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NO. 51465-6-II

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

STATE OF WASHINGTON, Respondent

v.

VICTOR PASCUAL BEMEJIA, Appellant

FROM THE SUPERIOR COURT FOR CLARK COUNTY
CLARK COUNTY SUPERIOR COURT CAUSE NO.15-1-01210-0

BRIEF OF RESPONDENT

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RESPONSE TO ASSIGNMENTS OF ERROR

- I. **The State presented sufficient evidence to support Bemejia's bail jumping conviction because after receiving notice of his court date Bemejia failed to personally appear as required.**

STATEMENT OF THE CASE

Pursuant to RAP 10.3(b), the State is satisfied with the statement of the case in the brief of Appellant. Brief of Appellant at 2-5. The State will include additional, relevant facts in the argument section.

ARGUMENT

- I. **The State presented sufficient evidence to support Bemejia's bail jumping conviction because after receiving notice of his court date Bemejia failed to personally appear as required.**

Bemejia primarily speaks Spanish and used an interpreter at his court hearings and during trial. RP 375-388; CP 14, 54, 147, 152, 155. He also understands and speaks English. RP 222, 224, 227-28, 233-34, 246. On August 5, 2015, Bemejia was in court and informed orally and in writing that he was required to make his next scheduled court appearance, which was to take place on September 1, 2015 at 1:30 PM. RP 358-59, 361-62; CP 155-56; Ex. 8, Ex. 9, Ex. 20. Bemejia failed to appear as required and was charged with bail jumping. RP 291-93; CP 6-8; Ex. 12. He next appeared in court just over two years later on September 20, 2017.

CP 12. He now argues that the evidence was insufficient to support his conviction for bail jumping because the notice he received did not include the courtroom at which to appear. This argument fails because the State presented sufficient evidence to show that Bemejia had knowledge of the requirement of a subsequent, personal appearance and because the State was not required to prove that the notice Bemejia received included a specific courtroom at which the hearing would take place.

Evidence is sufficient to support a conviction if, when viewed in a light most favorable to the prosecution, it permits any rational trier of fact to find the essential elements of the crime beyond a reasonable doubt. *State v. Salinas*, 119 Wn.2d 192, 829 P.2d 1068 (1992). Accordingly, in order to determine whether the necessary quantum of proof exists, the reviewing court “need not be convinced of the defendant’s guilt beyond a reasonable doubt but only that substantial evidence supports the State’s case.” *State v. Gallagher*, 112 Wn.App. 601, 51 P.3d 100 (2002) (citations omitted).

“A claim of insufficiency admits the truth of the State’s evidence and all inferences that reasonably can be drawn therefrom.” *Salinas*, 119 Wn.2d at 201. This means that “these inferences ‘must be drawn in favor of the State and interpreted most strongly against the defendant.’” *State v. Homan*, 181 Wn.2d 102, 330 P.3d 182 (2014) (quoting *Salinas*, 119

Wn.2d at 201). Circumstantial and direct evidence are equally reliable. *State v. Delmarter*, 94 Wn.2d 634, 618 P.2d 99 (1980).

The reviewing court defers to the trier of fact on issues of conflicting testimony, credibility of witnesses, and the persuasiveness of the evidence. *State v. Camarillo*, 115 Wn.2d 60, 794 P.2d 850 (1990); *State v. Walton*, 64 Wn. App. 410, 824 P.2d 533 (1992). In other words, an appellate court does not “reweigh the evidence and substitute [its] judgment for that of” the fact finder. *State v. McCreven*, 170 Wn.App. 444, 284 P.3d 793 (2012) (citation omitted). Furthermore, “specifics regarding date, time, place, and circumstance are factors regarding credibility . . .” and, thus, matters a fact finder best resolves. *State v. Hayes*, 81 Wn.App. 425, 914 P.2d 788 (1996) *rev. denied* 130 Wn.2d 1013 (1996).

