

68632-1

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No. 68632-1-1

IN THE COURT OF APPEALS OF THE STATE OF
WASHINGTON

DIVISION THREE

STATE OF WASHINGTON,

Respondent,

v.

JACOB T.,

Appellant.

2017
APR 13 11:45 AM
COURT OF APPEALS
JACOB T.
68632-1-1



ON APPEAL FROM THE SUPERIOR COURT OF THE
STATE OF WASHINGTON FOR KING COUNTY
JUVENILE DEPARTMENT

The Honorable Bruce Hilyer

BRIEF OF APPELLANT

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A. ASSIGNMENTS OF ERROR

1. The State failed to prove beyond a reasonable doubt that appellant Jacob T. assaulted Charles Bowman, as required to support his conviction for assault in the second degree.

2. In the absence of substantial evidence in the record, the juvenile court erred in entering finding of fact 6.

3. In the absence of substantial evidence in the record, the juvenile court erred in entering finding of fact 14.

4. In the absence of substantial evidence in the record, the juvenile court erred in entering finding of fact 17.

5. In the absence of substantial evidence in the record, the juvenile court erred in entering finding of fact 18.

6. In the absence of substantial evidence in the record, the juvenile court erred in entering finding of fact 24.

7. In the absence of substantial evidence in the record, the juvenile court erred in entering finding of fact 25.

8. In the absence of substantial evidence in the record, the juvenile court erred in entering finding of fact 26.

9. In the absence of substantial evidence in the record, the juvenile court erred in entering finding of fact 27.

10. In the absence of substantial evidence in the record, the juvenile court erred in entering finding of fact 28.

11. In the absence of substantial evidence in the record, the juvenile court erred in entering finding of fact 29.

12. In the absence of substantial evidence in the record, the juvenile court erred in entering finding of fact 30.

13. In the absence of substantial evidence in the record, the juvenile court erred in entering finding of fact 31.

14. In the absence of substantial evidence in the record, the juvenile court erred in entering finding of fact 33.

15. In the absence of substantial evidence in the record, the juvenile court erred in entering finding of fact 34.

16. In the absence of substantial evidence in the record, the juvenile court erred in entering finding of fact 56.

17. In the absence of substantial evidence in the record, the juvenile court erred in entering finding of fact 58.

18. In the absence of substantial evidence in the record, the juvenile court erred in entering finding of fact 60.

19. In the absence of substantial evidence in the record, the juvenile court erred in entering finding of fact 65.

20. In the absence of substantial evidence in the record, the juvenile court erred in entering finding of fact 66.

21. The juvenile court erred in entering conclusions of law II and III.

B. ISSUE PERTAINING TO ASSIGNMENTS OF ERROR

Principles of due process impose the burden on the State of proving the essential elements of a criminal charge beyond a reasonable doubt. A person's identity and presence at the scene of a crime are one of the essential elements that must be proven. Three witnesses to an assault gave conflicting testimony regarding the description of the primary assailant. Some of the describing information tended to exculpate, not inculpate, appellant Jacob T. Should this Court reverse and dismiss his conviction for assault in the second degree?

C. STATEMENT OF THE CASE

In September 2011, Erika Bowman and her brother, Charles Bowman lived together.¹ 1RP 20.² On September 22, they ran errands in Tacoma. 1RP 22. A couple of years earlier, Charles had suffered an injury that caused him to be prescribed a variety of pain medications, including oxycodone and hydrocodone, as well as Klonopin for anxiety. 2RP 149, 181. Bowman had taken his medications that day, as usual, and in Tacoma both he and his sister had a few beers. 1RP 54; 2RP 81.

On the way back, their bus was crowded, and Erika and Charles were unable to sit together. 1RP 24. Erika sat near the rear door, and Charles sat two rows in front of her. Id. At Southcenter a group of teenagers boarded the bus. Erika was sitting in an aisle seat, and one of the teenagers indicated that he wanted her seat. 1RP 31. She offered him the seat beside her, but he refused. Id. A dispute ensued,

¹ Since Erika and Charles Bowman share a last name, they are referred to in this brief by their first names. No disrespect is intended.

