IN THE SUPREME COURT OF THE STATE OF MONTANA

No. DA 18-0393

STATE OF MONTANA,

Plaintiff and Appellee,

v.

QUINTON RAND SEDERDAHL,

Defendant and Appellant.

BRIEF OF APPELLANT

On Appeal from the Montana Eleventh Judicial District Court, Flathead County, the Honorable Heidi Ulbricht, Presiding

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STATEMENT OF THE ISSUE

Did the District Court err in denying Sederdahl's motion to dismiss the criminal endangerment charge for insufficient evidence?

STATEMENT OF THE CASE AND FACTS

On April 5, 2017 at approximately 1 AM, Mandi Perry, a deputy with the Flathead County Sheriff's Office was driving northbound on Highway 93 north of Lakeside, MT. (11/10/2017 Trial Transcript (hereafter "Tr.") at 7-8.) Perry saw a car travelling southbound cross over the center line, swerve back, and then come into her lane again before returning to its lane. (Tr. at 8-9.) The car had been going the speed limit. (Tr. at 9.) This happened approximately 200 yards in the distance. (Tr. at 42.) In response, Perry braked and later testified that she said a prayer, fearing for her life. (Tr. at 9.)

After the southbound car passed, Perry turned around and activated her lights and siren. (Tr. at 10-11.) The driver put out his hand to indicate he was pulling over but needed to find a safe location. (Tr. at 11-12.) They proceeded "about a mile" down the road, back to Lakeside, where they safely pulled off the highway into a parking lot in town. (Tr. at 11; State's Ex. 1, Perry's dashcam video, at 1:31).

Perry approached the car and told the driver, Quinton Sederdahl, "you almost hit me." (State's Ex. 2, Perry's bodycam video, at 1:31.) Sederdahl did not have identification on him. (State's Ex. 2 at 1:57.) Perry asked Sederdahl if he had been drinking and he said no. (State's Ex. 2 at 2:53.) Observing Sederdahl, Perry smelled alcohol, saw watery eyes, and heard slurred speech. (Tr. at 20-21.) Perry asked Sederdahl to step out of the car and to perform a field sobriety test. (Tr. at 23.) Sederdahl warned her he had dislocated his knee ten times. (Tr. at 24.) After observing him complete the test, Perry arrested Quinton and took him to jail. (Tr. at 29.) Sederdahl exercised his right to refuse a breath test. (Tr. at 33.)

The State charged Sederdahl with Misdemeanor Driving Under the Influence and Felony Criminal Endangerment. (D.C. Doc. 3.) Explaining the Felony Criminal Endangerment allegation in its charging document, the State said Sederdahl "knowingly engaged in conduct that creates a substantial risk of death or serious bodily injury" to Perry. (D.C. Doc. 3.) Sederdahl requested a bench trial. (D.C. Doc. 25.)

At the conclusion of the prosecution's case, Sederdahl moved for acquittal on the Criminal Endangerment charge. (Tr. at 47.) Sederdahl argued that the State failed to put on evidence that he knowingly put others at risk of serious bodily injury or death. (Tr. at 48-49.) The court denied Sederdahl's motion, pinpointing his swerve across the center line as the act that endangered Perry: "In this case there is testimony from Deputy Perry that she was traveling on a way of the state and that the defendant's car swerved into her oncoming lane and that she believed that would result in death or serious bodily injury." (Tr. at 51 (attached as App. A).)

The court found Sederdahl guilty of both offenses. (D.C. Doc. 32.) He was sentenced to 6 months, all suspended on the DUI, and received a three-year deferred sentence on the Criminal Endangerment. (D.C. Doc. 35 (attached as App. B).) Sederdahl filed a timely notice of appeal. (D.C. Doc. 39.)

STANDARD OF REVIEW

The standard of review for the denial of a motion to dismiss for insufficient evidence—also known as a directed verdict or judgment of acquittal—is de novo. *State v. Swann*, 2007 MT 126, ¶¶ 17, 19, 337

Mont. 326, 160 P.3d 511; *State v. McWilliams*, 2008 MT 59, ¶ 36, 341 Mont. 517, 178 P.3d 121.

