IN THE COURT OF APPEALS FOR THE STATE OF WASHINGTON

STATE OF WASHINGTON,	)	
	)	No. 66047-1-I
Respondent,	)	
	)	DIVISION ONE
v.	)	
	)	
BRANDI MARTINEZ,	)	UNPUBLISHED OPINION
	)	
Appellant.	)	FILED: March 12, 2012

Spearman, J. — A jury convicted Brandi Martinez of attempting to elude a police vehicle and resisting arrest, and also returned a special verdict finding that one or more other persons were threatened by Martinez's attempt to elude a police vehicle, under RCW 9.94A.834. She claims on appeal that the evidence was insufficient to support the special verdict and that RCW 9.94A.834, as applied by the special allegation, is void for vagueness. She also claims in a statement of additional grounds (SAG) that her Fifth Amendment rights were violated by the admission of statements she made around the time of her arrest. We conclude her claims lack merit and affirm.

FACTS

In the early morning hours of January 30, 2010, Officer Edgar Serrano received a dispatch of a possible accident and hit-and-run involving a white

Honda-type vehicle. Serrano was in the area of the possible accident and observed a white Honda driving quickly. He was in full uniform and was driving a marked patrol car. The car was paced traveling 50 miles per hour (m.p.h.) in a 25 m.p.h. zone. Serrano activated his lights and siren but the car turned into a residential neighborhood and the car's headlights and tail lights were turned off. The car continued to travel at high speeds on the residential street, losing traction at times as Serrano followed. Eventually the car stopped at the dead end of a cul-de-sac, where there was a parking lot, boats, recreational vehicles, and cars. Serrano saw the front doors on both sides of the car swing open and observed two women, later identified as Brandi Martinez and Veronica Ceja, run in opposite directions. Serrano yelled at Martinez, who emerged from the driver's side door, that she was under arrest but she did not stop, so he had to grab her and prevent her from pulling away. Other officers soon arrived and found Ceja nearby. Martinez was read her Miranda[1] rights and indicated she did not understand them. Nonetheless, she made several statements, insisting that she did not drive the car and did not do anything.

Martinez was charged with attempting to elude a police officer, with a special allegation of conduct endangering others under RCW 9.94A.834, and resisting arrest. At trial, Serrano testified that he saw Martinez get out of the car from the driver's side. Ceja testified that an unfamiliar male was the driver and that Martinez was riding in the back seat. She testified that the driving was "all

[1] Miranda v. Arizona, 384 U.S. 436, 86 S.Ct. 1602, 16 L.Ed.2d 694 (1966).

crazy like" and estimated they were traveling 50 m.p.h. through the neighborhood. Ceja testified that she was afraid because of how quickly the car was moving. She was afraid that the car would crash and she would be injured. Id. at 77-78. At one point, she was so fearful that she wanted to jump out of the moving car. Id. at 63, 77-78.

A jury found Martinez guilty on all counts and that the special allegation had been committed.

DISCUSSION

Martinez makes the following claims on appeal: (1) there was insufficient evidence supporting the special verdict; (2) RCW 9.94A.834, as applied by the special verdict form, violates due process vagueness prohibitions; and (3) she was deprived of her Fifth Amendment rights by the admission of statements to officers when she was arrested. We address her claims in turn.

Sufficiency of the Evidence

Martinez first challenges the sufficiency of the evidence supporting the special verdict. The special verdict form asked the jury, "Was any person, other than Brandi Martinez or a pursuing law enforcement officer, threatened with physical injury or harm by the actions of Brandi Martinez during her commission of the crime of attempting to elude a police vehicle?" Where a special verdict is challenged based on sufficiency of the evidence, our inquiry is whether, after viewing the evidence in the light most favorable to the State, any rational trier of fact could have found the relevant facts proven beyond a reasonable doubt.

State v. Chanthabouly, 164 Wn. App. 104, 142-43, 262 P.3d 144 (2011). A claim of insufficiency admits the truth of the State's evidence and all inferences that can reasonably be drawn therefrom. State v. Salinas, 119 Wn.2d 192, 201, 829 P.2d 1068, 1074 (1992). Circumstantial evidence and direct evidence are equally reliable. State v. Delmarter, 94 Wn.2d 634, 638, 618 P.2d 99 (1980). We do not reweigh the evidence or substitute our judgment for that of the jury but instead defer to the jury on issues of conflicting testimony, witness credibility, and persuasiveness of the evidence. State v. Green, 94 Wn.2d 216, 221, 616 P.2d 628 (1980); State v. Walton, 64 Wn. App. 410, 415-16, 824 P.2d 533 (1992).

Martinez argues that, while the speed at which she was driving is a potential factor in determining whether the evidence supports the special verdict, speed alone fails to set her conduct apart from the recklessness inherent in any eluding offense. She cites State v. Randhawa, 133 Wn.2d 67, 77, 941 P.2d 661 (1997) in support.

Her argument is not well taken. There was more than just evidence about the speed at which Martinez was driving to permit the jury to find that the special allegation was established. There was evidence that Martinez sped through a residential neighborhood where there were parked cars, RVs, homes and apartments; that she lost traction multiple times while speeding, causing the vehicle to slide; and that she drove with her headlights and taillights turned off. Ceja testified that the driving was fast and crazy and that she was afraid they

could crash and she could be injured. Viewing the evidence in a light most favorable to the State, a rational juror could find that Ceja was threatened with physical injury or harm by Martinez's actions.