² Two volumes of transcripts are cited in this brief as follows: a volume containing a hearing on February 6, 2012, is cited as “1RP” followed by page number. A volume containing hearings on February 7 and April 12, 2012, is cited as “2RP” followed by page number.

and according to Erika, one of the teenagers called her a “fat white bitch.” 1RP 32. Erika responded by calling the teenagers, “black Smurfs.” Id. The teenagers became affronted, and accused Erika of being racist. 1RP 33. In response, Charles intervened and told them not to “mess with” his sister. Id. The dispute escalated, to the point where it bothered other passengers, who began to call for the driver to “kick them off the bus.” 1RP 36. Erika admitted her voice was so raised that the driver in fact threatened to eject her from the bus. Id.

At the Renton Park ‘n’ Ride, Erika, Charles, and the teenagers all got off the bus. 1RP 39. When Erika got off the bus, she saw one of the teenagers on top of Charles. 1RP 40. She was unable to see his face. 1RP 75. She tried to pull him off, and was punched herself. 1RP 42-43. All of the teenagers then ran away, and Erika followed them while dialing 9-1-1. 1RP 46.

The teenagers split up and ran off in various directions. 1RP 47. Due to a sprained ankle, Erika was unable to run and lost them on Shattuck Avenue. 1RP 48,

152. Renton police officer James Fowler, who responded to the 9-1-1 call, apprehended two young black men, later identified as appellant Jacob T. and Devaughn Simmons, running with a young black woman. 1RP 83. Both Jacob and Simmons were sweating profusely. Id.

Erika, Charles, and a witness, Tenisha Hermans, were transported for a show-up identification. Erika identified Jacob and Simmons as having been present on the bus, but did not believe that either young man had assaulted her or Charles. 1RP 53, 135. Charles believed that Simmons had assaulted him first, and that Jacob had punched him second. 1RP 137. Hermans, for her part, had not seen the principal assailant's face, but believed he was wearing a black-and-white striped shirt and had dreadlocks or braided hair. 1RP 159; 2RP 110, 114. Jacob was wearing a black-and-white striped shirt, but was wearing a hat and did not have dreadlocks or braided hair. 1RP 78.

The King County Prosecuting Attorney charged Jacob and Simmons in juvenile court by amended information with

assault in the second degree.³ CP 2. At a fact-finding hearing, Erika did not recognize Simmons, but recognized Jacob. 1RP 38. Charles, for his part, claimed that his earlier identification of Simmons as his primary assailant was erroneous, and that the young man in the striped shirt had punched him first. 2RP 179-80.

The court dismissed the charge against Simmons at the close of the State's case and convicted Jacob. Jacob appeals.

D. ARGUMENT

The State presented insufficient evidence to prove that Jacob T. was Bowman's assailant, as required to support his conviction for assault in the second degree.

1. The State must prove the elements of a criminal charge beyond a reasonable doubt.

Fundamental principles of due process require the State to prove each of the elements of a criminal charge beyond a reasonable doubt. In re Winship, 397 U.S. 358, 364, 90 S.Ct. 1068, 25 L.Ed.2d 368 (1970); State v. Colquitt, 133 Wn. App. 789, 796, 137 P.3d 892 (2006); U.S. Const.

³ Charles sustained multiple facial fractures as a result of the assault. 2RP 71-72.

amend. XIV; Const. art. I, § 3. The identity of a criminal defendant and his or her presence at the scene of a crime are implied elements of a crime that must be proven beyond a reasonable doubt. State v. Thomson, 70 Wn. App. 200, 211, 852 P.2d 1104 (1993), rev. denied, 123 Wn.2d 877 (1994). Because the State did not present sufficient evidence to prove that Jacob assaulted Bowman, his conviction should be reversed and dismissed.

2. The identification evidence was equivocal and conflicting and was insufficient to support conviction beyond a reasonable doubt.

A challenge to the sufficiency of the evidence requires the appellate court to view the evidence in the light most favorable to the prosecution and decide whether any rational trier of fact could have found the elements of the crime beyond a reasonable doubt. State v Green, 94 Wn.2d 216, 220-22, 616 P.2d 628 (1980). A claim of insufficiency admits the truth of the State's evidence and all inferences that can reasonably be drawn therefrom. State v. Salinas, 119 Wn.2d 192, 201, 829 P.2d 1068 (1992).

