

NO. 44772-0-II

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

STATE OF WASHINGTON,

Respondent,

v.

VICTORIA PANGELINAN,

Appellant.

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

The Honorable Kevin D, Hull, Judge

BRIEF OF APPELLANT

CATHERINE E. GLINSKI
Attorney for Appellant

CATHERINE E. GLINSKI
Attorney at Law
P.O. Box 761
Manchester, WA 98353
(360) 876-2736

TABLE OF CONTENTS

A.	ASSIGNMENTS OF ERROR.....	1
	Issue pertaining to assignments of error	1
B.	STATEMENT OF THE CASE.....	1
	1. Procedural History	1
	2. Substantive Facts	2
C.	ARGUMENT.....	4
	THE STATE PRESENTED INSUFFICIENT EVIDENCE TO SUSTAIN THE CONVICTION OF TAMPERING WITH A WITNESS.	4
D.	CONCLUSION.....	8

TABLE OF AUTHORITIES

Washington Cases

<u>State v. Andrews</u> , 172 Wn. App. 703, 293 P.3d 1203 (2013).....	7
<u>State v. Burkins</u> , 94 Wn. App. 677, 973 P.2d 15, <u>review denied</u> , 138 Wn.2d 1014 (1999)	5
<u>State v. Chapin</u> , 118 Wn.2d 681, 826 P.2d 194 (1992)	5
<u>State v. Crediford</u> , 130 Wn.2d 747, 927 P.2d 1129 (1996)	5
<u>State v. Green</u> , 94 Wn. 2d 216, 616 P.2d 628 (1980).....	5
<u>State v. Hardesty</u> , 129 Wn.2d 303, 915 P.2d 1080 (1996)	5
<u>State v. Hickman</u> , 135 Wn.2d 97, 954 P.2d 900 (1998)	5
<u>State v. Hutton</u> , 7 Wn. App. 726, 502 P.2d 1037 (1972).....	5
<u>State v. J.P.</u> , 130 Wn. App. 887, 125 P.3d 215 (2005)	5
<u>State v. Prestegard</u> , 108 Wn. App. 14, 28 P.3d 817 (2001)	5
<u>State v. Rempel</u> , 114 Wn.2d 77, 785 P.2d 1134 (1990)	7
<u>State v. Williamson</u> , 131 Wn. App. 1, 86 P.3d 1221 (2004)	7
<u>State v. Wingard</u> , 92 Wash. 219, 158 P. 725 (1916).....	7

Federal Cases

<u>In re Winship</u> , 397 U.S. 358, 25 L. Ed. 2d 368, 90 S. Ct. 1068 (1970).....	5
---	---

Statutes

RCW 9A.72.120(1).....	6
-----------------------	---

Constitutional Provisions

Const. art. 1, § 3	4
U.S. Const. amend. 14	4

A. ASSIGNMENTS OF ERROR

1. The trial court erred in entering Findings of Fact XV and XVI.

2. The evidence was insufficient to support the court's finding that appellant was guilty of tampering with a witness.

Issue pertaining to assignments of error

Appellant was convicted of tampering with a witness. Where there was no evidence she threatened, bribed, or other otherwise exerted pressure or influence on the witness to withhold relevant information from law enforcement, must her conviction be reversed?

B. STATEMENT OF THE CASE

1. Procedural History

On February 8, 2013, the Kitsap County Prosecuting Attorney charged appellant Victoria Pangelinan with one count of tampering with a witness. CP 1. The Honorable Kevin Hull denied Pangelinan's motion to dismiss, and Pangelinan waived her right to a jury trial. CP 7-10, 102. The court found Pangelinan guilty following a bench trial and entered findings of fact and conclusions of law in support of its decision. CP 103-09. Pangelinan filed this timely appeal. CP 121.

2. Substantive Facts

Bremerton Police Officer Randy Plumb conducted an investigation focused on Allixzander Harris involving the prostitution of two minors, SD and KH. 3RP¹ 27-29, 38-39. Harris was arrested on January 1, 2013, and on January 2, 2013, he was charged with one count of second degree rape involving another victim. 3RP 46; Exhibit 18. On January 18, 2013, the information was amended to add charges of human trafficking and promoting sexual abuse of a minor. Exhibit 15. SD was named as a victim in the amended information, and KH was identified in the probable cause statement. Id.

