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Court of Appeals
Division I
NO. 72138-1-I State of Washington

IN THE COURT OF APPEALS – STATE OF WASHINGTON
DIVISION ONE

STATE OF WASHINGTON
Respondent,

v.

SHELBY TYLER BENOIT,
Appellant.

ON APPEAL FROM THE SUPERIOR COURT OF THE
STATE OF WASHINGTON, FOR SKAGIT COUNTY

The Honorable Michael E. Rickert, Judge

RESPONDENT'S BRIEF

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I. SUMMARY OF ARGUMENT

A jury found Shelby Benoit guilty of Attempting to Elude, Driving While under the Influence and Resisting Arrest. Benoit only appeals the Driving While under the Influence conviction arguing insufficient evidence.

Benoit had failed to stop for a traffic stop, sped at 80 to 85 miles per hour in a 35 mile per hour zone, ran red lights and almost struck one officer's vehicle when he failed to stop at a stop sign after the pursuit was terminated. Benoit had a strong odor of alcohol from his breath, was unsteady on his feet, had mood swings, and told officers that he had consumed "the legal limit" and later that he had too much to drink. All four officers who had contact with Benoit testified that shortly after the driving they believed Benoit was under the influence of alcohol. Given all rational inferences are drawn in favor of the State, there was sufficient evidence for the jury to find Benoit guilty of Driving While under the Influence.

II. ISSUES

Where a defendant eluded an officer, was speeding, ran red lights, almost collided with an officer, admitted to consuming alcohol and according to the opinion of four officers was under the influence of alcohol shortly after the traffic stop, was there sufficient evidence for a rational trier of fact to find the defendant drove while under the influence?

III. STATEMENT OF THE CASE

1. Statement of Procedural History

On August 6, 2013, Shelby Benoit was charged with Attempting to Elude a Pursuing Police Vehicle, Driving While under the Influence and Resisting Arrest, alleged to have occurred on August 2, 2013. RP 1-2.

On June 9, 2014, the case proceeded to trial.¹

On June 11, 2014, the jury found Benoit guilty of all three charges. CP 52-4.

On July 2, 2014, the trial court sentenced Benoit to 20 days jail on the Attempting to Elude, 364 days on the DUI with all but 20 days jail suspended and 90 days on the Resisting Arrest with all 90 days suspended. CP 62, 71, 7/2/14 RP 186-7. Benoit's sentence was stayed pending appeal. CP 75-6.

On July 15, 2014, Benoit timely filed a notice of appeal. CP 77.

2. Summary of Trial Testimony

On August 2, 2013, Officer Goss of the Burlington Police

¹ The State will refer to the verbatim report of proceedings by using the date followed by "RP" and the page number. The report of proceedings in this case are as follows:

4/23/14 RP	CrR 3.5 Hearing – in separate volume
6/9/14 RP	Jury Trial – Testimony Day 1 – Begins at page 3
6/10/14 RP	Jury Trial – Testimony Day 2 and Closing - Begins at page 68
6/11/14 RP	Jury Trial – Verdicts – Begins at page 180
7/2/14 RP	Sentencing – Begins at page 182.

Department was on patrol on the graveyard shift shortly before 2:30 a.m. when he saw a vehicle driving towards him. 6/9/14 RP 10-11, 42. Goss's radar showed the vehicle was traveling 67 miles per hour in a 35 mile per hour zone. 6/9/14 RP 11. Goss was in uniform, driving a white marked Chevrolet Tahoe police cruiser. 6/9/14 RP 12. Goss made a U-turn in the roadway slowing to nearly a stop as the vehicle passed and activated his emergency lights. 6/9/14 RP 12, 37. After he turned, Goss saw the vehicle was a block away headed north. 6/9/14 RP 13.

When Goss got behind the vehicle, it appeared to accelerate and failed to stop for a red traffic light on Gilkey road. 6/9/14 RP 13. Goss estimated the vehicle was traveling 80 to 85 miles per hour. 6/9/14 RP 13. Goss activated his siren and a device to turn traffic lights green. 6/9/14 RP 14. After Goss realized the vehicle was not stopping for him, Goss decided the pursuit was too dangerous due to speed, placing the public at risk, so he turned off his lights and siren and slowed. 6/9/14 RP 14-5, 45. Goss was several hundred feet behind. 6/9/14 RP 41. Goss saw the vehicle fail to slow for a yellow light at Sharon Road. 6/9/14 RP 15.

