

FILED
Court of Appeals
Division II
State of Washington
3/18/2019 3:08 PM
NO. 51540-7-II

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

STATE OF WASHINGTON,

Respondent,

v.

CHELSEA K. HAYES,

Appellant.

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

The Honorable John Skinder, Judge

REPLY BRIEF OF APPELLANT

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A. ARGUMENT IN REPLY

1. MS. HAYES INTENDED TO “RIP OFF” READEL AND HAD NO INTENTION TO DELIVER METHAMPHETMINE TO HIM

Appellant Chelsea Hayes argues to this Court, inter alia, that the conviction of conspiracy to deliver methamphetamine in Count 1 should be dismissed because the State presented insufficient evidence to demonstrate that she intended to deliver methamphetamine to Erich Readel. Brief of Appellant at 29-32. The State argues in its Response that an inference exists from the evidence that she intended to deliver methamphetamine, obtained from “her supplier,” and that her attempt to weigh the drugs was “circumstantial evidence of her intent to actually deliver the drugs to Readel.” Brief of Respondent at 21-22.

A person is guilty of conspiracy when:

[W]ith intent that conduct constituting a crime be performed, he or she agrees with one or more persons to engage in or cause the performance of such conduct, and any one of them takes a substantial step in pursuance of such agreement.

RCW 9A.28.040(1). The trial court instructed the jury that in order to find Ms. Hayes guilty of conspiracy to commit delivery of a controlled substance, it had to find:

(1) That on or about the 16th day of May, 2016, the defendant agreed with one or more persons, other than Erich Readel, to engage in or cause the performance of

conduct constituting the crime of delivery of a controlled substance, methamphetamine;

(2) That the defendant knew that the substance conspired to be delivered was a controlled substance, methamphetamine;

(3) That the *defendant made the agreement with the intent that such conduct be performed*;

(4) That any one of the persons involved in the agreement took a substantial step in pursuance of the agreement; and

(5) That any of these acts occurred in the State of Washington.

Instruction 18; Clerk's Papers 121 (emphasis added).

An agreement between two or more people to commit a specific crime is the essence of a criminal conspiracy. *State v. Miller*, 131 Wn.2d 78, 87, 929 P.2d 372 (1997); *State v. Bobic*, 140 Wn.2d 250, 264-65, 996 P.2d 610 (2000); "A conspiracy has been defined as 'a partnership in criminal purposes. The gist of the crime is the confederation or combination of minds.'" *State v. Dent*, 123 Wn.2d 467, 476, 869 P.2d 392 (1994) (quoting *State v. Casarez-Gastelum*, 48 Wn.App. 112, 116, 738 P.2d 303 (1987)).

In order to prove a conspiracy, a formal agreement is not necessary. *State v. Israel*, 113 Wn. App. 243, 284, 54 P.3d 1218 (2002). However, "[t]he State must show an actual, rather than feigned agreement with at least one other person to prove conspiracy." *State v. Stark*, 158 Wn. App. 952, 962, 244 P.3d 433 (2010) (citing *State v. Pacheco*, 125

Wn.2d 150, 159, 882 P.2d 183 (1994)). “A conspiracy may be proven by a concert of action, all the parties working together understandingly, with a single design for the accomplishment of a common purpose.” *Israel*, 113 Wn. App. at 284 (internal quotation marks omitted) (quoting *Casarez-Gastelum*, 48 Wn. App. at 116).

In order to prove Mr. Hayes was guilty of conspiracy to commit delivery, the State had to prove that she agreed with one or more persons to cause conduct constituting delivery of methamphetamine, that she made the agreement with the intent that such conduct be performed, and that a person involved in the agreement took a substantial step in pursuance of the agreement. In other words, to be convicted of conspiracy, a defendant must have committed, or conspired to commit, an underlying offense with the specific intent to participate in that offense with other person or persons. See RCW 9A.28.040(1); see also *Israel*, 113 Wn. App. at 284 (setting forth the required elements).

