IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

STATE OF WASHINGTON, Respondent, v. TRAVIS PAUL SHIVE, Appellant.	No. 42882-2-II UNPUBLISHED OPINION

PENOYAR, J. — Following a bench trial, the trial court convicted Travis Paul Shive of attempting to elude a pursuing police vehicle.[1] Shive argues that the evidence is insufficient to support his conviction. Because sufficient evidence supports the verdict, we affirm.

FACTS

On a rainy morning at approximately 4:30 a.m. on October 7, 2011, Lewis County Sheriff's Deputy Jeremy Almond drove his patrol vehicle on Carlisle Avenue in the Onalaska area near State Route 12 when he heard a vehicle "spinning out" on the wet roadway. Clerk's Papers at 5. Almond neared the intersection where he heard the vehicle and observed a car speeding while headed southbound on Leonard Road. Almond did not observe any other vehicles in the area. He activated his emergency lights and siren and attempted to catch up to the car.

Although the posted speed limit is 35 miles per hour, Almond pursued the vehicle at speeds of over 80 miles per hour. As the vehicle approached the intersection of Leonard Road and State Route 12, it failed to stop at the posted stop sign and turned onto State Route 12 while continuing to drive over 80 miles per hour. While attempting to turn left onto Tucker Road, the

[1] In violation of RCW 46.61.024.

vehicle took a wide turn to the right and lost traction, causing it to spin out and cross into the opposite lane of traffic. The car abruptly changed direction, coming back toward Almond's vehicle. The two vehicles passed each other at a distance of seven feet under a well-lit stretch of the roadway. Almond testified, and the trial court ultimately found, that he was able to successfully identify Shive as the driver. Shortly thereafter, Almond terminated the pursuit due to safety concerns and was unable to apprehend Shive.

A dashboard video camera in Almond's patrol vehicle captured the pursuit but did not show Almond communicating to dispatch Shive's identity. Almond testified, however, that he asked dispatch to confirm Shive's driving status after the camera had been turned off. Another officer, Lewis County Sheriff's Deputy Jeff Godbey, later identified the car in the video as the same car he had seen Shive driving the previous night.

The State charged Shive with attempting to elude a pursuing police vehicle and the trial court found him guilty. He appeals.

ANALYSIS

Shive argues that the evidence was insufficient to prove beyond a reasonable doubt (1) that Almond could identify Shive as the driver, (2) that Shive drove recklessly, and (3) that Shive had the requisite knowledge of being pursued in order to have willfully failed to stop. We hold that the evidence was sufficient to prove that Shive was the driver and that he violated RCW 46.61.024(1).

I. Standard of Review

When a defendant challenges the sufficiency of the evidence supporting his conviction, we examine whether, viewing the evidence in the light most favorable to the State, any rational trier

of fact could have found the defendant guilty beyond a reasonable doubt. *State v. Kintz*, 169 Wn.2d 537, 551, 238 P.3d 470 (2010). We draw all reasonable inferences from the evidence in the State's favor. *Kintz*, 169 Wn.2d at 551. Circumstantial evidence is not to be considered any less reliable than direct evidence. *State v. Delmarter*, 94 Wn.2d 634, 638, 618 P.2d 99 (1980). We leave credibility determinations to the trier of fact; such determinations are not subject to appellate review. *State v. Camarillo*, 115 Wn.2d 60, 71, 794 P.2d 850 (1990).

II. Attempting to Elude a Pursuing Police Vehicle

RCW 46.61.024(1) defines attempting to elude a pursuing police vehicle as:

> [1] Any driver of a motor vehicle who willfully fails or refuses to immediately bring his or her vehicle to a stop [2] and who drives his or her vehicle in a reckless manner, [3] while attempting to elude a pursuing police vehicle, after being given a visual or audible signal to bring the vehicle to a stop, shall be guilty of a class C felony. The signal given by the police officer may be by hand, voice, emergency light, or siren. The officer giving such a signal shall be in uniform and the vehicle shall be equipped with lights and sirens.

The State must prove all three elements to obtain a conviction. *State v. Tandecki*, 120 Wn. App. 303, 308-09, 84 P.3d 1262 (2004).

A. Evidence of Driver's Identity

Shive argues that Almond's testimony identifying Shive as the driver was contradictory. He also contends that Almond could not have identified the driver because the dark, rainy conditions impaired his visibility. We disagree with both assertions.

