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Court of Appeals
Division II
State of Washington
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NO. 52824-0-II

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON,

DIVISION II

STATE OF WASHINGTON,

Respondent,

vs.

MICHAEL SCOTT,

Appellant.

RESPONDENT'S BRIEF

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I. ISSUE

1. WAS THERE SUFFICIENT EVIDENCE FOR THE JURY TO FIND THE DEFE DANT GUILTY OF BAIL JUMPING?

II. SHORT ANSWER

1. YES. THERE WAS SUFFICIENT EVIDENCE FOR THE JURY TO FIND THE DEFENDANT GUILTY OF BAIL JUMPING.

III. FACTS

On October 21, 2016, defendant appeared in court for his summons in Cowlitz County Superior Court Cause No. 16-1-01198-2 for ten counts of burglary in the second degree which occurred between September 2013 to March 2014. CP 1-3 and 64-65, and RP 291-292. The defendant was booked and released, and ordered to appear for his arraignment on October 31, 2016. RP 296-300 and Exh. 17A and 17B.

On October 31, 2016, defendant appeared in court and was arraigned on his burglary in the second degree charges. The defendant was ordered to appear for his pre-trial hearing on December 19, 2016, readiness hearing on January 19, 2017, and trial date on January 23, 2017. RP 291-292 and 301-303, and Exh. 17C.

On January 26, 2017, the defendant appeared in court and was granted his request for a continuance of the case. The defendant was ordered to appear for his new readiness hearing on February 16, 2017 and new trial date on February 21, 2017. RP 304-305 and Exh. 17D.

On February 11, 2017, defendant was arrested in Tualatin, Oregon, for shoplifting from Safeway. RP 484-485. At the time, defendant knew he had court coming up in Cowlitz County and knew that when a person commits a crime, the person runs the chance of being caught and detained. RP 499-500 and 505-507. The defendant was taken into custody, convicted, and sentenced on the theft charge. RP 484-485. The defendant's Tualatin theft caused him to miss his next court date in Cowlitz County. RP 485.

On February 16, 2017, defendant failed to appear for his trial readiness hearing in his Cowlitz County case. The court struck the trial date and issued a bench warrant for the defendant's arrest. RP 305-307 and Exh 17E.

Sometime after February 16, 2017, the State dismissed Cowlitz County Superior Court Cause No. 16-1-01198-2 and refiled the case in 2018, which resulted in new Cause No. 18-1-00437-08. RP 476 and 600. On June 18, 2018, the State amended the information to add one count of bail jumping for the defendant's failure to appear in court on February 16, 2017. RP 18.

On October 17, 2018, the Honorable Ann Cruser presided over the defendant's jury trial. RP 151. The defendant did not have any objections

or exceptions to the jury instructions, including the affirmative bail jump defense jury instructions. RP 458-468 and 519-522.

The jury found the defendant guilty of nine counts of burglary in the second degree and one count of bail jumping. RP 599-605. On October 29, 2018, Judge Ann Cruser sentenced the defendant to a prison based DOSA. RP 115 to 144.

The defendant now appeals his bail jumping conviction. CP 168-169.

IV. ARGUMENT

1. THERE WAS SUFFICIENT EVIDENCE FOR THE JURY TO FIND THE DEFENDANT GUILTY OF BAIL JUMPING.

"When the sufficiency of the evidence is challenged in a criminal case, all reasonable inferences from the evidence must be drawn in favor of the State and interpreted most strongly against the defendant. A claim of insufficiency admits the truth of the State's evidence and all inferences that can be drawn therefrom." *State v. Salinas*, 119 Wn.2d 192, 201, 829 P.2d 1068 (1992) (citing *State v. Partin*, 88 Wn.2d 899, 906-07, 567 P.2d 1136 (1977); *State v. Theroff*, 25 Wn.App. 590, 593, 608 P.2d 1254, aff'd, 95 Wn.2d 385, 622 P.2d 1240 (1980).

When determining the sufficiency of evidence, the standard of review is "whether, after viewing the evidence in the light most favorable

to the prosecution, any rational trier of fact could have found the necessary facts to be proven beyond a reasonable doubt." *State v. Green*, 94 Wn.2d 216, 221, 616 P.2d 628 (1980). At trial, the State has the burden of proving each element of the offense beyond a reasonable doubt. *In re Winship*, 397 U.S. 358, 364, 90 S.Ct. 1068, 25 L.Ed.2d 368 (1970). However, a reviewing court need not itself be convinced beyond a reasonable doubt, *State v. Jones*, 63 Wn.App. 703, 708, 821 P.2d 543, review denied, 118 Wn.2d 1028, 828 P.2d 563 (1992), and must defer to the trier of fact on issues of conflicting testimony, credibility of witnesses, and the persuasiveness of the evidence. *State v. Walton*, 64 Wn.App. 410, 415-16, 824 P.2d 533, review denied, 119 Wn.2d 1011 (1992).

