

the street. Marguerite Spencer was in the car. The dog ran into the street, and Cusson followed. Spencer drove the car out of her driveway and in the direction of Parsons' house. Cusson "walked quickly" towards a van parked in front of Parsons' home. As Spencer passed Cusson at a "fast" rate of speed, Cusson "felt the wind coming off the car" that "blew her and caused her to step back." Cusson estimated Spencer's car passed her at a distance of "about 3 feet." Cusson then joined Parsons on Parsons' porch. Parsons called after Spencer but although Spencer had stopped the car, she pulled away and did not talk with Parsons. Spencer circled the block twice before parking again in her driveway.

Spencer was charged with and convicted of reckless driving in violation of Norfolk City Code § 25-217. The trial court sentenced Spencer to 10 days imprisonment in the Norfolk City Jail but suspended the sentence conditioned on Spencer's good behavior for a period of two years and having no contact with Cusson or her mother. The trial court also imposed a fine of \$250.00. The Court of Appeals denied Spencer's petition for appeal by order, Spencer v. City of Norfolk, Record No. 1312-04-1 (May 2, 2005). We awarded Spencer an appeal.

As a threshold matter, we must determine whether this appeal is within the category of cases that this Court may

consider; that is to say, does this Court have subject matter jurisdiction? Morrison v. Bestler, 239 Va. 166, 170, 387 S.E.2d 753, 755 (1990) ("a court always has jurisdiction to determine whether it has subject matter jurisdiction"). Code § 17.1-411 provides that this Court may hear an appeal of any case in which a party is aggrieved by a final decision of the Court of Appeals except in those cases in which the decision of the Court of Appeals is made final by Code §§ 17.1-410 or 19.2-408. A judgment of the Court of Appeals is final under Code § 17.1-410 in traffic infraction and misdemeanor cases "where no incarceration is imposed." Code § 17.1-410(A)(1).

The City argues that this Court does not have subject matter jurisdiction to consider this appeal because the trial court suspended Spencer's jail sentence and therefore imposed no incarceration. We disagree. The finality provisions of Code § 17.1-410(A)(1) do not require physical confinement, only the imposition of incarceration. In this case, the trial court imposed a 10-day period of incarceration. The subsequent suspension of the sentence does not eliminate the imposition of the jail sentence and place this case in a category of cases in which no incarceration is imposed. Accordingly, we conclude that this appeal is within the class of cases that we may consider. We now turn to the merits of Spencer's appeal.

Spencer was convicted of violating Norfolk City Code § 25-217, which substantially mirrors Code § 46.2-852 in defining "reckless driving:"

Irrespective of the maximum speeds provided in this article, any person who drives a vehicle on any street or highway recklessly or at a speed or in a manner so as to endanger the life, limb, or property of any person shall be guilty of reckless driving.

In Powers v. Commonwealth, 211 Va. 386, 388, 177 S.E.2d 628, 630 (1970), this Court held that " 'recklessly' . . . imparts a disregard by the driver . . . for the consequences of his act and an indifference to the safety of life, limb or property" and that speed alone does not constitute recklessness unless it endangers life, limb, or property. In applying these principles and determining whether the evidence was sufficient to support the conviction, our rules of appellate review require that we must affirm the conviction unless it is plainly wrong or without evidence to support it. Commonwealth v. Presley, 256 Va. 465, 466, 507 S.E.2d 72, 72 (1998).

In this case, Cusson and Spencer were the only eyewitnesses to the facts surrounding the driving at issue. Their testimony does not demonstrate that Spencer was driving erratically, nor does it indicate she lacked control of the car. Cf. Miles v. Commonwealth, 205 Va. 462, 468, 138 S.E.2d

22, 27 (1964) (finding recklessness where driver drove diagonally across road in front of police officer, forcing officer to brake "violently" in order to avoid collision); Sheckler v. Anderson, 182 Va. 701, 705-66, 29 S.E.2d 867, 868-69 (1944) (finding recklessness where driver in residential neighborhood maintained speed too fast to allow him to stop to avoid emergency).

Spencer drove out of her driveway and proceeded up the street. Cusson was aware of Spencer's car before it left the driveway because she heard the horn blowing. According to Cusson's testimony, she followed the dog into the street, the dog ran back to Parsons' house, and then Cusson walked to the van parked in front of Parsons' house. Thus, at the time the "wind blew her," Cusson was standing in the street near the van parked in the street, and when Spencer passed Cusson, her car was not near the curb but had to be in the travel lane of the street, three feet beyond the parked van. Though Cusson testified she had to "step back," she claimed she did so because of the wind, not because she feared injury or impact with Spencer's car. "Fast" driving alone, without the element of endangering life, limb, or property, is not sufficient to support a conviction for reckless driving. Powers, 211 Va. at 388, 177 S.E.2d at 630.

This record does not support a conclusion that Spencer had a disregard for the consequences of her act, was indifferent to the safety of others, or that her rate of speed endangered Cusson. Therefore, we will reverse the judgment of the Court of Appeals, vacate the conviction, and dismiss the case.

Reversed and final judgment.