

72129-1

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NO. 72129-1-I

IN THE COURT OF APPEALS  
OF THE STATE OF WASHINGTON  
DIVISION I

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STATE OF WASHINGTON,

Respondent,

v.

STEVE M. MAAS,

Appellant.

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BRIEF OF RESPONDENT

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## **I. ISSUES**

(1) Did evidence support a finding of driving in a reckless manner when it showed that defendant raced through a residential neighborhood at twice the legal speed limit, ignored two yield signs, drove through a stop sign without braking or slowing, and forced a car to brake to avoid a collision?

(2) Did the trial court err when it would not permit defense to question an officer about evidentiary requirements in civil infraction hearings?

(3) Does the Confrontation Clause entitle the defendant to ask a question about irrelevant evidence?

## **II. STATEMENT OF THE CASE**

On April 10, 2014, at around 9:30 p.m., Everett Police Department (EPD) Officer Anatoly Kravchun saw the defendant driving a white pickup. 1RP 94, 99, 101. He confirmed that the defendant had an outstanding probation warrant. Officer Kravchun radioed for backup and followed until backup arrived. 1RP 103.

Officer Kravchun followed for three miles to the intersection of Madison and Jefferson before backup arrived. 1RP 95, 98. The defendant was not yet speeding. 2RP 143. He turned onto Jefferson. Id.

Jefferson runs through a neighborhood of family homes, populated by families with children, set back from the street with a wide grass verge dotted with trees and shrubs. 1RP 93, Exhibit 1. The posted speed limit is 25 m.p.h. and there is ample street parking. Ex. 1. The defendant could have legally parked in several spots. 2RP 131.

The neighborhood is laid out on a grid forming 4-way intersections. 1RP 93, Ex. 1. Several driveways and alleys also open onto Jefferson. Id. Some intersections are controlled yield signs where drivers are required to slow and look in both directions before entering the intersection. Ex. 1. The one at Jefferson and Jackson, is controlled by a stop sign on each of the four corners. 2RP 131, Ex. 1, 8, 11.

Officer Kravchun followed the defendant onto Jefferson as his backup, fellow-EPD Officer Wantland, arrived and dropped in behind him. 2RP 141. Officer Kravchun turned on his lights and sirens while Officer Wantland turned on his lights. 1RP 110. The defendant sped away. 1RP 110.

The defendant sped through two yield signs without slowing down; his brake lights never came on. 1RP 110, 2RP 185. Officer Kravchun called off the pursuit in compliance with EPD's limited

pursuit policy. 1RP 110. Pursuit is permitted only if the risk of the person getting away outweighs the risk of pursuit. 1RP 90. Officers hope that when the pursuit stops, the person fleeing may pull over and take off on foot. 1RP 91. A foot chase is safer because there are no speeding cars and capture is easier. Id.

As Officer Kravchun started to pull over, he saw the defendant drive past a stop sign without stopping or slowing. 1RP 110. A car that was already in the intersection had to brake sharply to avoid a collision. 1RP 110-11.

The pursuit had lasted approximately 12 seconds and covered four blocks, approximately  $\frac{3}{4}$  mile. 2RP 148, Ex. 29. Officers later located the defendant about half a mile away. 2RP 171. The defendant said he had fled because he did not want his car towed. 2RP 146.

Both officers estimated the defendant's speed. 1RP 105, 2RP 198. Officer Kravchun, a six-year veteran, said he had estimated speed daily over that time and had become better with experience. 1RP 84, 89. His estimate was 50 m.p.h. Officer Wantland, a 21-year veteran with years of patrol and radar experience, estimated it at 45-50 m.p.h. 2RP 188, 198, 199.

During Officer Wantland's cross-examination, the following exchange occurred:

Defense: I mean, if you're in court on a traffic ticket, you're trying to establish speed, you need a radar gun?

State: Objection, relevance.

Defense: Counsel asked questions about how he estimates speed.

The Court: Sustain the objection to that question.

2RP 206-07. Thereafter, defense asked questions about speed estimate without a radar gun and suggested that Officer Wantland could not have estimated the defendant's speed accurately because of their respective positions during the elude.

