

FILED  
OCTOBER 29, 2014  
Court of Appeals  
Division III  
State of Washington

No. 32214-9-III

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

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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

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BRIEF OF APPELLANT

---

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A. ASSIGNMENTS OF ERROR

1. There was insufficient evidence presented that Mr. Soto had suffered two prior convictions for violations of a protection order.

2. The trial court erred in entering a conviction for a felony violation of a no contact order in the absence of substantial evidence.

3. In the absence of substantial evidence, the trial court erred in entering Finding of Fact 7, finding Mr. Soto had a least two prior convictions for violations of no contact orders.

4. To the extent it is deemed a finding of fact, and in the absence of substantial evidence, the trial court erred in entering Conclusion of Law 4, which found Mr. Soto “had at least two previous convictions for violations of no contact orders.”

B. ISSUE PERTAINING TO ASSIGNMENTS OF ERROR

Due process requires the State prove each essential element of the charged offense beyond a reasonable doubt. One element of the offense of a felony violation of a no contact order is that the defendant had twice previously been convicted of a violation of a no contact order. A copy of a Judgment and Sentence in the defendant’s name is not sufficient proof beyond a reasonable doubt of this element. Here, the State presented two Judgments and Sentence containing the name

“Daniel Soto,” with the same birthdate as the appellant and no corroborating evidence to establish the appellant and the person named were the same individual. Is Mr. Soto entitled to reversal of his conviction with instructions to dismiss for the State’s failure to carry its burden of proof?

C. STATEMENT OF THE CASE

On April 5, 2013, Pasco Police Officer Fox stopped a car for speeding. RP 8-10. The driver of the car, Fabiola Ayala, identified herself with a driver’s license. RP 10. Officer Fox’s check of Ms. Ayala’s license status revealed the presence of a no contact order in which she was the protected person. RP 10. The person from whom she was protected was a “Daniel Soto.” RP 11.

Officer Fox contacted the passenger in the car who orally identified himself as Daniel Soto. RP 11. Officer Fox determined Mr. Soto’s birthdate matched that of the person named in the no-contact order. RP 11. Officer Fox arrested Mr. Soto.

Mr. Soto was charged with a felony violation of a no-contact order for violating the no-contact order while having suffered two previous convictions for violating no-contact orders. CP 38-39. Mr.

Soto waived his right to a jury trial and the matter proceeded as a bench trial. CP 37.

At trial, the State introduced certified copies of two Judgments and Sentence. CP 44-47. The documents contained the name of Daniel Soto and contained the same date of birth as Mr. Soto. Based upon these exhibits, the trial court concluded Mr. Soto had two previous convictions for violating no contact orders. CP 35-36. The court found Mr. Soto guilty as charged. CP 35-36.

#### D. ARGUMENT

##### THE STATE FAILED TO PROVE THE PERSON NAMED ON THE JUDGMENTS AND SENTENCE WAS THE DEFENDANT, DANIEL SOTO

1. The State bears the burden of proving each of the essential elements of the charged offense beyond a reasonable doubt.

The State is required to prove each element of the crime charged beyond a reasonable doubt. U.S. Const. amend XIV; *Apprendi v. New Jersey*, 530 U.S. 466, 471, 120 S.Ct. 2348, 147 L.Ed.2d 435 (2000); *In re Winship*, 397 U.S. 358, 364, 90 S.Ct. 1068, 25 L.Ed.2d 368 (1970).

The standard the reviewing court uses in analyzing a claim of insufficiency of the evidence is “[w]hether, 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.” *Jackson v. Virginia*, 443 U.S. 307, 319, 99 S.Ct. 2781, 61 L.Ed.2d 560 (1979). A challenge to the sufficiency of evidence admits the truth of the State's evidence and all reasonable inferences that can be drawn therefrom. *State v. Salinas*, 119 Wn.2d 192, 201, 829 P.2d 1068 (1992).

Here, the State was required to prove Mr. Soto had two previous convictions for violations of no contact orders. The State failed to prove Mr. Soto was the person named in the Judgments and Sentence, thus he is entitled to reversal of his conviction for failure of the State to prove an essential element of the charged offense.

2. The State failed to prove the person named in the Judgment and Sentences and the appellant were the same person.

There are three essential elements of the crime of violation of a no contact order: (1) willful contact with another, (2) the prohibition of contact by a valid no contact order, and (3) the defendant's knowledge of the no-contact order. RCW 26.50.110; *State v. Washington*, 135 Wn.App. 42, 49, 143 P.3d 606 (2006). Violation of a no contact order under chapter 10.99 RCW becomes a felony if the offender has at least two previous convictions for violating the provisions of an order issued

under chapter 26.50, 7.90, 9.94A, 9A.46, 10.99, 26.09, 26.10, 26.26, or 74.34 RCW. RCW 26.50.110(5). The State bears the burden of establishing the “identity of the accused as the person who committed the offense.” *State v. Hill*, 83 Wn.2d 558, 560, 520 P.2d 618 (1974).

Where a prior conviction is an element of a crime, the State must prove its existence beyond a reasonable doubt; an identity of names alone is insufficient to meet this burden. *State v. Harkness*, 1 Wn.2d 530, 533, 96 P.2d 460 (1939); *State v. Hunter*, 29 Wn.App. 218, 221, 627 P.2d 1339 (1981); *State v. Brezillac*, 19 Wn.App. 11, 13, 573 P.2d 1343 (1978).

