

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

STATE OF WASHINGTON,
Respondent,

v.

MICHAEL V. BODINE,
Appellant.

No. 42379-1-II

UNPUBLISHED OPINION

Armstrong, J. — A jury found Michael Bodine guilty of attempting to elude a pursuing police vehicle in violation of Former RCW 46.61.024(1) (2003).¹ Bodine appeals, arguing that the evidence is insufficient to support his conviction. We affirm.

FACTS

In Ocean Park on the morning of March 3, 2010, Pacific County Deputy Sheriff Kendell Biggs saw Bodine loading scrap metal onto a red Ford flatbed truck. Biggs was wearing his sheriff's uniform and driving a marked police vehicle. That afternoon Biggs saw the same truck as it made a "sudden and erratic" turn that caused the load of scrap metal to shift. Report of Proceedings (May 4, 2011) at 14-15. The truck then turned again without using its turn signal and ran a stop sign. Biggs turned on his emergency lights and followed on a parallel road. He

¹ The legislature amended the language of former RCW 46.61.024(1) in June 2010 to make the statute gender neutral, but made no substantive changes.

could see the truck only at intersections. Although the posted speed limit on the road was 25 m.p.h., Biggs had to go approximately 50 m.p.h. to keep up. Biggs activated his siren and continued to pursue the truck at speeds in excess of 50 m.p.h.

When the truck crossed Biggs's path, he recognized Bodine as the driver. Biggs then followed directly behind the truck and was about one quarter to one half block behind the truck when it turned left. Again, the truck failed to signal before making the turn and cut the corner, going through the lane for oncoming traffic. When the truck stopped, Bodine exited and ran into a yard. Other officers responded to the scene, but were unable to locate Bodine.

The jury found Bodine guilty of attempting to elude a pursuing police vehicle.

ANALYSIS

Bodine argues that the State failed to prove beyond a reasonable doubt he was driving in a reckless manner. In reviewing a sufficiency challenge, we consider the evidence in the light most favorable to the State and ask whether any rational trier of fact could find the essential elements of the crime beyond a reasonable doubt. *State v. Salinas*, 119 Wn.2d 192, 201, 829 P.2d 1068 (1992). A defendant who challenges the sufficiency of the evidence admits the truth of the State's evidence and all inferences that we can reasonably draw from it. *Salinas*, 119 Wn.2d at 201.

To establish Bodine's guilt, the State had to prove beyond a reasonable doubt that (1) he willfully failed or refused to immediately bring his vehicle to a stop and (2) he drove the vehicle in a reckless manner, (3) while attempting to elude a pursuing police vehicle equipped with lights and sirens, (4) after being given visual or audible signals by a uniformed officer to stop. Former RCW 46.61.024(1). Bodine challenges only the State's proof of the reckless driving element.

“[D]riving ‘in a reckless manner’”² means “driving in a ‘rash or heedless manner, indifferent to the consequences.’” *State v Ridgley*, 141 Wn. App. 771, 781, 174 P.3d 105 (2007) (internal quotation marks omitted) (quoting *State v Roggenkamp*, 153 Wn.2d 614, 628, 106 P.3d 196 (2005)). The legislature amended RCW 46.61.024 in 2003 by eliminating “wanton or willful” and adding “reckless manner.” *Ridgley*, 141 Wn. App. at 779-80; see Laws of 2003, ch. 101, § 1. Thus, the State no longer needs to prove “wanton and willful” driving to prove the reckless element of eluding a police officer. *State v. Naillieux*, 158 Wn. App. 630, 644-45, 241 P.3d 1280 (2010).

Bodine relies on *State v. Farr-Lenzini*, 93 Wn. App. 453, 970 P.2d 313 (1999) and *State v. Morales*, 154 Wn. App. 26, 225 P.3d 311 (2010), *aff’d in part, rev’d in part*, 173 Wn.2d 560, 243 P.3d 1172 (2012) to show he was not driving in a reckless manner; both cases, however, relied on the now out-of date “willful and wanton” standard. Thus, they do not help Bodine.

Biggs testified that he pursued Bodine at speeds of 50 m.p.h. in a 25 mile m.p.h. residential zone. And the jury could have inferred reckless driving from excessive speed. *State v. Hanna*, 123 Wn.2d 704, 713, 871 P.2d 135 (1994) (excessive speed can lead to the permissive inference of recklessness). Biggs also saw Bodine make an erratic turn causing the scrap metal in the truck to shift, fail to signal before making several turns, run a stop sign, and cut a corner by driving through the oncoming traffic lane.

A reasonable jury could find this to be driving in a “rash or heedless manner, indifferent to the consequences.” *Ridgley*, 141 Wn. App. 781 (quoting *Roggenkamp* at 153 Wn.2d at 628).

² The definition of “reckless manner” originated under both RCW 46.61.520(1) (vehicular homicide) and RCW 46.61.522(1) (vehicular assault) statutes. Washington courts have expanded the definition to include RCW 46.61.024(1). *Ridgley*, 141 Wn. App. at 781.

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Viewed in the light most favorable to the State, the evidence supports the jury's conclusion that Bodine drove the vehicle in a reckless manner in violation of former RCW 46.61.024(1).

We affirm.

A majority of the panel having determined that this opinion will not be printed in the Washington Appellate Reports, but will be filed for public record pursuant to RCW 2.06.040, it is so ordered.

Armstrong, P.J.

We concur:

Van Deren, J.

Johanson, J.