

2001

West Valley City v. Roy Benjamin Hoskins : Brief of Appellee

Utah Court of Appeals

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IN THE UTAH COURT OF APPEALS

WEST VALLEY CITY,	:	
	:	
Plaintiff/Appellee,	:	
	:	
v.	:	Case No.20010589-CA
	:	
ROY BENJAMIN HOSKINS,	:	Priority No. 2
	:	
Defendant/Appellant.	:	

BRIEF OF THE APPELLEE

Appeal from the Third Judicial District Court,
West Valley Department,
in and for Salt Lake County, State of Utah;
the Honorable Pat Brian

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STATEMENT OF JURISDICTION

Appellate jurisdiction over this case is rested in the Utah Court of Appeals pursuant to §78-2a-3(2)(e), Utah Code Annotated.

STATEMENT OF THE ISSUES

ISSUE I. IS THERE SUFFICIENT EVIDENCE TO SUPPORT THE TRIAL COURT'S VERDICT?

When an appeal is taken from a bench trial the proper standard of review is the "clearly erroneous" standard. Under this standard, the appellate court reviews the evidence and all reasonable inferences drawn therefrom in the light most favorable to the verdict. If the appeals court finds some evidence or inferences upon which findings of all of the requisite elements of the crime can reasonably be made, then the trial court's verdict is affirmed. *State v. Perry*, 871 P.2d 576 (Utah App. 1994).

ISSUE II. DID THE TRIAL COURT MAKE AN INCORRECT FINDING OF FACT AND THEREBY CREATE A REVERSIBLE ERROR?

The factual findings of a trial court will not be set aside unless they are found by the reviewing court to be clearly erroneous. *State v. Thurman*, 846 P.2d 1256 (Utah 1993).

DETERMINATIVE CONSTITUTIONAL PROVISIONS, STATUTES, ORDINANCES, AND RULES

West Valley City Municipal Code, §21-6-107. FLEEING A PEACE OFFICER.

It is a class "B" misdemeanor for any person on foot or on or in a non-motorized vehicle to knowingly flee from, evade, escape or attempt to flee from, escape or evade a peace officer after being

lawfully detained, arrested or stopped, or after receiving a reasonable visual or audible signal or command to remain or stop.

STATEMENT OF THE CASE

NATURE OF THE CASE

This case involves the prosecution and conviction of Roy Benjamin Hoskins ("Hoskins") for a violation of §21-6-107, West Valley City Municipal Code, "Fleeing a Peace Officer."

COURSE OF PROCEEDINGS

Prosecution in this case was commenced with the arrest of Hoskins on March 22, 2001. (Record p.1). An amended information was filed with the trial court on July 9, 2001. (Record p.15). Following discovery and a pre-trial conference, the Honorable Pat Brian conducted a bench trial on July 9, 2001, in the Third District Court-West Valley Department. Following trial, Hoskins filed a Notice of Appeal on July 16, 2001. (Record p.18).

DISPOSITION IN TRIAL COURT

Hoskins was convicted of the Class B Misdemeanor "Fleeing a Peace Officer," §21-6-107, West Valley City Municipal Code. He was sentenced by the trial court immediately following his bench trial. The sentence imposed by the court consisted of a fine in the amount of \$300, a 30-day jail sentence which was suspended, a written letter of apology to be provided to the West Valley City Police Department, and a 12 month probationary period. (Record p.17).

STATEMENT OF THE FACTS

The City accepts the Appellant's statement regarding the relevant facts in this case, with the following additions:

1. Hoskins admitted during cross-examination that he heard the officers yelling. (Trial Transcript, p.17).

2. Hoskins testified that he was aware of the location of the patrol car and his distance from the front door of his house when the officers began yelling. (Tr. pp.14,15).

