

69202-0

69202-0

NO. 69202-0-1

COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION I

STATE OF WASHINGTON,

Respondent,

v.

JOHN HARRIS, JR.,

Appellant.

APPEAL FROM THE SUPERIOR COURT FOR KING COUNTY

THE HONORABLE BARBARA LINDE

BRIEF OF RESPONDENT

2013 APR 17 PM 2:08
COURT OF APPEALS DIV 1
STATE OF WASHINGTON

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A. ISSUES PRESENTED

1. 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. Here, Harris was charged with the crime of hit and run of an attended vehicle. The physical description Naomi Yonemura gave of the driver that hit her car matched Harris, officers found Harris driving the same truck involved in the collision shortly after the collision happened, and he was found driving the truck near where the collision happened. Viewed in the light most favorable to the prosecution, could any rational trier of fact have found that Harris was the driver of the truck beyond a reasonable doubt?

2. Harris was also charged with the crime of attempting to elude a pursuing police vehicle. Harris rapidly accelerated, caused the pickup truck's tires to break traction with the ground and squeal twice, traveled 20 miles per hour over the speed limit in a residential area, crossed over the center lane divider three times, and caused people to rush backward when he drove up on a curb. Is this sufficient evidence to demonstrate that Harris was driving in a reckless manner?

3. Third, Harris was charged with the crime of driving while under the influence of alcohol. His breath smelled of alcohol, he vomited in the holding cell, swayed as he stood, had difficulty standing up, refused to provide a sample for the breath test, and his eyes were bloodshot and watery. Is this sufficient evidence to show that Harris was under the influence of or affected by alcohol?

4. The State concedes the fine imposed on Harris' conviction for driving while under the influence is higher than the relevant statutes mandate. Because the record is not clear as to amount of the fine the trial court intended to impose, should Harris' sentence on this count be remanded for clarification?

B. STATEMENT OF FACTS

1. PROCEDURAL FACTS.

The State charged defendant John Harris, Jr., by amended information with attempting to elude a pursuing police vehicle, driving while under the influence of alcohol, and hit and run of an attended vehicle. CP 15-16. Harris was convicted of all three crimes after a jury trial. CP 48-50. The jury answered "yes" to the question of whether Harris refused to submit to a breath alcohol test on a special verdict form. CP 51. The trial court imposed a

sentence of 12 months for the crime of attempting to elude a pursuing police vehicle, a sentence of 364 days for hit and run of an attended vehicle, and a sentence of 364 days for driving while under the influence of alcohol. CP 82-92. All three sentences were imposed concurrently to each other. CP 85, 90. Harris was ordered to pay a fine of \$1,545.50 as part of the penalty for being convicted of driving while under the influence. CP 91. Harris appealed.

2. SUBSTANTIVE FACTS.

Police responded to a call reporting a man waving a gun around at Vince's Bar close to midnight on September 6, 2010. 2RP 191-93. Officer Joe Hadley and Officer Lloyd Harris arrived within two minutes of receiving the call. 2RP 192. Officer Harris was driving the marked patrol car and Officer Hadley was in the front passenger seat. 2RP 130-31. The car was equipped with lights and sirens. 2RP 130. As they approached Vince's, they saw a red pickup truck aggressively pull out of a parking lot and take off at a high rate of speed. 2RP 192-93. The driver of the truck, John Harris, Jr., did not have lights activated during hours of darkness and failed to stop for a red traffic light. 2RP 193.

When the officers approached Vince's, they noticed a small silver Corolla stopped on the opposite side of the road from where Harris' truck pulled out of the parking lot. 2RP 220, 257. That car belonged to Naomi Yonemura. 2RP 257. While driving the Corolla that night, she was involved in a collision with a red truck with license plate SWS5475. 2RP 262, 269. The collision happened shortly before officers arrived at Vince's. 2RP 273.

