

IN THE
ARIZONA COURT OF APPEALS
DIVISION TWO

THE STATE OF ARIZONA,
Appellee,

v.

JAMES DAUGHERTY,
Appellant.

No. 2 CA-CR 2019-0247
Filed October 13, 2020

THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND
MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES.
NOT FOR PUBLICATION
See Ariz. R. Sup. Ct. 111(c)(1); Ariz. R. Crim. P. 31.19(e).

Appeal from the Superior Court in Pinal County
No. S1100CR201803124
The Honorable Christopher J. O'Neil, Judge

AFFIRMED AS CORRECTED

COUNSEL

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MEMORANDUM DECISION

Judge Eckerstrom authored the decision of the Court, in which Presiding Judge Eppich and Judge Espinosa concurred.

ECKERSTROM, Judge:

¶1 James Daugherty appeals from his convictions and sentences for aggravated assault, criminal damage, unlawful flight, and aggravated driving under the influence (DUI), all of which stem from his involvement in a six-minute police chase through Coolidge. For the reasons that follow, we affirm his convictions and sentences, but we correct the sentencing minute entry in two respects.

Factual and Procedural Background

¶2 We review the evidence and all reasonable inference in the light most favorable to upholding the jury's verdicts. *State v. Miles*, 211 Ariz. 475, ¶ 2 (App. 2005). One morning in December 2018, Daugherty failed to stop at a stop sign and was pulled over by Officer Coleman of the Coolidge Police Department. As Coleman approached on foot, Daugherty drove away. Coleman ran back to his patrol vehicle and pursued Daugherty, with sirens and lights activated. Daugherty drove along residential streets, above the posted speed limit and without stopping at stop signs, and Coleman called for backup.

¶3 When Daugherty turned into a residential subdivision, Coleman and another officer followed. At a cul-de-sac surrounded by a green belt area, Daugherty stopped his vehicle, and the officers stopped behind him. As Officer Coleman walked toward Daugherty's vehicle, it suddenly "jumped the curb, went across the sidewalk onto the grass and drove across the green belt."

¶4 Daugherty drove directly toward two occupied police vehicles parked on the other side of the green belt, one of which was unmarked. One of the officers quickly moved his vehicle to avoid being hit, and Daugherty sped between the two cars. These officers, as well as the officer who had joined Coleman in the cul-de-sac and followed Daugherty over the green belt, pursued Daugherty into another subdivision, where he continued speeding and ignoring stop signs.

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¶5 Officer Coleman drove ahead and positioned his vehicle at the exit of the second subdivision to block civilian traffic from the pursuit area. Daugherty drove toward him and attempted to exit the subdivision, but his car “crashe[d] into” and became wedged between Coleman’s vehicle and a steel cage on the side of the road. The crash caused damage to the patrol car and left Officer Coleman with an injured calf muscle.

¶6 Daugherty exited his vehicle and ran. Another officer pursued him on foot, catching him twenty to thirty yards away from the collision site. He was taken to the hospital, where he told hospital staff he had smoked methamphetamine earlier that morning. A test of his blood revealed a toxic level of methamphetamine capable of creating effects mimicking a manic or schizophrenic episode and causing aggression and negative impacts on driving. Daugherty was also found to have been driving on a suspended license.

¶7 At the conclusion of a five-day trial, a jury found Daugherty guilty of two counts of aggravated assault with a motor vehicle, criminal damage of Officer Coleman’s patrol vehicle, unlawful flight from pursuing law enforcement, and two counts of aggravated DUI. The trial court sentenced him to concurrent sentences of imprisonment, the longest of which is 10.5 years. This appeal followed. We have jurisdiction pursuant to A.R.S. §§ 12-120.21(A)(1), 13-4031, and 13-4033(A).

Police Pursuit Policy

¶8 A Coolidge Police Department internal investigation concluded that Officer Coleman had violated a police policy prohibiting vehicle pursuits “for traffic offenses (including unlawful flight).” He was disciplined for this violation. None of the other three officers involved in Daugherty’s arrest were found to have violated the pursuit policy.

¶9 Before trial, the state sought to preclude Daugherty from introducing evidence of the police policy or the internal investigation, arguing that such evidence was not relevant to Daugherty’s culpability and would confuse and mislead the jury. Daugherty opposed the motion, arguing the evidence was relevant to impeach the credibility and demonstrate possible “motive and bias of the testifying officers” and would not confuse the jury.

¶10 The trial court granted the motion in part, precluding Daugherty from presenting evidence of the internal investigation. However, the court allowed impeachment of law enforcement witnesses with prior inconsistent statements and evidence as to whether the actions

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of the officers involved in the arrest were inconsistent with the pursuit policy.