Goss continued to follow the vehicle and kept the traffic control on to turn lights green. 6/9/14 RP 15. The vehicle appeared to veer into the center turn lane kicking up dust before correcting and failing to stop for a red light at Fairhaven Avenue, continuing northbound. 6/9/14 RP 15.

Goss stayed several blocks behind and was traveling at the speed limit but was able to keep track of the vehicle because it was the only vehicle around and Goss could see the tail lights. 6/9/14 RP 15-6.

Goss turned onto West Fairhaven Avenue. 6/9/14 RP 16. He then saw the vehicle at McKinley Street where it failed to stop at a stop sign almost striking Goss' vehicle. 6/9/14 RP 16, 41-2. The vehicle stopped at Norris Street and turned south. 6/9/14 RP 16. The vehicle continued four blocks south before turning off into an apartment complex parking lot and stopping in a manner taking up two parking stalls. 6/9/14 RP 17, 22.

Goss activated his emergency lights again, drew his weapon and saw the defendant, Mr. Benoit, exit the driver door and attempted to close the door. 6/9/14 RP 17, 50. Goss ordered Benoit to show his hands, which he did. 6/9/14 RP 17. Goss saw he had no weapons and put his firearm away. 6/9/14 RP 17. Goss told Benoit to stop. 6/9/14 RP 17. Benoit paused for a moment then started to walk away saying he was looking for his father. 6/9/14 RP 18. Goss grabbed Benoit by the arm, told him he was being detained and attempted to place Benoit in handcuffs. 6/9/14 RP 18.

Goss smelled a strong odor of intoxicants coming from either Benoit's clothes or breath. 6/9/14 RP 18. Due to intoxication, Benoit was not initially cooperative. 6/9/14 RP 18. Officer Weiss had arrived by that point

and had to assist in placing Benoit into handcuffs. 6/9/14 RP 18. It took about 30 seconds of struggling to get Benoit into handcuffs. 6/9/14 RP 18.

Goss advised Benoit of his Miranda warnings and Benoit agreed to speak. 6/9/14 RP 24. When told Goss tried to stop him due to traveling 67 in a 35 mile per hour zone, Benoit said he had been driving “35 miles per hour in the median because that was what was recommended.” 6/9/14 RP 24.

When asked how much he had to drink that evening before driving, Benoit said his father had purchased a fifth of Bacardi and they had been drinking at his apartment in Mount Vernon. 6/9/14 RP 25. Benoit said he had started drinking around 12:30. 6/9/14 RP 25. Benoit said his father had left at 1:00 a.m. and he had gone to look for him. 6/9/14 RP 25.

When asked how much he had to drink, Benoit smiled and said “the legal limit.” 6/9/14 RP 25. When asked what that meant, Benoit said “you know.” 6/9/14 RP 25.

When asked if he saw the vehicle with lights and siren activated, Benoit said he had, before then stating he had only seen the patrol vehicle but saw no lights and heard no siren. 6/9/14 RP 25. Benoit also apologized for causing problems and stating he was studying to be a lawyer and couldn't get arrested. 6/9/14 RP 26.

While Benoit was talking, Goss could tell that the strong odor of alcohol was coming from Benoit's breath. 6/9/14 RP 26. Benoit had droopy,

bloodshot eyes and dilated pupils. 6/9/14 RP 26. Benoit's face was red or flushed. 6/9/14 RP 26. Benoit was repeating himself and mispronouncing words. 6/9/14 RP 26. All these Goss took as signs of intoxication. 6/9/14 RP 26. Benoit had mood swings from demanding to laughing and joking which Goss also took as signs of intoxication. 6/9/14 RP 27.

Goss then decided to transport Benoit to the station for processing for DUI. 6/9/14 RP 26.