Immediately after the collision, the driver of the truck spoke with Yonemura at the side of her car. 2RP 258. He told her he worked for an auto body detailer and that she could get her car fixed there. 2RP 258. After a brief conversation, he yelled at her and walked away from her towards his truck. 2RP 259. He left without giving Yonemura his name, business card, driver's license, or insurance information. 2RP 264-65. Yonemura called 911 and gave the truck's license plate to the operator. 2RP 269.

There was damage to the front of Yonemura's car as a result of the collision. 2RP 220. There was damage to the driver's side door of Harris' truck near the crease of the front of the door, such that the door did not easily open. 2RP 148, 219.

As Officer Hadley and Officer Harris drove up to Vince's, bystanders on the street pointed at the truck and said "The guy you

want is in the truck." 2RP 192. The officers pulled up behind Harris at a traffic light and activated the patrol car's emergency lights. 2RP 131. The officers broadcasted the truck's license plate, SWS5475, over the police radio. 2RP 134.

Harris was stopped in the farthest left turn lane on South Henderson Street waiting to turn left onto Martin Luther King Junior Way South. 2RP 131. Once the light turned green, Harris made a right turn across all lanes of traffic and accelerated very quickly. He caused his tires to break traction with the road and make a squealing sound, like a burnout, and he sped away from the police car. 2RP 131, 215. Next, Harris changed lanes without signaling. 2RP 215. There were many other vehicles on the road that night. 2RP 153.

The officers pursued the truck. Officer Harris had his foot on the pedal all the way to the floor, but Harris was pulling away. 2RP 216. The speed limit in that area is 35 miles per hour and Officer Harris' car was traveling 55 miles per hour. 2RP 216. As Harris continued driving, he crossed the center lane divider three times. 2RP 216. At one point, the patrol car's spotlight was activated and shone on Harris. 2RP 217. Officer Harris chirped his siren twice during the pursuit. 2RP 197.

At the next intersection, Martin Luther King Junior Way South and South Cloverdale Street, Harris stopped for a red light. 2RP 217. There was another car stopped at the light blocking his path. 2RP 217. Harris inched forward before the light turned green. 2RP 217. When the light changed, he accelerated hard enough to cause the tires to break traction with the pavement and make a squealing sound. 2RP 217. Once again, Harris accelerated and pulled away from the officers. 2RP 218. Officer Harris was concerned because they were in a residential neighborhood and there were usually people walking outside. 2RP 216, 218.

Harris' truck jumped onto the sidewalk and came to a stop about one minute after the pursuit began. 2RP 201, 218. The sidewalk had a two-inch curb and there were people on the sidewalk where Harris stopped the truck. 2RP 201. Four or five young people had to rush backwards to avoid being hit when he stopped. 2RP 139. Harris came to an abrupt stop and the truck rocked back and forth when he jammed on the brake. 2RP 201. Officer Harris was concerned that the truck would have hit a person or a light pole if Harris did not stop in time. 2RP 218.

Harris jumped out of the driver's seat immediately after the truck stopped. 2RP 231. Due to concern over the gun mentioned in the initial call to Vince's, the officers ordered him to the ground. 2RP 201. Harris did not comply. 2RP 201. He walked to the middle of the street, yelling, with his hands out to his sides. 2RP 201. There was a standoff and Harris did not get on the ground until additional police officers arrived. 2RP 142-43.

Medics from the fire department came to treat Harris for back pain. 2RP 145-46. Harris was cleared medically and taken to the Seattle Police Department's South Precinct. 2RP 146.

Officer Michael Lewis contacted Harris at the South Precinct. 2RP 333. Harris was vomiting inside the holding cell, but the vomit was entirely liquid and reeked of alcohol. 2RP 334. Harris had a very difficult time standing up and displayed problems with gross motor skills. 2RP 334. In addition, Harris had trouble standing upright and swayed as he stood. 2RP 343. Even after rinsing his mouth, Harris still had an odor of alcohol on his breath. 2RP 335. Harris was not asked to perform field sobriety tests in part because he was vomiting, and because it would pose a danger for him to perform balancing tasks. 2RP 335. Harris' eyes were watery and

bloodshot. 2RP 344. Harris twice refused to provide a sample for the breath test. 2RP 339-40.