As part of his investigation, Plumb listened to telephone calls Harris made from the jail to Victoria Pangelinan. 3RP 69, 77. He also viewed records of Facebook messages and posts between Pangelinan and KH. 3RP 56-57; Exhibits 11-14. Based on these communications, Plumb arrested Pangelinan for tampering with a witness. 3RP 70. The State presented transcripts of the jail calls and copies of the Facebook posts and messages at trial.

In a call on January 17, Harris told Pangelinan to call “that one person that stayed the night that one time and their friend” and tell them

¹ The Verbatim Report of Proceedings is contained in four volumes, designated as follows: 1RP—2/15/13; 2RP—2/26/13; 3RP—3/22, 4/1-3/13; 4RP—4/12/13.

“so long as they don’t, you know, basically say anything or they don’t want to get in trouble, then their best bet is just, no matter what, not say anything.” Exhibit 4. On January 20, Harris told Pangelinan, “So but you just gotta remember, nothing’s coming from me, because I don’t want – I’m not saying anything to me, and I don’t want to say nothing to them. I know that I can’t talk to them, so that’s all on everyone else.” Exhibit 6. Later that same day, Harris said to Pangelinan, “But make sure you’re not threatening nobody on there and stuff like this and that. And, you know, just make sure the things that can help me what – what was needed. Make sure that they’re in – that – in your messages.” The court found these calls demonstrated that Harris and Pangelinan had discussed the idea that Harris’s legal predicament could be advantaged by Pangelinan contacting the witnesses to persuade them to withhold relevant information. CP 105-07.

In a Facebook posting to KH’s account on January 20, 2013, Pangelinan, using Harris’s Facebook account, wrote:

[KH] we are no longer friends and I no longer want anything at all to do with you. You’re no longer apart of my family and I seriously need you to keep my name out of your mouth. I need you to say nothing about how you were making your money. You and your bestfriend.

Exhibit 11.

The court found that in making this statement, “the Defendant attempted to persuade KH to withhold relevant information from law enforcement by telling KH not to speak about how she was making her money.” CP 107 (Finding of Fact XV). The court further found that

State’s Exhibit 11 ... is relevant to the specific allegation as to whether the Defendant induced KH to withhold relevant information from law enforcement. Specifically, the Defendant tells KH on this Facebook posting: ‘I need you to say nothing about how you were making your money.’

This statement is not ambiguous and can only be interpreted one way – that this Defendant is attempting to persuade KH not to provide information about how she was making her money (as a prostitute for Allixzander Harris) because that information would have direct, significant and negative consequences for Allixzander Harris and his pending charges.

CP 107 (Finding of Fact XVI).

Based on these findings, the court concluded that Pangelinan attempted to induce KH to withhold from a law enforcement agency information relevant to a criminal investigation. CP 108-09. It found her guilty of tampering with a witness. CP 109.

C. ARGUMENT

THE STATE PRESENTED INSUFFICIENT EVIDENCE TO SUSTAIN THE CONVICTION OF TAMPERING WITH A WITNESS.

In every criminal prosecution, the State must prove all elements of a charged crime beyond a reasonable doubt. U.S. Const. amend. 14; Const. art. 1, § 3; In re Winship, 397 U.S. 358, 25 L. Ed. 2d 368, 90 S. Ct.

1068 (1970); State v. Crediford, 130 Wn.2d 747, 759, 927 P.2d 1129 (1996). Therefore, as a matter of state and federal constitutional law, a reviewing court must reverse a conviction and dismiss the prosecution for insufficient evidence where no rational trier of fact could find that all elements of the crime were proven beyond a reasonable doubt. State v. Hickman, 135 Wn.2d 97, 103, 954 P.2d 900 (1998); State v. Hardesty, 129 Wn.2d 303, 309, 915 P.2d 1080 (1996); State v. Chapin, 118 Wn.2d 681, 826 P.2d 194 (1992); State v. Green, 94 Wn. 2d 216, 616 P.2d 628 (1980).

Any element of the offense may be proved by circumstantial evidence. State v. J.P., 130 Wn. App. 887, 893, 125 P.3d 215 (2005). But the State cannot meet its burden through pure speculation. State v. Prestegard, 108 Wn. App. 14, 22, 28 P.3d 817 (2001). On appeal, the reviewing court must be convinced that substantial evidence supports the State's case. Id. at 22-23. Substantial evidence is evidence that "would convince an unprejudiced, thinking mind of the truth of the fact to which the evidence is directed." Id. (quoting State v. Hutton, 7 Wn. App. 726, 728, 502 P.2d 1037 (1972)). Substantial evidence requires more than "guess, speculation, or conjecture." Id. To rise above speculation and conjecture, evidence must support a reasonable inference. State v. Burkins, 94 Wn. App. 677, 690, 973 P.2d 15, review denied, 138 Wn.2d 1014 (1999).