At the station Benoit became demanding asking to smoke. 6/9/14 RP 27. Benoit also grabbed on to the duty belt of another officer at one point. 6/9/14 RP 27. At the station, Benoit made another statement indicating he had too much to drink or was pretty drunk. 6/9/14 RP 28. Benoit indicated at one point he needed to vomit. 6/9/14 RP 28. Goss put him in a holding cell with a toilet, but Benoit did not vomit. 6/9/14 RP 28. Benoit sat in a chair leaning over making vomiting sounds. 6/9/14 RP 28. Benoit tipped over, struck his head on the wall and slid to the floor. 6/9/14 RP 28. Goss asked Benoit if he was okay and Benoit started crying. 6/9/14 RP 28.

Goss called for aid. 6/9/14 RP 28. Within ten minutes, aid had arrived and checked on Benoit. 6/9/14 RP 29. Aid attempted to evaluate him, asking questions, but Benoit was joking and making nonsense statements. 6/9/14 RP 29. Nothing appeared medically wrong, so aid left. 6/9/14 RP 29.

Goss began processing Benoit for DUI. 6/9/14 RP 29. Goss read Benoit the implied consent warnings. 6/9/14 RP 29. Benoit appeared to be looking around, not paying attention. 6/9/14 RP 29-30.

Benoit asked to urinate, so Goss took him to a holding cell. 6/9/14 RP 29. Benoit stopped at the doorway and began to unzip his pants to urinate from there. 6/9/14 RP 30. Goss went to push Benoit into the cell and Benoit pushed back and came out of the cell. 6/9/14 RP 30. Goss ordered Benoit back into the cell but he refused. 6/9/14 RP 31. Goss required the assistance of another officer to control Benoit and took him to the ground. 6/9/14 RP 31. They put Benoit in the cell in handcuffs. 6/9/14 RP 31. Benoit asked again to urinate, so Goss un-handcuffed Benoit from outside the cell. 6/9/14 RP 31. At one point, Benoit was lying on the floor asleep or passed out. 6/9/14 RP 31.

Goss determined he could not process Benoit for a DUI because he would not even listen to Goss when he was reading warnings, was having mood swings, was not concentrating or paying attention. 6/9/14 RP 34. Benoit's actions in trying to urinate from the doorway, and pushing back and resisting Goss lead him to believe processing was not viable. 6/9/14 RP 34.

Goss decided to take Benoit to jail. 6/9/14 RP 32. At the jail, Benoit apologized for everything that happened, began to cry and said he couldn't go to jail. 6/9/14 RP 32. Benoit then began to hyperventilate and claimed he

was having a heart attack. 6/9/14 RP 32. Benoit was booked into jail. 6/9/14 RP 32.

Based upon Goss' observations of Benoit for over two and a half hours, Goss thought Benoit was extremely intoxicated. 6/9/14 RP 33-4.

Officer Weiss was also working when he came into contact with Shelby Benoit on August 2, 2013. 6/10/14 RP 68-9. Weiss overheard Goss's pursuit of the black SUV on the radio at 2:30 a.m. 6/10/14 RP 70. Weiss could see Goss's emergency lights in the distance pursuing the SUV. 6/10/14 RP 70. He waited for the SUV to pass. 6/10/14 RP 70. Weiss was a couple blocks away and the roads were empty. 6/10/14 RP 70. Shortly after that Goss terminated the pursuit. 6/10/14 RP 72. Weiss saw the SUV pass him and estimated the speed at 60 miles per hour in a 30 mile per hour zone. 6/10/14 RP 72. Weiss pulled in behind the SUV and maintained visual contact. 6/10/14 RP 73. Weiss observed the vehicle turning and saw it roll past a stop sign. 6/10/14 RP 74. Weiss then saw Officer Goss pull in behind the SUV and followed both until the SUV pulled into the Woodgate Place apartments. 6/10/14 RP 74. Weiss saw Benoit exit the vehicle and Officer Goss apprehend him. 6/10/14 RP 74, 95.

Weiss described how he had to assist Goss in arresting Benoit because Benoit was resisting. 6/10/14 RP 75. Eventually after much resistance they were able to get Benoit into handcuffs. 6/10/14 RP 75. Weiss

had observed the SUV continuously from the time he first saw it until it came to a stop and Benoit was arrested. 6/10/14 RP 100-1.

