322149

COURT OF APPEALS, DIVISION III

OF THE STATE OF WASHINGTON

STATE OF WASHINGTON	)	
	)	
Respondent,	)	MOTION ON THE MERITS
	)	(Franklin County No.
vs.	)	13-1-50157-0)
	)	
DANIEL SOTO,	)	
	)	
Appellant.	)	
	)	

I. Identity of the Moving Party:

The State of Washington, Respondent, Shawn P. Sant, Franklin County Prosecuting Attorney, by and through Brian V. Hultgrenn, Deputy Prosecuting Attorney, asks for the relief designated in Part II.

II. State of Relief Sought:

To affirm the decision of the Superior Court for Franklin County, which found the Appellant, Daniel Soto, guilty of the crime of Felony Violation of a No Contact Order, in Cause #13-1-50157-0.

III. Fact Relevant to Motion

On April 5, 2013, Officer Eric Fox of the Pasco Police Department made a traffic stop on vehicle in Pasco, Washington. RP

9-10. Officer Fox identified the driver as Fabiola Ayala. Dispatch informed him that Ayala was the protected party in an order which prohibited a "Daniel Soto" from having any contact with her. RP 10. A male sitting in the passenger seat matched the description for Daniel Soto. Officer Fox confirmed the man's name was Daniel Soto, the Appellant, and that his birthday was January 14, 1977. RP 11. Under Miranda, the Appellant conceded that a no contact order was in place, but claimed that the order allowed him to meet with the protected party in order to discuss financial matters. RP 13.

Based on being observed in the same vehicle with the protected party after previously being convicted of multiple prior no contact order violations, the Appellant was charged in Franklin County Superior Court with Felony Violation of a No Contact Order. CP 38-39. The case proceeded to bench trial on October 23, 2013. RP 4. At trial, the Appellant was identified by Officer Fox as the Daniel Soto he arrested for the no contact order violation on April 5, 2013. Officer Fox confirmed the Appellant had given a date of birth of January 14, 1977.

During that trial the State admitted certified copies of a domestic violence no contact order and a modification of that no contact order from Pasco Municipal Court. Ex. 4 & 5. Each order

was admitted by the State in its entirety and without limitation or objection. RP 18.

Ms. Ayala testified at trial that the original no contact order was put in place following her relationship with the Appellant. RP 21. She acknowledged that State's Exhibit Number 4 was the order between her and the Appellant. RP 22. Ms. Ayala confirmed that following the original order, she and the Appellant made a motion to have it rescinded. Based on that motion, the order was altered to allow text, phone, and email communication. RP 21. The State admitted an audio copy of that hearing where the two asked for the modification. That recording was consistent with the no contact orders admitted. Ex. 1. There was no dispute at trial that the two no contact orders offered by the State applied to the Appellant and the protected party, Ms. Ayala. RP 39, 53.

The State also offered certified copies of two judgment and sentences for previous no contact order violation convictions for "Daniel Soto." Ex. 2 & 3. Those judgment and sentences were admitted in their entirety without limitation or objection. RP 18. The documents showed a total of nine prior convictions for no contact order violations by the Appellant. Ex. 2 & 3. The trial judge found that the judgment and sentences belonged to the Appellant because

they matched the Appellant's personal information as provided in the no contact orders and in the evidence at trial. They had the same name and spelling, the same date of birth, the same signature, and they were from the same bi-county judicial district. CP 35.

IV. Grounds for Relief and Argument

RAP 18.14 authorizes this court to affirm a trial court's decision on the merits by motion of a party when the appeal is clearly without merit. This appeal is without merit because the trial court's record contains evidence which confirms the judgment and sentences offered at trial the belong to the Appellant, Daniel Soto.

During the course of the trial, the State introduced two no contact orders. These no contact orders, and the testimony of Officer Fox, contain details which confirm the judgment and sentences offered by the State are in fact true records of the Appellant's prior convictions. When considering the details of the documents in evidence, the lower court made the logical conclusion that the State had met their burden of proving the Appellant had at least two prior convictions for violations of no contact orders.

