IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,	)	NO. 67570-2-I
Respondent,	)	DIVISION ONE
v.	)	UNPUBLISHED OPINION
CARLI RENEE ALVARADO,	)	
Appellant.	)	FILED: December 3, 2012

Leach, C.J. — Carli Alvarado appeals her vehicular homicide conviction, challenging the sufficiency of the evidence to establish that she acted with disregard for the safety of others. Viewing the evidence in the light most favorable to the State, we conclude a rational trier of fact could have found Alvarado guilty as charged and affirm.

FACTS

The afternoon of September 30, 2010, sixteen-year-old Carli Alvarado and two classmates got into Alvarado's car, a 2001 Volkswagen Jetta, parked in the Bellingham High School parking lot. One classmate sat in the front, and the other sat in the back. Alvarado knew that her restricted driver's license prohibited her from driving with her two classmates. Alvarado drove through the parking lot and turned out onto the northbound lane of Cornwall Avenue, where the posted speed limit was 25 m.p.h.

Cornwall runs north and south. In the first block north of the high school, the speed limit reduces to 20 m.p.h. for a school zone when an amber light flashes. All three occupants of the Alvarado vehicle saw the amber light flashing, and Ms. Alvarado reduced her speed. Soon after turning onto Cornwall, the girls saw a friend walking on the sidewalk, and the two passengers rolled down their windows to catch his attention.

While driving on Cornwall, Alvarado asked her front seat passenger to look in Alvarado's backpack for a caterpillar she wanted to show her passengers. Because the passenger did not know which compartment to look in, Alvarado turned her head to look at the backpack, located in her passenger's lap. She also pointed with her right hand at the backpack.

Farther down Cornwall, Christine Bron was turning right onto Virginia Street. She stopped her car at a pedestrian crosswalk to allow a family to cross Virginia Street. The rear of her vehicle was still slightly in the northbound lane of Cornwall Avenue. Looking in her rearview mirror, Bron saw a car approaching rapidly but believed that she was far enough out of the lane for the other car to pass her safely.

Alvarado's backseat passenger saw the Bron vehicle stopped ahead, but before she could say anything, the Alvarado vehicle collided with the Bron vehicle. Alvarado never saw the Bron vehicle before impact. She was driving

somewhere between 5 and 12 m.p.h. over the speed limit at impact and had not been looking at the roadway for between two and four seconds.

When Alvarado's Jetta collided with the rear end of Bron's Escort, it pushed the Escort forward into the crosswalk, where it struck Melissa Brulotte and her two-year-old daughter, Anna. Melissa suffered only minor injuries, but Anna was crushed under the Escort and died instantly.

The State charged Alvarado with vehicular homicide, alleging she had acted with "disregard for the safety of others." After a five-day bench trial, a juvenile court commissioner found Alvarado guilty. However, the trial court found that a standard range sentence of 15 to 36 weeks in juvenile detention would constitute a manifest injustice; it sentenced her to 30 days' confinement and imposed other restrictions. Alvarado appeals.

ANALYSIS

Alvarado contends that insufficient evidence supports her conviction for vehicular homicide. She challenges several of the trial court's findings of fact relating to her attentiveness and speed in the moments leading up to the collision. She also alleges that the evidence does not support a conclusion that she drove with disregard for the safety of others.

We first address the challenged findings. "In reviewing a trial court's findings and conclusions, we determine whether substantial evidence supports

challenged findings of fact and, in turn, whether the findings support the conclusions of law."[1] "Substantial evidence is evidence sufficient to persuade a fair-minded, rational person of the truth of the finding."[2]

Alvarado first challenges finding 24:

> During the entire drive time from leaving the Bellingham High School parking lot to the point of impact, Ms. Alvarado never saw the Bron vehicle until after the collision.

Alvarado notes that she testified that she did not recall seeing other vehicles traveling north on Cornwall, which she claims is different from not seeing them on the date of the collision. But Officer Leake, a Bellingham police officer who investigated the incident, testified that when he interviewed Alvarado on September 30, she said that she never saw the Bron vehicle. This testimony provides sufficient support for finding 24.

Alvarado next challenges finding 25:

> The evidence presented as well as the view of the scene conducted by the Court demonstrates that the intersection of Virginia Street and Cornwall Avenue, where the collision took place, is clearly visible from at least a full block away at the intersection of Kentucky Street and Cornwall Avenue. This intersection is also partially visible from the point where Ms. Alvarado entered Cornwall Avenue from the Bellingham High School parking lot.

While Alvarado does not provide any argument explaining this challenge, the trial

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[1] State v. McEnry,124 Wn. App. 918, 924, 103 P.3d 857 (2004).
[2] McEnry, 124 Wn. App. at 924.

court based finding 25 on a personal viewing of the scene, undertaken at defense counsel's request. The commissioner placed his observations on the record with no objection from either party, and he noted at that time that he walked straight up the sidewalk from Cornwall Avenue to the intersection with Virginia Street, "observing the view that [Alvarado and her passengers] more or less would have had as they drove towards the crash scene."

Alvarado next challenges finding 27:

> Any driver headed north on Cornwall Avenue at the intersection of Kentucky Street and Cornwall Avenue, could have or should have seen any vehicle located at least 400 feet ahead of him or her at the location of the collision.

This finding is a permissible inference from the commissioner's unchallenged findings that September 30 was a sunny and dry day and Cornwall runs north and south with a slight uphill grade of one percent and finding 25.

Alvarado challenges the trial court's time/distance calculations regarding how much time Alvarado would have had to see the car in front of her and adjust to prevent the accident. Findings 28 through 31 contain these calculations. We reject Alvarado's contention that the commissioner acted as an expert witness in making these findings. These arithmetic calculations use the formulas presented through expert testimony at trial and used by the police investigators at the scene. They involve nothing more than calculating the feet per second

traveled by a vehicle traveling at an indicated speed, calculations that could be performed by any person with basic math skills.

