

71135-1

71135-1

NO. 71135-1-I

COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION I

STATE OF WASHINGTON,

Respondent,

v.

SAMUEL RAYMUNDO,

Appellant.

APPEAL FROM THE SUPERIOR COURT FOR KING COUNTY

THE HONORABLE ANDREA DARVAS
AND
THE HONORABLE PATRICK OISHI

BRIEF OF RESPONDENT

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A. ISSUES PRESENTED

1. A police officer is not required to obtain a search warrant prior to completing a blood draw from a drunk-driving suspect if exigent circumstances exist that justify departure from the warrant requirement. Here, the defendant was captured by a K-9 team after fleeing from the scene of a vehicular homicide. Injuries sustained by the defendant during his capture necessitated transport to the hospital for treatment, where medical intervention would include provision of intravenous fluids and medication. The sergeant who directed the blood draw at the hospital arrived there only after he was relieved of his duties as primary officer at the scene of the late-night vehicle crash. Did the trial court reasonably conclude that all of these factors, coupled with the natural dissipation of blood-alcohol over time, created sufficient exigency such that delays associated with obtaining a search warrant would have jeopardized the blood-alcohol evidence?

2. The test results of blood-alcohol analysis are admissible so long as sufficient foundational facts are presented to suggest that the results were not the product of adulteration. Admission is reviewed for abuse of discretion. Here, the State presented evidence that the vials used to collect the defendant's blood were

consistent with the state crime laboratory's practice of ensuring that preservatives are placed within the tubes to prevent adulteration. The vials themselves bore labels identifying the preservatives within them, and the forensic scientist who tested the contents stated that the qualities of the blood and the results of his analysis established that there was no adulteration. Did the trial court properly exercise its discretion in finding sufficient foundation to permit admission of the blood-alcohol test results?

3. Evidence is sufficient to support a conviction if, viewed in a light most favorable to the State, and with all reasonable inferences made in the State's favor, it permits a rational trier of fact to find the elements of the charged crime proved beyond a reasonable doubt. Here, the defendant was charged with felony hit-and-run, which prohibits a driver involved in an accident that caused injuries to depart from the scene before providing his name, address, driver's license, and insurance information to responding police officers. The evidence presented at trial showed that, at most, the defendant, after crashing his vehicle and causing the death of his passenger, dialed 911 before handing the phone to a bystander and fleeing from approaching police officers. Was this evidence sufficient to establish the defendant's guilt for felony hit-and-run?

B. STATEMENT OF THE CASE

1. PROCEDURAL FACTS

The appellant, Samuel Raymundo, was charged by amended information with the crimes of Vehicular Homicide (Count I), Hit and Run – Felony (Count II), Reckless Driving (Count III), and Driving While License Suspended in the Second Degree (Count IV). CP 8-10. Prior to trial, Raymundo pleaded guilty to an amended charge of Driving While License Suspended in the Third Degree. 4RP 7-16.¹ He proceeded to trial on the remaining counts and, by jury verdict rendered on October 17, 2013, was found guilty as charged. CP 104-06.

2. SUBSTANTIVE FACTS

At approximately 12:30 a.m. on March 2, 2012, Douglas Lower was preparing to drive home from his shift as a bus driver for King County Metro Transit (Metro) when he looked out from the parking lot at Metro's Tukwila base and noticed an SUV that appeared to be going too fast on a nearby road. 9RP 45-46, 50-51.

¹ The verbatim report of proceedings consists of 12 volumes, referred to in this brief as follows: 1RP (7/5/2013 and 7/6/2013); 2RP (9/19/2013, 10/15/2013, and 11/1/2013); 3RP (9/30/2013); 4RP (10/1/2013); 5RP (10/2/2013); 6RP (10/7/2013); 7RP (10/8/2013); 8RP (10/9/2013); 9RP (10/14/2013); 10RP (10/15/2013); 11RP (10/16/2013); and 12RP (10/17/2013).