Weiss noted that while Benoit was resisting, he could smell a strong odor of intoxicants from his person. 6/10/14 RP 76. Benoit also had a “thousand-yard-stare-type” look at the point he said I need to talk to you. 6/10/14 RP 77. Benoit also exhibited the effects of being intoxicated, stumbling as he walked. 6/10/14 RP 78. Weiss’s opinion was that Benoit was intoxicated. 6/10/14 RP 78.

Officer Campo was also working on the night of the pursuit and went to assist when he heard the information that the driver was resisting arrest. 6/10/14 RP 102-3. When Campo arrived, Officers Goss and Weiss were on the ground in front of the SUV trying to take control of Benoit. 6/10/14 RP 102, 104. After they gained control of Benoit, Campo heard Benoit state that he had had the legal amount of alcohol. 6/10/14 RP 106.

Campo also was present when Benoit was taken to the Burlington Police Station. 6/10/14 RP 106. While Benoit was being transported into the station, Campo heard Benoit say “I’m a little drunk.” 6/10/14 RP 106-7. Campo overheard Benoit say he wanted to tell a joke, but then did not do so. 6/10/14 RP 107. Benoit also repeatedly asked for a cigarette. 6/10/14 RP 107. Benoit was also in a joking demeanor given the severity of the situation

but also exhibited mood swings from crying to laughing. 6/10/14 RP 108. It was Campo's opinion that Benoit was intoxicated. 6/10/14 RP 108.

Benoit fell off his chair at one point and paramedics were called to evaluate him. 6/10/14 RP 108-9. Benoit claimed he recognized a paramedic, but the paramedic did not recognize him. 6/10/14 RP 109. Paramedics did not stay and treat Benoit, who was put back on the chair next to the BAC machine. 6/10/14 RP 109.

Campo heard Goss advise Benoit of his implied consent warnings, but Benoit appeared not to be listening and placed his fingers in his ears. 6/10/14 RP 110. Campo also described that when Benoit asked to use the bathroom he started to attempt to pee into the toilet from the doorway. 6/10/14 RP 111. Campo and Goss had to take control of Benoit again, placing him in handcuffs. 6/10/14 RP 112. Campo later observed Benoit curled upon a fetal position on the floor, kicking the door, rubbing his head back and forth against the cell door and chanting or singing himself a nursery rhyme. 6/10/14 RP 112-3.

Sergeant Rogge was also working at the time of the pursuit. 6/10/14 RP 125-6. Rogge had heard radio traffic by Officer Goss describing Benoit as traveling 85 miles per hour in a 35 mile per hour zone. 6/10/14 RP 126. Rogge considered that reckless driving and requested Goss to terminate the pursuit. 6/10/14 RP 126-7. Goss had decided to terminate the pursuit just

before Rogge contacted him. 6/10/14 RP 127. Rogge went to the area. 6/10/14 RP 128.

When Rogge arrived, Benoit was on the ground and Officers Weiss and Goss were taking Benoit into custody. 6/10/14 RP 128-9. Goss was trying to advise Benoit of his rights, but Benoit was hollering, yelling and not making much sense. 6/10/14 RP 129. Rogge could smell the odor of alcohol from Benoit, while Benoit was being taken to a police vehicle. 6/10/14 RP 130. Rogge's opinion was that Benoit was under the influence of alcohol. 6/10/14 RP 130, 138.

Mr. Benoit did not testify. 6/10/14 RP 142.

IV. ARGUMENT

Speeding at over double the speed limit, running red lights, almost striking an officer's vehicle and being extremely intoxicated shortly thereafter was sufficient evidence for a rational trier of fact to find the defendant guilty of Driving While Under the Influence.

i. Standards Pertaining to Sufficiency of Evidence

Evidence is sufficient to support a conviction if, viewed in the light most favorable to the prosecution, it permits any rational trier of fact to find the essential elements of the 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 inferences that reasonably can be drawn therefrom." *Salinas*, 119 Wn.2d 201. Circumstantial evidence and direct evidence are equally reliable. *State v. Delmarter*, 94 Wn.2d 634, 638, 618 P.2d 99 (1980).

