NO. 91758-2

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,

Respondent,

v.

G.C.,

Petitioner.

ON DISCRETIONARY REVIEW FROM
THE COURT OF APPEALS, DIVISION II
Court of Appeals No. 46588-4-II
Clallam County Superior Court No. 14-8-00083-3

ANSWER TO PETITION FOR REVIEW

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I. IDENTITY OF RESPONDENT

The respondent is the State of Washington. The answer is filed by Clallam County Deputy Prosecuting Attorney JESSE ESPINOZA.

II. COURT OF APPEALS DECISION

The State respectfully requests that this Court deny review of the Court of Appeals order denying the petitioner's Motion to Modify Ruling, No. 46588-4-II, entered Feb. 24, 2015 (hereinafter "Motion to Modify"), a copy of which is attached to the petition for review.

The Court of Appeals held that when viewed in the light most favorable to the State, the evidence taken as a whole supports that G.C. exhibited the effects of having consumed alcohol.

III. COUNTERSTATMENT OF THE ISSUES

The question presented is whether this Court should decline to accept review because none of the criteria set forth in RAP 13.4 (b) are met, because:

1. The Court of Appeals decision does not conflict with any decision of this Court or the Court of Appeals; and

2. The petition fails to present a significant question of law under the Constitution of the State of Washington and of the United States; and

3. The petition fails to present any issue of substantial public

interest that should be determined by this Court?

IV. STATEMENT OF THE CASE

G.C.'s father (B.C.) testified that he had set up a counseling appointment for G.C. at Clallam Counseling at 3:30 p.m. on June 17, 2014. RP 5. B.C. got G.C. up for breakfast that morning and gave G.C. instructions to be at Clallam Counseling for his appointment. *Id.* B.C. found G.C. at the skate park about 5 or 6 p.m. after learning that G.C. missed his appointment. RP 6. When B.C. asked G.C. why he had missed his appointment, B.C. smelled alcohol on G.C.'s breath and G.C. appeared to be mildly intoxicated. RP 6.

B.C. asked G.C. if he had been drinking and G.C. admitted he had been drinking. RP 9. When the prosecutor asked B.C. to explain what he observed that made him believe G.C. was mildly intoxicated, B.C. responded that G.C.'s eyes were glassy. RP 6.

B.C. then took G.C. to his mother's home. RP 11. Officer Josh Powless responded to the incident and located G.C. at his mother's house. RP 17. Off. Powless observed G.C. while at his mother's house and testified that G.C.'s eyes were glassy, but not bloodshot. RP 24. G.C. admitted to Off. Powless that he had been drinking. RP 24.

The Commissioner noted that G.C. did not challenge that alcohol consumption can cause a person to have glassy eyes. Ruling Affirming

Guilty Adjudication and Manifest Injustice Disposition at 9.

V. ARGUMENT

G.C.'s arguments for discretionary review are essentially the same as those supporting his claims made in his Motion to Modify. G.C. does not present any case law showing how the Court of Appeals erred by denying his motion, but simply disagrees that a rational trier of fact could find beyond a reasonable doubt that G.C. exhibited the effects of having consumed liquor.

G.C. argues that the Appellate Court's directive to take the evidence in the light most favorable to the State does not permit the Court to resort to speculation and conjecture. It is the State's position that the Court's directive does not require the Court to ignore circumstantial evidence, the surrounding circumstances, and to refrain from making reasonable inferences.

A. THIS COURT SHOULD DENY REVIEW OF THE COURT OF APPEALS DECISION BECAUSE G.C. HAS NOT ESTABLISHED ANY OF THE CONSIDERATIONS GOVERNING ACCEPTANCE OF REVIEW SET FORTH IN RAP 13.4 (b).

RAP 13.4 (b) sets forth the considerations governing this Court's acceptance of review:

A petition for review will be accepted by the Supreme Court only:

(1) If the decision of the Court of Appeals is in conflict with a decision by the Supreme Court; or

(2) If the decision of the Court of Appeals is in conflict with a decision of another division of the Court of Appeals; or

(3) If a significant question of law under the Constitution of the State of Washington or of the United States is involved; or

(4) If the petition involves an issue of substantial public interest that should be determined by the Supreme Court.

