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Commonwealth of Kentucky

Court of Appeals

NO. 2025-CA-0736-MR

JECORE KING — APPELLANT

v.

APPEAL FROM HARDIN CIRCUIT COURT
HONORABLE JOHN D. SIMCOE, JUDGE
ACTION NO. 24-CR-00752

COMMONWEALTH OF KENTUCKY — APPELLEE

OPINION
AFFIRMING

** ** ** ** **

BEFORE: THOMPSON, CHIEF JUDGE; CALDWELL AND CETRULO, JUDGES.

CETRULO, JUDGE: Jecore King ("King") appeals from his conviction of fleeing or evading police in the first degree in the Hardin Circuit Court for which he received a sentence of five years of imprisonment. King argues that he was denied the right to present a defense and due process of law when the trial court declined to instruct the jury on King's choice of evils defense and on the lesser-included

offense of fleeing or evading police in the second degree. After careful review of the record, we affirm.

BACKGROUND

In October 2024, a Hardin County grand jury indicted King on six offenses[1] stemming from the incident of October 24, 2024 between himself and Kentucky State Police ("KSP") troopers. The case proceeded to a jury trial, which was scheduled to commence on May 29, 2025. On the morning of trial, the Commonwealth informed the trial court that it intended to proceed only on the charge of fleeing or evading police in the first degree. The court granted the motion and dismissed the remaining counts without prejudice.

At trial, the Commonwealth called KSP Troopers Clayton Ellis ("Trooper Ellis") and Tyler Walters ("Trooper Walters") for its case-in-chief. King testified on his behalf as the only defense witness. As will become evident, while the underlying facts are largely uncontested, the parties maintain competing perspectives and characterizations of the operative events. We begin our summary with the account presented by the Commonwealth at trial.

[1] The indictment included Count I, Speeding (26 mph or over), Kentucky Revised Statute ("KRS") 189.390(5)(b); Count II, Fleeing or Evading Police in the First Degree, KRS 520.095; Count III, Fleeing or Evading Police (Pedestrian) in the Second Degree, KRS 520.100; Count IV, Wanton Endangerment in the First Degree, KRS 508.060; Count V, Resisting Arrest, KRS 520.090; and Count VI, Possession of Marijuana, KRS 218A.1422.

Trooper Ellis testified about his law enforcement background and current assignment on the Criminal Interdiction Team in the KSP Drug Enforcement Special Investigation Branch. As part of his duties, Trooper Ellis primarily patrolled Interstate 65 ("I-65") to look for criminal activity and intercept high-level traffickers in drugs, guns, and currency. He was also tasked with enforcing traffic laws.

On the afternoon of October 24, 2024, Trooper Ellis was returning from an in-service training program at Barren River Lake State Resort Park and heading home to Hardin County, Kentucky. As he had been training that day, Trooper Ellis was not dressed in his KSP uniform; instead, he wore a polo shirt with a KSP emblem, jeans, a baseball cap, and boots. Trooper Ellis also testified that he wore a body camera when in uniform but not when at a training program. On October 24, however, Trooper Ellis was driving a marked KSP police cruiser,[2] which was equipped with a dashcam, and armed with a handgun in an inside-the-waistband holster.

Shortly after getting on I-65 to drive northbound from Cave City, Kentucky, Trooper Ellis merged into the center lane and noticed a black Dodge Challenger behind him in the left passing lane. It appeared to Trooper Ellis that

[2] Trooper Ellis described the cruiser as a grey Dodge Charger that said "State Trooper" on the front fenders and on the back and the Kentucky State Police emblem on the sides. He also stated the cruiser was equipped with blue lights on the inside of the car.

the Challenger was traveling slightly above the posted speed limit of 70 mph but then slowed down upon noticing his police cruiser. Trooper Ellis did not find that reaction particularly unusual; however, his attention remained on the Challenger, which stayed in the left lane without attempting to pass him.

Trooper Ellis decreased his speed, and the Challenger responded in kind, decreasing its speed as well. This mirroring continued for approximately seven miles. Eventually, Trooper Ellis slowed to 50 mph and moved to the far-right lane. The Challenger still did not pass him but turned on its emergency flashers and merged into the center lane. Trooper Ellis testified that by this point, he found these actions to be "extremely odd" and pulled off I-65 onto the shoulder. The Challenger followed the trooper's lead and merged off the interstate, pulling up and parking directly in front of the police vehicle. At that time of day, traffic on I-65 was "moderate to heavy," and Trooper Ellis activated his blue lights as a safety precaution to signal for traffic to avoid the right lane. His dashcam also turned on, which recorded a majority of the ensuing interaction.