C. ARGUMENT

1. THE EVIDENCE WAS SUFFICIENT TO SUPPORT HARRIS' CONVICTIONS FOR HIT AND RUN OF AN ATTENDED VEHICLE, ATTEMPTING TO ELUDE A PURSUING POLICE VEHICLE, AND DRIVING WHILE UNDER THE INFLUENCE.

Harris claims that there is insufficient evidence to support his convictions for hit and run of an attended vehicle, attempting to elude a pursuing police vehicle, and driving while under the influence. Because there is sufficient evidence to sustain each charge, Harris' convictions should be affirmed.

The Washington State Supreme Court explained the standard to use when reviewing a claim of insufficiency of the evidence in State v. Thomas, 150 Wn.2d 821, 874-75, 83 P.3d 970 (2004).

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. A claim of insufficiency admits the truth of the State's evidence and all inferences that reasonably can be drawn therefrom. Circumstantial evidence and direct evidence are equally reliable. Credibility determinations are for the trier of fact and are not

subject to review. This court must defer to the trier of fact on issues of conflicting testimony, credibility of witnesses, and the persuasiveness of the evidence.

Id. at 874-75 (citations omitted).

A reviewing court evaluates whether “the record contained sufficient evidence from which the trier of fact could reasonably infer a defendant’s guilt under the beyond a reasonable doubt standard.” State v. Bridge, 91 Wn. App. 98, 955 P.2d 418 (1998). In determining whether there is sufficient evidence, the reviewing court determines not “whether *it* believes the evidence at trial established guilt beyond a reasonable doubt,” but whether “*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, 221, 616 P.2d 628 (1980) (emphasis added).

a. The State Presented Sufficient Evidence Supporting Harris’ Conviction for Hit and Run of an Attended Vehicle.

Harris asserts that there was insufficient evidence to support his conviction for hit and run of an attended vehicle, arguing that the State failed to present evidence from which the trier of fact could reasonably infer that he was the driver of the truck involved in the collision with Yonemura’s car. The evidence presented at trial,

viewed in the light most favorable to the prosecution, permitted a rational trier of fact to find that Harris was involved in the collision with Yonemura's vehicle beyond a reasonable doubt. The evidence showed the physical description Yonemura gave of the driver of the truck matched Harris. Further, officers found Harris driving the same truck involved in the collision shortly after the collision happened and very close to where the collision happened. For these reasons, Harris' claim should be rejected.

A person is guilty of hit and run of an attended vehicle when he is the driver of a vehicle, is knowingly involved in an accident resulting in damage to any vehicle that is driven or attended by any person, and fails to stop and give his name, address, insurance information, vehicle license number, driver's license number, and render any person injured in the accident reasonable assistance. RCW 46.52.020(2), (3).

In this case, the State presented evidence such that a reasonable trier of fact could find Harris was driving the truck that collided with Yonemura's car. First, Yonemura described the driver of the truck as a tall African-American man in his thirties of lean to medium build wearing dark pants, a dark top, and a do-rag on his head. 2RP 266-67. Such is the physical description of Harris: the

jury watched patrol car video and BAC room video showing Harris as a taller African American man wearing dark jeans, a dark sweatshirt, and a do-rag. Ex. 1, 10. Further, Yonemura heard screeching of tires, sirens, and boys on the street yelling “he came back” a few minutes after the collision. 2RP 272. Although she couldn’t see the face of the man who was arrested because he was on the ground, he had the same build and was wearing dark clothes similar to the driver of the truck. 2RP 276.