G.C. does not provide any authority showing that the Court of Appeals decision denying the Motion to Modify was in conflict with any decision of the Supreme Court or another diversion of the Court of Appeals. G.C.'s Petition for Review does not present a question of law under the Washington State or United States Constitutions. Finally, G.C.'s argument that his petition involves an issue of substantial public interest based on his insufficiency of the evidence argument fails because there was sufficient evidence to support a finding of guilty.

This Court should decline to accept review because G.C. has failed to establish any of the above criteria.

1. **There was sufficient evidence to support a finding of guilt beyond a reasonable doubt.**

"The test for determining the sufficiency of the evidence is whether, after viewing the evidence in the light most favorable to the State, any rational trier of fact could have found guilt beyond a reasonable doubt." *State v. Salinas*, 119 Wn.2d 192, 201, 829 P.2d 1068 (1992)

(citing *State v. Green*, 94 Wn.2d 216, 220–22, 616 P.2d 628 (1980)). "When the sufficiency of the evidence is challenged in a criminal case, all reasonable inferences from the evidence must be drawn in favor of the State and interpreted most strongly against the defendant." *Id.* (citing *State v. Partin*, 88 Wn.2d 899, 906–07, 567 P.2d 1136 (1977)).

"A claim of insufficiency admits the truth of the State's evidence and all inferences that reasonably can be drawn therefrom." *Id.* (citing *State v. Theroff*, 25 Wn. App. 590, 593, 608 P.2d 1254, aff'd, 95 Wn.2d 385, 622 P.2d 1240 (1980)). "Circumstantial evidence and direct evidence are equally reliable." *State v. Thomas*, 150 Wn.2d 821, 874, 83 P.3d 970 (2004) (citing *State v. Delmarter*, 94 Wn.2d 634, 638, 618 P.2d 99 (1980)). "This court must defer to the trier of fact on issues of conflicting testimony, credibility of witnesses, and the persuasiveness of the evidence." *State v. Thomas*, 150 Wn.2d 821, 874–75, 83 P.3d 970 (2004) (citing *State v. Cord*, 103 Wn.2d 361, 367, 693 P.2d 81 (1985)).

Here, a rational juror could make a reasonable inference that G.C. by appearance or otherwise exhibited that he was under the influence of liquor because G.C. appeared to his father to be mildly intoxicated, he admitted to drinking alcohol to his father and Off. Powless, and G.C. had glassy eyes.

G.C. claims that "glassy eyes" alone is speculative and ambiguous

because it is possible that glassy eyes could be caused by something other than alcohol. Therefore, G.C. argues, the State did not prove the second element of exhibiting the effects of having consumed alcohol.

The second element may be satisfied when "by speech, manner, *appearance*, behavior, lack of coordination, *or otherwise*, [the defendant] exhibits that he or she is under the influence of liquor." RCW 66.44.270 (2)(b) (emphasis added). Each of the adjectives above alludes to physical symptoms. Thus the term "or otherwise", by its plain meaning requires some physical symptom other than the odor of alcohol on one's breath. This does not render an admission (non-physical evidence) to having consumed alcohol irrelevant. Rather, the admission to having consumed alcohol makes it reasonable to infer that G.C.'s glassy eyes were a result of having consumed alcohol.

Further, G.C.'s argument is weakened by the fact that "speech, manner, appearance, behavior, and lack of coordination," can also be caused by something other than alcohol. Those terms are clearly just physical factors. "Glassy eyes" is also a physical factor with just as much relevance as speech or lack of coordination.

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G.C. cites *State v. Smith*,[1] *State v. DeVries*,[2] and *State v. Colquitt*[3] as cases supporting his argument that equivocal evidence is insufficient evidence to establish G.C. exhibited that he was under the influence of liquor. Although the proposition may be accurate, it has no application to the current case.

Those cases do not claim that circumstantial evidence has no weight, *see Thomas*, 150 Wn.2d at 874, or that a fact finder may not make reasonable inferences from the evidence, *see Salinas*, 119 Wn.2d at 201. Furthermore, none of the cases cited by G.C. discuss the quantum of evidence required to establish the existence of physical symptoms of being under the influence of alcohol.