As Trooper Ellis got out of his cruiser, he noticed that the Challenger did not display a registered license plate or a temporary tag. King was already outside his vehicle when the trooper approached, and he stated that he believed something was wrong with the front passenger wheel. Although both men examined the wheel and checked under the hood, neither identified an issue.

Trooper Ellis then advised King that, in his experience, Dodge Challengers were frequently stolen and asked to see King's driver's license and vehicle registration. King responded that he recently purchased the vehicle and had the requested documentation on his phone.

Trooper Ellis then followed King to the driver's side and immediately detected the smell of marijuana when King opened the door. As King sat down in the driver's seat, he began moving rapidly and "digging around the car." Trooper Ellis testified that King appeared nervous and had "body tremors." King got out of the car with his phone in his hand but did not provide his license nor any other documents concerning the Challenger. At that point, Trooper Ellis testified that he intended to detain King and then to search the Challenger for marijuana and locate its vehicle identification number to investigate whether it was stolen.

Trooper Ellis conducted a pat down of King's person and asked him to come back to the police cruiser where he could manually input his information into the computer and confirm his identity. As they started to walk to the cruiser, King turned back to the Challenger as if he was going to get in the driver's seat. Suspecting that King would try to leave, Trooper Ellis grabbed him by the arm and escorted him to the cruiser.

Trooper Ellis testified that once they reached the passenger side of the cruiser, King began pulling away from him. In response, Ellis forced King against

the side of the car, but King attempted to push him away. When in uniform, Trooper Ellis normally carried standard police equipment on his person – such as handcuffs and a baton – to assist with detaining an individual. On this day, however, those items were located inside the passenger side of his patrol vehicle, and he was without backup or immediate access to his gear.

Trooper Ellis ordered King to get on his knees to facilitate retrieving handcuffs from the cruiser. King only partially complied by dropping to one knee before quickly standing up and attempting to run back to the Challenger. According to Trooper Ellis, King's conduct at this point immediately raised red flags, and he grabbed King by his hair and punched him in the head. King managed to break free from Trooper Ellis's grasp and ran to the passenger side of the Challenger. Trooper Ellis ran to the driver's side and opened the door to determine if King was attempting to get a weapon.

When King continued to grab at the passenger door, Trooper Ellis drew his handgun and ordered King to surrender. King held his arms in the air, but as Trooper Ellis approached from the rear of the car, King moved away toward the front. The two scuffled as Trooper Ellis positioned his body to prevent King from gaining access to the open driver's side door. King broke away and ran to the passenger side to try the door again. Ellis resumed his position at the driver's side, continuously shouting commands to comply while holding King at gunpoint.

King then pulled his phone from his pocket and walked back toward the passenger side of the police cruiser. Trooper Ellis followed with his gun still drawn, yelling at King to get on the ground. Upon reaching his driver's side, Ellis seized the opportunity to call for backup. As he did, King sprinted back to his car, jumped into the driver's seat, and slammed the door shut before Ellis could intercept him. King immediately peeled out, leaving Ellis rushing back to his cruiser. A high-speed chase ensued.

Trooper Ellis testified that his police cruiser was modified to prevent it from going more than 130 mph, and even at that speed, he was unable to catch up with King. However, when King exited I-65 to merge onto Highway 224, Ellis was able to close the distance. At this point, Trooper Walters had become involved in the chase and followed behind Ellis in his own police car.

The vehicular pursuit continued along Highway 224, a two-lane road with a 35-mph speed limit. Highway 224 was also described as having blind curves and a double yellow center line. Trooper Ellis's dashcam recorded King crossing both lanes of traffic and passing other motorists. Several cars were forced to pull off the road.

King eventually turned onto a one-lane road called Wheldon Loop, and Trooper Ellis attempted a Pursuit Intervention Technique ("PIT") to disable King's vehicle. The maneuver caused King to swerve off the roadway and turn

around, but failed to disable the vehicle. After pausing momentarily, King sped away. Trooper Walters took the lead in pursuing King as he backtracked his same route to reenter I-65 headed northbound.