The jury convicted the defendant of Felony Eluding while on Community Custody. CP 72. This appeal follows.

### **III. ARGUMENT**

**A. THE EVIDENCE WAS SUFFICIENT TO SHOW THAT THE DEFENDANT DROVE RASHLY, HEEDLESSLY, AND INDIFFERENTLY TO CONSEQUENCES WHEN HE DROVE THROUGH A RESIDENTIAL NEIGHBORHOOD AT TWICE THE POSTED SPEED LIMIT AT NIGHT, FAILED TO SLOW AT YIELD SIGNS, SPED THROUGH A STOP SIGN WITHOUT SLOWING OR STOPPING, AND CAUSED A CAR TO BRAKE TO AVOID A COLLISION.**

The standard of review for a challenge to the sufficiency of the evidence is whether any rational trier of fact could have found

each essential element of the crime beyond a reasonable doubt. State v. Randhawa, 133 Wn.2d 67, 73-74, 941 P.2d 661 (1997). The evidence is viewed most favorably to the State. Id. All reasonable inferences are drawn in the State's favor and interpreted strongly against the defendant. State v. Refuerzo, 102 Wn. App. 341, 345, 7 P.3d 847 (2000). A claim of insufficiency admits the truth of the State's evidence. State v. Salinas, 119 Wn.2d 192, 201, 829 P.2d 1068 (1992). Witness credibility is an issue for the jury. State v. Perez, 155 Wn. App. 55, 60, 269 P.3d 372 (2012).

The defendant now claims that the evidence was insufficient to show that he drove in a reckless manner. The record and applicable law belie his claim.

In Refuerzo, the defendant was convicted of eluding after he ignored a police directive to stop, weaved through heavy traffic, cut across four lanes of traffic, disobeyed stop signs, and drove through several cross walks. Then RCW 46.61.024 provided that a person was guilty of attempting to elude after driving in a "reckless manner indicating a wanton or wilful disregard for the lives and property of others." Refuerzo challenged the sufficiency of the

evidence, claiming that his driving did not show that disregard. The court called his claim “without merit.”

The State need not prove that the defendant's driving endangered anyone else, or that a high probability of harm actually existed. Instead, the evidence need only establish that the defendant engaged in conduct from which a juror could infer wanton or wilful disregard for the lives or property of others.

102 Wn. App. at 348-49.

That law applies in the present case although the language of the statute was amended in 2003 to remove the “wanton and wilful” language. Laws of 2003 ch. 101, sec. 1. A “reckless manner” is defined as driving that is rash, heedless, indifferent to the consequences. RCW 46.61.024(1); State v. Roggenkamp, 153 Wn.2d 614, 621, 106 P.3d 196 (2005). The question for the jury is still not whether the defendant endangered anyone but rather whether the evidence showed that his driving was rash, heedless, and indifferent to the consequences. That is precisely what the evidence showed.

The defendant raced at twice the legal limit through a residential neighborhood, past alleys, through intersections, past yield signs, and eventually through a stop sign without stopping or slowing. He actually caused a car in an intersection to brake to

avoid a collision. His driving was rash and heedless. It showed an indifference to the consequences. That exactly what the present jury found and what any rational jury could find.

The defendant's reliance on Randhawa is misplaced. There, the trial court disapproved of an instruction that permitted the jury to rely on speed alone to find recklessness when Randhawa was driving 10 to 20 m.p.h. over the posted limit of 50 m.p.h. 133 Wn.2d at 77-78. Randhawa's speed was "not so excessive" that it alone showed recklessness. Id. at 78. The court noted that in rare cases, excessive speed could support a permissive inference of recklessness. Id.

The present case is entirely different for several reasons. First, there was no instruction given about a permissive inference of recklessness based on speed alone. Second, the defendant's speed was not just 20% or 40% over the legal limit; it was 100% over the legal limit. That fact alone might not have been enough for a finding of reckless driving but it certainly was a fact worthy of the jury's consideration. Third, there was not just evidence of speed alone. The defendant sped through a residential neighborhood, through controlled intersections, disregarded traffic control signs, and caused a car to brake to avoid a collision.

