

**IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON**

**DIVISION II**

STATE OF WASHINGTON,

Respondent,

v.

LUIS ENRIQUE BLANCO,

Appellant.

No. 42350-2-II

UNPUBLISHED OPINION

Quinn-Brintnall, J. — Luis Blanco appeals his conviction for attempting to elude a pursuing police vehicle, arguing that it is not supported by sufficient evidence. He also argues that his counsel’s assistance was deficient for failing to request a jury instruction on the affirmative defense that his driving was “reasonable under the circumstances.” RCW 46.61.024(2)(b). Concluding that the State presented sufficient evidence and that Blanco does not establish ineffective assistance of counsel, we affirm.<sup>1</sup>

**FACTS**

At 7:53 am on August 6, 2010, Lakewood Police Officer Jeff Johnson was in his police cruiser driving eastbound on 112th when he saw a vehicle travelling at a high rate of speed in the

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<sup>1</sup> A commissioner of this court initially considered Blanco’s appeal as a motion on the merits under RAP 18.14 and then transferred it to a panel of judges.

westbound direction. Johnson was in uniform. His radar registered the vehicle's speed as 88 mph. The speed limit was 35 mph. Johnson activated his lights and sirens, made a u-turn, and began pursuing the speeding vehicle. The vehicle did not stop and passed places where it could have pulled over. It turned northbound onto South Tacoma Way, where it met traffic. It crossed into the oncoming lane to pass the traffic and accelerated. After crossing an overpass in the oncoming lane, the vehicle met southbound traffic, obliging it to stop in the middle of the road. The driver then extended his arms straight out from his sides in a gesture of surrender. Johnson estimated the pursuit as having travelled a little over one-half mile.

Officer Johnson arrested the driver, Blanco. He advised Blanco of his constitutional rights. When asked why he was driving so fast, Blanco gave inconsistent accounts. First he said that two Indian males had pulled a gun on him at a gas station on 112th and Steele. But later he was unable to identify the ethnicity of the men. His account was also inconsistent regarding whether he was in his car when the alleged event occurred. Johnson inquired of dispatch whether any incidents had been reported at 112th and Steele, but dispatch knew of none.

The State charged Blanco with attempting to elude a pursuing police vehicle. Officer Johnson testified as described above. Blanco testified that while he was in a convenience store, a man saw that he had a considerable amount of money in his wallet. He saw the man get into a dark green Crown Victoria, a "police type of car." 3 Report of Proceedings at 122. Five or ten minutes later, while approaching a gas station at 112th and Steele, he noticed the Crown Victoria behind him. He said the Crown Victoria turned on some lights, so he started to turn into the gas station. But as he did, a yellow Honda pulled out and blocked him. He saw a woman point a gun at his car through the passenger window of the Honda. Believing he was about to be robbed, he

continued straight on 112th. He estimated his speed as 50 to 60 mph. He said he did not see Johnson's vehicle behind him until he had crossed the overpass. He denied that there would have been anywhere on 112th for him to pull over.

Blanco sought and was given a jury instruction on duress as a defense to attempting to elude a pursuing police vehicle. The jury convicted Blanco and he appeals.

### ANALYSIS

#### Sufficiency of the Evidence

Blanco argues that the State failed to present sufficient evidence that he attempted to elude Officer Johnson's pursuing police vehicle. Evidence is sufficient if, when viewed in a light most favorable to the jury's verdict, it permits any rational trier of fact to find the essential elements of the crime beyond a reasonable doubt. *State v. Salinas*, 119 Wn.2d 192, 201, 829 P.2d 1068 (1992). "A claim of insufficiency admits the truth of the State's evidence and all inferences that reasonably can be drawn therefrom." *Salinas*, 119 Wn.2d at 201. Circumstantial and direct evidence are equally reliable. *State v. Delmarter*, 94 Wn.2d 634, 638, 618 P.2d 99 (1980). Because it is the trier of fact's responsibility to resolve credibility issues and determine the weight of the evidence, we defer to it on issues of conflicting testimony, credibility of witnesses, and the persuasiveness of the evidence. *State v. Camarillo*, 115 Wn.2d 60, 71, 794 P.2d 850 (1990); *State v. Walton*, 64 Wn. App. 410, 415-16, 824 P.2d 533, *review denied*, 119 Wn.2d 1011 (1992).

To find Blanco guilty of attempting to elude a pursuing police vehicle, the State must prove beyond a reasonable doubt that Blanco (1) willfully failed or refused to immediately bring his vehicle to a stop and (2) drove in a reckless manner while attempting to elude a pursuing

police vehicle (3) after being given a visual or audible signal to stop. RCW 46.61.024(1). The signal to stop may be by hand, voice, emergency light, or signal. RCW 46.61.024(1). The officer giving the signal must be in uniform and the vehicle must be equipped with lights and sirens. RCW 46.61.024(1). Taken in the light most favorable to the State, after uniformed Officer Johnson activated his lights and sirens, Blanco did not bring his vehicle to a stop until he met with oncoming traffic more than one-half mile later. Blanco drove at speeds exceeding 88 mph and crossed into the oncoming lane to pass traffic. This evidence is sufficient to support the jury's verdict that Blanco drove in a reckless manner while attempting to elude Johnson's pursuing police vehicle.

#### Ineffective Assistance of Counsel

Second, Blanco argues that his counsel provided ineffective assistance when she failed to request a jury instruction on the affirmative defense contained in RCW 46.61.024(2)(b), which creates a defense to attempting to elude a pursuing police vehicle if "driving after the signal to stop was reasonable under the circumstances." To establish ineffective assistance of counsel, Blanco must show that (1) his counsel's performance was deficient in that it fell below an objective standard of reasonableness based on all the circumstances; and (2) the deficient performance prejudiced him because, had the errors not occurred, the result probably would have been different. *State v. McFarland*, 127 Wn.2d 322, 335, 899 P.2d 1251 (1995); *Strickland v. Washington*, 466 U.S. 668, 689, 104 S. Ct. 2052, 80 L. Ed. 2d 674 (1984). But a legitimate trial tactical decision does not constitute ineffective assistance of counsel. *State v. Grier*, 171 Wn.2d 17, 33, 246 P.3d 1260 (2011).

Blanco argues that his trial counsel should have sought a jury instruction for the

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affirmative defense contained in RCW 46.61.024(2)(b). He contends that because he believed he was being pursued by robbers, his driving was reasonable under the circumstances. But Blanco’s trial counsel argued for, and obtained, a duress instruction. Her decision to focus on that defense, rather than arguing that his driving at 88 mph on the wrong side of the road was “reasonable under the circumstances,” was a legitimate tactical decision and does not support Blanco’s ineffective assistance of counsel argument.

Statement of Additional Grounds

In his statement of additional grounds, Blanco asserts that (1) a juror fell asleep but his counsel did not ask for a mistrial and (2) a juror discussed the case with the prosecutor outside the courtroom. But the record before this court is silent as to either alleged incident. In a direct appeal, we cannot review a defendant’s claims that rest on evidence or facts not in the record. *Grier*, 171 Wn.2d at 29; *McFarland*, 127 Wn.2d at 335.

We affirm Blanco’s judgment and sentence.

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 in accordance with RCW 2.06.040, it is so ordered.

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QUINN-BRINTNALL, J.

We concur:

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HUNT, P.J.

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VAN DEREN, J.