State of Washington v. Aslan M. Jeffery

2012 | Cited 0 times | Court of Appeals of Washington | August 28, 2012

UNPUBLISHED OPINION

Aslan M. Jeffery appeals his jury trial conviction for attempting to elude a pursuing police vehicle. Jeffery argues that the evidence was insufficient to prove that he was the person driving the eluding vehicle and that an officer testifying for the State improperly commented on Jeffrey's right to remain silent. Holding that the evidence is sufficient to support the verdict and that the officer's comment on Jeffery's partial silence was not an impermissible comment on his right to remain silent, we affirm.

FACTS

I. The Eluding Incident

At about 8:00 am, on April 4, 2010, Shelton Police Officer Mike Fiola was on patrol when he noticed a three wheeled all-terrain vehicle (ATV) parked at a local motel. Because it was unusual to see an ATV parked at the motel, Officer Fiola decided to investigate to ensure that the ATV was not stolen. The ATV was parked in the parking stall assigned to room three.

As Officer Fiola was trying to find a vehicle identification number on the ATV, Jeffery approached "from behind." Report of Proceedings (RP) at 42. Officer Fiola, who knew Jeffery from three to five previous contacts, asked Jeffery if the ATV belonged to him. Jeffery responded that the ATV did not belong to him and then walked into room three. When Officer Fiola could not find any identifying information on the ATV, he left to respond to other calls.

About three hours later, Officer Calvin Moran attempted to stop a person on a three-wheeled ATV after the ATV had pulled out of an alley and onto the main roadway near the motel. Although Officer Moran "signaled to the operator to pull over" by pointing to the side of the road and later pursued the ATV with his lights and sirens on, the ATV driver refused to stop and Officer Moran radioed for assistance. RP at 62. Officer Fiola came to assist Officer Moran. Officer Fiola recognized the ATV as the one he had seen at the motel earlier that day.

Officer Fiola attempted to block the road with his patrol car, got out of his car, and aimed his pistol at the driver. At this point, Officer Fiola could "clearly see Mr. Jeffery's eyes and nose," despite the fact he was wearing a helmet, and called out Jeffery's name and ordered him to stop. RP at 45. The driver did not stop and drove into a nearby residential neighborhood.

The officers and, later, a deputy sheriff, continued to follow the ATV as it left the road and then reentered the roadway, crossing several lanes of traffic and forcing some of the oncoming traffic to stop. Eventually the officers and the deputy lost track of the ATV.[1] The State charged Jeffery with attempting to elude a pursuing police vehicle.

II. Procedure.

Officers Fiola and Moran and the deputy sheriff testified for the State as described above. In addition, Officer Fiola testified that he had recognized Jeffery as the ATV driver and that he had no doubt that it was Jeffery driving the ATV, despite the fact the driver was wearing a helmet with a partial face shield.

Jeffery's sole witness was his younger brother, David A. Jeffery. David Jeffery testified that on April 4, 2010, he had been working on a construction project at his mother-in-law's home with Jeffery from about 9:00 am until noon or 1:00 pm. David Jeffery also denied having been the driver who had eluded the officers.

The State recalled Officer Moran to rebut David Jeffery's testimony. Officer Moran testified that he had contacted Aslan Jeffery in the Mason County Jail a couple of weeks after the incident, that he had asked Jeffery if he wanted to talk about the incident, and that Jeffery had responded that he did not want to talk about it. The State then asked Officer Moran if "anything else remarkable" had happened related to his contact with Jeffery, and Officer Moran responded, "As I was leaving the jail, he made a comment that he wasn't driving the ATV, that [sic] was his brother." RP at 80. Jeffery did not object to any of this testimony.

In its closing argument and rebuttal argument, the State mentioned Officer Moran's rebuttal testimony. It first argued:

Now, about three weeks later, give or take, Officer Moran has contact with the defendant. And spontaneously, here is what the defendant says to Officer Moran: It's my brother. It's my brother on the ATV. It wasn't me, it was my brother. You heard from the brother today, ladies and gentlemen. The brother says it's not me on the ATV and oh, by the way, he was at my house. Ask yourselves if that has the ring of credibility here or the ring of somebody who is trying to get away with something. If he was really at his brother's back on April 4th, why wouldn't he just have told Officer Moran that at that time, instead of saying, it was my brother and pointing the finger at somebody else. It simply doesn't make sense in light of the evidence that you have, ladies and gentlemen.

RP at 100. On rebuttal, the State again mentioned Jeffery's brief statement to Officer Moran implicating his (Jeffery's) "brother," and argued that this statement was inconsistent with Jeffery's defense. RP at 108-09. The State also suggested that if Jeffery had indeed been elsewhere with his brother, there would have been no reason for Jeffery to try to implicate his brother in the eluding

incident rather than tell Officer Moran where he had been.

The jury convicted Jeffery of attempting to elude a pursuing police vehicle. Jeffery appeals his conviction.

ANALYSIS

I. Sufficient Evidence

Jeffery first argues that the evidence was insufficient to prove beyond a reasonable doubt that he was the person who attempted to elude the officers. He contends that Officer Fiola's identification was not sufficient to prove identity beyond a reasonable doubt given the circumstances of that identification. This argument fails.

