

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

STATE OF WASHINGTON,

Respondent,

v.

JACOB WARREN HOPKINS,

Appellant.

No. 40038-3-II

UNPUBLISHED OPINION

Quinn-Brintnall, J. — A jury found Jacob W. Hopkins guilty of attempting to elude a police vehicle in violation of former RCW 46.61.024(1) (2003) as charged. Additionally, the jury returned a special verdict for endangerment under RCW 9.94A.834, finding that Hopkins threatened others with physical injury or harm while eluding a pursuing police vehicle. The trial court imposed a sentence of 14 months and one day in confinement: two months for attempting to elude a police vehicle, and 366 days for the endangerment special verdict. Hopkins appeals both his conviction and the special verdict, arguing that insufficient evidence supports the jury's findings. We affirm both Hopkins's conviction and his endangerment sentence enhancement.

FACTS

Background Facts

Just after 2:00 pm on October 3, 2009, Vancouver Police Officer Bill O'Meara arrested Hopkins for reckless driving¹ after a short vehicle pursuit. The four-block pursuit began as

¹ The State eventually charged Hopkins with attempting to elude a police vehicle, not with the lesser offense of reckless driving.

O'Meara patrolled westbound on East 29th Street through a residential neighborhood in Vancouver, Washington. From approximately 200 feet away, O'Meara observed Hopkins "roll through the stop sign" at the intersection of T Street and East 29th Street as Hopkins proceeded northbound on T Street. Report of Proceedings (RP) at 24. O'Meara then decided to initiate a traffic stop for the stop sign violation. As O'Meara turned northbound onto T Street, he noticed Hopkins "traveling at a very high rate of speed" about 300 to 400 feet in front of him. RP at 25. O'Meara activated his lights and sped up in pursuit of Hopkins. Although O'Meara never estimated Hopkins's speed in this 25 mph residential zone, he stated that Hopkins was "gaining speed" on him and that he had to go "pretty significantly fast to catch up" to him;² O'Meara reached speeds in excess of 40 mph. RP at 25. No cars, children, or pets were present on T Street during the pursuit.

About 795 feet from East 29th Street, Hopkins made an abrupt turn onto westbound 32nd Street; he cut diagonally through the corner and crossed into the eastbound lane of travel as he turned west onto 32nd Street. Neither his brake lights nor his turn signal illuminated. As Officer O'Meara followed Hopkins onto 32nd Street, he witnessed Hopkins run the stop sign at the next intersection as he made a northbound turn onto S Street.³ S Street is a southbound-only, one-way street that runs adjacent to an elementary school. Again, neither Hopkins's brake lights nor turn signal illuminated before he turned. Shortly after running the stop sign, Hopkins "jerked" his vehicle to the side of the road, jumped out of his truck, and glanced back at O'Meara. And about 100 feet north of where Hopkins stopped, O'Meara noticed a large group of children playing in

² Hopkins claims that he did not exceed 30 mph during this incident.

³ S Street runs north and south about 270 feet west of T Street.

the road and was concerned for their safety. After O'Meara ordered Hopkins not to run, Hopkins sat back down in his truck, ending the pursuit. At this point, O'Meara also noticed that Hopkins had two passengers in his vehicle: a 12-year-old boy and a 25-year-old man.

Procedural Facts

The State charged Hopkins with attempting to elude a police vehicle. A driver of an automobile commits this offense when he willfully fails or refuses to immediately bring his vehicle to a stop, after a uniformed officer in a marked vehicle gives a visual signal to a stop, and he drives his vehicle in a reckless manner while attempting to elude a pursuing police vehicle. Former RCW 46.61.024(1). Consistent with this statute, the trial court instructed Hopkins's jury that "to convict" Hopkins, it had to find that the State had proved beyond a reasonable doubt

- (1) [t]hat on or about October 3, 2009, [Hopkins] drove a motor vehicle;
- (2) That [Hopkins] was signaled to stop by a uniformed police officer by emergency light;
- (3) That the signaling police officer's vehicle was equipped with lights and siren;
- (4) That [Hopkins] willfully failed or refused to immediately bring the vehicle to a stop after being signaled to stop;
- (5) That while attempting to elude a pursuing police vehicle, [Hopkins] drove his vehicle in a reckless manner; and
- (6) That the acts occurred in the State of Washington.

Clerk's Papers at 55. On appeal, Hopkins only challenges whether there is sufficient evidence for the jury to find that he drove in a reckless manner (element five); he concedes that the State sufficiently proved the remaining elements.

In addition, the prosecution filed an endangerment special allegation under RCW 9.94A.834, seeking an enhanced sentence. To return the special verdict for endangerment, Hopkins's jury had to find beyond a reasonable doubt that Hopkins threatened one or more persons other than himself or the pursuing law enforcement officer with physical injury or harm

while attempting to elude Officer O'Meara's police vehicle. RCW 9.94A.834.⁴ Hopkins appeals the jury's endangerment finding, asserting that it is unsupported by the evidence.

At trial, defense counsel made an oral motion to dismiss the State's eluding a police vehicle charge, arguing that the State failed to sufficiently prove that Hopkins drove in a reckless manner. The trial court denied the motion after concluding that a jury could reasonably infer that Hopkins drove in a reckless manner when he ran stop signs and exceeded the speed limit in a residential area.

In addition, defense counsel also moved to dismiss the State's special allegation, arguing that the State failed to sufficiently prove that Hopkins's actions threatened others (i.e., his passengers, or the children on S Street) with physical injury or harm. The trial court denied this motion as well, explaining that a jury could reasonably infer that Hopkins subjected his passengers to danger by exceeding the speed limit, cutting corners and running a stop sign, and driving the wrong way down a one-way street.