He saw the SUV disappear into a cluster of trees, and immediately recognized that the SUV must have crashed. 9RP 51.

Lower drove to the crash location to see if he could provide aid. 9RP 51. When he arrived, he could not see the SUV, but noticed that the concrete barrier which was used to keep cars from going off the road and down a steep embankment was now missing. 9RP 52, 57. He looked over the road's edge and saw a man -- whom Lower identified in court as Raymundo -- on the ground below him. 9RP 52, 55. Lower parked his car and walked back to the site of the missing barrier; as he did, Raymundo walked up to Lower and handed him a phone he'd been holding to his ear. 9RP 53. Lower took the phone and discovered he was speaking to a 911 dispatcher. 9RP 53. As Lower provided his location to the dispatcher, a police car came into sight. 9RP 53. At that point, Lower noticed Raymundo walking away from the scene, in the opposite direction of the approaching police officer. 9RP 53-54.

Inside the police car was Tukwila Police Department Sgt. Sanjay Prasad. 6RP 66-67. Prasad also saw Raymundo walking away, and, after he stopped his car, Prasad found an overturned vehicle down the embankment. 6RP 68. Prasad attempted to locate Raymundo without success, and then returned

to the SUV to see if anyone inside was injured. 9RP 69. Prasad found Raymundo's cousin, Jaime Hernandez, lying under the roof of the upside-down SUV. 6RP 30, 70. Hernandez appeared to still be alive when Prasad first spotted him, but died before medics arrived shortly thereafter, due to multiple rib fractures and compressional asphyxiation caused by his being ejected from the SUV and then pinned under it. 6RP 71; 9RP 105.

Tukwila Police Department K-9 officer James Sturgill was dispatched to the crash scene with directions to track Raymundo. 9RP 70. Sturgill's dog immediately picked up Raymundo's scent and located Raymundo approximately eight or nine minutes later. 9RP 99. The dog bit Raymundo on his right leg, necessitating Raymundo's transport to Highline Medical Center for treatment. 9RP 99.

After securing the crash scene, taking photographs, and waiting for the arrival of senior traffic investigators, Sgt. Prasad stopped at his police station for DUI paperwork and empty vials for blood collection, and then went to the hospital where Raymundo was being treated. CP 54. At the hospital, Prasad informed Raymundo of his constitutional rights as a criminal suspect, and asked Raymundo what had happened. 6RP 85. Raymundo said

that he had been at a bar with his cousin when Hernandez told him that they had to leave or he (Hernandez) would be killed. 6RP 85. Raymundo said he'd driven away at high speed but lost control of his SUV and crashed. 6RP 85. Raymundo told Prasad that he had consumed four or five beers prior to the crash. 6RP 86. Prasad asked hospital staff to perform a blood draw from Raymundo, and then collected the vials. 6RP 64, 87.

Washington State Patrol Crime Laboratory forensic scientist Asa Louis tested the contents of the vials, and determined that Raymundo had a blood-alcohol count of .13 at the time his blood was drawn. 7RP 104. Louis also detected the presence of cocaine in Raymundo's blood. 7RP 106.

Tukwila Police Department officer Donald Dart, his department's primary traffic investigator, analyzed the scene of the crash. 6RP 114. He explained to the jury that Raymundo had failed to brake or otherwise slow down as he sped toward a sharp right curve on E. Marginal Way, despite posted signs warning drivers to slow to 15 miles per hour. 6RP 118, 149. Raymundo's SUV struck and destroyed a concrete barrier head-on, shearing the right-side wheels of the vehicle completely away. 6RP 146-47.

The SUV then traveled another 100 feet or so down a ditch before coming to rest, upside-down. 7RP 26.