3. Officer Casias testified that more than one police officer was yelling for Hoskins to stop. (Tr. p.12).

4. Officer Casias testified that his yelling of "Stop, Police, Stop" was directed at Hoskins alone. (Tr. p.12).

5. Officer Casias testified that after he yelled "Stop, Police, Stop," Hoskins "...saw us and knew we were there and he knew--he could hear us, that we were telling him to stop." (Tr. p.13).

6. Officer Casias testified that despite the yells of the officers to stop, Hoskins continued on his way. (Tr. p.13).

SUMMARY OF THE ARGUMENTS

I. EVIDENCE OF "FLEEING A PEACE OFFICER" WAS SUFFICIENT TO SUSTAIN THE TRIAL COURT'S GUILTY VERDICT.

Appellate courts should affirm a trial court verdict if the appellate court is able to find some evidence or inferences upon which all the elements of the crime can be established. *State v. Perry*, 871 P.2d 576 (Utah App. 1994). In this case, substantial

evidence supporting every element of the crime of "Fleeing a Peace Officer" was presented to the trial court. Also, Hoskins' conduct fits squarely within the plain-meaning definition of the word "flee" as that word appears and is used in the ordinance.

**II. THE TRIAL COURT DID NOT COMMIT A CLEAR ERROR
IN ITS INTERPRETATION OF HOSKINS' TESTIMONY.**

The testimony presented by Hoskins at trial was confusing and often contradictory. The trial court chose to believe Hoskins' direct statement that "At the time I believe the police officer was telling me or whoever to stop, the police car was at least 75 feet away from my house." (Trial Transcript pp.14-15). This statement by Hoskins, along with the testimony of Officer Casias, support the trial court's finding that Hoskins knew the police officers were telling him to stop. Since the trial court is in the best position to determine the credibility of witnesses, its finding on this issue should be given a high degree of deference by the appellate court. In this case, the trial court's finding is supported by the evidence contained in the record and should be left undisturbed.

DETAIL OF THE ARGUMENTS

**I. EVIDENCE OF "FLEEING A PEACE OFFICER" WAS
SUFFICIENT TO SUSTAIN THE TRIAL COURT'S
GUILTY VERDICT.**

The City presented sufficient evidence to support the verdict of the trial court with regard to Hoskins' conviction for "Fleeing a Peace Officer," §21-6-107, West Valley City Municipal Code.

There are three essential elements to the crime of "Fleeing a Peace Officer." The first is that the subject must be on foot or on a non-motorized vehicle. The second element is that the person must "knowingly flee from, evade, escape or attempt to flee from, escape or evade a peace officer." The final element is that the subject must have received a "reasonable visual or audible signal or command to remain or stop." An appellate court should affirm a trial court's verdict if it is able to find in the record some evidence or inferences upon which all of the elements of the crime can be established. *State v. Perry*, 871 P.2d 576 (Utah App. 1994). In this case, ample evidence that Hoskins met all three elements of this crime was presented to the trial court.

It is undisputed that Hoskins meets the first element of the crime. All parties agree that Hoskins was on foot, walking from the park to his house, at the time that the incident took place.

There is also no dispute regarding Hoskins' actions with respect to the second element of "fleeing from, evading or escaping a peace officer." Both the testimony of the police officers and the testimony of Hoskins himself indicated that he did not stop and talk to the officers prior to entering his house. Despite testimony that several officers were yelling at him to stop, Hoskins proceeded to enter the house.

While there is no dispute with regard to the relevant actions taken by Hoskins, he now argues that those actions do not

constitute "fleeing from, escaping or evading a peace officer." This argument is simply without merit.

Hoskins correctly states that "the statute's unambiguous language may not be interpreted to contradict its plain meaning." *Zoll & Branch, P.C. v. Asay*, 932 P.2d 592, 594 (Utah 1997). He then asks this court to violate that concept with respect to the word "flee." Hoskins takes pains to explain how his conduct does not meet the definition of "escape," "evade," or even "flight," a word which does not appear in the statute. Hoskins however, spends very little time on the definition of the word "flee," although he does admit that it means "running away." (Appellant's Brief p.12).