Randhawa involved a flawed jury instruction and does not support Martinez's position. There, Harmit Randhawa was charged with vehicular homicide and the jury was instructed that it could infer that he drove recklessly solely from evidence that he was driving in excess of the maximum lawful speed at the time of the accident. Id. at 69. He argued that the instruction violated due process because it relieved the State of its burden to prove each element of the crime beyond a reasonable doubt. Id. at 75-76. The Supreme Court agreed and held the instruction was error where the evidence showed that Randhawa was traveling at most between 10 to 20 m.p.h. over the speed limit. It noted that, based on the facts, "we cannot say with substantial assurance that the inferred fact of reckless driving flowed from the evidence of speed alone." Id. at 78. Here, there was no jury instruction akin to the one in Randhawa.

Void for Vagueness

Martinez next argues that RCW 9.94A.834,[2] as applied in her case by the

[2] RCW 9.94A.834, which allows the prosecutor to file a special allegation that the defendant's conduct during an attempted eluding offense caused endangerment, provides:

> (1) The prosecuting attorney may file a special allegation of endangerment by eluding in every criminal case involving a charge of attempting to elude a police vehicle under RCW 46.61.024, when sufficient admissible evidence exists, to show that one or more persons other than the defendant or the pursuing law enforcement officer were threatened with physical injury or harm by the actions of the person committing the crime of attempting to elude a police vehicle.
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> (2) In a criminal case in which there has been a special allegation, the state shall prove beyond a reasonable doubt that the accused committed the crime while endangering one or more persons other than the defendant or the pursuing law

special verdict, is void for vagueness. A statute is presumed constitutional and the challenging party must prove unconstitutionality beyond a reasonable doubt. State v. Maciolek, 101 Wn.2d 259, 263, 676 P.2d 996 (1984).

A statute is void for vagueness if it either (1) does not define the offense with sufficient definiteness such that ordinary people can understand what conduct is prohibited, or (2) does not contain adequate standards to protect against arbitrary enforcement. Spokane v. Douglass, 115 Wn.2d 171, 178, 795 P.2d 693 (1990). Under the second ground, "[w]hat is forbidden by the due process clause are criminal statutes that contain no standards and allow police officers, judge, and jury to subjectively decide what conduct the statute proscribes or what conduct will comply with a statute in any given case." Maciolek, 101 Wn.2d at 267.

Martinez's challenge is based on the second ground and involves the term "threatened" as contained in RCW 9.94A.834 and the special verdict. She contends that the jury was given no context for evaluating how to distinguish the threat that must be shown under RCW 9.94A.834 from the inherent danger that must be established under the elements of the eluding offense.

We reject this claim. The crux of Martinez's argument is that the term "threaten" was vague and permitted the jury to find that the special allegation

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enforcement officer. The court shall make a finding of fact of whether or not one or more persons other than the defendant or the pursuing law enforcement officer were endangered at the time of the commission of the crime, or if a jury trial is had, the jury shall, if it finds the defendant guilty, also find a special verdict as to whether or not one or more persons other than the defendant or the pursuing law enforcement officer were endangered during the commission of the crime.

was met without finding that there was more to her actions than what was necessary to convict her of the eluding offense. In other words, the special allegation was duplicative of the eluding charge. She is incorrect. RCW 9.94A.834 applies only to situations where there is sufficient admissible evidence to show that one or more persons other than the defendant or the pursuing officer were threatened with physical injury or harm by the defendant's actions. Furthermore, if persons of ordinary intelligence can understand a penal statute, notwithstanding some possible areas of disagreement, it is not wanting in certainty. Maciolek, 101 Wn.2d at 265 (internal citation omitted). The term threatened as used in RCW 9.94A.834 is readily understood by persons of ordinary intelligence. Martinez fails to show that the statute does not provide ascertainable standards of guilt to protect against arbitrary enforcement.

Fifth Amendment

In a SAG, Martinez claims she was deprived of her Fifth Amendment privilege against self-incrimination because she did not understand her Miranda rights but was nonetheless asked questions around the time of her arrest. Specifically, her claim appears to involve Serrano's question to her, who else was in the car. But at the CrR 3.5 hearing, the defense conceded the statements were admissible.[3] Therefore, this is an argument raised for the first time on

[3] At the CrR 3.5 hearing, Serrano testified that when he placed Martinez under arrest, he advised her of her Miranda rights and Martinez stated she did not understand. He testified that she nonetheless stated that she wanted to give her car keys to her aunt, that she had not done anything, and that she was the only occupant of the vehicle. She also said that she had not been driving the car. Serrano responded that he had seen two females running out of the car. She did not say anything else at that point, and he did not ask her any questions. On cross-examination, Serrano testified that when he apprehended Martinez, he asked her who else was in the vehicle,

appeal, which he usually do not consider, absent "'manifest error affecting a constitutional right.'" RAP 2.5(a); State v. McFarland, 127 Wn.2d 322, 332-33, 899 P.2d 1251 (1995). Martinez fails to explain why the statements were inadmissible or show that this is a claim of manifest error affecting a constitutional right. Moreover, insofar as her claim involves Serrano's question who else was in the car, the record does not show that this question elicited any incriminating statements from her.

Affirmed.

Spearman, J.

WE CONCUR:

Ellington, J

Cox, J.

but he could not remember whether Martinez answered him or what her answer was. Two other officers testified as to similar statements by Martinez. Upon hearing the officers' testimony, defense counsel conceded that the statements were admissible because they were not a product of interrogation. The trial court ruled that the statements were admissible because they were voluntary and not the result of questioning.