¶11 The trial court later granted the state's motion to reconsider this ruling, precluding all evidence related to the pursuit policy, over Daugherty's objection. On appeal, Daugherty argues the trial court abused its discretion in reversing its original ruling partially denying the state's motion *in limine* because it did so "[w]ithout good cause" or "established legal authority." He further contends the ruling deprived him of a fair trial and violated his constitutional right to confront and cross-examine witnesses against him. He again argues that he sought to question officers regarding the policy in order to raise doubts regarding their bias or motive and that the evidence would not have confused or misled the jury.

¶12 Although Daugherty identifies a non-trivial theory of relevance, and we caution trial courts to admit evidence of motive or bias as to central witnesses absent weighty concerns about prejudice, any error in the trial court's rulings here regarding the police pursuit policy was harmless beyond a reasonable doubt. *See State v. Henderson*, 210 Ariz. 561, ¶ 18 (2005) (error harmless if, beyond reasonable doubt, it "did not contribute to or affect the verdict or sentence"). The jury's determinations that Daugherty was guilty of unlawful flight from law enforcement, assaulting Officer Coleman by ramming into his stationary patrol vehicle with his car, criminal damage of the patrol vehicle, and aggravated DUI were not solely dependent on testimony from Coolidge Police Department officers.

¶13 In particular, a neighborhood onlooker testified that Daugherty had sped by with police chasing him and then "smashed right into" Officer Coleman's vehicle. A law enforcement witness unrelated to the Coolidge Police Department testified that the skid marks at the collision site indicated that the patrol car had been stationary when it was pushed backwards during the collision, confirming Officer Coleman's account. The mechanic responsible for overseeing the repair of Coleman's vehicle established the amount of damage it sustained in the collision, and the police pursuit policy had no bearing on his testimony. Finally, the evidence that Daugherty had been driving with methamphetamine in his system and on a suspended license was provided by witnesses independent of the Coolidge Police Department who were in no way affected by the pursuit policy.

¶14 The only conviction that depended exclusively on testimony from members of the Coolidge Police Department bound by the pursuit

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policy was the second aggravated assault conviction, which related to Daugherty driving directly at two police officers across the green belt before narrowly missing and driving between them.¹ Daugherty argues that the officers at whom he drove might have been motivated to exaggerate the events in their police reports and subsequent trial testimony in order to manufacture an assault justifying their subsequent pursuit of him under the pursuit policy. But a third officer, a detective, also testified that Daugherty drove directly toward the two other officers, before cutting between their two vehicles. This detective, who had pursued Daugherty over the curb at the cul-de-sac and through the green belt, had no incentive to manufacture an assault to justify his pursuit, which occurred before the assault in question. Moreover, Daugherty was permitted during cross-examination of this detective to ask questions implying that he might be biased in favor of his colleagues or his employer, who could have an interest in the outcome of the case.² We therefore conclude that any hypothetical error in the trial court's evidentiary rulings regarding the police pursuit policy was harmless as to the second aggravated assault count as well. *See Henderson*, 210 Ariz. 561, ¶ 18.

Corrections to Sentencing Minute Entry

¶15 Daugherty concedes the trial court correctly sentenced him on the guilty verdicts of the jury. However, he contends the sentencing minute entry fails to accurately reflect the verdict on the second aggravated assault

¹Daugherty was charged with assaulting both of these police officers, but the jury found him not guilty of one of the two resulting counts of aggravated assault.

²As Daugherty attempted to imply at trial, Officer Coleman might theoretically have had a greater incentive to help establish the second assault in order to bolster the account provided by the second victim, his brother. But Coleman's testimony on that assault was indefinite. He stated he had not been focused on what was occurring on the other side of the green belt, and agreed he was not in the "best position to tell the jury what exactly happened" after Daugherty jumped the curb in the cul-de-sac and that the other officers "would probably be in a better position to say what happened." Moreover, his testimony was materially identical to his police report, which had resulted in a finding of his own violation of the pursuit policy and related discipline, undercutting Daugherty's argument that use of the policy during Coleman's cross-examination might have materially damaged his credibility.

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conviction and the court's oral pronouncement of his sentence for criminal damage. In particular, he asks us to correct the sentencing minute entry to reflect: (1) the second aggravated assault conviction (count two) is a class three—not class two—dangerous felony, because the jury found the state had failed to prove Daugherty committed the offense “knowingly or intentionally upon a police officer engaged in his official duties”; and (2) the trial court imposed a 2.25-year sentence for criminal damage (count four), not the 2.5 years currently reflected in the minute entry. The state agrees these corrections are appropriate. Because the record unambiguously supports Daugherty's uncontested request, we hereby grant it. *See State v. Ovante*, 231 Ariz. 180, ¶ 38 (2013) (oral pronouncement controls over minute entry when discrepancy exists and appeals court may order correction if record unambiguous).

Disposition

¶16 For the foregoing reasons, we affirm Daugherty's convictions and sentences but order that the sentencing minute entry be corrected as specified above.