State v. McNeal, 98 Wn. App. 585, 592, 991 P.2d 649 (1999).

In determining whether the necessary quantum of proof exists, the reviewing court need not be convinced of the defendant's guilt beyond a reasonable doubt, but only that substantial evidence supports the State's case. *State v. Fiser*, 99 Wn. App. 714, 718, 995 P.2d 107 (2000), *rev. denied*, 141 Wn.2d 1023, 10 P.3d 1074 (2000). Substantial evidence is evidence that "would convince an unprejudiced, thinking mind of the truth of the fact to which the evidence is directed." *State v. Hutton*, 7 Wn. App. 726, 728, 502 P.2d 1037 (1972). In finding substantial evidence, we cannot rely upon guess, speculation, or conjecture. *Hutton*, 7 Wn. App. at 728, 502 P.2d 1037.

Credibility determinations are for the trier of fact and are not subject to review. *State v. Camarillo*, 115 Wn.2d 60, 71, 794 P.2d 850 (1990). We must defer to the trier of fact on issues of conflicting testimony, credibility of witnesses, and the persuasiveness of the evidence. *State v. Walton*, 64 Wn. App. 410, 415-16, 824 P.2d 533, *rev. denied*, 119 Wn.2d 1011, 833 P.2d 386 (1992). The trier of fact is free to reject even uncontested testimony as not credible as long as it does not do so arbitrarily. *State v. Tocki*, 32 Wn. App. 457, 462, 648 P.2d 99, *rev. denied*, 98 Wn.2d 1004 (1982).

State v. Prestegard, 108 Wn. App. 14, 22-3, 28 P.2d 817 (2001)

And "all reasonable inferences from the evidence must be drawn in favor of the State and interpreted most strongly against the defendant." *Id.* The credibility of the witnesses is for the jury. *See State v. Camarillo*, 115 Wn.2d 60, 71, 794 P.2d 850 (1990)

State v. Perez, 166 Wn. App. 55, 60, 269 P.3d 372 (2012).

The statute defining driving while under the influence provides as follows:

(1) A person is guilty of driving while under the influence of intoxicating liquor, marijuana, or any drug if the person drives a vehicle within this state:

(a) And the person has, within two hours after driving, an alcohol concentration of 0.08 or higher as shown by analysis of the person's breath or blood made under RCW 46.61.506; or

(b) The person has, within two hours after driving, a THC concentration of 5.00 or higher as shown by analysis of the person's blood made under RCW 46.61.506; or

(c) While the person is under the influence of or affected by intoxicating liquor, marijuana, or any drug; or

(d) While the person is under the combined influence of or affected by intoxicating liquor, marijuana, and any drug.

RCW 46.61.502.

Here the jury was provided the following jury instructions:

A person commits the crime of driving while under the influence when he or she drives while he or she is under the influence of or affected by intoxicating liquor.

CP 40.

A person is under the influence of or affected by the use of intoxicating liquor if the person's ability to drive a motor vehicle is lessened in any appreciable degree.

It is not unlawful for a person to consume liquor and drive a motor vehicle. The law recognizes that a person may have consumed intoxicating liquor and yet not be under the influence of it.

CP 41.

To convict the defendant of driving while under the influence, each of the following three elements of the crime must be proved beyond a reasonable doubt:

(1) That on or about August 2, 2013, the defendant drove a motor vehicle;

(2) That the defendant at the time of driving a motor vehicle was under the influence of or affected by intoxicating liquor

And

(3) That this act occurred in the State of Washington.

If you find from the evidence that elements (1), (2), and (3) have been proven beyond a reasonable doubt, then it will be your duty to return a verdict of guilty.

On the other hand, if, after weighting all of the evidence, you have a reasonable doubt as to any one of these elements (1), (2), and (3), then it will be your duty to return a verdict of not guilty.

CP 42.

ii. The evidence as sufficient for a trier of fact to find the defendant's ability to drive was lessened to an appreciable degree.

Benoit's driving showed evidence that his ability to drive was lessened to an appreciable degree.