Second, officers arrived shortly after the collision and spotted Harris driving the same truck that collided with Yonemura’s car minutes before. When Yonemura called 911 after the collision, she reported the license plate of the truck involved in the collision as SWS5475. 2RP 269. The officers announced an identical license plate for the truck Harris was driving while he tried to avoid contact with law enforcement during the chase. 2RP 134. Additionally, the officers discovered the truck in close geographic proximity to where the collision happened. When they first pulled up to Vince’s, they noticed Yonemura’s car stopped on the opposite side of the road from where Harris’ truck was spotted pulling onto the street. 2RP 220, 257.

Finally, there is no evidence that a person other than Harris was driving the truck at the time of the collision. There was a passenger in the truck when Harris was eluding the police, but it was Ms. Ames, a woman. 2RP 202. Yonemura clearly described a man as the driver of the truck that collided with her vehicle.

Sufficient evidence was also presented as to the other elements of this crime. Harris hit Yonemura's Corolla while she was driving. 2RP 262, 269. He left the scene of the collision without giving Yonemura his name, business card, driver's license, or insurance information. 2RP 264-65. There was sufficient evidence such that a reasonable trier of fact could have found all the elements of the crime beyond a reasonable doubt.

Harris cites State v. Vela, 100 Wn.2d 636, 639, 673 P.2d 185 (1983), for the proposition that the State must prove Harris knew he was involved in a traffic accident. Here, the State produced ample evidence demonstrating Harris knew he was involved in traffic collision. Yonemura testified that the driver of the truck spoke with her at the side of her car immediately after the collision. 2RP 258. He told her she could get her car fixed at the car detailer where he worked. 2RP 258. He got upset, yelled at

her, and left. 2RP 265. As detailed above, Yonemura described this man as an exact match to the physical description of Harris.

Viewing the evidence in the light most favorable to the prosecution and taking all reasonable inferences therefrom, a reasonable trier of fact could have found that Harris was the driver of the truck that left the scene of the collision without providing information required by law beyond a reasonable doubt. Therefore, Harris' claim fails.

b. The State Presented Sufficient Evidence Supporting Harris' Conviction for Attempting to Elude a Pursuing Police Vehicle.

Second, Harris challenges his conviction for attempting to elude a pursuing police vehicle, arguing that there is insufficient evidence to show that he drove in a reckless manner. This claim must be rejected because the uncontroverted evidence presented at trial shows that Harris rapidly accelerated, caused the truck's tires to break traction with the ground and squeal twice, drove more than 20 miles over the speed limit in a residential area, crossed over the center lane divider three times, and caused people to rush backward when he drove up on a curb.

A person is guilty of attempting to elude a pursuing police vehicle when he willfully fails or refuses to bring his vehicle to a stop after being given a visual or audible signal to bring the vehicle to a stop by a police officer, and while attempting to elude a pursuing police vehicle he drives his vehicle in a reckless manner. RCW 46.61.024. To operate a motor vehicle in a reckless manner means to drive in a rash or heedless manner, indifferent to the consequences. State v. Ridgley, 141 Wn. App. 771, 780-81, 174 P.3d 105 (2007).

At trial, the State presented sufficient evidence to cause a rational trier of fact to find that Harris drove in a reckless manner while evading the police. The jury watched a video of the pursuit captured on Officer Harris' in-car video system. Both Officer Harris and Officer Hadley explained safety concerns they had in relation to Harris' driving, which the jury heard and saw on the video. 2RP 152-53, 218, Ex. 1.

A number of instances during the pursuit demonstrate how Harris drove in a reckless manner. On two separate occasions, he accelerated away from law enforcement so rapidly that his tires broke traction with the pavement and made a squealing sound. Ex. 1. Also audible on the video recording is the truck's engine revving

as Harris travels more than 20 miles per hour over the speed limit in a residential area. Ex. 1, 2RP 216. The posted speed limit was 35 miles per hour. 2RP 216. Officer Harris testified that during the pursuit he was traveling 55 miles per hour, but Harris was still pulling away from his patrol car. 2RP 216-18. Also indicative of Harris' driving in a reckless manner is his failure to maintain his lane of travel by drifting over the center line three times while he was speeding. 2RP 216. Harris changed lanes without signaling as well: 2RP 215.

