

FILED

JUNE 07, 2012

**In the Office of the Clerk of Court
WA State Court of Appeals, Division III**

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION THREE

STATE OF WASHINGTON,

No. 29845-1-III

Respondent,

v.

AUSTIN LEE CURTISS,

Appellant.

UNPUBLISHED OPINION

Sweeney, J. — The test for sufficient evidence to support a criminal conviction is modest. The jury’s verdict need be supported by only substantial evidence. Here, the State convinced a jury that the defendant tried to elude pursuing police vehicles. Both the speed and the distance the defendant traveled down country roads at night while an officer pursued with his emergency equipment activated, easily supports the jury’s verdict.

FACTS

Washington State Fish and Wildlife Officer Jason Snyder was on Sand Dunes

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Road in Grant County around 1:30 a.m. on April 17, 2009. Officer Snyder drove a tan pickup with black Department of Fish and Wildlife decals. The pickup had emergency lights in the front and back windows of the passenger compartment. Sand Dunes Road is a “graveled sand road” that runs through a desert wildlife area. The speed limit there is 35 m.p.h.

A string of several cars drove north on Sand Dunes Road as Officer Snyder was parked on the side of the road. A black Jeep was among them. Officer Snyder ran the Jeep’s license plate through a database and found that its owner had a suspended license. Officer Snyder followed the Jeep for a quarter- to half-mile. They were going between 50 and 55 m.p.h.

The Jeep passed a car on the left. Officer Snyder turned on his emergency lights. The Jeep started going 10 to 15 m.p.h. faster once Officer Snyder turned on his lights. The Jeep passed two more cars. At that point, the road was curvy with some straight-aways. The shoulder was soft and there were ditches alongside the shoulder. The Jeep passed cars in the road’s curves and the cars pulled far onto the shoulder to let him pass. Officer Snyder and the Jeep were traveling between 65 and 70 m.p.h. Officer Snyder felt unsafe driving that fast on the windy gravel road. He had trouble keeping up with the Jeep. Officer Snyder followed the Jeep for about a mile and a half to a point where the

road becomes paved. Officer Snyder was going 75 m.p.h.

He radioed Sergeant Chris Erhardt for help. Sergeant Erhardt was near the paved portion of Sand Dunes Road. He got ahead of the Jeep in a pickup like Officer Snyder's. It looked like the Jeep was trying to pass Sergeant Erhardt on the left. Sergeant Erhardt got in the center lane to try to keep the Jeep behind him. The Jeep caught up to Sergeant Erhardt, but it slowed down and pulled onto the left shoulder instead of passing. Officer Snyder told the driver, Austin Lee Curtiss, to get out. Mr. Curtiss was drunk. Mr. Curtiss said that he saw Officer Snyder's emergency lights "a ways back," but did not answer Officer Snyder's questions about why he did not stop. Report of Proceedings (RP) at 55.

The State charged Mr. Curtiss with attempting to elude a pursuing police vehicle and driving under the influence. A jury found him guilty.

DISCUSSION

Mr. Curtiss contends that the evidence here is not sufficient to support the jury's verdict for attempting to elude because no rational trier of fact could find that Mr. Curtiss willfully failed or refused to stop under these circumstances.

There is sufficient evidence to support a conviction if substantial evidence supports the jury's verdict. *State v. Fiser*, 99 Wn. App. 714, 718, 995 P.2d 107 (2000).

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There is substantial evidence if any rational fact finder could have found the elements of the crime beyond a reasonable doubt when that evidence is viewed in a light most favorable to the State. *State v. Gentry*, 125 Wn.2d 570, 596-97, 888 P.2d 1105 (1995). We defer to the jury on conflicting testimony, credibility of witnesses, and the persuasiveness of the evidence. *State v. Thomas*, 150 Wn.2d 821, 874-75, 83 P.3d 970 (2004).

As framed, the only question is whether there was sufficient evidence that Mr. Curtiss acted willfully when he failed to stop. Willfulness is an element of attempting to elude. *State v. Flora*, 160 Wn. App. 549, 553, 249 P.3d 188 (2011). A person is guilty of attempting to elude a pursuing police vehicle if he “willfully fails or refuses to immediately bring his . . . vehicle to a stop and who drives his or her vehicle in a reckless manner while attempting to elude a pursuing police vehicle, after being given a visual or audible signal to bring the vehicle to a stop.” RCW 46.61.024. “Willfully” means “knowledge” in the context of the eluding statute. *Flora*, 160 Wn. App. at 553 (citing *State v. Mather*, 28 Wn. App. 700, 702, 626 P.2d 44 (1981)).

Mr. Curtiss contends that the State failed to prove willfulness because the evidence suggests that Mr. Curtiss had no knowledge that Officer Snyder signaled him to stop. Br. of Appellant at 4. The State showed that Mr. Curtiss knew that Officer Snyder was

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signaling for him to stop. Mr. Curtiss admitted that he saw Officer Snyder's emergency lights "a ways back." RP at 55. And Mr. Curtiss increased his speed once Officer Snyder turned on his emergency lights. The jury could then easily have inferred that Mr. Curtiss knew Officer Snyder was signaling for him to stop, but decided to evade Officer Snyder rather than pull over. There was substantial evidence that Mr. Curtiss acted willfully.

We affirm the conviction.

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

Sweeney, J.

WE CONCUR:

Siddoway, A.C.J.

Kulik, J.