IN THE COURT OF APPEALS OF THE STATE OF ALASKA

CARL ALEX LOVETT, Appellant, v. STATE OF ALASKA, Appellee.	Court of Appeals No. A-11451 Trial Court No. 3PA-12-009 CR MEMORANDUM OPINION No. 6276 — January 27, 2016

Appeal from the Superior Court, Third Judicial District, Palmer, Gregory Heath, Judge.

Appearances: Catherine Boruff, Assistant Public Defender, and Quinlan Steiner, Public Defender, Anchorage, for the Appellant. Mary A. Gilson, Assistant Attorney General, Office of Criminal Appeals, Anchorage, and Craig W. Richards, Attorney General, Juneau, for the Appellee.

Before: Mannheimer, Chief Judge, Allard, Judge, and Suddock, Superior Court Judge.[*]

Judge MANNHEIMER.

Carl Alex Lovett appeals his conviction for first-degree failure to stop at the direction of a police officer, AS 28.35.182(a)(1). Lovett concedes that he failed to stop

[*] Sitting by assignment made pursuant to Article IV, Section 16 of the Alaska Constitution and Administrative Rule 24(d).

when signaled to do so, and that he was therefore guilty of the lesser offense of second-degree failure to stop. But Lovett argues that the State's evidence was legally insufficient to prove that he committed the crime of reckless driving while he was eluding the police — the element that, under AS 28.35.182(a)(1), distinguishes first-degree failure to stop from second-degree failure to stop.

Lovett also argues that his grand jury indictment was invalid because a police officer sat as a member of the grand jury panel.

For the reasons explained in this opinion, we conclude that neither of Lovett's claims has merit, and we therefore affirm his conviction.

Lovett's claim that the evidence was insufficient to support his conviction for first-degree failure to stop

When a defendant challenges the sufficiency of the evidence to support a guilty verdict, we must view the evidence (and the inferences that could reasonably be drawn from that evidence) in the light most favorable to upholding the jury's verdict, and then assess whether reasonable jurors could conclude that the State had proved its case beyond a reasonable doubt. [1]

To prove the offense of reckless driving as defined in AS 28.35.400(a), the State had to prove that Lovett drove a motor vehicle "in a manner that create[d] a substantial and unjustifiable risk of harm to a person or to property". The statute defines "substantial and unjustifiable risk" as "a risk of such a nature and degree that the conscious disregard of it or a failure to perceive it constitutes a gross deviation from the standard of conduct that a reasonable person would observe in the situation."

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[1] *See*, *e.g.*, *Dorman v. State*, 622 P.2d 448, 453 (Alaska 1981); *Spencer v. State*, 164 P.3d 649, 653 (Alaska App. 2007).

Here, the State presented evidence that Lovett sped away from the police, that the roads were icy and snowy at the time, that Lovett barely slowed down as he drove through two stop signs, and that Lovett had a blood alcohol level of .197 percent (more than twice the legal limit).

Viewing this evidence in the light most favorable to the jury's verdict, we conclude that the evidence was sufficient to convince reasonable jurors that the State had proved beyond a reasonable doubt that Lovett had engaged in reckless driving.[2] The evidence was therefore legally sufficient to support Lovett's conviction for first-degree failure to stop.

Lovett's claim that his grand jury indictment was invalid because one of the grand jurors was a police officer

One of the people who sat on Lovett's grand jury was a Palmer police officer who, when asked if he had any connection to this case, answered that (1) he knew the arresting officer, and (2) he believed he himself had had prior contact with Lovett. However, the grand juror also stated that neither his professional relationship with the arresting officer nor his prior contact with Lovett would affect his ability to be fair.

Based on the police officer's answers (and the fact that the prosecutor allowed this officer to remain on the grand jury, rather than referring the matter to the court), Lovett asked the superior court to dismiss the indictment.

The superior court concluded that the police officer's answer did not manifestly imply that the officer was biased against Lovett or otherwise incapable of rendering an impartial decision as to whether Lovett should be indicted. The superior

[2] *See*, *e.g.*, *Dorman*, 622 P.2d at 453; *Spencer*, 164 P.3d at 653.

court also concluded that, even if the officer was biased, Lovett had failed to show any prejudice.

As the superior court noted, the facts of Lovett's case are analogous to the facts of *Patterson v. State*, 747 P.2d 535 (Alaska App. 1987). The defendant in *Patterson* likewise challenged his indictment because a police officer sat on the grand jury.[3] This Court concluded that, even assuming that the grand juror's employment as a police officer indicated that he was biased, Patterson was not entitled to dismissal of the indictment because he had still failed to show prejudice — *i.e.*, failed to show that the police officer's vote made any difference:

> In order to prevail on this argument, Patterson must establish both bias and prejudice. Even if a grand juror's employment as a police officer would constitute bias disqualifying the juror from service, it does not follow that dismissal would be called for. Alaska Rule of Criminal Procedure 6(f)(2) provides, in relevant part:
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> > An indictment shall not be dismissed upon the ground that one or more members of the grand jury were not legally qualified if it appears from the record [of the grand jury vote] that a majority of the total number of grand jurors, after deducting the number not legally qualified, concurred in finding the indictment.
> >
> > [Since our decision in *Patterson*, this rule was recodified — with minor variations in its wording — as Criminal Rule 6(g).]
>
> In this case, Patterson's indictment was returned by a unanimous vote of fifteen grand jurors. Assuming that one

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[3] *Patterson*, 747 P.2d at 536-37.

> member of the grand jury was biased by virtue of his employment as a police officer, Criminal Rule 6(f)(2) would appear to preclude dismissal.

Patterson, 747 P.2d at 537 (citations and footnote omitted). *See also Mustafoski v. State*, 867 P.2d 824, 830 (Alaska App. 1994) (dealing with a similar grand jury issue).

In Lovett's case, the grand jury's vote was likewise unanimous. In other words, the indictment was supported by a sufficient number of qualified grand jurors, even assuming that one member of the panel should have been disqualified. Because of this, and based on our decision in *Patterson*, the superior court correctly concluded that Lovett had failed to show prejudice — and that, accordingly, Lovett's motion to dismiss the indictment should be denied.

Conclusion

The judgement of the superior court is AFFIRMED.