. Once back-up arrived, Officer Honda turned on her overhead lights in an effort to pull over the driver of the van. RP 156. Bates did not respond to the request to pull over so Officer Honda chirped the siren on her patrol car. RP 157.

When the van did not pull over, Officer Honda continued to pursue the van with her overhead lights and siren engaged. RP 157. Officer Honda followed the van as it approached a red light at the intersection of 228th and 84th. RP 157. Officer Honda was behind Bates as they neared the traffic light from the curbside lane. RP 157. Bates was driving 35-40 miles per hour in a 25 mile per hour zone. A car was stopped at the light waiting for it to turn green. Instead of stopping behind the car that was stopped at the light, Bates turned into the next lane of travel, ran the stoplight, and continued to drive away. RP 157.

The defendant refused to pull over as he drove eastbound on 228th Street at speeds up to approximately 40 miles per hour in a 25 mile per hour zone. RP 158. As the pursuit continued, the defendant crossed into the oncoming lane and drove around a vehicle that was stopped at the stop sign. RP 158. The defendant ran the stop sign and continued to flee in the stolen van. RP 158. Officer Honda saw several kids getting off the bus across the street near the area where the defendant ran the stop sign. RP 161. Even though the children were across the street, Officer Honda was concerned for their safety because the road was narrow and it was raining. RP 162 and 171. Officer Honda pursued the van as it drove into the Berkley Heights Apartment Complex. RP 162. Officer Honda was concerned because there were children walking around the apartment complex who had just gotten out of school for the day. RP 162. With Officer Honda in pursuit, Bates drove the van into the parking area of the complex. RP 162. He then jumped out of the moving van as it was traveling approximately 20 miles per hour. RP 163. The driverless van ran into a wall and the defendant fled into a swamp. RP 163-64. He was later arrested by police. RP 164-65.

In closing argument, the prosecutor stressed that at one point during the eluding, Bates ran a stop sign and drove into the oncoming lane. The prosecutor showed the jury a photo of the road and argued:

But this is really the most pertinent part of the elude. He is going down this road. And granted, he is not going 100 miles per hour. But you've got to remember, he is not exactly driving a Ferrari either. He's driving a 1994 minivan and he is trying to get away from the police. He's driving down a narrow road. He's exceeding the speed limit. There's busy traffic. And he goes right -- he goes right through that stop sign. You'll see the stop sign when you take it back. It's kind of hard to tell. But you'll see there is a telephone pole, and there is a stop sign right (inaudible) here. He goes right around that. And there weren't kids in the middle of the street, but there were kids nearby.

RP 289-90.

C. ARGUMENT

1. SUFFICIENT EVIDENCE SUPPORTS BATES' CONVICTION OF ATTEMPTING TO ELUDE A PURSUING POLICE VEHICLE.

The only issue raised on this appeal is whether Bates drove the stolen vehicle in a reckless manner. When a defendant challenges the sufficiency of the evidence to convict, the appellate court reviews the evidence in the light most favorable to the State

and determines whether any rational trier of fact could have found the elements of the charged crime beyond a reasonable doubt.

State v. Salinas, 119 Wn.2d 192, 201, 829 P.2d 1068 (1992).

“A claim of insufficiency admits the truth of the State’s evidence and all reasonable inferences that reasonably can be drawn therefrom.”

Id. at 201. A reviewing court must defer to the trier of fact on issues of conflicting testimony, credibility of witnesses, and the persuasiveness of the evidence. Id. at 719. The reviewing court need not be convinced of the defendant’s guilt beyond a reasonable doubt, but only that there is substantial evidence in the record to support the conviction. Id. at 718. Substantial evidence means evidence in the record of a sufficient quantity to persuade a fair-minded, rational person of the truth of the finding. State v. Hill, 123 Wn.2d 641, 644, 870 P.2d 313 (1994).

The "reckless manner" standard applicable to the crime of attempting to elude is defined as "driving in a rash or heedless manner, indifferent to the consequences." State v. Ridgley, 141 Wn. App. 771, 781, 174 P.3d 105 (2007).

There is substantial evidence in the record to prove that Bates drove in a rash and heedless manner indifferent to the consequences. Bates attempted to elude police during heavy

traffic in downtown Kent on a rainy day. As he was being pursued by police, he ran a red light at speeds of 35 to 40 miles per hour in a 25 mile per hour zone. Instead of pulling over, the defendant continued to speed away. Then as he was rapidly approaching a car that was stopped at the stop sign, Bates veered into the opposite lane of traffic, ran a stop sign and continued to flee at speeds of 35 to 40 miles per hour in a 25 mile per hour zone. It was approximately 3:19 in the afternoon and there were children standing across the street near the area where the defendant ran the stop sign. With the police still in pursuit, the defendant drove into an apartment complex. Children were walking around the complex because they had just gotten out of school. He then leapt out of the moving van as it was traveling 20 miles per hour. The driverless van hit a wall.

Appellant argues that the defendant's conduct was insufficient to convict because there was no evidence that he "struck another vehicle, cut off another vehicle or required a vehicle or pedestrian to take evasive action." This argument is misplaced because the State is not required to prove that the defendant's driving endangered a third party. Appellant is essentially asking the reviewing court to apply the standard that is required to prove the

endangerment by eluding enhancement. The State did not seek the eluding enhancement in this case and it is not required to prove that Bates' driving endangered any innocent civilians or caused any collisions.

D. CONCLUSION

The jury listened to arguments from both attorneys on this issue and correctly found that the defendant drove in a heedless manner indifferent to the consequences. The record is sufficient to support the jury's finding and the Court should affirm Bates' conviction for eluding a pursuing police vehicle.

DATED this 31 day of January, 2011.

Respectfully submitted,

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Certificate of Service by Mail

Today I deposited in the mail of the United States of America, postage prepaid, a properly stamped and addressed envelope directed to David B. Koch, the attorney for the appellant, at Nielsen Broman & Koch, P.L.L.C., 1908 E. Madison Street, Seattle, WA 98122, containing a copy of the Brief of Respondent, in STATE V. DUANE BATES, Cause No. 65466-7-1, in the Court of Appeals, Division I, for the State of Washington.

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

Betty A. Huddleston
Name
Done in Seattle, Washington

1/31/11
Date

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