Moreover, glassy eyes were not the only evidence available to satisfy the second element of the crime at issue. G.C.'s father stated that G.C. *appeared* to be mildly intoxicated. RP 6. That G.C. had glassy eyes was the basis that B.C. gave for his opinion.

"It is well settled in Washington that a lay witness may express an opinion regarding the level of intoxication of another." *State v. Lewellyn*,

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1 155 Wn.2d 496, 120 P.3d 559 (2005) (fact that driver's license was revoked in the first degree insufficient to prove revocation was due to habitual traffic offender status).

2 149 Wn.2d 842, 850, 72 P.3d 748 (2003) (juvenile's statement a pill "could mess you up" was insufficient to prove knowledge of nature of a substance).

3 133 Wn. App. 789, 801–02, 137 P.3d 892 (2006) (foundationless assertion of appearance of a substance insufficient to establish its identity).

78 Wn. App. 788, 794, 895 P.2d 418 (1995), as amended on reconsideration (Aug. 3, 1995), aff'd sub nom. *State v. Smith*, 130 Wn.2d 215, 922 P.2d 811 (1996) (citing *State v. Forsyth*, 131 Wash. 611, 612, 230 P. 821 (1924)).

Here, B.C. expressed his opinion that G.C. appeared to be mildly intoxicated. RP 6. This is relevant lay testimony from one who arguably has special knowledge and familiarity with G.C. Whether this opinion was persuasive is an issue deferred to the trier of fact. *Thomas*, 150 Wn.2d at 874–75.

G.C.'s father's lay opinion that G.C. appeared to be mildly intoxicated, combined with G.C.'s glassy eyes and admissions of consumption of alcohol support a reasonable inference that, by appearance or otherwise, G.C. exhibited that he was under the influence of liquor.

This is not a mere guess or conjecture. This is not an issue of substantial public interest. This is a reasonable inference which must be drawn in favor of the State and interpreted most strongly against the defendant. *Salinas*, 119 Wn.2d at 201. This in turn leads to a conclusion that there was sufficient evidence for a rational juror to find the defendant guilty beyond a reasonable doubt.

Therefore, G.C.'s motion should be denied.

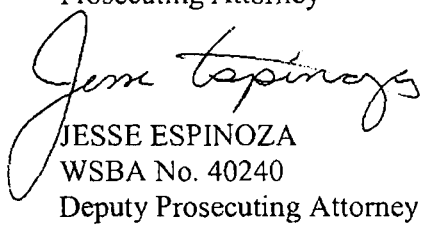
VI. CONCLUSION

G.C. does not present any case law which conflicts with a decision by the Washington State Supreme Court or Court of Appeals. G.C. has not presented a significant question of law under the Washington State or U.S. Constitutions. G.C.'s petition also fails to present any issue of substantial public interest. Therefore, G.C. has not established any of the criteria set forth under RAP 13.4 (b).

For the foregoing reasons, the State respectfully requests that the Court deny G.C.'s Petition for Discretionary Review.

DATED July 1, 2015.

Respectfully submitted,
MARK B. NICHOLS
Prosecuting Attorney

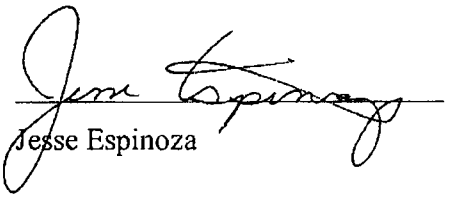


JESSE ESPINOZA
WSBA No. 40240
Deputy Prosecuting Attorney

CERTIFICATE OF DELIVERY

Jesse Espinoza, under penalty of perjury under the laws of the State of Washington, does hereby swear or affirm that a copy of this document was forwarded electronically or mailed to Jodi R. Backlund. on 7/1/2015.

MARK B. NICHOLS, Prosecutor



Jesse Espinoza

OFFICE RECEPTIONIST, CLERK

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To: OFFICE RECEPTIONIST, CLERK
Cc: Backlund & Mistry
Subject: G.N.C. 91758-2 Answer to Petition for Review

Dear Supreme Court Clerk and Ms. Backlund,

Please find attached the State's Answer to Petition for Review.

Thanks,
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