To prove that a defendant is guilty of bail jumping, the State must prove that the defendant: (1) was held for, charged with, or convicted of a particular crime; (2) was released by court order or admitted to bail with the knowledge of the requirement of a subsequent personal appearance; and, (3) failed to appear as required. RCW 9A.76.170; *State v. Aguilar*, 153 Wn.App. 265, 272-73, 223 P.3d 1158 (2009); *State v. Williams*, 162 Wn.2d 177, 183-84, 170 P.3d 30 (2007). The knowledge requirement “is met when the State proves that the defendant has been given notice of the

required court dates.” *State v. Fredrick*, 123 Wn.App. 347, 353, 97 P.3d 47 (2004) (citing *State v. Carver*, 122 Wn.App. 300, 93 P.3d 947 (2004)); *Aguilar*, 153 Wn.App. at 276 (citations omitted).

Additionally, a person “knows or acts knowingly or with knowledge when he or she (1) is aware of a fact, circumstance, or result described by statute as being a crime, or (2) has information that would lead a reasonable person in the same situation to believe that facts exist which facts are described by a statute as being a crime.” *Aguilar*, 153 Wn.App. at 273 (citing RCW 9A.08.010(1)(b)); CP 92. Thus, for example, if based on the evidence a reasonable person would have known of a required, subsequent court date then the “evidence is sufficient for a jury to conclude that [the defendant] knew . . .” of it. *State v. Bryant*, 89 Wn.App. 857, 871, 950 P.2d 1004 (1998).

Here, Bemejia cobbles together case law on notice and vagueness for the proposition, in the context of bail jumping, that if the notice of the required, subsequent appearance is too vague then a defendant cannot be charged with knowledge of that appearance. Br. of App. at 7-11. Absent other evidence of a defendant’s knowledge, Bemejia’s argument appears correct. *See State v. Liden*, 118 Wn.App. 734, 739-740, 77 P.3d 668 (2003) (holding that defendant’s trial notice, which stated “TRIAL: Week of August 6, 2001,” was insufficient to prove that the defendant “knew the

exact date on when to appear for his trial”). Bemejia stretches this argument too far, however, when he contends that the notice that he received in this case was too vague to provide him knowledge of his required, subsequent appearance because the notice did not include the exact courtroom in which he would be required to appear. Br. of App. at 10-11. For one, in interpreting the bail jumping statute, our courts have concluded that notice of the exact date of the required court appearance establishes knowledge of said appearance. *Fredrick*, 123 Wn.App. at 353; *Carver*, 122 Wn.App. at 306; *Aguilar*, 153 Wn.App. at 276; *State v. Cardwell*, 155 Wn.App. 41, 47, 226 P.3d 243 (2010).

Second, the notice in Bemejia’s case was multiple and provided him all of the information he needed to have “knowledge of the requirement of a subsequent personal appearance before” the court. RCW 9A.76.170(1). On August 5, 2015, Bemejia signed and received two documents, a diversion referral and release order, that informed him of the date and time on which he would have to return to court—September 1, 2015 at 1:30 PM. RP 362-64; CP 156; Ex. 9, Ex. 20. Moreover, the release order contained the following language: “FAILURE TO APPEAR: Failure to appear as directed . . . may result in issuance of a warrant for your arrest. Failure to appear may also constitute the crime of Bail Jumping. . . . I understand that I am liable for penalties for failure to appear . . .”. CP

156; Ex. 9 (emphasis omitted). Similarly, the diversion referral instructed Bemejia that he “must return to Court” and that his “failure to report to court at the above date and time may constitute a separate, independent and new crime called Bail Jumping . . .”. Ex. 20 (emphasis omitted). The trial court also orally warned Bemejia that a failure to appear could result in bail jumping charges, thrice provided oral notice to him that his subsequent court date was September 1, 2015 at 1:30 PM, and orally instructed him that he must appear on that date. RP 358-59, 361-62; Ex.

11. For example, the trial court stated:

[COURT]: . . . Once you’re out of custody, report to Supervised Release. Your next court date will be 9/1 at 1:30.

THE DEFENDANT: Okay.