Raymundo testified in his defense case-in-chief, and claimed that he had been drinking beers with his cousin at a Tukwila bar on the night of March 1-2, 2012. 10RP 82-83. Raymundo stated that he was using the bar's bathroom when Hernandez rushed in and, in a panic, begged Raymundo to leave. 10RP 84. According to Raymundo, Hernandez said that somebody was trying to kill him. 10RP 84. Raymundo told the jury that he and Hernandez fled to the SUV and, as they began to pull away from the bar's parking lot, Raymundo noticed that he was being followed by another car. 10RP 85-87.

Raymundo said that he lost control of his SUV during the high-speed pursuit and crashed, causing him to lose consciousness. 10RP 87-88. He stated that when he awakened, he looked for his cousin without success, and called 911. 10RP 89. Raymundo told the jury that he gave his phone to Lower because, not being certain of his location, he could not direct the dispatcher, and then went to find additional help for Hernandez, whom Raymundo had now noticed was under the overturned SUV. 10RP 89-92.

Douglas Lower testified that he had not seen or otherwise noticed any vehicles other than Raymundo's on the road prior to the crash. 9RP 58. Officer Dart told the jury that he had gone to the bar that Raymundo stated he had patronized with his cousin on the night of March 1-2, 2012, and that no one there reported seeing any disputes or altercations that evening. 9RP 36.

C. ARGUMENT

1. THE TRIAL COURT PROPERLY DENIED RAYMUNDO'S MOTION TO SUPPRESS.

Raymundo contends that the trial court erred when it refused to suppress evidence derived from the blood draw conducted by hospital staff at Sgt. Prasad's direction while Raymundo was being treated for the bite he received from a police dog. He asserts that the police lacked any justification to conduct the seizure of his blood without first obtaining a search warrant.

Raymundo expends considerable effort in his opening brief challenging the policy of the Tukwila Police Department in effect at the time of his crimes, which provided blanket direction to its officers that they did not need a warrant in order to perform blood draws of offenders suspected of committing various alcohol-related driving felonies. See Brief of Appellant, at 15-21. The State does

not dispute that such a *per se* rule is currently prohibited, pursuant to the U.S. Supreme Court's decision in Missouri v. McNeely, ___ U.S. ___, 133 S. Ct. 1552, 185 L. Ed. 2d 696 (2013). It should be noted, however, that McNeely was decided more than a year after Raymundo crashed his vehicle and was arrested, and effectively overruled the long-standing precedent existing at the time of Raymundo's arrest which permitted warrantless seizures, in all cases, of blood if needed in order to determine the presence of alcohol in an offender's system. See McNeely, 133 S. Ct. at 1563 (holding that the natural dissipation of alcohol in blood no longer, by itself, supports a categorical finding of exigency justifying a warrantless blood test, largely abrogating Schmerber v. California, 384 U.S. 757, 86 S. Ct. 1826, 16 L. Ed. 2d 908 (1966)).

Recognizing this substantial change in the law of search and seizure, the State has never contended that the Tukwila Police Department's policy in 2012 survives post-McNeely scrutiny.²

² Raymundo has relied solely, both at the trial court and in his brief to this Court, on Fourth Amendment jurisprudence for his assertion that his blood draw was unlawful. It should be noted that the U.S. Supreme Court recognizes a good faith exception to the *federal* exclusionary rule where police reasonably relied on binding appellate precedent at the time of their investigation, even if that precedent was later invalidated, as was the case in the instant matter. See, e.g., Davis v. United States, ___ U.S. ___, 131 S. Ct. 2419, 180 L. Ed. 2d 285 (2011); but see State v. Afana, 169 Wn.2d 169, 233 P.3d 879 (2010) (holding that Washington's exclusionary rule under Art. 1, sec. 7, of the state constitution does not allow for a "good faith" exception).

Rather, as the trial court properly recognized here, a number of factors, including, but not limited to, Raymundo's metabolism, created sufficient exigency such that a search warrant was not required, even after McNeely. Raymundo's assertion to the contrary should be rejected.