Alvarado next challenges finding 32:

> Ms. Alvarado's eyes were not on the roadway in front of her for the last two to four seconds prior to the collision, while she was looking at the backpack on her passenger's lap. In addition, she was not paying sufficient attention to the roadway well before this time frame to see a car located at the point of impact of the two vehicles involved in this collision.

Alvarado contends that the evidence only supports a finding that she was inattentive for one to four seconds immediately before impact, but no longer. But Alvarado told an investigating officer that she never saw the Bron vehicle. This testimony provides adequate support for a finding that Alvarado failed to pay sufficient attention for longer than the time she looked at the backpack in her passenger's lap.

The final challenged finding, 33, states,

> Any distraction that may have occurred in this case was not caused by either passenger nor by an outside event.

Alvarado testified that she initiated the request to locate the caterpillar in her backpack. All three girls testified that they were not behaving boisterously and that Alvarado was not involved in the attempt to flag down their friend on the side of the road. No witness testified to any outside event or act of either passenger as distracting to Alvarado. Thus, substantial evidence supports this

finding.

We now turn to Alvarado's primary argument—that the State presented insufficient evidence to prove she drove with disregard for the safety of others. When reviewing the sufficiency of the evidence, we view the evidence in the light most favorable to the State and ask whether any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.[3] By challenging the sufficiency of the evidence, the defendant admits the truth of the State's evidence and all reasonable inferences drawn from it.[4]

RCW 46.61.520 defines three distinct ways of committing vehicular homicide: (1) driving a vehicle while under the influence of alcohol or drugs, (2) driving in a reckless manner, or (3) driving with disregard for the safety of others.[5] Alvarado was charged with and found guilty of driving with disregard for the safety of others. In State v. Eike,[6] our Supreme Court determined that driving with disregard for the safety of others means driving with "an aggravated kind of negligence or carelessness, falling short of recklessness but constituting a more serious dereliction than the hundreds of minor oversights and inadvertences encompassed within the term 'negligence.'" The court noted that

> [e]very violation of a positive statute, from a defective taillight to an

[3] State v. Lord, 117 Wn.2d 829, 881, 822 P.2d 177 (1991).
[4] State v. Pedro, 148 Wn. App. 932, 951, 201 P.3d 398 (2009).
[5] State v. Roggenkamp, 153 Wn.2d 614, 626, 106 P.3d 196 (2005).
[6] 72 Wn.2d 760, 765-66, 435 P.2d 680 (1967).

> inaudible horn may constitute negligence under the motor vehicle statutes, yet be unintentional, committed without knowledge, and amount to no more than oversight or inadvertence but would probably not sustain a conviction of negligent homicide. To drive with disregard for the safety of others, consequently, is a greater and more marked dereliction than ordinary negligence.[7]

Alvarado argues her conduct did not rise to the level of negligence or carelessness required for a vehicular homicide conviction but instead was the kind of inadvertence encompassed within ordinary negligence, as a matter of law. We disagree.

While speeding in a school zone, Alvarado took her eyes off the road for two to four seconds to show passengers who should not have been in the car a caterpillar kept in her backpack. Additionally, she inexplicably never saw the vehicle she struck before impact. While she correctly notes that viewed in isolation, one or more of her multiple breaches of statutory duties, such as the license restriction on underage passengers, would be insufficient to prove disregard for the safety of others,[8] the totality of her conduct is sufficient to permit a rational trier of fact to find beyond a reasonable doubt that she drove with disregard for the safety of others. She cites no case involving such a multiplicity of misconduct holding otherwise.

Alvarado also argues that because she was not texting, listening to loud

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[7] Eike, 72 Wn.2d at 766.

[8] State v. Lopez, 93 Wn. App. 619, 622-23, 970 P.2d 765 (1999) (finding fourteen-year-old's lack of a driver's license was admissible but insufficient to prove disregard for the safety of others).

music, drinking alcohol, or doing any of the other things that Washington courts have previously considered "aggravated negligence,"[9] the court should not have found her guilty. But the case law she cites does not purport to establish an exhaustive list of the activities that constitute "aggravated negligence." Thus, Alvarado's argument fails.

Alvarado requests attorney fees for her appeal. Apart from noting that Alvarado rejected a public defender and elected to hire an attorney for her defense, she presents no argument and no legal authority supporting her request. We are not aware of any and deny her request.

[9] See Eike, 72 Wn.2d at 766 (upholding conviction of defendant who rounded curve at 45 to 50 m.p.h. and crossed center line into the path of an oncoming car); State v. Brooks, 73 Wn.2d 653, 659, 440 P.2d 199 (1968) (upholding conviction of defendant who rounded a curve and crossed the center line while speeding on a dark, windy, and rainy night); State v. Knowles, 46 Wn. App. 426, 430-31, 730 P.2d 738 (1986) (upholding conviction of defendant who took a "blind" curve at 22 m.p.h. over the posted limit of 35 m.p.h., crossed the center line, and struck oncoming car); State v. Barefield, 47 Wn. App. 444, 459, 735 P.2d 1339 (1987) (finding sufficient evidence under all three prongs of vehicular homicide, including "disregard," where intoxicated driver crossed center line into path of oncoming traffic).

CONCLUSION

Because the trial court record contains sufficient evidence for a reasonable trier of fact to find that Alvarado drove her vehicle with disregard for the safety of others, we affirm.

Leach, C.J.

WE CONCUR:

Schindler, J.

Grosse, J.