

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,

No. 28037-3-III

Respondent,

)

)

) **Division Three**

v.

)

)

WILMA LYNN GOGGLES,

) **UNPUBLISHED OPINION**

)

Appellant.

)

)

Kulik, C.J. — Wilma Goggles drove 20 to 45 m.p.h. above the speed limit, ran a stop sign, and failed to stop when a police officer pursued her with his vehicle lights and siren activated. We affirm Ms. Goggles’s conviction for attempting to elude a pursuing police vehicle.

FACTS

On June 1, 2008, at approximately 3:43 p.m., Officer Gary Moore observed Wilma Goggles and a man later identified as her son at a house on Center Street in Grand Coulee. Officer Moore was in full uniform and was driving a marked police vehicle. Ms. Goggles’s son saw Officer Moore and got into Ms. Goggles’s car, laid down, and covered

his head. Ms. Goggles drove away from the house. Officer Moore drove away in the opposite direction and eventually ended up on Federal Avenue.

Officer Moore observed Ms. Goggles's vehicle one or two blocks ahead of him on Federal. He observed Ms. Goggles fail to stop at a stop sign and then turn left without signaling onto State Route (SR) 174. Officer Moore activated his overhead lights and followed Ms. Goggles's vehicle.

Officer Moore estimated that Ms. Goggles was traveling at approximately 60 to 70 m.p.h. on SR 174, where the speed limit is 35 m.p.h. Officer Moore turned on his siren and noted that at one point his speedometer read 80 m.p.h.

Ms. Goggles made a sudden left turn onto O'Sullivan Road, again without signaling. Officer Moore had to swing out in an arc to avoid hitting Ms. Goggles's vehicle. Officer Moore testified that he heard both vehicles skid to make the turn.

O'Sullivan Road becomes unimproved a short distance from SR 174. It is also steep with sharp turns. The speed limit on O'Sullivan is 25 m.p.h. Officer Moore testified that he was driving as fast as he could safely go on O'Sullivan at 45 m.p.h., but was not gaining on Ms. Goggles's vehicle.

Ms. Goggles abruptly stopped her vehicle just before O'Sullivan ends at Martin. Officer Moore asked Ms. Goggles why she did not stop when she first saw him, and Ms.

Goggles replied, “‘I know.’” Clerk’s Papers (CP) at 26.

Ms. Goggles testified that she was driving to apartments which were approximately 150 yards away from where she stopped her vehicle. There were three different routes Ms. Goggles could have driven from the house on Center Street to the apartments. O’Sullivan Road was the only unpaved road on any of the three routes. Furthermore, the route chosen was the longest and most unlikely route.

Ms. Goggles first became aware of Officer Moore’s presence at SR 174 and O’Sullivan. Officer Moore had his lights and siren on for three-tenths to four-tenths of a mile.

The trial court convicted Ms. Goggles of attempting to elude a pursuing police vehicle. Ms. Goggles appeals, assigning error to two findings of fact and asserting the State presented insufficient evidence to support her conviction.

ANALYSIS

Evidence is sufficient when, 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. Green*, 94 Wn.2d 216, 221, 616 P.2d 628 (1980) (quoting *Jackson v. Virginia*, 443 U.S. 307, 319, 99 S. Ct. 2781, 61 L. Ed. 2d 560 (1979)). When considering the sufficiency of the evidence, all reasonable inferences must be drawn in favor of the State

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and interpreted most strongly against the defendant. *State v. Partin*, 88 Wn.2d 899, 906-07, 567 P.2d 1136 (1977). “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).

This court reviews a trial court’s challenged findings of fact for substantial evidence. *Sunnyside Valley Irrigation Dist. v. Dickie*, 149 Wn.2d 873, 879, 73 P.3d 369 (2003). “Substantial evidence is evidence sufficient to persuade a fair-minded person of the truth of the declared premise.” *In re Marriage of Hall*, 103 Wn.2d 236, 246, 692 P.2d 175 (1984).

Ms. Goggles assigns error to findings of fact 11 and 12 and asserts the State presented insufficient evidence to convict her of attempting to elude a pursuing police vehicle.

Finding of fact 11 reads: “A short distance from SR 174, O’Sullivan Road becomes an unimproved road, steep, with sharp turns which can safely be traveled at no more than 20-25 miles an hour.” CP at 26. Ms. Goggles asserts that there is not substantial evidence that O’Sullivan can safely be traveled at no more than 20 to 25 m.p.h.