As noted *supra*, the McNeely Court's holding that "exigency in [the drunk driving] context must be determined case by case based on the totality of the circumstances" represented a significant change in that it disallowed a *per se* exception to the warrant requirement in cases of blood draws for detection of alcohol. McNeely, 133 S. Ct. at 1556. However, the Court took great care to explain that it continued to recognize the "exigent circumstances" exception to the Fourth Amendment, and observed that while an offender's natural metabolism of blood-alcohol over time cannot establish such an exigency on its own, this dissipation would continue to remain an essential factor when considering the totality of the situation surrounding the police conduct. See McNeely, 133 S. Ct. at 1561.

Notably, the McNeely Court specifically found that the circumstances present in Schmerber would justify a departure from the warrant requirement under the exigency exception even under

the revised doctrine set forth in McNeely. See McNeely, 133 S. Ct. at 1560. Unlike the situation in McNeely, which the Court identified as “unquestionably a routine DWI case” in which no factors other than natural dissipation of blood-alcohol suggested an emergency,³ Schmerber involved circumstances strikingly similar to those present in the instant matter. Schmerber had suffered injuries as a result of his drunk-driving, requiring his transport to a hospital. Schmerber, 384 U.S. at 758. Police officers needed to spend time at the scene of Schmerber’s accident to investigate prior to travelling to the hospital to conduct his blood draw. Id. at 770-71. These factors, combined with the natural breakdown of blood-alcohol and the delay inherent in obtaining a warrant, satisfied the McNeely Court as exigent justification for departure from the warrant requirement. See McNeely, 133 S. Ct. at 1560 (observing that “our analysis in Schmerber fits comfortably within our case law applying the exigent circumstances exception.”).

Here, the trial court found that Raymundo created the circumstances that elevated his offense far above a routine drunk-driving case. Raymundo was not suspected of merely driving while under the influence; he was suspected of causing

³ 133 S. Ct. at 1557.

another person's death.⁴ CP 54. His flight from the scene necessitated the deployment of a K-9 dog, resulting in the infliction of a dog bite that required medical care at a hospital some distance from the scene of Raymundo's apprehension. CP 54. Sgt. Prasad was obligated to remain at the site of the vehicular homicide in order to secure the scene, begin preliminary investigation, and await arrival of senior investigators before he could travel to Raymundo's location to conduct a blood draw. CP 54. Sgt. Prasad then needed to stop at his station for necessary paperwork and blood vials before traveling to the hospital to which Raymundo had been taken by ambulance. CP 54. While at the hospital, Sgt. Prasad learned that the staff there intended to give Raymundo intravenous fluids and anesthetics, and the sergeant was quite reasonably concerned that such medical intervention, which he believed he was powerless to stop, could affect Raymundo's blood-alcohol level. 3RP 101-02; CP 54-55. These facts, in conjunction with the expenditure of time associated with obtaining a

⁴ The Supreme Court held, in Welsh v. Wisconsin, 466 U.S. 753, 104 S. Ct. 2091, 80 L. Ed. 2d 732 (1984), that "an important factor to be considered when determining whether any exigency exists is the gravity of the underlying offense for which the arrest is being made."

search warrant⁵ and the natural dissipation of blood-alcohol, amply supported the trial court's conclusion that exigent circumstances existed.

In sum, even if McNeely had been decided long before Raymundo's crash, and Sgt. Prasad's department had accordingly revised its procedures in light of the Supreme Court's decision, his warrantless seizure of Raymundo's blood would have been justified under the exigent circumstances exception to the Fourth Amendment. The trial court did not err in denying Raymundo's suppression motion.

2. THE TRIAL COURT PROPERLY FOUND THAT SUFFICIENT FOUNDATION HAD BEEN ESTABLISHED TO ADMIT THE RESULTS OF RAYMUNDO'S BLOOD-ALCOHOL TEST.