The officers testified they were concerned for public safety during the pursuit of Harris. The high-speed pursuit happened in a residential area where people walk outside all the time. 2RP 218. When Harris stopped, he caused the truck to jump up on the sidewalk where four or five people were standing. 2RP 139, 201. Those people had to rush backwards to avoid being hit by Harris. 2RP 139. Finally, Officer Harris testified he was concerned Harris would have hit a person or a light pole if he did not stop in time. 2RP 218.

Sufficient evidence was also presented as to the other elements of this crime. A marked police car pursued Harris for about one minute. 2RP 130. During the pursuit, the patrol car's

emergency lights were activated and the siren “chirped” a couple of times. 2RP 131, 197. Further, a spotlight from the patrol car shone on Harris. 2RP 217. When Harris finally did stop, he jumped out of the car with his hands up and walked to the middle of the street. 2RP 201, 231. There was sufficient evidence such that a reasonable trier of fact could have found all the elements of the crime beyond a reasonable doubt.

Harris relies on State v. Chouap, 170 Wn. App. 114, 285 P.3d 138 (2012), to support his argument that the State did not prove he drove in a reckless manner. Harris’ reliance on this case is misplaced. First, the court in Chouap addressed a claimed double jeopardy violation for two convictions of attempting to elude a pursuing police vehicle, not sufficiency of the evidence for those two convictions. Id.

Second, even if the court had addressed sufficiency of the evidence in Chouap, Harris’ manner of driving is similar to Chouap’s and therefore his conviction should be affirmed. For one count, Chouap traveled at a high speed in a residential area, his car fish-tailed and was nearly out of control, and one officer testified that Chouap’s driving endangered himself, other people, and property. Id. at 119-120. Likewise here, Harris traveled more than

20 miles over the speed limit in a residential area, caused his tires to break traction with the pavement on two occasions when he accelerated rapidly, and Officer Harris articulated concern for the safety of others because of Harris' driving.

Next, Harris contends that this case is distinguishable from State v. Perez, 166 Wn. App. 55, 269 P.3d 372 (2012), where the court upheld Perez's conviction for attempting to elude a pursuing police vehicle. On the contrary, the facts of Harris' case are strikingly similar to the facts of Perez. In that case, Perez increased his speed from 25 miles per hour to 50 miles per hour during the pursuit, caused a pedestrian to throw up his arms and a dog to bolt, and ran a stop sign during the pursuit. Id. at 58-59. When he stopped, Perez threw open his car door and ran. Id. at 61. The jury watched a video of the 40-second chase that was recorded on a camera mounted in the patrol car. Id. Perez argued the evidence did not show that he willfully failed to stop. The court disagreed and found the evidence supported the opposite conclusion. Id.

Like Perez, Harris traveled over the speed limit by going more than 55 miles per hour in a posted 35 mile per hour zone. 2RP 216. Harris caused people to rush backward to avoid being hit

by his truck when he stopped. 2RP 139. Further, he drifted over the center lane divider and caused his tires to squeal on the pavement when he accelerated away from pursuing officers. 2RP 216-17. Finally, the jury watched a one-minute video of the pursuit of Harris, which showed all of the traffic violations Harris committed. Ex. 1.

Although Perez did not challenge the same element that Harris challenges, the factual parallel is instructive. By finding the evidence was sufficient to sustain Perez's conviction for attempting to elude a pursuing police vehicle, specifically, that Perez willfully failed to stop, the court implicitly found sufficient evidence that Perez drove in a reckless manner. The similarities of Perez and this case support the conclusion that sufficient evidence was presented that Harris drove in a reckless manner.

When viewed in the light most favorable to the State, the record contains sufficient facts from which the trier of fact could reasonably infer Harris' guilt beyond a reasonable doubt. Therefore, his conviction for attempting to elude a pursuing police vehicle should be affirmed.

c. The State Presented Sufficient Evidence Supporting Harris' Conviction for Driving While Under the Influence.