Flee is the operative word in this case and exactly fits the actions of Hoskins. Webster's Encyclopedic Unabridged Dictionary of the English Language defines flee as 1. to run away, as from danger, pursuers, etc.: take flight. 2. to move swiftly; fly; speed. 3. to run away from (a place, person, etc.): *They fled the town because of the plague.*

If Hoskins' conduct in continuing to walk away after having been told to stop by a police officer does not meet the above definition of flee, then what does? Flee simply means to run away from pursuers, places or persons. That is exactly what Hoskins did. He was being pursued by the officers who were telling him to stop and he did not stop, but continued to move away from the officers.

Hoskins suggests in his brief that hiding or concealment after leaving the scene is a necessary part of this crime. That is simply not accurate. While that may be a necessary part of "evading" or "escaping," it is not part of the common definition of "flee." Consistent with the plain meaning of the word flee and the terms of the ordinance, leaving the scene itself, after having been told to stop, is the act of fleeing. Hoskins would be no less guilty of "fleeing" had he been intercepted by the officers prior to reaching his house.

The cases cited by Hoskins in his brief, particularly *Utah v. Leyva*, 951 P.2d 738 (Utah, 1997); and *State v. Finlayson*, 2000 UT 10, 994 P.2d 1243 (Utah, 2000), are not on point. The *Leyva* case involved multiple violations of the motor vehicle code, statutes which have no real relationship to the West Valley City ordinance at issue here. Also, the *Leyva* case contains no explanation as to why Mr. Leyva was charged with failing to respond to an officer's signal, rather than evading an officer.

The *Finlayson* case is also not applicable. In that case, the court defines the word "flight," a word which does not appear in the "Fleeing a Peace Officer" ordinance. This definition was set forth by the court with respect to a statute which contained an enhanced penalty for "flight after commission or attempted commission of a felony." The statute being interpreted in *Finlayson* is radically different than the ordinance in this case and in fact,

contained no requirement that the subject be given a command to stop by a police officer. That statute is aimed at a situation and conduct totally inconsistent with the "Fleeing a Peace Officer" ordinance.

Hoskins' actions in continuing to move away from the police officers after having been told to stop clearly meet the second element of "Fleeing a Peace Officer."

The final element necessary to convict Hoskins is that he received a reasonable visual or audible signal or command to stop from a peace officer. Again, sufficient evidence was presented to the trial court to determine that this element was satisfied. West Valley City Police Officer Robert Casias testified that he personally told Hoskins to stop at least three or four times and that another officer, Officer Pearce, was also yelling at Hoskins to stop. (Tr. pp.7, 12.) Casias also testified that these shouts by both officers were directed squarely at Hoskins. (Tr. p.12). Officer Casias further testified that Hoskins saw him yelling for Hoskins to stop and stated "There's no question in our mind, he--he saw us..." and also "He saw us and knew we were there and he knew--he could hear us, that we were telling him to stop." (Tr. pp.11, 13).

Although the version of events as presented by Officer Casias was disputed by Hoskins, the Officer's testimony clearly provided the trial court with sufficient evidence to satisfy the third

element of the crime. When combined with the uncontradicted evidence that Mr. Hoskins did not stop when commanded to by the officers, and that he was on foot, it is clear that Hoskins committed a violation of §21-6-107, "Fleeing a Peace Officer."

**II. THE TRIAL COURT DID NOT COMMIT A CLEAR ERROR
IN ITS INTERPRETATION OF HOSKINS' TESTIMONY.**

On direct examination, Hoskins testified that "At the time I believe the police officer was telling me or whoever to stop, the police car was at least 75 feet away from my house." (Tr. pp.14-15). He further testified that "At the approximate time, I may have been 15 feet from my door--when the officer was telling us to--or telling whoever to stop..." (Tr. p.15). Hoskins now argues that the court misinterpreted these statements.

Upon closer examination of Hoskins' testimony, it is easy to see why the trial court decided to accept his statements at face value. The trial court was faced with trying to sort out his confusing and sometimes directly contradictory testimony.

