IN THE COURT OF CRIMINAL APPEALS OF THE STATE OF OKLAHOMA

CHRISTOPHER D. EIDSON,	)	
	)	
Appellant,	)	
	)	
v.	)	No. M 2005-0332
	)	
THE STATE OF OKLAHOMA,	)	
	)	
Appellee.	)	

SUMMARY OPINION

On September 17, 2003, Appellant was issued a traffic citation for Speeding. Following a bench trial March 4, 2004, before the Honorable Curtis L. DeLapp, Associate District Judge, District Court of Washington County, Appellant was found guilty in Case No. TRI-2003-141 of Reckless Driving. Appellant was sentenced to ninety days with thirty days to serve in the Washington County Jail and the balance suspended. Appellant was also fined $300.00. Appellant did not timely appeal his conviction, but was granted an appeal out of time by this Court March 29, 2005, PC 2005-0247. Appellant appeals from the Judgment and Sentence imposed.

On appeal Appellant raised the following propositions of error:

1. Appellant's conduct under the circumstances does not rise to the level of 'culpable negligence' required for a reckless driving conviction.
2. Appellant's counsel was denied the opportunity to cross-examine the witness following questioning by the trial court judge.

Appellant was issued a traffic citation for speeding. Appellant was clocked at 90 mph in a 65 mph zone. The testimony of the patrolman reflects the stop occurred around 2:00 p.m. on a typical cloudy September day. The roads were dry. Traffic was moderate – three to five cars in a mile stretch. The highway was a four-lane divided U. S. highway. Appellant was responsive to the patrolman's signal and pulled over. The patrolman testified he witnessed nothing improper other than Appellant was exceeding the speed limit. The patrolman did not issue the driver a ticket for reckless driving. The State's argument is that a violation of the speeding laws "is sufficient to satisfy the degree of culpable negligence required for reckless driving".

For a conviction for reckless driving, the State must prove beyond a reasonable doubt each element of the crime. The third element of reckless driving is driving a motor vehicle "in a careless or wanton manner". A careless or wanton manner requires more than just a speeding violation. *See,* Committee Comments to OUJI-CR 6-32 ("A 'careless or wanton manner' signifies more than simply a violation of the speeding laws; it signifies culpable negligence.") *Chappell v. State,* 1969 OK CR 305, ¶ 2, 462 P.2d 325, reiterates that in a prosecution for reckless driving there must be facts introduced by the State "to establish culpable negligence on the part of the defendant in the operation of his automobile".

The State argues that the facts supporting the conviction for reckless driving, besides the fact Appellant was speeding, are (1) that there were other persons on the roadway during the middle of the day and (2) Appellant passed

through an intersection with another highway. The conviction for reckless driving was, therefore, in this case based upon the officer's description of the "potential" for an accident or the potential of a more serious accident because Appellant was speeding.

Appellant in this case was sentenced to 30 days in jail because of the "potential" for an accident to happen. He was admittedly speeding, Appellant even admits this in his brief, but it has not been shown that Appellant was driving recklessly.

We also find merit in Appellant's second proposition of error. The trial judge solicited testimony from the witness concerning the existence of any intersecting roads on this stretch of highway. The witness advised the trial judge that there was one intersecting road but not a reduction in speed. Appellant then asked if he could cross-examine and the trial judge said "no".

The evidence obtained by the trial judge was not cumulative. The existence of any intersecting road had not been discussed before it was brought out by the trial judge's questioning. And, the trial judge used the existence of an intersecting road as one of two factors supporting his finding of evidence of the third element, driving in a careless or wanton manner.

An accused is guaranteed the right to be confronted with the witnesses against him in a criminal prosecution by the Sixth Amendment to the Constitution. "The main and essential purpose of confrontation is to secure for the opponent the opportunity of cross-examination." *Davis v. Alaska*, 415 U.S.

308, 94 S.Ct. 1105, 1110, 39 L.Ed.2d 347 (1974). An opportunity, in this case, was denied Appellant.

We agree Appellant's conviction for Reckless Driving must be vacated. Review of this appeal is limited by the record as Appellant failed to designate the complete record in this case and the State did not cross-designate the record. However, we find sufficient evidence in the record, in addition to Appellant's admission in his brief, to support a conviction of the lesser included offense of Speeding. **THEREFORE**, we hereby **MODIFY** the Judgment in this case from Reckless Driving to Speeding[1], **VACATE** the sentence imposed for Reckless Driving and **REMAND** the matter to the District Court for appropriate sentencing of Appellant for Speeding. Pursuant to Rule 3.15, *Rules of the Oklahoma Court of Criminal Appeals*, Title 22, Ch.18, App. (2006), the **MANDATE** is **ORDERED** issued upon the delivery and filing of this decision.

IT IS SO ORDERED.

WITNESS OUR HANDS AND THE SEAL OF THIS COURT this 24th day of March, 2006.

RECUSED
CHARLES S. CHAPEL, Presiding Judge

GARY L. LUMPKIN, Vice Presiding Judge

[1] *See* 22 O.S. 2001, § 1066; *See also, McArthur v. State*, 1993 OK CR 48, ¶ 10, 862 P.2d 482.

CHARLES A. JOHNSON, Judge

ARLENE JOHNSON, Judge

DAVID B. LEWIS, Judge

ATTEST:

Clerk

RC