In the meantime, KSP officers positioned spike strips further ahead on I-65 near the Glendale exit. King was driving his vehicle in the left lane when he struck the strips, causing him to lose control. The vehicle veered across all lanes of traffic and onto the right shoulder, leaving distinct skid marks that were later noted by Trooper Ellis. Upon hitting the roadside embankment, King's vehicle rolled over several times before finally coming to a halt. The chase, however, did not end there. King got out of his vehicle and fled on foot to a nearby cornfield where he hid for several hours. After involving several other police agencies and conducting searches with drones and a helicopter, an armored police vehicle was used to "flush" out King from the cornfield. Trooper Walters apprehended King and took him into custody. Police recovered King's Alabama driver's license, four grams of marijuana, and a scale from inside the Challenger. Trooper Ellis estimated that the entire pursuit lasted over two hours, with the high-speed car chase spanning approximately 36 miles.

During his testimony, King explained that on October 24, 2024, he was driving from his home in Alabama to Louisville, Kentucky for a hydro-blasting job. He heard a "pinging" sound from his car that caused him some

concern. King testified that he observed Trooper Ellis's police cruiser on I-65 and wanted to seek assistance, but he did not want to speed past the trooper. As the police cruiser reduced its speed, King slowed down as well and eventually turned on his emergency flashers.

After pulling onto the right shoulder in front of the police cruiser, King stated that he popped the hood and got out of his vehicle to inspect the front passenger wheel. At trial, King testified that he expected Trooper Ellis to be dressed in uniform like a typical police officer, but the man who approached him that day was dressed in plain clothes and did not identify himself as a police officer.[3] King recalled Trooper Ellis asking if the Challenger belonged to him and answering that it did and his information was on his cell phone. When they went to the driver's side and opened the door, Trooper Ellis did not say anything about smelling marijuana. While King looked through his phone, he began questioning whether Trooper Ellis was "an actual police officer or an impersonator" and whether King should provide his information to him.

King testified that he intended to comply with Trooper Ellis's request to return to the police cruiser to input his information but first wanted to turn off his car, which was still running. According to King's testimony, Trooper Ellis

[3] When asked whether he identified himself as a police officer upon making initial contact with King, Trooper Ellis could not recall if he did or not.

then "slammed" the door shut and grabbed his arm to escort him to the cruiser. King stated that he was confused and that the trooper's action "felt like an assault."

King recounted questioning the trooper's order to kneel on the ground but was not given a reason. As King went down on one knee, he saw the trooper grab his waistband, at which point the "impersonator" suspicion returned to King's mind. Fearing he would be harmed, King immediately stood back up. When Trooper Ellis grabbed King's hair and punched him, King thought he might be killed and opted to flee instead of fight. He did not understand why the trooper pointed a handgun at him and explained his decision to run was further motivated by a fear for his life and desire to protect himself.

On cross examination, King admitted to driving over 100 mph but countered that he primarily drove on the shoulder of the interstate to avoid colliding with other cars. King explained that he did not call 911 after returning to his car because his phone fell on the floor and he could not locate it. He further stated that he did not stop fleeing because he feared another assault.

At the close of all the evidence, King requested jury instructions on the choice of evils justification and the lesser-included offense of fleeing or evading police in the second degree. The trial court held a hearing outside the presence of the jury, and after considering arguments from counsel, declined to grant King's instruction requests. The jury deliberated for approximately an hour

and a half[4] before indicating they were deadlocked. The trial court delivered an *Allen* charge[5] pursuant to RCr 9.57. The jury resumed deliberations for another hour and a half before returning with its verdict of guilty on the sole count of fleeing or evading police in the first degree. Following the penalty phase, the jury recommended the minimum term of five years of imprisonment. The trial court sentenced King in accordance with the jury's recommendation. King appealed.

STANDARD OF REVIEW

"In a criminal case, it is the duty of the trial judge to prepare and give instructions on the whole law of the case, and this rule requires instructions applicable to every state of the case deducible or supported to any extent by the testimony." *Taylor v. Commonwealth*, 995 S.W.2d 355, 360 (Ky. 1999) (citing RCr 9.54(1); *Kelly v. Commonwealth*, 267 S.W.2d 536, 539 (Ky. 1954)). "Whether the evidence warranted a requested instruction is viewed in the light most favorable to the requesting party." *Sutton v. Commonwealth*, 627 S.W.3d 836, 848 (Ky. 2021) (citing *Thomas v. Commonwealth*, 170 S.W.3d 343, 347 (Ky.