Next, Raymundo asserts that the trial court erred when it permitted the State to offer into evidence the results of the state crime lab's testing of his blood-alcohol level. Raymundo argues that the State did not present a sufficient foundation to justify the admission of the test results, and that the trial court should have

⁵ As the McNeely Court noted, telephonic warrants "may still require officers to follow time-consuming formalities designed to create an adequate record," and "improvements in communication technology do not guarantee that a magistrate judge will be available when an officer needs a warrant after making a late-night arrest." McNeely, 133 S. Ct. at 1562.

sustained his objection on that ground. See Brief of Appellant, at 27. Raymundo's claim is without merit.

A trial court's ruling on the admission of a blood-alcohol test result is reviewed for an abuse of discretion, and it is the defendant's burden to show such an abuse. State v. Hultenschmidt, 125 Wn. App. 259, 264, 102 P.3d 192 (2004); State v. Sponburgh, 84 Wn.2d 203, 210, 525 P.2d 238 (1974). A trial court abuses its discretion when it admits evidence of a blood test in the absence of sufficient prima facie evidence. State v. Brown, 145 Wn. App. 62, 69, 184 P.3d 1284 (2008).

Prima facie evidence is defined by statute as evidence "of sufficient circumstances that would support a logical and reasonable inference of the facts sought to be proved." RCW 46.61.506(4)(b). The "facts sought to be proved" under that statute consist of proof that the chemicals used in the blood-alcohol test and the blood sample itself are free from any adulteration which could possibly introduce error into the test results. State v. Clark, 62 Wn. App. 263, 270, 814 P.2d 222 (1991). More specifically, blood-alcohol test results are admissible only if the blood sample was preserved with both an anticoagulant and an enzyme poison "sufficient in amount to prevent clotting and stabilize the alcohol

concentration.” WAC 448-14-020(3)(b); see also Hultenschmidt, 125 Wn. App. at 625. In determining whether there is sufficient evidence of these foundational facts, the trial court must assume the truth of the State’s evidence and all reasonable inferences must be drawn in the State’s favor. RCW 46.61.506(4)(b).

Here, Sgt. Prasad testified that he obtained two vials from his station that his department uses for blood draws in drunk-driving investigations, and brought them to Highline Medical Center so that samples could be taken from Raymundo. 6RP 62-64. A lab technician at Highline identified the vials during her testimony, and confirmed that they were the ones into which she collected Raymundo’s blood samples. 6RP 100.

Washington State Patrol Crime Laboratory (WSPCL) forensic scientist Asa Louis verified that he tested the contents of the same vials, and explained that it is his agency which supplies such vials to police departments throughout the state. 7RP 50. Louis further explained that the manufacturer of the vials used by WSPCL must adhere to Food and Drug Administration (FDA) requirements, including the obligation to ensure that each tube contains both an anticoagulant and an enzyme poison. 7RP 50, 93. Louis told the jury that his lab regularly relies on the

manufacturer's certificates of compliance establishing that its own quality control officers have ensured that their vials comport with the FDA's rules insisting on the introduction of the necessary chemicals into the tubes. 7RP 51-52, 74-76. He added that the tubes he analyzed in this case bore labels identifying the chemicals inside, and noted that the blood remaining in the tubes had still not clotted, showing the presence of the anticoagulant. 7RP 75-76, 93. Finally, Louis's detection of alcohol in the samples obtained from Raymundo necessarily proved that the enzyme poison had been present, acting as a preservative and preventing the breakdown of any chemicals, including alcohol, present in the blood at the time it was drawn. 7RP 50-51.

Given the relatively low threshold that the State must overcome in order to establish foundational facts, and drawing all reasonable inferences in the State's favor, it is clear that the trial court properly exercised its discretion in finding that the State met its burden here. Raymundo, mistakenly relying on Brown, nevertheless insists that the State failed to satisfy its obligation because Louis could not personally vouch for the presence of the enzyme poison in the tubes *prior* to the introduction of Raymundo's blood into them. Brief of Appellant, at 30. In fact, the Brown court

expressly declined to impose a requirement of such firsthand knowledge. See Brown, 145 Wn. App. at 71. Moreover, the evidence presented by the State in the Brown case, which was deemed sufficient by the Court of Appeals following its review, is identical to the evidence in the instant appeal. See id.