In Perez, the defendant eluded police by driving at 50 m.p.h. in a 25 m.p.h. zone, scared a pedestrian and dog, and ran a stop sign, all in 40 seconds. 166 Wn. App. at 51. Here, the defendant drove 50 m.p.h. in a 25 m.p.h. zone, scared another driver, and ran a stop sign, all in 12 seconds. Nothing in Perez supports the defendant's insufficiency argument.

Insofar as the defendant's claim rests on the brevity of the chase, under a mile and 12 seconds, his argument still fails. While police pulled over before him, the defendant continued to elude for at least another block. Ex. 26. "[T]he statute requires that defendant elude a 'pursuing police vehicle,' it does not require that the police vehicle remain moving at all times." State v. Treat, 109 Wn. App. 419, 426-27, 35 P.3d 1192 (2001). Id. at 427. An illegal elude can be as short as a quarter-mile. Id.

The evidence, taken as true and in the light most favorable to the State, was sufficient to show that the defendant drove in a manner that was rash, heedless, and indifferent to the consequences. His conviction should be affirmed.

**B. THE DEFENDANT HAD NO CONSTITUTIONAL RIGHT TO QUESTION AN OFFICER ABOUT IRRELEVANT EVIDENCE.**

Both the state and federal constitutions guarantee the right

to confront adverse witnesses. U.S. Const. amend 6; Const. art. I, § 22; Washington v. Texas, 388 U.S. 14, 23, 87 S.Ct. 1920, 18 L.Ed.2d 1019 (1967); State v. Darden, 145 Wn.2d 612, 620, 41 P.3d 1189 (2002). That includes the right to conduct meaningful cross examination. Darden, 145 Wn.2d at 620. However, the right to cross examine is not absolute. Id. Cross examination is limited by the evidence rules and considerations of relevance. Id. at 621. Defendants have no right to present irrelevant evidence. State v. Jones, 168 Wn.2d 713, 720, 230 P.3d 576 (2010).

In the present case, defense asked a question about requirements in traffic infractions hearings. 2RP 207. The court sustained a relevance objection specifically “to that question.” Id.

The defendant now argues that because of this he was not permitted to question Officer Wantland about how he estimated speed, something the State had been permitted to do. However, that was not the question he was prohibited from asking. The court never prohibited defense counsel from asking those questions. Nothing in the record supports that claim.

In all likelihood, the defense would have been permitted to question Officer Wantland about his use of and training in radar. But that was not the question asked. The question asked was

about the level of proof required in traffic court. The court sustained the objection specifically to that question alone.

Relevant evidence is that which tends to make the existence of any fact of consequence more or less probable than it would be without the evidence. ER 401. Relevance rulings for review for a manifest abuse of discretion. State v. Stenson, 132 Wn.2d 669, 701, 940 P.2d 1239 (1997). A trial court abuses its discretion when its ruling is manifestly unreasonable or based on untenable grounds. Id.

The court did not abuse its discretion when it sustained an objection to evidence about procedures in infraction hearings. Whether traffic courts routinely use radar gun readings in adjudicating infractions does not make Officer Wantland's ability to visually estimate speed or credibility any more or less probable.

Interestingly, the defendant says he would have been happy whether Officer Wantland had answered his question either yes or no. Either answer, he says, would have bolstered his argument that the officers' visual speed estimates were unreliable. If the answer sought did not matter to defense at all, it is unclear how it could have been probative of anything.

Defense was still able to argue, and did argue, that the visual speed estimates were uncorroborated, without basis, and no better than looking into a crystal ball. 2RP 281. In fact, defense even argued that at an infraction hearing, an officer's estimate of speed was not enough to prove speeding. Id.

The purpose of cross examination is to test a witness's perception, memory, and credibility. State v. Parris, 98 Wn.2d 140, 144, 754 P.2d 77 (1982). In the present case, the defense had every opportunity to do just that and did. The trial court properly exercised its discretion and excluded irrelevant evidence. There was no constitutional error and no evidentiary error. The conviction should be affirmed.

#### **IV. CONCLUSION**

For the foregoing reasons, the conviction should be affirmed.

Respectfully submitted on March 17, 2015.

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