[4] During this time, the jury requested to rewatch the portion of Trooper Ellis's dashcam footage that recorded the initial roadside interaction between him and King.

[5] "An *Allen* charge is a supplemental jury instruction that a trial court is permitted to read to a deadlocked jury. The *Allen* charge derives its name from *Allen v. United States*, in which the United States Supreme Court approved of a trial court encouraging a jury to continue deliberations after it reported itself deadlocked. Kentucky's version of the *Allen* charge is codified by [Kentucky Rule of Criminal Procedure (RCr)] 9.57[.]" *Wright v. Commonwealth*, 590 S.W.3d 255, 261 (Ky. 2019) (citing *Allen v. United States*, 164 U.S. 492 (1896)).

2005)). "However, the trial court has no duty to instruct on theories of the case that are not supported by the evidence." *Hunt v. Commonwealth*, 304 S.W.3d 15, 30 (Ky. 2009) (citing *Payne v. Commonwealth*, 656 S.W.2d 719, 721 (Ky. 1983)). We review a trial court's decision whether to give a jury instruction for abuse of discretion. *Id.* at 31(citing *Williams v. Commonwealth*, 178 S.W.3d 491, 498 (Ky. 2005)).[6] "The test for abuse of discretion is whether the trial judge's decision was arbitrary, unreasonable, unfair, or unsupported by sound legal principles." *Commonwealth v. English*, 993 S.W.2d 941, 945 (Ky. 1999) (citation omitted). Critical to this determination is "whether the evidence would permit a reasonable juror to make the finding the instruction authorizes." *Allen v. Commonwealth*, 338 S.W.3d 252, 255 n.1 (Ky. 2011).

ANALYSIS

A. Choice of Evils Defense

At trial, King conceded that he fled from police but argued that he was compelled to do so to protect himself from physical harm. On appeal, King argues that the trial court improperly denied his request to instruct the jury on the justification of "choice of evils," thereby preventing him from arguing his theory

[6] *See also Sutton*, 627 S.W.3d at 848-49 (quoting *Sargent v. Shaffer*, 467 S.W.3d 198, 203 (Ky. 2015), *overruled on other grounds by Univ. Med. Ctr. v. Shwab*, 628 S.W.3d 112, 129 (Ky. 2021)) ("Because such decisions are necessarily based upon the evidence presented at the trial, the trial judge's superior view of that evidence warrants a measure of deference from appellate courts that is reflected in the abuse of discretion standard.").

of defense to the jury. This issue is preserved for review by King's request for this instruction at trial.

The choice of evils defense is codified in KRS 503.030 and provides in part that "conduct which would otherwise constitute an offense is justifiable when the defendant believes it to be necessary to avoid an imminent public or private injury greater than the injury which is sought to be prevented by the statute defining the offense charged[.]" KRS 503.030(1). A successful choice of evils defense requires that the defendant has nearly no legal recourse available to him prior to committing an unlawful act. As the United States Supreme Court made clear in this context: "if there was a reasonable, legal alternative to violating the law, a chance both to refuse to do the criminal act and also to avoid the threatened harm, the defense[] will fail." *United States v. Bailey*, 444 U.S. 394, 410 (1980) (internal quotation marks and citation omitted). Our Supreme Court echoed this principle in *Senay v. Commonwealth*:

> For this defense to be available . . . in justification of any act which is otherwise condemned by the Criminal Code, it must be shown that defendant's conduct was necessitated by a specific and imminent threat of injury to his person under circumstances which left him no reasonable and viable alternative, other than the violation of the law for which he stands charged.

650 S.W.2d 259, 260 (Ky. 1983) (citation omitted).

The defendant bears the initial burden to produce evidence meriting an instruction on the choice of evils, and "[o]nce such evidence is proffered, the burden of proof is then on the Commonwealth to disprove the defense beyond a reasonable doubt." *LaPradd v. Commonwealth*, 334 S.W.3d 88, 91 (Ky. 2011) (citation omitted); *see also* KRS 503.020 ("In any prosecution for an offense, justification, as defined in this chapter, is a defense."). However, "[w]here a defendant fails to produce evidence which would support him in choosing the commission of an otherwise unlawful act over other lawful means of protecting himself, the trial court is not required to instruct the jury on the choice of evils defense." *Senay*, 650 S.W.2d at 260-61 (citing *United States v. Saettele*, 585 F.2d 307 (8th Cir. 1978)).