[W]hen criminal liability depends on the accused’s being the person to whom a document pertains[,] ... *the State must do more than authenticate and admit the document*; it also must show beyond a reasonable doubt “that the person named therein is the same person on trial.” Because “in many instances men bear identical names,” the State cannot do this by showing identity of names alone. Rather, it must show, ““by evidence independent of the record,”” that the person named therein is the defendant in the present action.

*State v. Huber*, 129 Wn.App. 499, 502, 119 P.3d 388 (2005) (emphasis added) (footnotes omitted). If the State presents only a document bearing an identical name, the State fails to produce sufficient evidence to support a criminal conviction beyond a reasonable doubt. *Hunter*, 29 Wn.App. at 221.



Thus, there must be some independent corroborative evidence that shows that the person whose former conviction is proved is the defendant in the present action. *Hunter*, 29 Wn.App. at 221. The State can meet this burden in a variety of specific ways. Depending on the circumstances, these may include otherwise-admissible booking photographs, booking fingerprints, eyewitness identification, or, arguably, distinctive personal information. *Huber*, 129 Wn.App. at 502-03.

In *Hunter*, the defendant was convicted of attempted first degree escape. *Id.* at 219. On appeal, Mr. Hunter argued that insufficient evidence supported his conviction because the State had failed to demonstrate that at the time of the incident he was detained in the county jail pursuant to a felony conviction - an essential element of attempted first degree escape. *Id.* at 221. At trial, the State had produced certified copies of two judgments and sentences, both of which showed the felony convictions of a person named Dallas E. Hunter. The State also produced the testimony of a probation and parole officer who identified the defendant as a former resident of the work release facility who had been transferred from a state correctional institution following his felony convictions. He also testified that the

defendant was temporarily incarcerated while awaiting transfer to a state institution on the date he attempted his escape. *Id.* The appellate court held that the testimony was sufficient independent evidence to establish a prima facie case that the defendant was the same Dallas E. Hunter named in the certified judgments. *Id.* at 222.

In *State v. Clark*, the State submitted a copy of the prior judgment and sentence with a copy of the warrant of commitment. 18 Wn.App. 831, 832, 572 P.2d 734 (1977). The warrant referred to the judgment and sentence, a fingerprint card and photograph with Mr. Clark's prison identification number, and an attestation by the custodian of records that the documents submitted were copies of the original records of Mr. Clark. *Id.* at 832-33.

In *Huber*, the State charged the defendant with bail jumping.

The State:

introduced certified copies of an information charging Huber with violation of a protection order and tampering with a witness; of a written court order requiring Huber to appear in court on July 10, 2003; of clerk's minutes indicating that Huber had failed to appear on July 10; and a bench warrant commanding Huber's arrest. The State did not call any witnesses or otherwise attempt to show that the exhibits related to the same Wayne Huber who was then before the court.

*Huber*, 129 Wn.App. at 500-01.

The Court of Appeals reversed Mr. Huber's conviction, finding that the State had presented nothing more than identity of names. *Id.* In so holding, this court relied on *Hill, supra*, for the rule that the State must present evidence independent of the record relied on. *Id.* "Because 'in many instances men bear identical names,' the State cannot do this by showing 'identity of names alone.' Rather, it must show, 'by evidence independent of the record,' that the person named therein is the defendant in the present action." *Huber*, 129 Wn.App. at 502 (citations omitted).

Here, the State did not otherwise attempt to show that the exhibits were related to the "Daniel Soto" who was then before the trial court. *See Huber*, 129 Wn.App. at 501-03. The State provided only documents that contained a name and date of birth but failed to provide any additional corroborating evidence of identity, such as a booking photo of Mr. Soto or an analysis of his fingerprints to establish the "Daniel Soto" listed in the Judgments and Sentence was the same Daniel Soto charged in this matter. The State failed to prove this essential element of the charged offense of felony violation of a no contact order.

3. Mr. Soto is entitled to reversal of his conviction with instructions to dismiss.

Since there was insufficient evidence to support the conviction, this Court must reverse the conviction with instructions to dismiss. To do otherwise would violate double jeopardy. *State v. Crediford*, 130 Wn.2d 747, 760-61, 927 P.2d 1129 (1996) (the Double Jeopardy Clause of the United States Constitution “forbids a second trial for the purpose of affording the prosecution another opportunity to supply evidence which it failed to muster in the first proceeding.”), *quoting Burks v. United States*, 437 U.S. 1, 9, 98 S.Ct. 2141, 57 L.Ed.2d 1 (1978).

#### E. CONCLUSION

For the reasons stated, Mr. Soto asks this Court to reverse his conviction with instructions to dismiss.

DATED this 29<sup>th</sup> day of October 2014.

Respectfully submitted,



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

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

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**DECLARATION OF DOCUMENT FILING AND SERVICE**

I, MARIA ANA ARRANZA RILEY, STATE THAT ON THE 29<sup>TH</sup> DAY OF OCTOBER, 2014, I CAUSED THE ORIGINAL **OPENING 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 ] | SHAWN SANT, PA<br>FRANKLIN COUNTY PROSECUTOR'S OFFICE<br>1016 N 4 <sup>TH</sup> AVE<br>PASCO, WA 99301 | (X)<br>( )<br>( ) | U.S. MAIL<br>HAND DELIVERY<br>_____ |
| [X ] | DANIEL SOTO<br>124 N ELM AVE<br>PASCO, WA 99301  | (X)<br>( )<br>( ) | U.S. MAIL<br>HAND DELIVERY<br>_____ |

**SIGNED** IN SEATTLE, WASHINGTON THIS 29<sup>TH</sup> DAY OF OCTOBER, 2014.

X \_\_\_\_\_ 