SUMMARY OF THE ARGUMENT

A person commits the offense of criminal endangerment when they "knowingly engage[] in conduct that creates a substantial risk of death or serious bodily injury to another." Mont. Code Ann. § 45-5-207(1). Sederdahl briefly drove into the opposite lane of traffic and then corrected his error. The State's only witness testified that she did not know if he was avoiding one of the deer in the area that evening. The State put on no evidence suggesting Sederdahl was aware he crossed over the center line. There is insufficient evidence in the trial record for a rational fact finder to conclude, beyond a reasonable doubt, that Sederdahl "knowingly" created a substantial risk of death or serious bodily injury to Perry.

ARGUMENT

I. The State failed to put on sufficient evidence to prove, beyond a reasonable doubt, Sederdahl "knowingly" engaged in conduct creating a risk of death or serious bodily injury to Perry.

The Due Process Clause of the Fourteenth Amendment of the U.S. Constitution and Article II, § 17 of the Montana Constitution guarantee

that no person shall be convicted of a crime unless the government provides sufficient evidence to convince a finder of fact beyond a reasonable doubt of the existence of every element of that criminal offense. *Jackson v. Virgina*, 443 U.S. 307, 316 (1979); *State v. Clark*, 1998 MT 221, ¶ 29, 290 Mont. 479, 964 P.2d 766. The State's evidence is sufficient when it allows a rational trier of fact to find, beyond a reasonable doubt, each of the essential elements of the crime have been satisfied. *State v. Giant*, 2001 MT 245, ¶ 23, 307 Mont. 74, 37 P.3d 49, *overruled on other grounds by Swann*, ¶ 19.

A person commits the offense of criminal endangerment when they "knowingly engage[] in conduct that creates a substantial risk of death or serious bodily injury to another." Mont. Code Ann. § 45-5-207(1). The "knowingly" element of criminal endangerment contemplates a defendant's awareness of the high probability that their act will cause a substantial risk of death or serious bodily injury to another. *State v. Lambert*, 280 Mont. 231, 237, 929 P.2d 846, 850 (1996). "'It is the appreciation of the probable risks to others posed by one's conduct that creates culpability for criminal endangerment,' rather than the 'mere appreciation of one's conduct.'"

State v. Ingraham, 1998 MT 156, ¶ 69, 290 Mont. 18, 966 P.2d 103, 115 (quoting *Lambert*).

The Court has closely examined what constitutes sufficient evidence of criminal endangerment's mens rea requirement. In *State v. Bekemans*, the defendant bought a small bus in Utah that she did not know how to fully operate, drove it to Montana without insurance and without proper emergency warning devices, while ignoring its mechanical problems. *State v. Bekemans*, 2013 MT 11, ¶ 22, 368 Mont. 235, 293 P.3d 843. As she crossed over Monida Pass on Interstate 15 on a dark, moonless night, Bekemans stopped her bus in the highway's northbound lane and turned off her lights. *Bekemans*, ¶ 22. Multiple drivers passed by, some narrowly avoiding a collision by switching lanes at the last moment. *Bekemans*, ¶ 22. Brandon Davis was not so lucky, and was killed when he collided with the back of Bekemans' bus. *Bekemans*, ¶¶ 14, 46.

Bekemans argued her criminal endangerment conviction was not supported by evidence. *Bekemans*, ¶ 23. The Court examined her conduct on the road. Bekemans claimed to have turned her lights back on whenever she saw a vehicle approaching and argued that no rational

fact-finder could have found she knowingly created a risk of substantial injury or death because a witness testified her lights were on at the time of the crash. *Bekemans*, ¶ 23. However, one witness testified Bekemans completely failed to turn her lights on as they passed by, and another witness testified Bekemans was late to turn her lights on although they approached at forty-five miles per hour with their bright headlights activated. *Bekemans*, ¶ 22.

The Court rejected Bekemans's argument, finding "[e]ven if Bekemans' lights were on at the moment of impact, the jury could have found that she did not turn her lights on early enough to warn Davis of the impending danger." *Bekemans*, ¶ 23. The Court concluded "[a] jury could have thus reasonably concluded that Bekemans' conduct had created a substantial risk of death or serious bodily injury." *Bekemans*, ¶ 23.