Next, Harris maintains that the State failed to produce sufficient evidence that he was under the influence of alcohol. This claim should be rejected because sufficient evidence was presented from which a rational trier of fact could find that Harris' ability to operate a motor vehicle was affected in an appreciable degree.

A person is guilty of driving while under the influence when he drives a motor vehicle while he is under the influence of or affected by intoxicating liquor or any drug. Former RCW 46.61.502 (2010). Further, a person is under the influence of or affected by intoxicating liquor or drugs if the person's ability to drive a motor vehicle is lessened in an appreciable degree by the consumption of alcohol or drugs. State v. Wilhelm, 78 Wn. App. 188, 193, 896 P.2d 105 (1995).

At trial, Officer Lewis testified that everything he observed about Harris was consistent with alcohol impairment. 3RP 344. The context for his opinion is important: he has worked as a police officer for 23 years, he is certified as a Drug Recognition Expert, and he has completed Advanced Roadside Impairment Detection

Education, which is specific to enforcement of driving while under the influence offenses. 3RP 329. Officer Lewis' training and experience was the backdrop for his testimony about the effects of alcohol on the body. He testified that alcohol inhibits fine and gross motor skills and the ability to stand and walk straight. 3RP 330. Further, alcohol affects a person's ability to drive by delaying reaction time; for example, causing a person to run a stop light or an inability to maintain one lane of travel at a consistent speed. 3RP 330.

The State presented ample evidence that Harris was under the influence of alcohol while he was driving that night, particularly in light of Officer Lewis' training and experience. The physical signs of intoxication presented to the jury included Harris' breath smelling of alcohol even after he rinsed out his mouth, vomiting, and problems with balance and coordination. 3RP 333-35. The jury also watched video footage of Harris at the precinct where he had difficulty getting to his feet and swayed as he stood. 3RP 343, Ex. 10. His eyes were watery, bloodshot, and the whites of his eyes were almost completely reddened. 3RP 344. Additionally, Harris' erratic driving during the pursuit by police is symptomatic of

impairment from alcohol. He demonstrated an inability to stay in one lane and he drove at irregular speeds. 2RP 216.

Further, Harris refused to provide a breath sample after being read the implied consent warnings. These warnings clearly convey (1) that refusal to provide a breath sample will result in automatic license revocation or denial for at least one year, and (2) that the refusal to take the test may be used in a criminal trial. Former RCW 46.20.308(2)(a), (b) (2010). In light of the automatic consequences of refusing a breath test, consciousness of guilt is a reasonable inference explaining why a person refused the test. In this case, the jury was presented evidence of Harris' decision to refuse the breath test after it was offered to him twice. In light of the other evidence that Harris was under the influence of alcohol, a rational trier of fact could easily infer that Harris refused the breath test because he was under the influence of alcohol.

Sufficient evidence was also presented as to the other elements of this crime. It is undisputed that Harris was driving the pickup truck that night. 2RP 201. Therefore, a reasonable trier of fact could have found all the elements of the crime beyond a reasonable doubt.

Harris argues this Court's decision upholding a conviction for driving while intoxicated in State v. Keller, 36 Wn. App. 110, 672 P.2d 412 (1983), is distinguishable from the facts here. In that case, Keller drove the wrong way down a one-way street, provided a breath analysis reading of .10 percent, and admitted to consuming eight alcoholic beverages. Id. at 111, 114. Keller was convicted of driving while intoxicated under the "per se" prong of the statute based on having a blood alcohol content of .10 percent or greater. Id. at 111-14. In contrast, Harris was charged with driving while under the influence under the "affected by" prong of the statute. The State was not required to prove that Harris' blood alcohol content was at any particular level; rather, the State was required to prove that his ability to drive a motor vehicle was affected by alcohol.

