

FILED

MARCH 27, 2015

Court of Appeals
Division III
State of Washington

No. 32214-9-III

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION THREE

STATE OF WASHINGTON,

Respondent,

v.

DANIEL SOTO,

Appellant.

ON APPEAL FROM THE SUPERIOR COURT OF
THE STATE OF WASHINGTON FOR FRANKLIN COUNTY

The Honorable Carrie L. Runge

REPLY BRIEF OF APPELLANT

THOMAS M. KUMMEROW
Attorney for Appellant

WASHINGTON APPELLATE PROJECT
1511 Third Avenue, Suite 701
Seattle, Washington 98101
(206) 587-2711

TABLE OF CONTENTS

A. ARGUMENT..... 1

The State’s proof was insufficient and mandates reversal
and dismissal. 1

B. CONCLUSION..... 3

TABLE OF AUTHORITIES

WASHINGTON CASES

State v. Brezillac, 19 Wn.App. 11, 573 P.2d 1343 (1978) 1, 2

State v. Clark, 18 Wn.App. 831, 572 P.2d 734, 735 (1977)..... 2

State v. Huber, 129 Wn.App. 499, 119 P.3d 388 (2005) 3

State v. Hunter, 29 Wn.App. 218, 627 P.2d 1339 (1981) 3

A. ARGUMENT

The State's proof was insufficient and mandates reversal and dismissal.

The State claims the evidence of the prior convictions was sufficient because they contained the date of birth and a signature by a "Daniel Soto." Brief of Respondent at 6. Critically absent from the State's response is any attempt to distinguish the cases cited by Mr. Soto which plainly state that documents containing just the name and date of birth are insufficient.

The State claims that the decision in *State v. Brezillac* controls in this situation. Brief of Respondent at 8-9. But a review of *Brezillac* shows some critical differences which are missing here:

However, in this case such evidence was produced, in the form of properly certified Georgia prison records. Page 3 of the prison records consists of a photograph, front 1345 and profile, of an inmate of the Georgia state prison at Reidsville, Georgia, and shows that he was convicted, in Fulton County, of the crimes of forgery and larceny and sentenced on November 30, 1961, to two 2-5 year terms, to run concurrently. It states that the inmate was 26 years old, 6 feet 4 inches tall, 250 pounds, with fair complexion, brown eyes and a heavy build. It also states: "Notify in case of sudden illness Wife: Mildred Brezillac: 2609 Wood Green Dr., Chamblee, Ga."

19 Wn.App. 11, 13, 573 P.2d 1343 (1978). Thus, there was a photograph and a physical description of the defendant. Here, there was

no photograph of the person nor physical description, or profile of the person, or a next of kin as *Brezillac*, all of which certainly constituted the sufficient corroborative evidence.

The State also relies on the decision in *State v. Clark*, but again soft peddles the substantial differences between the proof in that case and the proof here:

As the State points out, exhibit No. 16 involves more than just a fingerprint card and a photograph. It contains as well a copy of the judgment and sentence in cause No. 59156 and a copy of the warrant of commitment. Additionally, Clark's prison identification number appears on the photograph card, the fingerprint card, the warrant of commitment, and the judgment and sentence. The certification "(t)hat the Judgment and Sentence, Warrant of Commitment, fingerprint card and photo, attached hereto are copies of the original records of Chester Merritt Clark, . . ." is competent evidence that the Chester Merritt Clark, Jr. identified by fingerprints and photographs is the man who was serving the sentence imposed in cause No. 59156 on January 21, 1972.

18 Wn.App. 831, 833, 572 P.2d 734, 735 (1977). Again as in *Brezillac*, in *Clark* there was a photograph and analysis of the fingerprints of the defendant, strong pieces of corroborative evidence missing here.

The State admits that the only evidence it proffered here were the Judgments and Sentences which contained just the name and date of birth. This was simply not enough to prove the essential element of the

offense of felony violation of a protection order. *State v. Huber*, 129 Wn.App. 499, 502, 119 P.3d 388 (2005); *State v. Hunter*, 29 Wn.App. 218, 221, 627 P.2d 1339 (1981). Mr. Soto is entitled to reversal of his conviction for a failure of the State to carry its burden of proof.

B. CONCLUSION

For the reasons stated in the previously filed Brief of Appellant as well as this reply brief, Mr. Soto asks this Court to reverse his conviction with instructions to dismiss.

DATED this 27th day of March 2015.

Respectfully submitted,

A large, stylized handwritten signature in black ink, which appears to read 'T. Kummerow', is written over a horizontal line. The signature is highly cursive and extends across the width of the text block.

THOMAS M. KUMMEROW (WSBA 21518)
tom@washapp.org
Washington Appellate Project – 91052
Attorneys for Appellant

**IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION THREE**

| | | |
|----------------------|---|-----------------|
| STATE OF WASHINGTON, |) | |
| |) | |
| RESPONDENT, |) | |
| |) | |
| v. |) | NO. 32214-9-III |
| |) | |
| DANIEL SOTO, |) | |
| |) | |
| APPELLANT. |) | |

DECLARATION OF DOCUMENT FILING AND SERVICE

I, MARIA ANA ARRANZA RILEY, STATE THAT ON THE 27TH DAY OF MARCH, 2015, I CAUSED THE ORIGINAL **REPLY BRIEF OF APPELLANT** TO BE FILED IN THE **COURT OF APPEALS – DIVISION THREE** AND A TRUE COPY OF THE SAME TO BE SERVED ON THE FOLLOWING IN THE MANNER INDICATED BELOW:

- | | | | |
|------|--|-------------------|-------------------------------------|
| [X] | BRIAN HULTGREN, DPA FRANKLIN COUNTY PROSECUTOR'S OFFICE 1016 N 4 TH AVE PASCO, WA 99301 | (X) () () | U.S. MAIL HAND DELIVERY _____ |
| [X] | DANIEL SOTO BKG # 0000048910 FRANKLIN COUNTY JAIL 1016 N 4 TH AVE D-102 PASCO, WA 99301 | (X) () () | U.S. MAIL HAND DELIVERY _____ |

SIGNED IN SEATTLE, WASHINGTON THIS 27TH DAY OF MARCH, 2015.

X _____ 