

FILED

JANUARY 6, 2012
Court of Appeals
Division III
State of Washington

No. 29845-1-III

**COURT OF APPEALS, DIVISION III
OF THE STATE OF WASHINGTON**

STATE OF WASHINGTON,

RESPONDENT,

v.

AUSTIN LEE CURTISS,

APPELLANT.

BRIEF OF RESPONDENT

**D. ANGUS LEE
PROSECUTING ATTORNEY**

**By: Douglas R. Mitchell – WSBA #22877
Deputy Prosecuting Attorney**

**By: Paul Michael Gaffney – WSBA #38109
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A. IDENTITY OF RESPONDENT

The State of Washington was the Plaintiff in the Superior Court, and is Respondent herein. The State is represented by the Grant County Prosecutor's Office.

B. RELIEF SOUGHT

The State is asking this Court to affirm the decision of the Superior Court and uphold the conviction of the Appellant.

C. STATEMENT OF FACTS

On April 17, 2010, at approximately 0130, Officer Jason Snyder was on duty as an officer with the State of Washington Department of Fish and Wildlife. RP, 38. Officer Snyder was driving a state issued Authorized Emergency Vehicle, a Ford truck with Washington Department of Fish and Wildlife decals on the sides. RP, 39; RCW 46.04.040. The vehicle is equipped with lights; these include "wig-wag" headlights and an LED dash light that alternates red and blue lights. RP, 40; RCW 46.37.190. At the time Officer Snyder was parked on the east side of Sand Dunes Road, his vehicle

facing northbound. This road is a gravel road that is maintained by the county. RP, 42. The speed limit on this road is 35 MPH. There are no street lights in the area where Officer Snyder first encountered the Appellant. Officer Snyder testified that there was good visibility that night, there was no fog or rain. RP, 51-52.

Officer Snyder observed a group of three or four vehicles go by his location. The vehicles appeared to be traveling together. Officer Snyder testified that the vehicle driven by the Appellant was the last vehicle in the group. RP, 73. As the vehicle passed him it was his recollection that the vehicle was not really going all that fast. RP, 73. Officer Snyder ran the license plate of the Appellant's vehicle and the information returned informed him that the registered owner of the vehicle had a suspended license. RP, 74. After receiving the information Officer Snyder pulled out to follow the vehicle.

At the time Officer Snyder pulled out to follow the vehicle being driven by the Appellant Officer Snyder estimated that the distance between his patrol vehicle and Appellant's vehicle was roughly the distance from the witness stand to the exit doors. RP, 75. At that time the court stated for the record that the witness was 46 and one half feet from the exit doors. RP, 76.

Officer Snyder was following the vehicle due to registered owner's license status. RP, 77. At that time, he had no suspicion that the Appellant was intoxicated or driving under the influence. Appellant began to accelerate after Officer Snyder pulled in behind his vehicle.

Officer Snyder testified that he activated his emergency lights immediately after crossing Spillway Two. Once activated Officer Snyder left his emergency lights on until the pursuit was terminated. RP, 80. Officer Snyder testified that he activated the "wig-wags," both front and back, flashers in the taillights, the front side LED and the rear side LED all at the same time. RP, 81.

At this time the Appellant was about 80 to 100 feet ahead of Officer Snyder's vehicle. Officer Snyder testified that he believed that the Appellant had seen the patrol vehicle's lights at this time due to his behavior. At this time the Appellant accelerated 10 or 15 miles an hour. RP, 81.

Sergeant Chris Erhardt of Washington Department of Fish and Wildlife was also on duty on that date near that location. RP, 115. Sergeant Erhardt was also wearing a WDFW uniform and driving a state issued Authorized Emergency Vehicle. This vehicle is also equipped with lights and a siren. RP, 116-117. Sergeant Erhardt was contacted by Officer Snyder who reported that he was trying to overtake a Black Jeep Cherokee. Officer

Snyder reported to Sergeant Erhardt that the vehicle was traveling at a high rate of speed and was failing to yield to his emergency lights. RP, 116.