The best evidence of a prior conviction is a certified copy of the judgment and sentence for that conviction. State v. Rivers, 130 Wn.App 689, 698, 128 P.3d 608 (2006). The State must show

beyond a reasonable doubt, that the person named in those predicate judgment and sentences is actually the defendant. State v. Huber, 129 Wash.App 499, 502, 119 P.3d 388 (2005). This should be evidence which is independent of the judgment and sentence, because it is possible for different people to have identical names. Id. In this case, the State produced several pieces of evidence which confirmed that the Appellant was in fact the individual in the judgment and sentences produced at trial.

The first piece of evidence confirming the judgment and sentences is the Appellant's date of birth. That date of birth is part of the evidentiary record in a number of ways. It is listed in the State's charging document. CP 38-39. The arresting officer, Officer Fox, confirmed the Appellant's date of birth as January 14, 1977, at the time of his arrest. Lastly, the date of birth is listed on both of the no contact orders admitted as evidence. These orders were confirmed as relating to the Appellant by the protected party, Ms. Ayala, by a matching recorded district court proceeding, and by the details of the orders themselves. This date of birth is found on the judgment and sentences of "Daniel Soto."

The Appellant's date of birth matching the date of birth of "Daniel Soto" in the judgment and sentences is significant. An

individual may have the same name as another person, but the odds of having the exact same date of birth is significantly less likely. The Tri-Cities, has a population of around 200,000 people. The odds of having the exact same day of birth and year as another individual (of the same gender) in the Tri-Cities is approximately 1 in 60,000. The odds of the individual in the judgment and sentences being a different Daniel Soto, with the same date of birth s the Appellant, is extraordinarily unlikely. A reasonable doubt is

> ...such a doubt as would exist in the mind of a reasonable person after fully, fairly, and carefully considering all of the evidence or lack of evidence. If, from such consideration, you have an abiding belief in the truth of the charge, you are satisfied beyond a reasonable doubt.

WPIC 4.01. When considering such odds, it is unreasonable to doubt that the judgment and sentences offered in the case are the Appellant's.

The second piece of external information which confirms the judgments as belong to the Appellant is the signatures. In the event of a jury trial, the jury may consider similarities in signatures as part of their duties as the trier of fact. State v. Davis, 5 Wash.App. 868, 869, 491 P.2d 676 (1971); State v. Hill, 45 Wash. 694, 695-96, 89 P. 160 (1907). With the jury waived in this case,

the trial judge acted as the trier of fact. The trial court found that the signature of the Appellant, as seen on the original Pasco Municipal Court no contact order, and the signature of Daniel Soto in the judgments, matched. Even if the Appellant happened to possess the same name and date of birth as another Daniel Soto, it would not explain him having the exact same signature as that person.

Lastly, one can consider the details surrounding the present case and the prior convictions offered into evidence. The judgments offered come from the same bi-county judicial district as the current case. While mere proximity certainly isn't dispositive, it is consistent with the judgments belonging to the Appellant. Likewise, the June 7, 2006 judgment bears many of the same parties practicing in those jurisdictions. Scott Johnson, the Appellant's trial attorney, acted as prosecutor at that time and Judge Runge (judge in this case) ultimately accepted the jury's verdict of guilty to the eight counts of no contact order violations in Benton County.

Other courts have considered connections such as location, similarity in types of offenses, and matching personal details as significant in confirming predicate judgment and sentences as

relating to the particular defendant charged. State v. Brezillac, 19 Wash.App. 11, 573 P.2d 1343 (1978); State v. Clark, 18 Wash.App. 831, 572 P.2d 734 (1977). Such a position acknowledges the simple logic concerning the probability of the judgments relating to a defendant.

In State v. Brezillac, the Court was faced with determining whether the State had proved six prior predicate felony convictions (they referred to them as counts 2-7). Id. at 12-13. Three of the counts, 3, 4, and 5, were fairly obvious, as they had physical descriptions of the defendant which matched him, as well as occurring at the same time in the same county. Id. at 13-14. The second three counts, 2,6, and 7, did not have those details contained within them. Id. at 14. However, 2, 6, and 7 did have details which matched the already clear counts of 3, 4, and 5. Id. at 15. The court found because the crimes matched the other counts, and were so similar and occurred around the same time, it was not reasonable to doubt it was the same person. Id.

