

FILED
4-13-15
Court of Appeals
Division I
State of Washington

No. 72129-1-I

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION ONE

STATE OF WASHINGTON,

Respondent,

v.

STEVE MAAS,

Appellant.

ON APPEAL FROM THE SUPERIOR COURT OF THE
STATE OF WASHINGTON FOR SNOHOMISH COUNTY

APPELLANT'S REPLY BRIEF

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A. ARGUMENT

1. The evidence was insufficient to prove beyond a reasonable doubt that Mr. Maas was guilty of attempting to elude a pursuing police vehicle.

a. In reviewing a challenge to the sufficiency of the evidence, only reasonable inferences are drawn in favor of the State and unfavorable facts to the State are not ignored.

When reviewing a sufficiency of the evidence challenge, the question is, after viewing the evidence in the light most favorable to the prosecution, could a rational trier of fact have found the essential elements of the crime beyond a reasonable doubt? State v. Green, 94 Wn.2d 216, 221, 616 P.2d 628 (1980); Jackson v. Virginia, 443 U.S. 307, 319, 99 S. Ct. 2781, 61 L.Ed.2d 560 (1979)). Only reasonable inferences are drawn in favor of the State. Jackson, 443 U.S. 319. “[I]nferences based on circumstantial evidence must be reasonable and cannot be based on speculation.” State v. Vasquez, 178 Wn.2d 1, 16, 309 P.3d 318 (2013). Moreover, facts unfavorable to the State are not ignored. State v. Davis, 182 Wn.2d 222, 340 P.3d 820, 828 (2014) (Stephens, J. dissenting).¹ This “standard of review is . . . designed to ensure that the fact finder at trial reached the ‘subjective state of near certitude of the guilt of the accused,’

¹ This portion of Justice Stephens’s dissent received four concurring votes, making it precedent. Davis, 340 P.3d at 826 (Wiggins, J. concurring in part, dissenting in part) (concurring with dissent in that evidence was insufficient to sustain firearm possession convictions).

as required by the Fourteenth Amendment’s proof beyond a reasonable doubt standard.” State v. Rich, No. 70711-6-I, slip op. at 4, 2015 WL 1305780, at *3 (Mar. 23, 2015) (quoting Jackson, 443 U.S. at 315).

b. The evidence failed to prove beyond a reasonable doubt that Mr. Maas drove in a rash or heedless manner, indifferent to the consequences.

In making its argument that sufficient evidence proved beyond a reasonable doubt that Mr. Maas drove recklessly, i.e., in a rash and heedless manner, indifferent to the consequences, the State relies on speculation and unreasonable inferences. The State claims that Mr. Maas drove at twice the speed limit (50 miles per hour), but that he somehow turned on Jackson Avenue, an intersection with a stop sign, “without stopping or slowing.” Br. of Resp’t at 6. It is manifestly unreasonable to infer that Mr. Maas somehow navigated this turn without stopping or at least slowing down considerably. Ex. 1 (video showing path down Jefferson Avenue and intersection at Jackson Avenue). Either Mr. Maas must have not been driving very fast or he slowed down. The State cannot have it both ways.

In arguing that Mr. Maas drove recklessly, the State relies heavily on Officer Kravchun’s claim that he saw another car on Jackson “sharply stop to avoid getting hit.” RP 110-11. While Officer Kravchun testified to this, a jury could not rationally believe him in the face of the evidence

presented. First, the evidence established that officers Kravchun and Wantland pulled over somewhere between Columbia Avenue and Monroe Avenue. RP 90, 163, 199, 206, 209. Based on that, it is doubtful that Officer Kravchun could have seen, at night, all the way down to Jackson Street. Ex. 1 (showing view during daylight hours). Second, Officer Wantland, who pulled right next to Officer Kravchun in the northbound lane, did not see any cars taking defensive action in reaction to Mr. Maas. RP 210. Third, Officer Kravchun did not follow up with the driver of this supposed car. RP 154-55. Given this evidence, it is manifestly unreasonable to infer that another car had to stop to avoid a collision with Mr. Maas. And even assuming the existence of this driver, there was no evidence that this unknown driver was “scared.” Br. of Resp’t at 8.

Taking only reasonable inferences from the evidence and avoiding speculation, the State failed to prove beyond a reasonable doubt that Mr. Maas drove recklessly during the very brief pursuit south on Jefferson Avenue. The evidence established only that Mr. Maas briefly exceeded the speed limit and safely turned at an intersection. This is not driving that is indifferent to the consequences. At worst, the evidence proved mere negligent driving. State v. Partridge, 47 Wn.2d 640, 645, 289 P.2d 702 (1955) (operation of a motor vehicle in a reckless manner is “something more” than ordinary negligence). This Court should reverse.

B. CONCLUSION

The conviction should be reversed for insufficient evidence.

Alternatively, the conviction should be reversed for the violation of Mr.

Maas's right to present a defense, as argued in the opening brief.

DATED this 13th day of April, 2015.

Respectfully submitted,

/s Richard W. Lechich – WSBA #43296
Washington Appellate Project
Attorney for Appellant

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DIVISION I**

STATE OF WASHINGTON,)	
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Respondent,)	
)	NO. 72129-1-I
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STEVE MAAS,)	
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Appellant.)	

DECLARATION OF DOCUMENT FILING AND SERVICE

I, MARIA ARRANZA RILEY, STATE THAT ON THE 13TH DAY OF APRIL, 2015, I CAUSED THE ORIGINAL **REPLY BRIEF OF APPELLANT** TO BE FILED IN THE **COURT OF APPEALS – DIVISION ONE** AND A TRUE COPY OF THE SAME TO BE SERVED ON THE FOLLOWING IN THE MANNER INDICATED BELOW:

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