Under RCW 9A.72.120(1), a person is guilty of tampering with a witness if he or she attempts to induce a person he or she has reason to believe has information relevant to a criminal investigation to (a) testify falsely or withhold testimony; (b) absent himself or herself from an official proceeding; or (c) withhold from a law enforcement agency information relevant to a criminal investigation. The court below found Pangelinan guilty under subsection (c) of the statute, concluding that her statement to KH, “I need you to say nothing about how you were making your money[,]” was an attempt to induce KH to withhold from law enforcement information relevant to the investigation involving Harris.

As trial counsel argued, however, Pangelinan’s words, taken in the context of her entire statement, show no more than an attempt to disassociate herself from the criminal activity KH and Harris were involved in. Pangelinan told KH they were no longer friends or family, she wanted nothing more to do with KH, and she did not even want KH to speak her name, let alone mention her with regard to how KH was making money. Exhibit 11. Since there was no evidence Pangelinan was involved in any of the crimes Harris was charged with, her statement to KH does not support a finding that Pangelinan was trying to get KH to withhold relevant information from law enforcement.

Moreover, there was no evidence Pangelinan attempted to induce KH to do anything. As the court below found, there was no threat or promise of reward of any kind. 3RP 185. Without evidence of such pressure or influence, the evidence is insufficient to support a finding that Pangelinan attempted to induce KH to withhold relevant information. See State v. Rempel, 114 Wn.2d 77, 83-84, 785 P.2d 1134 (1990) (insufficient evidence of witness tampering where defendant apologized, asked victim to drop assault charges, and told her not to ruin his life, but made no threats or promises); State v. Wingard, 92 Wash. 219, 158 P. 725 (1916) (sufficient evidence where defendant promised a reward, made a threat, and urged witness to ignore subpoena); State v. Andrews, 172 Wn. App. 703, 707, 293 P.3d 1203 (2013) (sufficient evidence of tampering where defendant communicated that witness might be subject to retaliation if she showed up to testify and offered \$500 in exchange for silence); State v. Williamson, 131 Wn. App. 1, 5-6, 86 P.3d 1221 (2004) (sufficient evidence where defendant threatened minor witness that her parents would go to jail if she did not recant).

Because the State failed to present sufficient evidence to established the elements of tampering with a witness, Pangelinan's conviction must be reversed and the charge dismissed.

D. CONCLUSION

The State failed to prove beyond a reasonable doubt that Pangelinan was guilty of tampering a witness, and her conviction must be reversed and the charge dismissed.

DATED October 7, 2013.

Respectfully submitted,



CATHERINE E. GLINSKI
WSBA No. 20260
Attorney for Appellant

Certification of Service by Mail

Today I mailed copies of the Brief of Appellant and Designation of Exhibits in *State v. Victoria Pangelinan*, Cause No. 447720-II as follows:

Victoria Pangelinan
1106 Pleasant Ave. Apt. 3
Bremerton, WA 98337

I certify under penalty of perjury of the laws of the State of Washington that the foregoing is true and correct.



Catherine E. Glinski
Done in Port Orchard, WA
October 7, 2013

GLINSKI LAW OFFICE

October 07, 2013 - 3:55 PM

Transmittal Letter

Document Uploaded: 447720-Appellant's Brief.pdf

Case Name:

Court of Appeals Case Number: 44772-0

Is this a Personal Restraint Petition? Yes No

The document being Filed is:

Designation of Clerk's Papers Supplemental Designation of Clerk's Papers

Statement of Arrangements

Motion: ____

Answer/Reply to Motion: ____

Brief: Appellant's

Statement of Additional Authorities

Cost Bill

Objection to Cost Bill

Affidavit

Letter

Copy of Verbatim Report of Proceedings - No. of Volumes: ____

Hearing Date(s): _____

Personal Restraint Petition (PRP)

Response to Personal Restraint Petition

Reply to Response to Personal Restraint Petition

Petition for Review (PRV)

Other: _____

Comments:

No Comments were entered.

Sender Name: Catherine E Glinski - Email: cathyglinski@wavecable.com

A copy of this document has been emailed to the following addresses:

kcpa@co.kitsap.wa.us