

FILED  
NOV 30 2012  
COURT OF APPEALS  
DIVISION III

30402-7-III

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OF THE STATE OF WASHINGTON

STATE OF WASHINGTON, RESPONDENT

v.

KORY L. ZIELKE, APPELLANT

---

APPEAL FROM THE SUPERIOR COURT

OF SPOKANE COUNTY

---

BRIEF OF RESPONDENT

---

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I.

APPELLANT'S ASSIGNMENT OF ERROR

1. The State's evidence was insufficient to support Kory Leo Zielke's convictions of possession of a motor vehicle and attempting to elude.

II.

ISSUES PRESENTED

- A. DID THE STATE PRESENT SUFFICIENT EVIDENCE OF IDENTIFICATION OF THE DEFENDANT AS THE DRIVER OF THE STOLEN VEHICLE?

III.

STATEMENT OF THE CASE

For the purposes of this appeal, the State accepts the defendant's version of the Statement of the Case.

IV.

ARGUMENT

- A. THERE WAS AMPLE EVIDENCE TO SUPPORT THE JURY'S DECISIONS.

The defendant raises a single issue in this appeal: was there sufficient evidence to identify the defendant as the individual who stole the motor vehicle and attempted to elude.

“There is sufficient proof of an element of a crime to support a jury’s verdict when, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found that element beyond a reasonable doubt.” *State v. Bright*, 129 Wn.2d 257, 266 n.30, 916 P.2d 922 (1996). “A claim of insufficiency admits the truth of the State’s evidence and all inferences that reasonably can be drawn therefrom.” *State v. Salinas*, 119 Wn.2d 192, 201, 829 P.2d 1068 (1992). The relevant question 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. Green*, 94 Wn.2d 216, 616 P.2d 628 (1980); *State v. Smith*, 106 Wn.2d 772, 725 P.2d 951 (1988); *State v. Myles*, 127 Wn.2d 807, 816, 903 P.2d 979 (1995). The defendant admits to the truth of the State’s evidence and the viewing of the State’s evidence in a light most favorable to the prosecution.

Circumstantial evidence and direct evidence are equally reliable. *State v. Delmarter*, 94 Wn.2d 634, 638, 618 P.2d 99 (1980).

When analyzing a sufficiency of the evidence claim, the court will draw all inferences from the evidence in favor of the State and against the defendant. *State v. Joy*, 121 Wn.2d 333, 339, 851 P.2d 654 (1993). The reviewing court will defer to the jury on the credibility of witnesses and

the weight of the evidence. *State v. Bonisio*, 92 Wn. App. 783, 794, 964 P.2d 1222 (1998), *review denied*, 137 Wn.2d 1024 (1999). Even if an appellate court is convinced that a verdict is incorrect, that court will not overrule the verdict of the jury. *Burke v. Pepsi-Cola Bottling Co.*, 64 Wn.2d 244, 391 P.2d 194 (1964).

Trooper Mark Haas testified that during one portion of the extended pursuit of the defendant, the defendant came to a stop. At this point the trooper and the defendant were four feet apart. In fact, the defendant's car scraped the trooper's car. According to the trooper's testimony he looked the defendant "...right in the eye." RP page 40. The trooper identified the defendant in court. RP 41.

In addition to Trooper Haas' identification, Trooper Haas noted that the defendant had damage to his face and to his back. The trooper testified the injuries appeared "fresh." RP 47.

Trooper Jerry Walker was one of several officers arrayed around the defendant's mother's house. RP 68-69. Trooper Walker is a defensive tactics instructor and testified that the defendant's face appeared "punched-in" recently. RP 69. The trooper also testified that he saw marks and abrasions on the defendant.

The defense consisted of the defendant's aunt, Crystal Desantos testifying that prior to the incident with the stolen car, she saw the defendant with injuries as if he had been in a fight. RP 90.

Neither the defendant nor his aunt gave an explanation for how he got injuries on his face and back.

As noted at the outset of this brief, the issue here is a very narrow one. The issue is simply identification. Under the laws of this State, a claim of insufficient evidence means the defendant accepts all of the State's evidence and the inferences from that evidence as true and correct. With that legal framework in place, the State had ample evidence in the form of the direct identification by an experienced trooper. In addition to the trooper identification, the inferences from the marks found on the defendant's face and back were that the defendant smashed his face going at high speeds over bumps and dips. Further inferences were that the defendant scraped his back running from the police to get to his mother's house.

When the testimony is viewed in the light most favorable to the State, there was clearly enough evidence to convict the defendant.

V.

CONCLUSION

For the reasons stated, the convictions of the defendant should be affirmed.

Dated this 30<sup>th</sup> day of November, 2012.

STEVEN J. TUCKER  
Prosecuting Attorney

A handwritten signature in black ink, appearing to read "Andrew J. Metts", is written over a horizontal line. The signature is stylized and cursive.

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