The evidence linking Jacob with the assault was equivocal and conflicting, and thus, even viewed in the light most favorable to the State, cannot support conviction beyond a reasonable doubt. At the time of the show-up identification procedure, although Erika recognized Jacob and Simmons from the bus incident, she specifically stated that she did not believe either young man had committed the assault. 1RP 53, 66, 72. Charles was heavily medicated and had been drinking. 2RP 81, 181. He initially stated he was absolutely confident that Simmons was his primary assailant, but at the fact-finding hearing reversed his position, and stated he was absolutely confident that Jacob was his primary assailant. 1RP 137; 2RP 179-80. Hermans did not see the assailant's face, but instead made her identification based upon his shirt and hair. 2RP 110, 114, 140, 145. She acknowledged that she had been text-messaging a friend before the assault began, and did not get a good look at any of the other teenagers before they ran away. 2RP 113, 116.

Although a sufficiency challenge permits the appellate court to construe inferences from the evidence in the State's favor, the inferences must still be reasonable. Salinas, 119 Wn.2d at 201. In this case, only one person – the assault victim – made a confident identification of Jacob. This identification was a complete reversal of his statement to the police at the time of the incident. Erika could only say that Jacob had been on the bus, not that he had committed assault. Hermans' identification was based only on clothing and hair. One of these factors was consistent with Jacob's appearance at the time of the incident, the other inconsistent.

Police did not stop or investigate any persons other than Jacob or Simmons in connection with the assault, even though any one of the several teenagers on the bus could have committed the crime. Officer Fowler inspected Jacob and Simmons' hands for red marks, as would be anticipated following an assault, but did not testify that he saw any such marks. 1RP 93. In short, the evidence was insufficient to

prove Jacob's identity as one of Charles' assailants, and insufficient to support Jacob's conviction.

3. The remedy is reversal and dismissal.

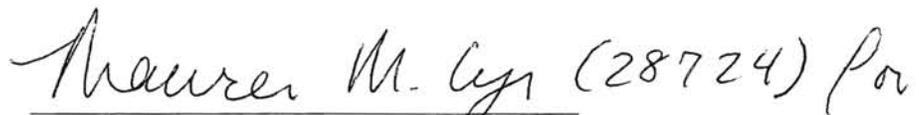
"Retrial following reversal for insufficient evidence is 'unequivocally prohibited' and dismissal is the remedy." State v. Hickman, 135 Wn.2d 97, 103, 954 P.2d 900 (1998) (citing State v. Hardesty, 129 Wn.2d 303, 309, 915 P.2d 1080 (1996)). Because the evidence was insufficient to prove Jacob's identity as one of Charles' assailants, her conviction should be reversed.

E. CONCLUSION

For the foregoing reasons, this Court should reverse and dismiss Jacob T.'s conviction.

DATED this 26th day of September, 2012.

Respectfully submitted:



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

STATE OF WASHINGTON,)	
)	
Respondent,)	
)	NO. 68632-1-I
v.)	
)	
JACOB T.,)	
)	
Juvenile Appellant.)	

DECLARATION OF DOCUMENT FILING AND SERVICE

I, MARIA ARRANZA RILEY, STATE THAT ON THE 26TH DAY OF SEPTEMBER, 2012, I CAUSED THE ORIGINAL **OPENING BRIEF OF APPELLANT** TO BE FILED IN THE **COURT OF APPEALS – DIVISION ONE** AND A TRUE COPY OF THE SAME TO BE SERVED ON THE FOLLOWING IN THE MANNER INDICATED BELOW:

[X] KING COUNTY PROSECUTOR'S OFFICE APPELLATE UNIT KING COUNTY COURTHOUSE 516 THIRD AVENUE, W-554 SEATTLE, WA 98104	(X) () ()	U.S. MAIL HAND DELIVERY _____
[X] JACOB T. 3528 S 116 TH ST. TUKWILA, WA 98168	(X) () ()	U.S. MAIL HAND DELIVERY _____

SIGNED IN SEATTLE, WASHINGTON THIS 26TH DAY OF SEPTEMBER, 2012.

X _____ 

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