An agreement is “the coming together in accord of two minds on a given proposition.” *State v. Pacheco*, 125 Wn.2d 150, 185-86, 882 P.2d 183 (1994) (quoting Black’s Law Dictionary 67 (6th rev. ed. 1990)). A conspiracy conviction cannot stand without a genuine agreement between one or more persons to commit a specific offense. *Pacheco*, 125 Wn.2d at 155.

The evidence is insufficient to support the conviction conspiracy because the evidence at trial demonstrated that Ms. Hayes never had the intent to deliver methamphetamine; she had her own design, which was to “rip off” Readel by obtaining money from him without delivering drugs. There was insufficient evidence presented at trial that Ms. Hayes reached an agreement with John Aguero, or any other person, to engage in or cause the performance of delivery of methamphetamine. See RCW 9A.28.040(1) (conspiracy); RCW 69.50.401(2)(b) (delivery of a methamphetamine).

Washington courts require evidence beyond possession to infer an intent to deliver. *State v. Campos*, 100 Wn.App. 218, 998 P.2d 893 (2000); *State v. Hagler*, 74 Wn.App. 232, 236, 872 P.2d 85 (1994); *State v. Lane*, 56 Wn.App. 286, 297–98, 786 P.2d 277 (1989). Here, the evidence shows that Ms. Hayes had no intention of providing drugs to Readel. Her intention was made clear by her repeated statements that she had “lost an ounce” provided by her supplier and that she was in debt to him. 2RP at 354. Her intention was to “rip off” Readel, take the buy money but not deliver the drugs to him, thereby resolving the debt owed to her supplier. This is shown by the protracted, sham attempts to weigh the drugs using digital scales, culminating in Ms. Hayes leaving the house with the money without providing drugs to Readel. 2RP at 176, 350, 351, 352, 359.

A rational trier of fact could not have found Ms. Hayes guilty, beyond a reasonable doubt, of conspiracy to commit deliver methamphetamine. *State v. Salinas*, 119 Wn.2d 201, 829 P.2d 1068 (1992) (citing *State v. Green*, 94 Wn.2d 216, 220-22, 616 P.2d 628 (1980)). Because an agreement to commit delivery of methamphetamine is an essential element of conspiracy to commit that crime, Ms. Hayes' conspiracy conviction must be reversed and dismissed. *Pacheco*, 125 Wn.2d at 159.

This Court must reverse Ms. Hayes' convictions and remand with directions that the trial court dismiss the charges with prejudice. *State v. Hickman*, 135 Wash.2d 97, 103, 954 P.2d 900 (1998) ("Retrial following reversal for insufficient evidence is 'unequivocally prohibited' and dismissal is the remedy" (citing *State v. Hardesty*, 129 Wash.2d 303, 309, 915 P.2d 1080 (1996)).

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F. CONCLUSION

For the reasons stated herein, and in appellant's opening brief and supplemental brief, the appellant respectfully requests this Court to reverse the convictions, or alternatively, remand for resentencing.

DATED: March 18, 2019.

Respectfully submitted,
THE TILLER LAW FIRM

A handwritten signature in black ink, appearing to read 'P. B. Tiller', written over a horizontal line.

PETER B. TILLER-WSBA 20835
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CERTIFICATE OF SERVICE

The undersigned certifies that on March 18, 2019, that this Reply Brief of Appellant was sent by the JIS link to Mr. Derek M. Byrne, Clerk of the Court, Court of Appeals, Division II, 950 Broadway, Ste. 300, Tacoma, WA 98402, and to Joseph James Anthony Jackson, Thurston County Prosecuting Attorney's Office and copies were mailed by U.S. mail, postage prepaid, to the following:

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This statement is certified to be true and correct under penalty of perjury of the laws of the State of Washington. Signed at Centralia, Washington on March 18, 2019.



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March 18, 2019 - 3:08 PM

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Appellate Court Case Title: State of Washington, Respondent v. Chelsea K. Hayes, Appellant
Superior Court Case Number: 16-1-01652-2

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