For purposes of a challenge to the sufficiency of the evidence, the appellant admits the truth of the State's evidence. *Jones*, 63 Wn.App. at 707-08. "In determining the sufficiency of the evidence, circumstantial evidence is not to be considered any less reliable than direct evidence." *State v. Delmarter*, 94 Wn.2d 634, 638, 618 P.2d 99 (1980). "Nothing forbids a jury, or a judge, from logically inferring intent from proven facts, so long as it is satisfied the state has proved that intent beyond a reasonable doubt." *State v. Bencivenga*, 137 Wn.2d 703, 709, 974 P.2d 832 (1999). All reasonable inferences must be drawn in the State's favor

and interpreted most strongly against the defendant. *State v. Joy*, 121 Wn.2d 333, 338-39, 851 P.2d 654 (1993).

In the present case, the defendant does not challenge the underlying basis for his bail jumping conviction. The only issue raised is whether his intentional act of shoplifting is a defense to his bail jumping conviction.

It is a defense to a charge of bail jumping that (1) uncontrollable circumstances prevented the defendant from personally appearing in court; (2) the defendant did not contribute to the creation of such circumstances in reckless disregard of the requirement to appear; and (3) the defendant appeared as soon as such circumstances ceased to exist. For the purposes of this defense, an uncontrollable circumstance is an act of nature such as a flood, earthquake, or fire, or a medical condition that requires immediate hospitalization or treatment, or an act of man such as an automobile accident or threats of death, forcible sexual attack, or substantial bodily injury in the immediate future for which there is no time for a complaint to the authorities and no time or opportunity to resort to the courts. The defendant has the burden of proving this defense by a preponderance of the evidence. Preponderance of the evidence means that you must be persuaded, considering all the evidence in the case, that it is more probably true than not true. If you find that the defendant has established

this defense, it will be your duty to return a verdict of not guilty as to the charge of bail jumping. RP 538-539.

While examples of uncontrollable circumstances are not meant to be exhaustive, they illustrate situations that are unforeseen, immediate, and outside of a defendant's control. The defendant's intentional act of stealing from Safeway was not an unforeseen, immediate, and uncontrollable circumstance outside of the defendant's control. The defendant's intentional act of stealing is a controllable circumstance and not a defense to the charge of bail jumping.

In addition, the defendant intentionally contributed to the creation of a circumstance that prevented him from appearing in court. On February 11, 2017, defendant knew he had court coming up in Cowlitz County and knew that when a person commits a crime, the person runs the chance of being caught and detained. RP 499-500 and 505-507. Regardless of such knowledge, the defendant chose to steal and was apprehended, detained, and convicted for his new crime. The defendant created a circumstance that led to his failure to appear in court and acted intentionally in disregard of his requirement to appear in court.

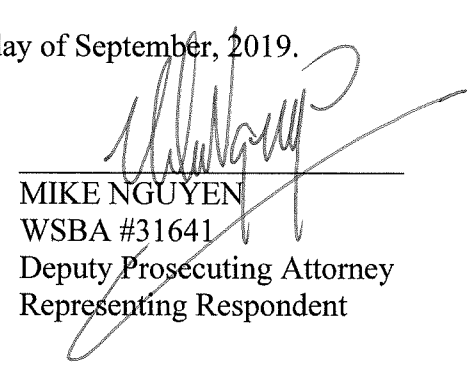
Therefore, the jury correctly found the defendant guilty of bail jumping because the defendant's intentional act of shoplifting was not an

uncontrollable circumstance and was an intentional disregard of his requirement to appear in court.

VI. CONCLUSION

The defendant's appeal should be denied because there was sufficient evidence for the jury to find the defendant guilty of bail jumping.

Respectfully submitted this 20 day of September, 2019.



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CERTIFICATE OF SERVICE

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I CERTIFY UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF WASHINGTON THAT THE FOREGOING IS TRUE AND CORRECT.

Signed at Kelso, Washington on September 20, 2019.

Julie Dalton

COWLITZ COUNTY PROSECUTING ATTORNEY'S OFFICE

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