

IN THE COURT OF CRIMINAL APPEALS OF THE STATE OF OKLAHOMA

EDWARD ALLEN RAYLS,
Appellant,

-vs.-

THE STATE OF OKLAHOMA,
Appellee.

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No. M-2003-450

FILED
IN COURT OF CRIMINAL APPEALS
STATE OF OKLAHOMA

MAY 18 2004

MICHAEL S. RICHIE
CLERK

SUMMARY ORDER REVERSING MISDEMEANOR CONVICTION

In the District Court of Oklahoma County, Case No. CM-2002-3759, Appellant, following a jury trial, was found guilty of Attempting to Elude a Police Officer. On April 17, 2003, the Honorable Glenn M. Jones, Special Judge, pursuant to the jury's sentencing verdict, sentenced Appellant to a \$2,000.00 fine and to thirty (30) days in the county jail. Appellant now appeals this Judgment and Sentence and raises the following propositions of error:

Proposition I

The State presented insufficient evidence to support a conviction of Attempting to Elude a Police Officer.

Proposition II

The trial court committed reversible error by suppressing the 911 audiotape that had relevant and probative impeachment evidence regarding the police officer's demeanor at the time he pulled Mr. Rayls over.

Proposition III

The prosecutor engaged in improper and highly prejudicial argument in violation of Mr. Rayls right to a fundamentally fair trial in violation of the federal and state constitutions.

After thoroughly considering the entire record before the Court, including the original record, transcript, and briefs, the Court **FINDS** Appellant's Proposi-

tion I has merit and requires Appellant's matter be reversed with instructions to dismiss. As the Court finds Appellant's Proposition I to be determinative, the Court does not decide those errors raised in Appellant's remaining two propositions.

The statute defining the offense of Attempting to Elude a Police Officer reads, in relevant part, as follows:

A. Any operator of a motor vehicle who has received a visual and audible signal, a red light and a siren from a peace officer driving a motor vehicle showing the same to be an official police, sheriff, highway patrol or state game ranger vehicle directing the operator to bring the vehicle to a stop and who willfully increases the speed or extinguishes the lights of the vehicle *in an attempt to elude such peace officer, or willfully attempts in any other manner to elude the peace officer*, or who does elude such peace officer, is guilty of a misdemeanor.

21 O.S.2001, § 540A(A) (emphasis added).

This provision requires more than simply failing to yield to an emergency vehicle or willful disobedience to the lawful order of a police officer—acts made unlawful in themselves by 47 O.S.2001, §§ 11-405(A) and 11-103, respectively. Section 540A(A) requires, among other things, that the refusal to yield or obey police directives be made for the purpose of attempting to elude the police officer.¹

In Appellant's matter, the evidence established that Appellant turned onto Highway 66 at a corner intersection where a police officer was standing outside his vehicle trying to flag Appellant to stop. When Appellant did not stop his vehicle but kept on driving, the officer got in his patrol car and, with lights and sirens engaged, caught up with Appellant and followed him.

¹ See *State ex rel. Okla. Dep't of Pub. Safety v. Ryan*, 1978 OK CIV APP 47, ¶ 8, 591 P.2d 1187, 1189 (Okla. App. 1978) (recognizing that the act of attempting to elude an officer requires more than a mere negligent failure to stop).

Before bringing his Kia automobile to a stop, Appellant had traveled the shoulderless, four-lane highway for less than two miles from the intersection where the officer had been standing. The evidence showed that, during the time Appellant was being followed by the officer, Appellant drove only at or near the speed limit, traveled in the right-hand lane, passed no other cars, did not disobey any traffic control devices or signs, and did not try to flee when he brought his car to a stop. Appellant testified that he did not see the patrol car behind him until several seconds prior to his pulling over and stopping in one of several driveways that were along the side of the road. The evidence further showed that Appellant was using his cell phone at the time he was stopped. These facts are insufficient to show that Appellant was attempting to elude the police officer's vehicle. At most they show that Appellant was neglectful in paying attention to his driving or was, at worst, simply refusing to stop at the first available opportunity.

IT IS THEREFORE THE ORDER OF THIS COURT that the Judgment and Sentence in Oklahoma County District Court Case No. CM-2002-3759 is **REVERSED AND REMANDED WITH INSTRUCTIONS TO DISMISS.**

IT IS SO ORDERED.

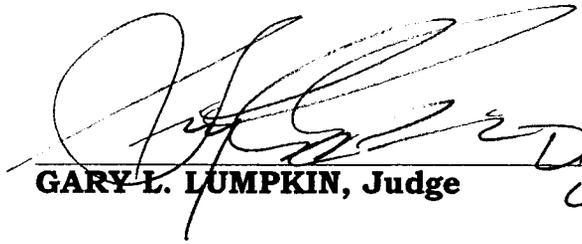
WITNESS OUR HANDS AND THE SEAL OF THIS COURT this 19th day of May, 2004.

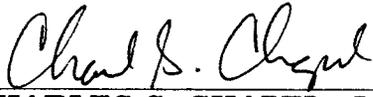


CHARLES A. JOHNSON, Presiding Judge



STEVE LILE, Vice Presiding Judge


GARY L. LUMPKIN, Judge *DISSENT - Writing Attached*


CHARLES S. CHAPEL, Judge


RETA M. STRUBHAR, Judge

ATTEST:


Clerk
RD

LUMPKIN, JUDGE: DISSENTING

I must respectfully dissent to the Court's decision in this case. After reviewing the transcript of the testimony in this case, I find the recitation of the facts more conclusionary than mere recitation of testimony. Under our system of justice, the jury is the trier of fact. They determine the weight and credibility of the evidence and which witnesses to believe or not to believe. I find the evidence presented in this case provided sufficient facts from which the jury, not this Court, could have found the Appellant guilty of the crime beyond a reasonable doubt. We are bound by that decision and should honor it, not attempt to reformat it. *Spuehler v. State*, 707 P.2d 202 (Okl.Cr.1985). Because I believe the evidence, when viewed in a light most favorable to the State, would support the finding by any rational trier of fact that the essential elements of the crime have been proven beyond a reasonable doubt, I would affirm the judgment and sentence.