Hopkins now reasserts his trial arguments on appeal, again claiming that insufficient evidence supports that he (1) drove in a reckless manner while attempting to elude Officer O'Meara, or (2) endangered others while attempting to elude O'Meara. We disagree and affirm

⁴ The legislature enacted this sentencing enhancement in 2008 to protect public safety. Public testimony held on January 10, 2007, in support of this sentencing enhancement before the House Committee on Public Safety and Emergency Preparedness is summarized as follows,

When these offenders decide to run away from police they are endangering society as a whole. This includes children on their way to school, people out shopping, pedestrians, etc. Currently the penalty for a first time offender is 30 days in jail. . . . Offenders need to know that there is [sic] going to be consequences for their actions of endangering others.

House Comm. on Pub. Safety & Emergency Preparedness, H.B. Rep. on H.B. 1030, 60th Leg., Reg. Sess. (Wash. 2008).

the trial court's resolution of these sufficiency claims.

ANALYSIS

Standard of Review

The test for determining the sufficiency of the evidence is whether, after viewing the evidence in the light most favorable to the State, any rational trier of fact could have found the essential elements of a crime beyond a reasonable doubt. *State v. Salinas*, 119 Wn.2d 192, 201, 829 P.2d 1068 (1992). We do not have to be convinced of the defendant's guilt beyond a reasonable doubt, only that substantial evidence supports the State's case. *State v. Fiser*, 99 Wn. App. 714, 718, 995 P.2d 107, *review denied*, 141 Wn.2d 1023 (2000).

"A claim of insufficiency admits the truth of the State's evidence and all inferences that reasonably can be drawn" from it. *Salinas*, 119 Wn.2d at 201. All reasonable inferences from the evidence must be drawn in favor of the verdict and interpreted strongly against the defendant. *Salinas*, 119 Wn.2d at 201. Circumstantial evidence and direct evidence is equally reliable for purposes of drawing inferences. *State v. Delmarter*, 94 Wn.2d 634, 638, 618 P.2d 99 (1980). The trier of fact is the sole and exclusive judge of the evidence. *State v. Bencivenga*, 137 Wn.2d 703, 709, 974 P.2d 832 (1999). Credibility determinations are for the trier of fact. *State v. Camarillo*, 115 Wn.2d 60, 71, 794 P.2d 850 (1990). The role as the reviewing court is not to reweigh the evidence and substitute our judgment for that of the jury. *State v. Green*, 94 Wn.2d 216, 221, 616 P.2d 628 (1980). Instead, we defer to the trier of fact's resolution of conflicting testimony, evaluation of witness credibility, and decisions regarding the persuasiveness of evidence. *State v. Walton*, 64 Wn. App. 410, 415-16, 824 P.2d 533, *review denied*, 119 Wn.2d 1011 (1992).

A. Driving in a Reckless Manner

Substantial evidence supports the jury's finding that Hopkins drove in a reckless manner. Driving "in a reckless manner" means "driving in a rash or heedless manner, indifferent to the consequences."⁵ *State v. Ridgley*, 141 Wn. App. 771, 780-81, 174 P.3d 105 (2007) (quoting *State v. Roggenkamp*, 153 Wn.2d 614, 621-22, 106 P.3d 196 (2005)).

And from the State's evidence, any rational juror could find that Hopkins drove in a rash or heedless manner, indifferent to the consequences. Hopkins admitted to speeding on T Street, and Officer O'Meara testified that Hopkins was "traveling at a very high rate of speed" through a residential neighborhood. RP at 25. In addition, Hopkins abruptly cut through the oncoming lane of traffic as he turned onto 32nd Street, he ran a stop sign while turning the wrong way onto a one-way street, and then he jerked his car to the side of the road. Accordingly, Hopkins's first sufficiency challenge fails.

B. Endangerment Sentence Enhancement

Substantial evidence also supports the jury's finding that Hopkins threatened his *passengers* with physical injury or harm while he attempted to elude Officer O'Meara. Again, Hopkins sped through a residential neighborhood, abruptly cut a corner through the oncoming lane of traffic, ran a stop sign, turned the wrong way down a one-way street, and then jerked his car to the side of the road. Any rational juror could find that Hopkins's actions threatened his passengers because he could have lost control of his vehicle during his abrupt maneuvering or he could have collided with an oncoming vehicle as he turned the wrong way onto S Street. In fact, Hopkins may not have seen an oncoming car, had one been approaching on S Street, because

⁵ The trial court instructed Hopkins's jury consistent with this definition of driving in a reckless manner.

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Hopkins testified that he did not know that he was turning the wrong way onto a one-way street. Hopkins even explained that he didn't see the one-way sign at the intersection because he was looking at O'Meara in his rear view mirror just before turning onto S Street. And while this evidence is not unequivocal proof that Hopkins endangered his passengers, it is sufficient evidence to warrant an inference of threatened harm to Hopkins's passengers. Therefore, because we interpret all reasonable inferences from the evidence strongly against the defendant, we hold that substantial evidence supports the jury's endangerment special verdict. *Salinas*, 119 Wn.2d at 201.

On this record, Hopkins's challenge to the sufficiency of the evidence fails for both his attempting to elude a police vehicle conviction and his endangerment sentence enhancement. Accordingly, we affirm.

A majority of the panel having determined that this opinion will not be printed in the Washington Appellate Reports, but will be filed for public record pursuant to RCW 2.06.040, it is so ordered.

QUINN-BRINTNALL, J.

We concur:

ARMSTRONG, P.J.

VAN DEREN, J.