Officer Moore testified that the speed limit on O’Sullivan was 25 m.p.h. He described the road as a dirt road, with an extremely steep grade and sharp corners. Ms.

Goggles testified that she “was probably going maybe 25 miles an hour to 20 miles an hour, because of the road condition. . . . [I]t’s a washboard road and it’s really bumpy.” Report of Proceedings (RP) (Feb. 27, 2009) at 118. Ms. Goggles further testified that she had never driven down O’Sullivan at 45 m.p.h. and agreed that driving at that speed on O’Sullivan would have been reckless.

While no one stated directly that O’Sullivan could safely be traveled at no more than 20 to 25 m.p.h., substantial evidence in the record supports the trial court’s finding. First, the speed limit on O’Sullivan was 25 m.p.h. Second, Ms. Goggles testified that she does not drive over 25 m.p.h. on O’Sullivan because of the conditions of the road—dirt road, steep grade, and sharp corners. Finding of fact 11 is supported by substantial evidence.

Next, Ms. Goggles challenges finding of fact 12, which states: “Officer Moore was traveling as fast as he could at 45 miles an hour on O’Sullivan, yet was unable to gain on the defendant.” CP at 26. Officer Moore testified that he was traveling at 45 m.p.h. and that he was “doing the most, the fastest I could be, and I was not gaining, that I could traverse that grade safely, knowing that corner that was coming up at the bottom.” RP (Feb. 25, 2009) at 19. Assessing witness credibility is for the trier of fact. Finding of fact 12 virtually mirrors Officer Moore’s testimony. The trial court obviously found

Officer Moore to be credible and, therefore, finding of fact 12 is supported by substantial evidence.

Lastly, Ms. Goggles challenges the sufficiency of the State's evidence supporting her conviction for attempting to elude a pursuing police vehicle. To prove attempting to elude a pursuing police vehicle, the State must prove that Ms. Goggles was the "driver of a motor vehicle who willfully fail[ed] or refuse[d] to immediately bring [her] vehicle to a stop and who [drove 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(1).

Ms. Goggles specifically asserts that there is insufficient evidence to show she drove her vehicle in willful or wanton disregard for the safety of persons or property. "In 2003, the words 'reckless manner' were substituted by the legislature for the phrase 'manner indicating a wanton or willful disregard for the lives or property of others.'" *State v. Ratliff*, 140 Wn. App. 12, 14, 164 P.3d 516 (2007) (quoting Laws of 2003, ch. 101, § 1). Thus, driving with wanton or willful disregard is no longer an element of attempting to elude a pursuing police vehicle.

Reckless manner is defined as "'a rash or heedless manner, with indifference to the consequences.'" *State v. Roggenkamp*, 153 Wn.2d 614, 622, 106 P.3d 196 (2005)

(quoting *State v. Thompson*, 90 Wn. App. 41, 48, 950 P.2d 977 (1998)). First, Ms. Goggles’s estimated speed was 60 to 70 m.p.h. on SR 174, where the speed limit is 35 m.p.h. Officer Moore testified that he was traveling at 80 m.p.h. at one point. The trial court found that Ms. Goggles “made a reckless sudden turn onto O’Sullivan, and traveled recklessly on O’Sullivan.” CP at 28. Both vehicles skidded at this turn, and Officer Moore had to swing out in order to avoid hitting Ms. Goggles’s vehicle.

O’Sullivan is described as an unimproved road with a steep grade and sharp turns. Officer Moore testified that his speed on O’Sullivan was 45 m.p.h.—20 m.p.h. over the speed limit—and that he was unable to gain on Ms. Goggles. Thus, by inference, Ms. Goggles must have been driving at least 45 m.p.h. In addition, Ms. Goggles’s son was unsecured in the back seat in a prone position. The State presented substantial evidence that Ms. Goggles drove in a reckless manner and, thus, the trial court properly convicted her of attempting to elude a pursuing police vehicle.

We affirm the conviction for attempting to elude a pursuing police vehicle.

A majority of the panel has determined this opinion will not be printed in the

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Washington Appellate Reports, but it will be filed for public record pursuant to
RCW 2.06.040.

Kulik, C.J.

WE CONCUR:

Brown, J.

Korsmo, J.