For example, in addition to the statements set forth above, Hoskins testified that he did not know that officers were yelling at him (Tr. p.15), or that officers were behind him (Tr. p.16). Hoskins also testified that the only unusual thing he remembered seeing or hearing as he walked toward his house was his girlfriend yelling. (Tr. p.15).

This version of the facts is contradicted by other portions of Hoskins' testimony. He first testified that his girlfriend's

yelling was the only unusual circumstance that he noticed (Tr. p.16), then he later admitted on cross-examination that "I heard the officers yelling, yes, sir, and the people over at the park yelling, yes, sir." (Tr. p.17). Also, Hoskins specifically testified that he did not know anyone was behind him as he moved toward his house. (Tr. p.16). However, he had previously testified that he was aware of the position of the police car and his own position relative to his front door at the time the officers were yelling. (Tr. p.14-15). The obvious question is how did he know he was approximately 15 feet from his front door at the time the officers were yelling "stop" if he was unaware that anyone was behind him or of any unusual circumstances other than his girlfriend's yelling?

Another flaw in Hoskins' testimony is his claim that up until such time as he reappeared in his yard and was arrested, he did not know what was going on or "what all the fuss was about." (Tr. p.17). That contradicts his testimony that he heard both the people in the park and the officers yelling (Tr. p.17) and that he knew the police were present based on his observation of the police car (Tr. p.15). His insistence that he didn't know what was going on or that anything unusual was going on is simply unbelievable. It is also contradicted by the testimony of his girlfriend Jodi Mattinson who observed the events from the driveway of the Hoskins' residence. (Tr. p.25). Ms. Mattinson testified that there had been

a problem across the street at the park where approximately 60 people were playing basketball and that she believed the police should have been handling the problem at the park. (Tr. pp.25-27). Her testimony, when combined with the officer's testimony that he observed Hoskins talking with a group of people on the roadside next to the park, and the Officer's testimony that Mattinson was yelling at the police officers wanting to know why they were bothering her boyfriend (Hoskins) (Tr. p.8) obviously means that Mr. Hoskins was involved in whatever situation was going on at the park that had precipitated the police call. Also, Officer Casias specifically testified that there was no question that Hoskins saw the officers and knew that the officers were telling him to stop. (Tr. pp.11-13). For him to claim to be oblivious to what was going on is not credible.

The testimony provided to the court by Hoskins was confusing and often contradictory. The trial court, while actually observing Hoskins' testimony, is in the best position to determine what portions of his testimony are believable and what portions are not and should be given great deference in making those determinations. *State v. Pena*, 869 P.2d 932, 936 (Utah 1994). For the trial court to choose to believe certain portions of Hoskins' testimony, particularly when supported by testimony of the police officer, is not clear error on the part of the trial court. The trial court had sufficient evidence to conclude that Hoskins was aware that the

officers were yelling at him to stop, yet he failed to do so. The trial court's evidentiary findings should be left undisturbed.

CONCLUSION

Based on the foregoing, it is clear that Hoskins' conviction for "Fleeing a Peace Officer" is supported by substantial evidence. Further, his conduct fits squarely within the conduct which is proscribed by the ordinance. Finally, the trial court's determination of facts in this case are based upon solid evidence combined with the trial court's ability to determine the credibility of witnesses. The verdict of the trial court should therefore be affirmed.

DATED this 15TH day of NOVEMBER, 2001.

WEST VALLEY CITY



J. Richard Catten, Senior Attorney
Attorney for Plaintiff/Appellee

CERTIFICATE OF SERVICE

I, J. Richard Catten, certify that on the 15th day of November, 2001, I served upon W. Andrew McCullough and Trenton K. Ricks, Attorneys for Defendant/Appellant, two (2) copies each of the Brief of the Appellee, by causing said Briefs to be mailed to them, by first class mail, with sufficient postage prepaid, to the following address:

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WEST VALLEY CITY



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