We review a claim of insufficient evidence to determine "'whether any rational fact finder could have found the essential elements of the crime beyond a reasonable doubt.'" State v. Drum, 168 Wn.2d 23, 34-35, 225 P.3d 237 (2010) (quoting State v. Wentz, 149 Wn.2d 342, 347, 68 P.3d 282 (2003)). An appellant challenging the sufficiency of evidence "necessarily admits the truth of the State's evidence and all reasonable inferences that can be drawn from [that evidence]." Drum, 168 Wn.2d at 35. We consider circumstantial and direct evidence to be equally reliable. State v. Delmarter, 94 Wn.2d 634, 638, 618 P.2d 99 (1980). And we defer to the trier of fact on issues of 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), abrogated on other grounds by Crawford v. Washington, 541 U.S. 36, 124 S. Ct. 1354, 158 L. Ed. 2d 177 (2004).

Taking the evidence in the light most favorable to the State, Officer Fiola's identification was sufficient to support the verdict. Jeffery's arguments that the officer's identification was questionable given the circumstances as a whole goes to weight and credibility issues that this court will not consider. Accordingly, this argument fails.

II. No Impermissible Comment on Silence

Jeffery next argues that Officer Moran impermissibly commented on his right to remain silent when the officer testified that he had asked Jeffery if he wanted to talk to him about the incident and Jeffery responded that he did not want to talk. This argument also fails.

"[I]t is well-settled that it is a violation of due process for the State to comment upon or otherwise exploit a defendant's exercise of his right to remain silent," and the State may not use a defendant's silence to imply guilt. State v. Romero, 113 Wn. App. 779, 786-87, 54 P.3d 1255 (2002) (citing State v. Lewis, 130 Wn.2d 700, 705, 927 P.2d 235 (1996); State v. Easter, 130 Wn.2d 228, 236, 922 P.2d 1285 (1996); State v. Curtis, 110 Wn. App. 6, 11-13, 37 P.3d 1274 (2002)). An impermissible comment on

silence requires more than merely referencing the silence. State v. Slone, 133 Wn. App. 120, 127, 134 P.3d 1217 (2006), review denied, 159 Wn.2d 1010 (2007). We must consider "'whether the [State] manifestly intended the remarks to be a comment on that right.'" State v. Burke, 163 Wn.2d 204, 216, 181 P.3d 1 (2008) (quoting State v. Crane, 116 Wn.2d 315, 331, 804 P.2d 10 (1991), overruled on other grounds by In re Pers. Restraint of Andress, 147 Wn.2d 602, 56 P.3d 981 (2002)), cert. denied, 501 U.S. 1237 (1991).

Jeffery challenges only the following portion of Officer Moran's testimony: Q [State]. Did you ever have contact with the defendant in this case? A [Officer Moran]. Yes, I did.

Q. And do you remember what day that took place?

A. That was on April 21st, in the a.m., around 7:00 a.m.

Q. And where did that contact take place?

A. At the Mason County Jail.

Q. And did you ask the defendant if he wanted to talk to you about this elude incident?

A. Yes, I did.

Q. And did he want to talk to you about it?

A. No, he didn't.

RP at 79-80. Jeffery, however, ignores the remainder of Officer Moran's testimony. The testimony continued:

Q. And anything else remarkable with respect to your contact with him at the jail?

A. As I was leaving the jail, he made a comment that he wasn't driving the ATV, that [sic] was his brother.

RP at 80.

Assuming, but not deciding, that Jeffery can raise this argument for the first time on appeal, viewing this testimony as a whole, Jeffery does not show that Officer Moran's testimony amounted to an impermissible comment on Jeffery's silence. Although Officer Moran testified that Jeffery first stated that he did not want to talk about the eluding incident, he also testified that Jeffery eventually voluntarily asserted that his brother had been riding the ATV-a story that was inconsistent with

David Jeffery's trial testimony. Therefore this was a proper subject for rebuttal. Additionally, the State's closing argument did not attempt to imply that Jeffery's initial refusal to give a statement suggested that Jeffery was guilty. Instead, the State's argument focused on what Jeffery said and how that statement was inconsistent with David Jeffery's trial testimony. Thus Officer Moran's testimony and the State's argument as a whole focused on Jeffery's comment, not on Jeffery's initial silence, and when a defendant waives his right to remain silent and makes a partial statement to police, the State may use the statement to impeach a subsequent defense. State v. Belgarde, 110 Wn.2d 504, 512-13, 755 P.2d 174 (1988); State v. Young, 89 Wn.2d 613, 621, 574 P.2d 1171, cert. denied, 439 U.S. 870 (1978) (1978); State v. Cosden, 18 Wn. App. 213, 220-21, 568 P.2d 802 (1977), review denied, 89 Wn.2d 1016, cert. denied, 439 U.S. 823 (1978). We hold that Officer Moran's brief testimony about Jeffery's initial silence was not an impermissible comment on Jeffery's silence as it was not intended to introduce Jeffery's silence as substantive evidence of guilt. Accordingly, this argument fails.

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.

Johanson, A.C.J.

We concur: Quinn-Brintnall, J. Van Deren, J.

1. Both officers recorded the pursuit on their "dash cam[s]." RP at 66. The jury saw these recordings, but they are not part of the record on appeal.