In *Beasley v. Commonwealth*, this Court identified "at least four different contingencies" to guide the determination of whether a defendant's conduct is justifiable under KRS 503.030:

> (1) that the person believes the necessity of his action is mandated by his subjective value judgment (this must be weighed by the reasonableness standard);
>
> (2) that such action must be contemporaneous with the danger of injury sought to be avoided[;]
>
> (3) that the injury is imminent, requiring an immediate choice if to be avoided; and

> (4) that the danger or injury sought to be avoided must be greater than the penalty or offending charge occasioned by the action chosen by the party.

618 S.W.2d 179, 180 (Ky. App. 1981), *overruled on other grounds by LaPradd*, 334 S.W.3d at 91 (citation omitted).

In the case *sub judice*, the trial court thoroughly considered the precedent established by *Senay* and *Beasley* and held that King was not entitled to a choice of evils instruction based on the unreasonableness of his subjective belief and availability of lawful alternatives to his criminal conduct. After reviewing the record in this case, we agree with the trial court that King failed to produce evidence supporting an instruction on the choice of evils.

We begin with a brief recap of the evidence concerning the initial interaction between King and Trooper Ellis. As noted by the trial court in making its ruling on the reasonableness of King's subjective value judgment, the beginning of the encounter appeared cordial. At trial, King acknowledged that he recognized Trooper Ellis's car to be a police vehicle, hoped to seek assistance from the officer, and initiated contact by turning on his hazard lights. Although Trooper Ellis testified that he found King's driving and the lack of a registered license plate or temporary tag suspicious, he assisted King in troubleshooting his alleged car problem – as King had hoped.

King's testimony established that he did not question Trooper Ellis's authority until he was prompted to produce his license and proof of vehicle ownership. Notably, King's skepticism directly coincided with his failure to provide the requested documentation. While King searched through his phone, Trooper Ellis detected the odor of marijuana and observed King's visible nervousness. Furthermore, King stated that he initially intended to go with Trooper Ellis to the police cruiser. This timeline undercuts King's challenge to the trooper's legitimacy.

While the trial court acknowledged a "misunderstanding" may have occurred when Trooper Ellis first prevented King from accessing the driver's side, it noted a lack of evidence establishing the nature of King's intent. Specifically, no testimony indicated that King expressed a desire to turn off the engine before abruptly moving toward the driver's side door. The court found King's actions equally consistent with an attempt to flee, and the result stemmed from his refusal to obey a lawful order.

At trial, King characterized his evasive conduct – including his ultimate high-speed vehicular flight from Trooper Ellis – as "de-escalation techniques." The evidence, however, indicates that those efforts did nothing but exacerbate tensions. The ensuing force was only deployed in response to King's active resistance and continued attempts to flee. Although King testified to his

fear, the evidence failed to show that his actions were necessary and reasonable under the circumstances. Accordingly, the trial court did not err when it held that King failed to establish a reasonable subjective belief.

Moreover, the trial court held that King failed to provide evidence supporting the contemporaneous contingency, given his choice to engage in an extended high-speed chase, in lieu of availing himself of viable and significantly more reasonable choices. The court noted that King could have simply complied with Trooper Ellis's efforts to detain him. Additionally, King had his cell phone on his person during the back-and-forth foot pursuit on the side of the road. Once he was able to return to his vehicle, King could have locked himself in the car and called 911. Even if fleeing in his car was his only viable option, King could have driven away at much slower and safer speeds until he could exit I-65 and stop at a public place, such as a gas station, where he could seek or call for help. Instead of pursuing any of these safer alternatives, King engaged in a reckless, high-speed chase, reaching speeds well over 100 mph, and continued to do so for approximately 36 miles. Evidencing nothing but an intent to flee, the vehicular pursuit did not come to an end until law enforcement employed spike strips on I-65, causing King's car to flip over multiple times. Even then, King continued his flight on foot into a cornfield where he refused to surrender for several hours.

Considering all the evidence, there were multiple opportunities when King could have stopped fleeing and sought assistance from the public or law enforcement.

Ultimately, King failed to satisfy the evidentiary threshold required to put forth a choice of evils defense to a jury. The record fails to show that his extremely dangerous behavior was reasonable or necessary to avoid imminent harm; instead, his flight actively endangered himself, law enforcement, and countless other motorists on the roadways that day. Consequently, the trial court did not abuse its discretion by declining the requested instruction, as no reasonable juror could have found King's conduct justified under the circumstances.

