IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,	)	
	)	No. 66309-7-I
Respondent,	)	
	)	DIVISION ONE
v.	)	
	)	
DENNIS JAMES BOGER,	)	UNPUBLISHED OPINION
	)	
Appellant.	)	FILED: September 4, 2012
_____	)	

Becker, J. — To be convicted of reckless driving, there must be sufficient evidence that a person drove in willful or wanton disregard for the safety of persons or property. While intoxicated, appellant Dennis Boger drove up and down in the parking lot of an apartment complex at night, doing "burnouts" and driving the truck up onto a curb. This evidence was sufficient to support convicting Boger of reckless driving.

According to testimony at trial, a resident at an apartment complex heard the sound of squealing tires in the parking lot outside at about 8:30 p.m. on December 28, 2009. The resident heard three or four "burnouts" over a 10 to 15 minute period, each lasting about 20 to 45 seconds. The resident walked

outside to investigate and saw a truck moving slowly in the parking lot. He watched as the truck "bumped out over the speed bump" and realized "this is obviously the guy." The resident tried to confront the driver. Ignoring the resident, the driver "jockeyed" the vehicle three or four times while attempting to park it and then drove it up on the curb, "up on the flower bed." There were "burnout marks everywhere," and the parking lot "smelled like burned rubber." The driver's side front and rear tires were all the way up on the curb in the flower bed, "and the other two were, you know, three feet away from the white line in the parking stall." The driver, Dennis Boger, got out and fell down. The resident smelled alcohol and thought Boger appeared very drunk.

Boger and the resident got into an argument. As they were arguing, three young adults interrupted them. One of them threw Boger on the ground. A woman in the apartment complex called 911 after hearing screaming and seeing Boger being beat up. She too had heard the sound of squealing tires earlier that night, which she described as "somebody roasting their tires in the parking lot," making a "loud, high-pitched scream." The people who had attacked Boger left when they learned that someone had called 911.

Deputy Chris Pedersen arrived. He observed Boger stumbling and arguing with the resident who had confronted him. Pedersen detected that Boger's speech was slurred, saw that his eyes appeared watery and bloodshot, and smelled a strong odor of intoxicants. He arrested Boger for driving while under the influence. At the police station, Boger refused to take a breathalyzer

test. When questioned, however, he admitted to drinking large amounts of wine over the preceding several days.

At the close of the State's case, Boger made a halftime motion to dismiss for insufficiency of the evidence to convict him of reckless driving. He argued that squealing tires and the spinning of the wheels over the speed bump was not enough to prove willful and wanton disregard for the safety of persons or property, the mental element for the crime of reckless driving. The State responded that the evidence might not be enough "if you see him squealing tires in an empty parking lot at a mall or something like that," but he had chosen to do it in front of an apartment complex where there were small children in residence. Boger replied by emphasizing that there was nobody actually in the parking lot at the time and that Boger was not speeding.

The trial court denied the motion to dismiss. The court reasoned that the jury could determine as a matter of common experience whether it was reckless to do burnouts in a residential location:

> THE COURT: . . . The question here is if you – you're in a parking lot in a residential area, and over a period of about half an hour you were out there doing wheelies, which is another way of saying, whether that's the old version when I was a kid, you called these wheelies, I think, and there was some testimony that when he was doing whatever he was doing, leaving long black tread marks in the parking lot. Is that sufficient for reckless driving?
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> I'm going to deny the motion. Doesn't mean I would find him guilty of reckless driving under the circumstances, but I think it is sufficient based on common experience as to what type of conduct of driving that you have to engage in to spin your tires over the distance these black marks were identified. And if you do that in an area of a parking complex where children reside, is that sufficient to show wanton willful disregard? I think it is sufficient to go to the jury.

> . . . .
> THE COURT: . . . It's not whether somebody's actually present. Are you doing something that's going to endanger lives? I think a reasonable jury can conclude, based on reasonable doubt, that doing this kind of conduct of accelerating sufficient to lay down those kind of black marks in doing it repeatedly over a period of half an hour where people could be present, I think the jury could say that is willful and that is wanton disregard. You didn't ask me to decide the case. You asked me to decide the sufficiency. I'm saying it's sufficient.

The jury convicted Boger of felony driving while under the influence and reckless driving. Boger contends there was insufficient evidence to support the conviction for reckless driving.

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 guilt beyond a reasonable doubt. State v. Salinas, 119 Wn.2d 192, 201, 829 P.2d 1068 (1992). When the sufficiency of the evidence is challenged in a criminal case, all reasonable inferences from the evidence must be drawn in favor of the State and interpreted most strongly against the defendant. Salinas, 119 Wn.2d at 201. 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 evidence and direct evidence are deemed equally reliable. State v. Delmarter, 94 Wn.2d 634, 638, 618 P.2d 99 (1980). Credibility determinations are for the trier of fact and cannot be reviewed on appeal. State v. Camarillo, 115 Wn.2d 60, 71, 794 P.2d 850 (1990).

The jury was instructed that "A person commits the crime of reckless

driving when he or she drives a vehicle in willful or wanton disregard for the safety of persons or property." See RCW 46.61.500. "Willful" was defined as "acting intentionally and purposely, and not accidentally or inadvertently." "Wanton" was defined as "acting intentionally in heedless disregard of the consequences and under such surrounding circumstances and conditions that a reasonable person would know or have reason to know that such conduct would, in a high degree of probability, harm a person or property."

Boger sums up the evidence as showing only that he "drove slowly through the parking lot and spun his tires in a loud and obnoxious fashion." He points out that no one explained what it meant to do a "burnout" and there was no testimony showing that doing a burnout is necessarily dangerous.

Driving an automobile under the influence of intoxicants does not, by itself, constitute reckless driving. But alcohol consumption is relevant. State v. Amurri, 51 Wn. App. 262, 265, 753 P.2d 540 (1988). And while speeding is prima facie evidence of reckless driving under RCW 46.61.465, there is no precedent suggesting that the absence of speeding precludes a jury from finding that a defendant committed the offense of reckless driving. It is not necessary to show that the driving endangered "others" who were actually present; the plain words of the statute require only that the conduct endangers "persons or property." Amurri, 51 Wn. App. at 266-67. Finally, as the trial court remarked, a jury can use its common experience to evaluate the risk involved in spinning tires hard enough to lay strips of rubber on the pavement.

The mental state of willful or wanton disregard may be proven by inference from the defendant's conduct. Amurri, 51 Wn. App. at 265. Here, the evidence showed that Boger, while drunk, drove his truck erratically around the parking lot of an apartment complex. It was dark, though still early enough to expect that people, including children, would be going in and out. He was doing "burnouts" that left long rubber patches on the pavement and made screeching noises loud enough to wake sleeping children. He failed in several attempts to park the vehicle normally, and instead brought it to rest with one side of the truck over a curb and its tires resting on a flower bed. A jury could readily find that by driving in this manner, Boger risked losing control of his truck completely and thereby showed willful or wanton disregard for the safety of persons and property in the apartment complex.

Affirmed.

Becker, J.

WE CONCUR:

Leach, C.J.

Grosse, J.