The present case mirrors this situation. The authenticity and identity no contact orders admitted into evidence are not in doubt. They were authenticated far more clearly then counts 3, 4, and 5 were in Brezillac. This included actually admitting and playing the

hearing relating to the second no contact order/modification. These no contact orders can be compared to the judgments in this case the same way Brezillac compared the two sets of counts. The only difference is that in this instance, is that there is more reliable information then just type of crime and location. In this case there is also a date of birth and signature which match. This exceeds the proof allowed by the Brezillac court.

The court also dealt a similar set of facts in State v. Clark. 18 Wash.App. 831. In that case the State offered a judgment and sentence along with a fingerprint card and a card with defendant's photo on it. Id. at 832-833. The defendant pointed out that the fingerprint card had a different date of offense then the judgment and that there was actually no testimony which connected the judgment and sentence to the fingerprint card and the card with the defendant's picture. Id. The Court overcame the discrepancy by pointing out that the fingerprint card and the photograph card were prepared 11 days after the judgment and sentence at the same time, so it made sense they were connected to that particular judgment and sentence. The Court also pointed out that the two items were not just connected by name, but also but the number of the judgment and sentence and the defendant's prison identification

number. Id. at 833. In this instance, the State asked that characteristics of compared in the same manner. Instead of a prison identification number and judgment and sentence number, the State simply asks that the court compares the date of birth, signature, and type of offense. Both Clark and Brezillac bear far more similarities to the present case then any of the cases cited by the Appellant.

In State v. Harkness, the Court opted to follow the line of cases which established "identity of names alone" is not sufficient to make a prima facie case of "identity of person" when considering predicate offenses. 1 Wash.2d 530, 542, 96 P.2d 460 (1939). The Court is not faced with such a case in this instance. The name of the Appellant is only part of the evidence indicating the judgments entered into the record are Appellant's. When considering claims of insufficiency of the evidence, the Court acknowledges that a reviewing court is not ideally placed to second guess the trier of fact:

> The standard for determining whether a conviction rests on insufficient evidence is whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. A claim of insufficiency admits the truth of the State's evidence and all inferences that

> reasonably can be drawn therefrom. This standard is a deferential one, and questions of credibility, persuasiveness, and conflicting testimony must be left to the jury.

In re Martinez, 171 Wash.2d 354, 364, 256 P.3d 277 (2011) (citations omitted). Taking the truth of the State's evidence and all inferences therein, the record is sufficient uphold the jury's decision to find the Appellant had previously been convicted of at least two counts of no contact order violations.

V. Conclusion:

Based on the record before the trial court, there was no doubt that the judgment and sentences offered were the Appellant's convictions. On the basis of the arguments set forth herein, it is respectfully requested that the decision of the Superior Court for Franklin County be affirmed on the merits pursuant to RAP 18.14..

Dated this 12th day of January, 2015.

Respectfully submitted,

SHAWN P. SANT
Prosecuting Attorney

By: 
Brian V. Hultgrenn
WSBA #34277
Deputy Prosecuting Attorney

AFFIDAVIT OF MAILING

STATE OF WASHINGTON)
) SS.
County of Franklin)

COMES NOW Abigail Iracheta, being first duly sworn on oath, deposes and says:

That she is employed as a Legal Secretary by the Prosecuting Attorney's Office in and for Franklin County and makes this affidavit in that capacity. I hereby certify that on the 12th day of January, 2015, a copy of the foregoing was delivered to Daniel Soto, Appellant, 124 North Elms Ave, Pasco WA 99301, and to Thomas Kummero, opposing counsel, 701 Melbourne Tower, 1511 Third Ave, Seattle, WA 98101 by depositing in the mail of the United States of America a properly stamped and addressed envelope.

Abigail Iracheta

Signed and sworn to before me this 12th day of January, 2015.

Gail L Johnston

Notary Public in and for
the State of Washington,
residing at Pasco
My appointment expires:
September 9, 2018

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FRANKLIN COUNTY PROSECUTOR

January 12, 2015 - 12:40 PM

Transmittal Letter

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Trial Court County: Franklin - Superior Court # 13-1-50157-0

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Comments:

No Comments were entered.

Sender Name: Abigail, D Polomsky - Email: airacheta@co.franklin.wa.us