B. Fleeing or Evading Police in the Second Degree

King's second argument on appeal is that the trial court erred by failing to instruct on the lesser-included offense of fleeing or evading police in the second degree, a class D felony, defined at KRS 520.100(1)(b): "A person is guilty of fleeing or evading police in the second degree when: [w]hile operating a motor vehicle with intent to elude or flee, the person knowingly or wantonly disobeys a recognized direction to stop his . . . vehicle, given by a person recognized to be a peace officer." The Commonwealth prosecuted King for fleeing and evading police in the first degree, a class C felony, under the theory that "[b]y fleeing or eluding, [he] is the cause, or creates substantial risk, of serious physical injury or death to any person or property[.]" KRS 520.095(1)(a)4. Under the

prosecution's theory in this case, fleeing or evading police in the second degree differs from fleeing or evading police in the first degree in that the latter contains the aggravating circumstance of causing or creating a substantial risk of serious physical injury to another person or property by fleeing or eluding police.

"[A] defendant has a right to have every issue of fact raised by the evidence and material to the defense submitted to the jury on proper instructions." *Allen v. Commonwealth*, 338 S.W.3d at 255. This right is conditioned on whether the instruction is supported by the evidence: "[a]n instruction on a lesser included offense is appropriate if, and only if, on the given evidence a reasonable juror could entertain a reasonable doubt of the defendant's guilt on the greater charge, but believe beyond a reasonable doubt that the defendant is guilty of the lesser charge." *Id.* (alteration in original) (quoting *Osborne v. Commonwealth*, 43 S.W.3d 234, 244 (Ky. 2001)). Accordingly, the inquiry is "whether a jury could have had reasonable doubts as to whether the fleeing driver's conduct created a substantial risk" of serious physical injury or death. *Lawson v. Commonwealth*, 85 S.W.3d 571, 576 (Ky. 2002), *overruled on other grounds by Hall v. Commonwealth*, 551 S.W.3d 7 (Ky. 2018).

We find this case factually similar to the scenario analyzed by our Supreme Court in *Lawson*. Although noting "in the vast majority of cases, the question of whether an actor's fleeing or evading created a substantial risk . . . is

subject to reasonable disagreement," the Court found "the evidence in [that] case overwhelming and conclude[d] that no jury could reasonably have believed that Appellant fled or evaded police but did not create a substantial risk of death or serious physical injury to any person." 85 S.W.3d at 576. In *Lawson*, the evidence established that the fleeing driver drove a stolen vehicle at speeds between 100 and 125 mph on the interstate, failed to adhere to lane designations, ran stop lights, and engaged in unsafe merging and weaving behaviors. *Id.* "Finally, the driver attempted to avoid a police roadblock by passing the roadblock in an emergency lane, and the [vehicle] became airborne after crashing into a guard rail." *Id.* The *Lawson* Court rejected the driver's claim that he was entitled to a lesser-included instruction for fleeing or evading police in the second degree, stating that "[w]e can envision no reasonable challenge to the conclusion that Appellant's actions created a substantial risk of serious physical injury or death – to other motorists and police officers in his path, not to mention himself." *Id.*

The same logic and reasoning apply to King's case. The evidence at trial showed King driving at extremely high speeds on both the interstate and backroads. Fleeing at nearly double the 70-mph limit, King approached 140 mph, easily outpacing Trooper Ellis, whose police cruiser topped out at 130 mph. For the portion of the backroad pursuit, the dashcam captured King frequently crossing the center line of the small two-lane road and veering into the oncoming lane.

Several other motorists were forced to pull off the road or stop due to the chase. King continued to drive in a hazardous manner, disregarding the risks inherent on the rural roadway, which included several blind crests and turns with compromised visibility. Finally, at the very end of the vehicular chase, King lost control of his car once hitting the spike strips and flipped over several times before coming to a stop. Given this evidence, we likewise "can envision no reasonable challenge" to the Court's conclusion that King's conduct presented a substantial risk of serious physical injury or death. We conclude that the trial court properly denied King's request for an instruction on fleeing and evading police in the second degree.

CONCLUSION

Accordingly, we AFFIRM the judgment of the Hardin Circuit Court upon the jury's verdict as the court did not abuse its discretion by declining to give the proposed instruction on choice of evils nor the lesser-included instruction for fleeing or evading police in the second degree.

ALL CONCUR.

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