Raymundo does not contend that Brown was wrongly decided. It appears that he merely misreads its holding. He provides no basis for this Court to conclude that the trial court abused its discretion. Raymundo's argument should be rejected.

3. THE EVIDENCE ESTABLISHED RAYMUNDO'S GUILT FOR FELONY HIT-AND-RUN.

Lastly, Raymundo contends that his conviction for felony hit-and-run must be reversed and dismissed with prejudice. He asserts that the State did not present sufficient evidence to prove that he failed to meet all of his statutory obligations as a driver following the crash of his vehicle. His contention is without merit.

Evidence is sufficient to support a conviction if, viewed in the light most favorable to the State, it permits a rational trier of fact to find the elements of the charged offense proved beyond a reasonable doubt. State v. Salinas, 119 Wn.2d 192, 201, 829 P.2d 1068 (1992). Circumstantial evidence and direct evidence are

equally reliable. State v. Delmarter, 94 Wn.2d 634, 638, 618 P.2d 99 (1980). A claim of evidentiary insufficiency admits the truth of the State's evidence and all reasonable inferences that can be drawn therefrom. Salinas, 119 Wn.2d at 201.

Washington requires a driver involved in an accident resulting in the death of another person to, *inter alia*, remain at the scene to provide police with his name, address, insurance company, and insurance policy number, and show his driver's license. RCW 46.52.020(3), (7). A driver is excused from these obligations only if he is so injured or incapacitated as a result of the vehicular accident that he is physically incapable of complying. RCW 46.52.020(4)(d).

Here, the State's evidence showed that, at most, Raymundo initiated a 911 call for emergency aid following the mishap that killed his cousin, before giving his phone to a third party. He did not remain at the scene to await the arrival of police, instead absconding as police vehicles approached his location. 9RP 53-56. Raymundo did not voluntarily return to the location where his cousin lay dead; rather, he was apprehended by a K-9 team while still in flight. 9RP 99.

Raymundo provides no support or authority for his assertion that merely dialing 911 suffices to meet the obligations expressly stated in RCW 46.52.020(3). (Indeed, it would be impossible for a driver to display his operator's license to a 911 dispatcher, and there is no reason to believe that a dispatcher is equivalent to a police officer for purposes of the felony hit-and-run statute regardless.) He claims that the jury could have reasonably inferred that he both satisfied his statutory obligations during his conversation with the dispatcher and that he was returning to the scene of the accident following a fruitless search for assistance when he encountered the police dog, but his claims conflict with the well-established principle that, in a challenge to the sufficiency of the State's evidence, all reasonable inferences must be drawn in the State's favor and *against* the appellant. Here, the jury had ample reason to doubt that Raymundo provided all of the necessary information to the dispatcher, and could have justifiably concluded that the K-9 team captured a fleeing suspect, as opposed to an innocent desperately seeking aid. Raymundo's request for reversal should be declined.

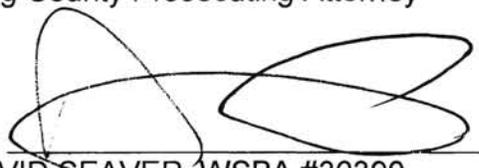
D. CONCLUSION

For the foregoing reasons, the State respectfully asks this Court to affirm Raymundo's convictions for vehicular homicide and felony hit-and-run.

DATED this 21st day of September, 2014.

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 Mitch Harrison, the attorney for the appellant, at 101 Warren Ave. N., Seattle, WA 98109, containing a copy of the BRIEF OF RESPONDENT, in STATE V. RAYMUNDO, Cause No. 71135-1 - I, 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.

Dated this 25th day of September, 2014

W Brame
Name
Done in Seattle, Washington