When Officer Goss first saw the vehicle, his radar showed the vehicle was traveling 67 miles per hour in a 35 mile per hour zone. 6/9/14 RP 11. When Goss got behind the vehicle, it appeared to accelerate to 80 to 85 miles per hour and failed to stop for a red traffic light. 6/9/14 RP 13.

Once Goss realized the vehicle was not stopping for him, he had to end the pursuit because it was placing the public at risk. 6/9/14 RP 14-5, 45. Goss then saw the vehicle fail to slow for a yellow light, veer into the center

turn lane kicking up dust before correcting and failing to stop for a red light. 6/9/14 RP 15.

While paralleling the vehicle, Goss saw the vehicle fail to stop at a stop sign almost striking Goss' vehicle. 6/9/14 RP 16, 41-2. The vehicle continued four blocks south before turning into an apartment complex parking lot and stopped taking up two parking stalls. 6/9/14 RP 17, 22.

Benoit's statements confirmed that he had been drinking and was under the influence.

Benoit initially tried to walk away from officers and stated he was looking for his father. 6/9/14 RP 18. When told Goss tried to stop him due to traveling 67 in a 35 mile per hour zone, Benoit said he had been driving "35 miles per hour in the median because that was what was recommended." 6/9/14 RP 24.

When asked how much he had to drink that evening before driving, Benoit said his father had purchased a fifth of Bacardi and they had been drinking at his apartment in Mount Vernon. 6/9/14 RP 25. Benoit said he had started drinking around 12:30. 6/9/14 RP 25. Benoit said his father had left at 1:00 a.m. and he had gone to look for him. 6/9/14 RP 25.

When asked how much he had to drink, Benoit smiled and said "the legal limit." 6/9/14 RP 25. When asked what that meant, Benoit said "you know." 6/9/14 RP 25. Benoit claimed he saw the patrol vehicle but saw no

lights and heard no siren. 6/9/14 RP 25. Benoit also apologized for causing problems and stating he was studying to be a lawyer and couldn't get arrested. 6/9/14 RP 26.

At the station, Benoit said had too much to drink or was pretty drunk. 6/9/14 RP 28. At the jail, Benoit apologized for everything that happened, began to cry and said he couldn't go to jail. 6/9/14 RP 32.

Benoit's physical characteristics and actions presented evidence of significant intoxication.

Goss smelled a strong odor of intoxicants coming from Benoit's breath. 6/9/14 RP 18, 26. Due to intoxication, Benoit was not initially cooperative. 6/9/14 RP 18. Benoit had droopy, bloodshot eyes and dilated pupils and his face was red or flushed. 6/9/14 RP 26. Benoit was repeating himself and mispronouncing words. 6/9/14 RP 26. Benoit had mood swings from demanding to laughing and joking. 6/9/14 RP 27.

Benoit was put in a holding cell with a toilet, but Benoit did not vomit. 6/9/14 RP 28. Benoit sat in a chair leaning over making vomiting sounds. 6/9/14 RP 28. Benoit tipped over, struck his head on the wall and slid to the floor. 6/9/14 RP 28. Goss asked Benoit if he was okay and Benoit started crying. 6/9/14 RP 28. Goss began processing Benoit for DUI. 6/9/14 RP 29. Goss read Benoit the implied consent warnings. 6/9/14 RP 29. Benoit appeared to be looking around, not paying attention. 6/9/14 RP 29-30.

Goss determined he could not process Benoit for a DUI because he would not listen to Goss when he was reading warnings, was having mood swings, was not concentrating or paying attention. 6/9/14 RP 34. Benoit's actions in trying to urinate from the doorway, and pushing back and resisting Goss lead him to believe processing was not viable. 6/9/14 RP 34.

Based upon Goss' observations of Benoit for over two and a half hours, Goss provided the opinion that Benoit was extremely intoxicated. 6/9/14 RP 33-4. Three other officers having contact with Benoit also provided the opinion that Benoit was intoxicated. 6/10/14 RP 78, 108, 130, 138.

The rational inference from this evidence was that Benoit's ability to drive was lessened to an appreciable degree.

iii. The Appellant's Opening Brief draws inferences contrary to the applicable standard.