In *State v. Cybulski*, the defendant was convicted of both DUI and criminal endangerment. *State v. Cybulski*, 2009 MT 70, ¶ 26, 349 Mont. 429, 204 P.3d 7. Cybulski challenged the sufficiency of the evidence required to prove criminal endangerment's required mental state. *Cybulski*, ¶ 41. The Court rejected her argument by looking to the

actions she took while behind the wheel: Cybulski drove on the wrong side of the interstate "for more than forty miles" while ignoring "billboards and highway signs facing the wrong way; vehicles approaching and swerving from her lane of travel; and the flashing lights and honking by approaching vehicles." *Cybulski*, ¶ 44. Moreover, Cybulski drove in excess of 100 miles per hour, and refused to pull over despite being followed by police with sirens and lights activated. *Cybulski*, ¶ 16. Based on those facts, the Court found the "knowingly" element of criminal endangerment was indeed proven. *Cybulski*, ¶ 45.

In both *Cybulski* and *Bekemans*, the undisputed facts were such that a rational fact-finder could conclude, beyond a reasonable doubt, that the defendant drivers were aware they were putting other lives at risk. Here, there is no evidence Sederdahl "knowingly" drove across the center line to put Perry's life at risk. Deputy Perry testified that Sederdahl corrected his error after entering her lane. (Tr. at 9.) Unlike *Cybulski*, there is no evidence that Sederdahl continued to drive in the wrong lane. Perry testified that she never asked Sederdahl why he moved over the center line. (Tr. at 40.) Perry testified that she wasn't sure if Sederdahl had been texting or if he moved to avoid a deer.

(Tr. at 10, 40.) Although her dashboard camera did not activate until after Sederdahl had corrected his error, the video does capture deer on the road as the two of them pull into Lakeside for the traffic stop. (State's Ex. 1 at 2:04.) Furthermore, Perry testified that it would be "entirely reasonable" for a person to swerve out of their lane to avoid hitting a deer. (Tr. at 46.)

After Deputy Perry activated her lights, Sederdahl turned on his blinker and drove until they could both safely pull over in a commercial parking lot in the town of Lakeside. (State's Ex. 1 at 0:08-1:46.) Perry testified that most motorists would have pulled over immediately to the side of the highway after she activated her lights, but that Sederdahl made the safer decision to proceed up the road to a lit parking lot in town, where the speed limit is lower. (Tr. at 44-45.)

The Court in *Cybulski* and *Bekemans* found the mental state requirement satisfied by pointing to evidence that the defendant "knowingly" engaged in unsafe driving conduct. Bekemans testified that she was aware she stopped her bus on the interstate at night. Witnesses testified that she turned her lights on when cars approached, though she failed to do so on multiple occasions. Cybulski drove

directly at oncoming cars on Interstate 90 for almost 50 miles, at speeds exceeding 100 mph, while being followed by police with lights and sirens actived. Sederdahl, by contrast, momentarily crossed the center line and then moved back into his lane to correct the error. Unlike in *Cybulski* and *Bekemans*, the record is insufficient for a rational fact finder to conclude, beyond a reasonable doubt, that Sederdahl "knowingly created a substantial risk of death or serious bodily injury." In such an instance, the Court will reverse the resulting conviction and the trial court will enter a judgment of acquittal. *State v. Polak*, 2018 MT 174, ¶ 39, 392 Mont. 90, 422 P.3d 112.

CONCLUSION

Sederdahl's conviction for criminal endangerment must be reversed with instructions to the trial court to enter a judgment of acquittal.

Respectfully submitted this 24th day of April, 2020.

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CERTIFICATE OF COMPLIANCE

Pursuant to Rule 11 of the Montana Rules of Appellate Procedure, I certify that this primary brief is printed with a proportionately spaced Century Schoolbook text typeface of 14 points; is double-spaced except for footnotes and for quoted and indented material; and the word count calculated by Microsoft Word for Windows is 1994, excluding Table of Contents, Table of Authorities, Certificate of Service, Certificate of Compliance, and Appendices.

/s/ Danny Tenenbaum
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APPENDIX

CERTIFICATE OF SERVICE

I, Danny Tenenbaum, hereby certify that I have served true and accurate copies of the foregoing Brief - Appellant's Opening to the following on 04-24-2020:

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