Shive argues that Almond first stated that he identified Shive during the chase but later testified that he could not identify the driver when communicating with dispatch. This inaccurately describes the testimony. After Shive drove past Almond's vehicle in the opposite direction, dispatch asked Almond to confirm whether the suspect fit a given physical description,

at which time Almond did not mention Shive by name. The fact that Almond did not immediately articulate his identification of Shive while he pursued him does not establish that he had not identified Shive. Rather, Almond testified that it was a stressful situation and he was more focused on catching the driver. He also testified that he asked dispatch to look up Shive's driving status after he had ended the chase. While the dashboard video did not record this conversation, we must defer to the trial court's determination that Almond's testimony was credible.

Shive also argues that, because Almond refrained from using his windshield wipers on a dark, rainy morning and followed Shive from a distance, the evidence is insufficient to prove that Almond could have identified Shive as the driver. However, Almond testified that when Shive drove toward Almond from the opposite direction, Shive was within seven feet of him. Further, that portion of the street is well lit and nothing obstructed Almond's view. Drawing all reasonable inferences in the State's favor, we hold that the evidence was sufficient to prove that Almond identified Shive as the driver.

B. Evidence of Reckless Driving

Shive contends that he did not drive recklessly, despite the trial court's findings that he was speeding in excess of 80 miles per hour, had driven through a stop sign, spun out when trying to turn onto Tucker Road, and at one point crossed into the opposing traffic lane. We reject his argument.

In *State v. Ridgley*, this court defined reckless driving under RCW 46.61.024(1) as driving in a rash or heedless manner, indifferent to the consequences. 141 Wn. App. 771, 781, 174 P.3d 105 (2007). Shive argues that his driving was not reckless as defined by *Ridgley* because neither he nor the car was in danger and there were no other vehicles or pedestrians on the road.

However, Shive incorrectly applies the out-dated standard of RCW 46.61.024 requiring "wanton or willful disregard for the lives or property of others," which was superseded in 2003 with the lesser "reckless manner" standard. *See* Laws of 2003, ch. 101, § 1. *Ridgley* does not hold that the life or property of the driver or others must be in danger in order to show that such conduct meets the reckless standard and Shive does not cite, nor are we aware of, any binding precedent to support this reading of RCW 46.61.024.[2] Driving with utter disregard for the rules of the road, including driving well over the speed limit, ignoring a stop sign, spinning the vehicle and crossing into an opposite lane of traffic, collectively shows an indifference to the consequences even without the added factor of doing so on a dark, rainy night with slippery driving conditions and impaired visibility. We also disagree with the assertion that such actions posed no threat of danger to either the car or the driver. This erratic driving behavior easily fits within *Ridgley*'s definition of driving in a reckless manner.

C. Evidence of Willful Failure to Stop

Lastly, Shive posits that the evidence is insufficient to show that he knew Deputy Almond was signaling him to pull over, and thus he did not knowingly attempt to elude a pursuing police vehicle. We have held that there can be no "attempt to elude" or "willful failure to stop" unless the driver has knowledge that there is a pursuing police vehicle and that the officer gave an appropriate signal. *State v. Stayton*, 39 Wn. App. 46, 49, 691 P.2d 596 (1984).

[2] Shive cites *State v. Farr-Lenzini,* where the court cautioned that speeding alone may be insufficient to establish reckless driving. 93 Wn. App. 453, 469, 970 P.2d 313 (1999). Not only is there more evidence of recklessness here than mere speeding, but that case also relied on the out-dated "wanton or willful" standard.

Shive argues that there is no evidence proving that Shive knew that Almond was chasing him. We agree with the State that Almond's testimony and the dashboard video prove the opposite. Almond testified, and the dashboard video corroborates, that after failing to negotiate the turn on to Tucker Road and spinning out, Shive began driving directly toward Almond's vehicle in the opposite direction. Drawing all reasonable inferences in the State's favor, any rational fact finder could have found beyond a reasonable doubt that a driver in that position would have clearly seen Almond's patrol vehicle's lights, heard the siren, and had knowledge that he was being signaled to stop. In continuing the chase in the opposite direction, Shive knowingly failed to stop when signaled to do so.

Sufficient evidence supports the trial court's conclusion that Shive attempted to elude a pursing police vehicle. 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 in accordance with RCW 2.06.040, it is so ordered.

Penoyar, J.

We concur:

Johanson, A.C.J.

Van Deren, J.