Benoit challenges the sufficiency of the evidence by citing the lack of evidence and providing alternative explanations rather than challenging the sufficiency of the evidence as it exists.

Benoit contends "other than surpassing the speed limit, Mr. Benoit complied with all traffic laws." Brief of Appellant at page 9. This is factually incorrect. Benoit ran two red lights and failed to yield for a yellow. 6/9/14 RP 13, 15. Benoit also failed to stop at a stop sign almost striking an

officer's vehicle. 6/9/14 RP 16, 42. Benoit also fails to mention that the speeding at 80 to 85 miles per hour was more than double the posted 35 mile per hour speed limit. 6/9/14 RP 13. The driving was so reckless that the pursuit had to be terminated. 6/9/14 RP 14-5, 45, 126-7.

In violation of the requirement that all rational inferences must be interpreted in favor of sufficiency of the evidence, Benoit draws inferences in his favor. He cites to a lack of a breath alcohol test or field sobriety tests. Brief of Appellant at page 7. No inference can be drawn from the lack of testing regarding his intoxication. And in fact, Officer Goss provided the opinion that Benoit was so intoxicated that he could not complete the breath testing process. 6/9/14 RP 29-30, 34.

The appellant further draws inferences suggesting his actions were consistent with someone with a mental health disorder although there was no affirmative evidence to support such a disorder. Brief of Appellant at pages 11-12. Again, Benoit seeks to draw an inference as to an alternative reason for his actions. However, the officers who Benoit cross-examined to reveal that certain of his actions could be consistent with a mental health disorder each provided the opinion that Benoit was intoxicated. 6/10/14 RP 78, 108, 130, 138

Benoit cites to two cases to contrast the sufficiency of the evidence in those cases with the present case. In *State v. Wilhelm*, 78 Wn. App. 188, 896

P.2d 105 (1995), the defendant was found behind the wheel of a car parked on the inside shoulder of I-5, had watery, bloodshot eyes, slurred speech, unsteady coordination and breath smelling of alcohol. Wilhlem also failed the field sobriety test and refused the breath test. The Court determined the evidence supports a reasonable inference of intoxication. *State v. Wilhelm*, 78 Wn. App. at 193, 896 P.2d 105 (1995).

In *State v. Shabel*, 95 Wn. App. 469, 976 P.2d 153 (1999) an officer saw the defendant drinking from a beer can and smelled alcohol from the vehicle before the vehicle fled. A short time later the vehicle was seen driving on a sidewalk around a road block and eluded officers before abandoning the vehicle. After arrest, the defendant had a strong odor of alcohol on her breath, appeared under the influence and provided breath test readings of .141 and .132. *State v. Shabel*, 95 Wn. App. at 471, 474, 976 P.2d 153 (1999).

These cases do not present a required level of evidentiary sufficiency, only cases in which there was sufficient evidence.

Here there was likewise sufficient evidence based upon Benoit's excessive speed and reckless driving, his admission to having consumed too much alcohol and his state of obvious intoxication.

V. CONCLUSION

For the foregoing reasons, this Court must find there was sufficient evidence for a rational trier of fact to find the defendant guilty of Driving While under the Influence and affirm the defendant's conviction.

DATED this 11th day of May, 2015.

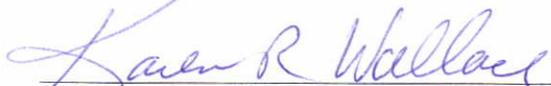
SKAGIT COUNTY PROSECUTING ATTORNEY

By: 
ERIK PEDERSEN, WSBA#20015
Deputy Prosecuting Attorney
Skagit County Prosecutor's Office #91059

DECLARATION OF DELIVERY

I, Karen R. Wallace, declare as follows:

I sent for delivery by; United States Postal Service; ABC Legal Messenger Service, a true and correct copy of the document to which this declaration is attached, to: Jan Trasen, addressed as Washington Appellate Project, 1511 Third Avenue, Seattle, WA 98101. I certify under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct. Executed at Mount Vernon, Washington this 11th day of May, 2015.


KAREN R. WALLACE, DECLARANT