THE COURT: Any questions, sir?

THE DEFENDANT: No.

RP 362.

When the above evidence is combined with the trial testimony of the interpreter and supervised release officer, who read and reviewed the release order with Bemejia on August 5, 2015 and would have ensured that Bemejia was aware of his next court appearance, the evidence that

Bemejia had knowledge of the requirement of a subsequent personal appearance is insurmountable. RP 363-64¹, 370-72, 380-81, 384-88.

That the trial court's order "did not state in which courtroom the defendant was to appear" is of no matter. Br. of App. at 10. First, the argument that a courtroom must specified by the trial court in order for a defendant to have sufficient notice makes the implicit, unwarranted assumption that at the time the court appearance for September 1, 2015 was scheduled that the courtroom in which the hearing would take place was knowable.² Second, Bemejia advanced this argument at trial and the jury rejected it. RP 295-96, 301-04, 465-67, 469.

The jury knew that Bemejia utilized a Spanish Interpreter, that his first three court appearances took place in a basement courtroom referred to as "the pit," and that the court appearance he missed occurred on the fourth floor. RP 301-04; *see also* Stipulated Facts on Appeal. But they

¹ Ms. Welch (Supervised Release): "His next court date is indicated here, September 1st at 1:30. [State:] Okay. And you would have reviewed that with Mr. Bemejia? [Ms. Welch:] Yes. And I would have asked him, 'Do you know your next court date?' and have him repeat it back to me."

² The situation is not too dissimilar from the purchase of an airline ticket. One purchases the ticket for specific date and time at a specific airport. At the time of the purchase the gates are not assigned or are at least unknown to the purchaser. Due to scheduling changes, delays, and other goings on it may be that a gate is assigned not too long before the plane departs. Nonetheless, the ticket purchaser knows to show up at the right airport on the scheduled date and time, and go through the normal procedures (in-person check in, reader boards, listen for announcements, etc.) to find out which gate they must end up at if they want to get on the plane. We would be unimpressed if the ticket purchaser who missed their flight later complained that he or she did not even have notice of their flight because at time of the purchase the confirmation or receipt did not contain gate information.

also heard that (1) Bemejia understood and spoke English; (2) Bemejia had an attorney appointed to assist him; (3) Bemejia had a supervised release officer to whom he reported; (4) the courthouse has multiple reader boards (video screens) that provide notification as to what courtroom a person is supposed to be in; (5) the courthouse has an information desk on the first floor to assist people; (6) printed dockets were outside the courtrooms; (7) the location of the dockets are placed in both elevators; (8) it is the common practice of officers of the court to direct people who end up in the wrong courtroom to the correct one; and (9) Bemejia never appeared as required. RP 222, 224, 227-28, 233-34, 246, 304-05, 307, 311-12, 360-62, 370-71; CP 156, Ex. 9. These facts rebut whatever force remains of Bemejia's notice argument since they show that the notice given—by the court, in the diversion referral and release order, and by the supervised release officer—of the exact date and time of the hearing would have placed Bemejia in the courthouse, wholly able to personally appear as required and unable to claim that a reasonable person in his situation would not have known of the required, subsequent court date. *Bryant*, 89 Wn.App. at 871;

RCW 9A.08.010(1)(b).³ That is, the evidence in this case taken in the light most favorable to the State shows that the notice given in this case was sufficient and that Bemejia had knowledge of the requirement of a subsequent personal appearance before the court.

CONCLUSION

For the reasons argued above, this Court should affirm Bemejia's conviction.

DATED this 20 day of September, 2018.

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³ The testimony established that Clark County "scheduling orders" do not say what courtroom the scheduled hearings are "going to be heard in." RP 303-04. And yet, common sense tells us defendants still are able to and regularly do appear at the required court dates by virtue of relying on the notice provided by the scheduling orders. Nonetheless, Bemejia's notice argument could potentially apply to each and every defendant who missed a required court appearance in Clark County.

CLARK COUNTY PROSECUTING ATTORNEY

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