

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority. Citation is disfavored, but may be permitted in accordance with the provisions of Rule 30(e)(3) of the North Carolina Rules of Appellate Procedure.

NO. COA06-470

NORTH CAROLINA COURT OF APPEALS

Filed: 6 March 2007

STATE OF NORTH CAROLINA

v.

Gaston County
Nos. 05 CRS 52813, 52816

JOYCE KAY JACOBS WILSON,
Defendant.

Appeal by defendant from judgments entered 24 January 2006 by Judge Timothy S. Kincaid in Superior Court, Gaston County. Heard in the Court of Appeals 19 February 2007.

Attorney General Roy Cooper, by Assistant Attorney General Allison A. Pluchos, for the State.

Allen W. Boyer, for defendant-appellant.

WYNN, Judge.

To prove felonious fleeing to elude arrest, the State must show, *inter alia*, that a defendant operated a vehicle while fleeing or attempting to elude an officer.¹ Here, Defendant contends that evidence showing the officer followed her for only a quarter of a mile before she stopped her vehicle was insufficient to prove this charge. Because the evidence, viewed in the light most favorable to the State, would allow a reasonable juror to find Defendant guilty of fleeing to elude arrest, we affirm her conviction.

¹ N.C. Gen. Stat. § 20-141.5(a) (2005).

The State's evidence tended to show that at approximately 1:13 a.m. on 20 February 2005, Gaston County Police Officer W. P. Downey was driving northward in a marked patrol car on Hickory Grove Road, a public road or highway in Gaston County, North Carolina, with a posted speed limit of forty-five miles per hour. From his left, Officer Downey observed a gray van traveling on Stowe Lane toward an intersection with Hickory Grove Road. Without decreasing its speed, the van "went through the stop sign and tried to make a right-hand turn" onto Hickory Grove Road. Unable to remain in its lane of travel, the van entered Officer Downey's lane, forcing him to leave the road and drive onto the righthand shoulder to "avoid being struck head[-]on by this vehicle."

Officer Downey turned his patrol car around and activated his blue lights and siren. As he pursued the van, "it was accelerating as an attempt to get away from [him]." Officer Downey paced the van's speed for five to six seconds and determined that it was traveling at sixty miles per hour. He saw the van "grossly crossing left [of] center" on four occasions, so that it was straddling the center line of Hickory Grove Road. About a quarter of a mile from the Stowe Lane intersection, the van "slammed on brakes" and, without signaling, made a left turn into a private gravel driveway at 2320 Hickory Grove Road. Officer Downey was about two to three car lengths behind the van with his lights and siren activated when it made the sudden turn.

Officer Downey followed the van into the driveway and saw it come to a stop. As Officer Downey exited his patrol car, he saw

Defendant Joyce Kay Jacobs Wilson attempt to get out of the vehicle. Defendant was facing away from Officer Downey and the roadway toward a stand of trees beyond the house. Officer Downey ordered Defendant to get back in the car, drew his service weapon and ordered the van's two occupants to keep their hands up. When a second officer arrived on the scene, Officer Downey ordered Defendant out of the car. She was "unsteady on her feet" and "had a very strong odor of alcohol on her breath." She was unable to produce identification and told Officer Downey that "she did not have a license." Defendant's speech was "slurred" and "very rapid." After placing Defendant under arrest, Officer Downey searched the van and found a "crack" pipe in the driver's seat. Defendant apologized to Downey, saying that she had forgotten the pipe was in the seat and that she would not "take any test that [he] offered because she never did."

At the jail, Defendant refused to submit to a chemical breath analysis. She was unable to perform properly any of the four physical dexterity tests administered by Officer Downey. Based on his observations of Defendant at the scene and in transporting her to jail, Officer Downey formed an opinion that she was "extremely impaired" by the consumption of alcohol.

The house at 2320 Hickory Grove Road was owned and occupied by Arthur Clemmer, who stated that he did not know Defendant, had "[n]ever seen her before," and did not invite her to drive her van "halfway into [his] backyard" on the morning of 20 February 2005.

A jury found Defendant guilty of felonious fleeing to elude

arrest based on the aggravating factors of gross impairment and driving while license revoked. It further found her guilty of driving while impaired (DWI), driving while license revoked, and reckless driving, but not guilty of possessing drug paraphernalia. The trial court entered judgments sentencing Defendant to consecutive prison terms of fifteen to eighteen months for fleeing to elude arrest, and twenty-four months for DWI. The court arrested judgment on her convictions for driving while license revoked and reckless driving.

Defendant appeals from the denial of her motion to dismiss the charge of felonious fleeing to elude arrest, contending the evidence was insufficient to show that she "was attempting to flee or elude a law enforcement officer."

In reviewing the denial of a motion to dismiss, we must determine whether the evidence, when viewed in the light most favorable to the State, would allow a reasonable juror to find Defendant guilty of the essential elements of the offense beyond a reasonable doubt. *State v. Irwin*, 304 N.C. 93, 98, 282 S.E.2d 439, 443 (1981). The State is entitled to all favorable inferences reasonably drawn from the evidence, and its witnesses are presumed to be credible. *State v. Robinson*, 355 N.C. 320, 336, 561 S.E.2d 245, 256, *cert. denied*, 537 U.S. 1006, 154 L. Ed. 2d 404 (2002); see also *State v. Jackson*, 161 N.C. App. 118, 122, 588 S.E.2d 11, 15 (2003).

The essential elements of felonious fleeing to elude arrest are: (1) operation of a motor vehicle (2) on a highway or public

vehicular area (3) while fleeing or attempting to elude a law enforcement officer who is lawfully performing his or her duties and (4) while two or more of the enumerated factors in N.C. Gen. Stat. § 20-141.5(b) are present. N.C. Gen. Stat. § 20-141.5(a) (2005). Defendant's appeal challenges only the evidence that she fled or attempted to elude Officer Downey. Noting that Officer Downey followed her for only a quarter of a mile before she stopped her vehicle, Defendant argues that the jury was left to "surmise or conjecture" whether she attempted to elude Officer Downey.

Here, the record shows that Defendant drove into the lane of Officer Downey's marked police car and nearly caused a head-on collision. Officer Downey pursued her vehicle with his lights and siren activated. In response, Defendant accelerated her speed and failed to avail herself of areas beside the road where she could have stopped her vehicle. As Officer Downey came within a few car lengths of her vehicle, Defendant slammed on her brakes, turned into a stranger's private driveway, pulled behind a house, and attempted to exit her vehicle in the direction of a stand of trees. The fact that Defendant was driving while impaired and without a license provided additional circumstances suggesting her conscious purpose to flee or attempt to elude the officer.

We hold that this evidence was sufficient to support a reasonable inference that Defendant knowingly and intentionally fled or attempted to elude apprehension by Officer Downey. Accordingly, we uphold Defendant's conviction on the charge of fleeing to elude arrest.

No error.

Judges ELMORE and GEER concur.

Report per Rule 30(e).