Sergeant Erhardt was located at the intersection of Camas Road and Sand Dunes Road, north of Officer Snyder and the Appellant. Sergeant Erhardt positioned himself about 50 yards from the edge of Sand Dunes Road and waited for the vehicles. RP, 119. Within a minute of Officer Snyder's radio contact Sergeant Erhardt saw headlights coming his way at a high rate of speed. RP, 120. He saw the first set of headlights coming with a second set of headlights following close behind, with red and blue lights flashing. RP, 121. Sergeant Erhardt got out onto Sand Dunes Road heading north and accelerated as fast as his vehicle would go to try and stay ahead of the approaching vehicles. When he pulled out onto Sand Dunes Road he had all of his emergency lights activated. RP, 122. Sergeant Erhardt monitored the Appellant's vehicle as he accelerated. Sergeant Erhardt was concerned that he might be hit by the approaching vehicle. Sergeant Erhardt approximated the total distance that he drove north on Sand Dunes Road was 300 yards. RP, 123-124. Sergeant Erhardt was driving in the right hand lane. The Jeep Cherokee moved to the left as though it was going to try to pass Sergeant Erhardt's vehicle. Sergeant Erhardt moved his vehicle to the center lane to try and keep the pursuit contained. RP, 124. The jeep caught up to Sergeant

Erhardt's vehicle and when he moved to the center lane, the jeep slowed, pulled to the left side of the road and stopped. Sergeant Erhardt turned his vehicle around and stopped in front of the jeep, noting that Officer Snyder was behind the vehicle. RP, 124. Officer Snyder approached the Appellant's vehicle, knocked on the driver's side window and the Appellant rolled the window down. RP, 90. Officer Snyder asked the Appellant why he hadn't stopped. The Appellant did not answer that question but acknowledged that he seen Officer Snyder's emergency lights a ways back. RP, 55.

D. RESPONSE TO APPELLANT'S ISSUE PRESENTED

The evidence at trial was sufficient to sustain the charge of Attempting to Elude a Police Vehicle.

Appellant challenges his conviction for Attempting to Elude a Police Vehicle arguing the evidence was insufficient to prove beyond a reasonable doubt that he committed the crime. Br. of Appellant, 5.

As stated in Instruction #4, in order to convict the Appellant of that crime, the State had to prove beyond a reasonable doubt that on or about April 17, 2010, the Appellant drove a motor vehicle; that he was signaled to stop by a uniformed officer by hand, voice, emergency light, or siren; that the signaling officer's vehicle was equipped with lights and siren; that Appellant

willfully failed or refused to immediately bring the vehicle to a stop after being signaled to stop; that while attempting to elude a pursuing police vehicle, he drove his vehicle in a reckless manner, and that the acts occurred in the State of Washington. CP, at 12; RCW 46.61.024.

In order to determine whether there was sufficient evidence to support Appellant's conviction, this Court will "view the evidence in the light most favorable to the prosecution and determine whether any rational fact finder could have found the essential elements of the crime beyond a reasonable doubt." *State v. Mitchell*, 169 Wn.2d 437, 443-44, 237 P.3d 282 (2010) (citing *State v. Engel*, 166 Wn.2d 572, 576, 210 P.3d 1007 (2009) (citing *State v. Wentz*, 149 Wn.2d 342, 347, 68 P.3d 282 (2003))). A claim of insufficiency of the evidence not only requires that the Appellant admit the truth of the State's evidence, but also grants the State the benefit of all inferences that can reasonably be drawn from it. *State v. DeVries*, 149 Wn.2d 842, 849, 72 P.3d 748 (2003) (citing *State v. Green*, 94 Wn.2d 216, 222, 616 P.2d 628 (1980)). Additionally, appellate courts defer to the finder of fact (in this case, the jury) on issues of witness credibility. *State v. Drum*, 168 Wn.2d 23, 35, 225 P.3d 237 (2010) (citing *State v. Camarillo*, 115 Wn.2d 60, 71, 794 P.2d 850 (1990)).

This Court should do the same. Considering all evidence, including all reasonable inferences drawn from it, reviewing the evidence in the light most favorable to the State, there is more than sufficient evidence to support a conviction for Attempting to Elude a Police Vehicle. Officer Snyder and Sergeant Erhardt testified as summarized above. Officer Snyder and Sergeant Erhardt were subjected to vigorous cross examination. RP, 59-109; 128-140.

Officer Snyder's testimony established the following: that he was on duty in Grant County Washington as an enforcement officer of the Washington Department of Fish and Wildlife; in uniform and driving a marked law enforcement vehicle with a complete set of emergency lights; that he saw Appellant driving a Jeep Cherokee; that he ran the registration of the vehicle; that the information returned showed that the registered owner of the vehicle had a suspended license; that initially the Jeep Cherokee was not going very fast; that as he pulled in behind the vehicle it accelerated; that he activated all of his vehicle's emergency lights; that the Jeep Cherokee continued to accelerate and pass other vehicles; that he contacted Sergeant Erhardt and alerted him to the situation. Sergeant Erhardt's testimony establishes that he activated his emergency lights and pulled out in front of the Jeep Cherokee in an effort to stop the vehicle; Sergeant Erhardt accelerated aggressively to prevent his vehicle from being hit by the Appellant; that the Appellant caught

up to his vehicle and attempted to pass him on the left; that Sergeant Erhardt moved to the center lane to prevent the vehicle from passing him and that ultimately the Appellant pulled over to the left side of the road.