In fact, the case at hand parallels State v. Wilhelm, 78 Wn. App. 188, 896 P.2d 105 (1995). In that case, Division Two of this Court found sufficient evidence to sustain Wilhelm's conviction for driving while intoxicated because "strong circumstantial evidence" indicated Wilhelm was intoxicated by liquor. Id. at 192. Although Wilhelm was not observed driving, he refused the breath test, had watery and bloodshot eyes, his breath smelled of alcohol, he failed

one field sobriety test, his coordination was unsteady and he was off balance, and his speech was slurred. Id. at 192-93.

Similar to the facts of Wilhelm, the State here presented strong circumstantial evidence that Harris' ability to drive a motor vehicle was affected by alcohol. His breath smelled of alcohol, he had trouble standing and swayed as he stood, his eyes were red, bloodshot and watery, and he refused the breath test. Further, he vomited in the holding cell and the vomit smelled like alcohol.

Viewed in the light most favorable to the prosecution, there is sufficient evidence to show that Harris was under the influence of or affected by alcohol when he was driving. Therefore, his conviction for driving while under the influence should be affirmed.

2. HARRIS' SENTENCE FOR DRIVING WHILE UNDER THE INFLUENCE SHOULD BE REMANDED TO THE TRIAL COURT FOR CLARIFICATION.

Harris argues that the trial court erred by imposing a fine in excess of the mandatory minimum fine required by RCW 46.61.5055 for his conviction of driving while under the influence. Based on Harris' criminal history and his refusal of the breath test, the mandatory minimum fine under RCW 46.61.5055 alone is

\$750.¹ In addition to the fine under RCW 46.61.5055, there are several other mandatory fines that attach to a conviction for driving while under the influence, which total to an amount of \$925.² Pursuant to RCW 46.61.5055(1)(a)(ii), the court may impose a fine up to \$5,000.

The trial court imposed a fine of \$1,545.50 for this count on the judgment and sentence; however, the trial court orally imposed the mandatory minimum penalties for driving while under the influence. 3RP 449. The State concedes that the fine imposed by the trial court is higher than the applicable statutes mandate. Nevertheless, the record is insufficient to determine whether the trial court intended to sentence Harris to only the mandatory fine of \$925, or a discretionary fine of \$1,545.50 as noted on the judgment and sentence. Because the trial court's intention is not clear, the State requests that Harris' sentence for driving while under the influence be remanded for clarification.

¹ Former RCW 46.61.5055(b)(ii) (2010). Harris does not contest the calculation of his criminal history at sentencing.

² These include a \$125 alcohol violators fee and \$50 for an additional monetary penalty. Former RCW 46.61.5054(1)(a) (2010), RCW 46.64.055(1).

D. CONCLUSION

For the foregoing reasons, the State asks this Court to affirm Harris' conviction for the crime of hit and run of an attended vehicle, attempting to elude a pursuing police vehicle, and driving while under the influence. The State also asks this Court to remand Harris' sentence for driving while under the influence for clarification on the amount of fine to be imposed.

DATED this 17th day of April, 2013.

Respectfully submitted,

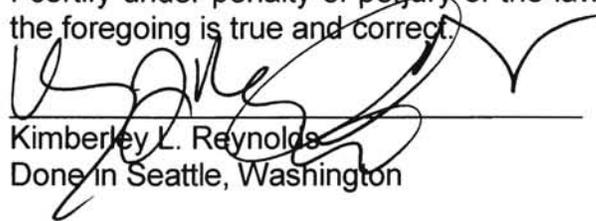
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Certificate of Service by Mail

Today I deposited in the mail of the United States of America, postage prepaid, a properly stamped and addressed envelope directed to Elaine L. Winters, the attorney for the appellant, at Washington Appellate Project, 701 Melbourne Tower, 1511 Third Avenue, Seattle, WA 98101, containing a copy of the Brief of Respondent, in STATE V. JOHN HARRIS, JR., Cause No. 69202-0-1, 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.



Kimberley L. Reynolds
Done in Seattle, Washington

4/17/13
Date

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