The jury was properly instructed as to its obligations in considering the evidence. The jury was to consider what had been proven based on the testimony and admitted exhibits, and to consider all evidence without regard to which party introduced it. CP, 14. It was also instructed as to witnesses and their testimony, including direct and circumstantial evidence, and the jury's role in considering the veracity and accuracy of any witness. CP, 16.

Additionally the jury was instructed as what constituted willful behavior. A person acts willfully as to a particular fact when he acts knowingly as to that fact. A person acts knowingly with respect to a fact when he is aware of that fact. If a person has information that would lead a reasonable person in the same situation to believe that fact exists, the jury is permitted but not required to find that he acted with knowledge of the fact. CP, 14.

The standard for determining whether a conviction rests on insufficient evidence is "whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." *State v. Townsend*, 147

Wn.2d 666, 679, 57 P.3d 255 (2002). A claim of insufficiency admits the truth of the State's evidence and all inferences that reasonably can be drawn therefrom. A challenge to the sufficiency of the evidence admits the truth of the evidence. *State v. Salinas*, 119 Wn.2d 192, 201, 829 P.2d 1068 (1992). Further, "all reasonable inferences from the evidence must be drawn in favor of the State and interpreted most strongly against the defendant." *Id.*, at 201. This standard is a deferential one, and questions of credibility, persuasiveness, and conflicting testimony must be left to the jury. *State v. Walton*, 64 Wn. App. 410, 415-416, 824 P.2d 533 (1992).

Applying the law to the facts of this case, the jury could have, and did, believe Officer Snyder and Sergeant Erhardt's testimony. Those testimonies, and the inferences from it, support the jury's verdict.

Appellant argues that being an intoxicated individual engaging in reckless driving maneuvers on a curvy road would have no knowledge that he was being signaled to stop. "No rational trier of fact could find beyond a reasonable doubt that an intoxicated individual driving at high speed on a winding dirt road while passing at least three vehicles in the space of about one minute would know that that he was being signaled to stop prior to completing this dangerous maneuver." Br. of Appellant, 4. This is not a

correct summary of the evidence; once stopped, Appellant had acknowledged awareness of Officer Snyder's lights "a ways back." RP, 55.

The court should not give the Appellant the benefit of a self created risk and allow his admitted illegal actions to obviate the jury's decision regarding his other illegal actions. The Appellant was pursued by Officer Snyder and did not stop his vehicle when signaled to do so. Appellant then attempted to pass another vehicle with activated emergency lights being driven by Sergeant Erhardt. Appellant did not, as he represents in his brief, promptly bring his vehicle to a stop when he encountered Sergeant Erhardt. Br. of Appellant, 4.

The jury followed their instructions and determined that the Appellant drove a motor vehicle; that he was signaled to stop by a uniformed officer by hand, voice, emergency light, or siren; that the signaling officer's vehicle was equipped with lights and siren; that Appellant willfully failed or refused to immediately bring the vehicle to a stop after being signaled to stop; that while attempting to elude a pursuing police vehicle, he drove his vehicle in a reckless manner, and that the acts occurred in the State of Washington.

E. CONCLUSION

The Appellant has not raised any supportable claims of error. The evidence was sufficient to convict the Appellant. Accordingly, this Court should uphold the decisions of the trial court and the conviction of the Appellant.

Respectfully submitted this 6th day of January 2012.



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COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION III

STATE OF WASHINGTON,)	
)	
Respondent,)	No. 29845-1-III
)	
vs.)	
)	
AUSTIN LEE CURTISS,)	DECLARATION OF SERVICE
)	
Appellant.)	
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Under penalty of perjury of the laws of the State of Washington, the undersigned declares:

That on this day I served a copy of the Brief of Respondent in this matter by e-mail on the following party, receipt confirmed, pursuant to the parties' agreement:

Janet Gemberling
Attorney at Law
admin@gemberlaw.com

That on this day I deposited in the mails of the United States of America a properly stamped and addressed envelope directed to Appellant containing a copy of the Brief of Respondent in the above-entitled matter.

Austin Lee Curtiss
8953-B Tinker Loop
Moses Lake WA 98837

Dated: January 6, 2012



Kaye Burns