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Court of Appeals
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No. 53654-4-II

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

STATE OF WASHINGTON,

Respondent,

v.

JAMES S. ROCHA,

Appellant.

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

The Honorable Carol Murphy, Judge
Cause No. 18-1-01692-34

BRIEF OF RESPONDENT

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A. ISSUES PERTAINING TO ASSIGNMENTS OF ERROR.

1. Whether the trial court properly exercised its discretion by excluding evidence indicating that Rocha had been at the counter of the Thurston County District Court near the time that he was scheduled to appear in Thurston County Superior Court pursuant to ER 403 where the evidence demonstrated that Rocha had notice of the scheduled hearing in Superior Court and did not appear before the court as required.

2. Whether the trial court's proper evidentiary ruling excluding evidence regarding the Thurston County District Court violated Rocha's Sixth Amendment right to present a defense where the defense did not raise an affirmative defense and his whereabouts outside of the Thurston County Superior Court were irrelevant.

B. STATEMENT OF THE CASE.

The Appellant, James S. Rocha was charged with residential burglary/domestic violence and violation of a pretrial no contact order/domestic violence. CP 1. While the case was pending, the State filed three amended informations. CP 46-47, 70-72, 86-87. The Third Amended Information included a charge of bail jumping for failing to appear in court on March 20, 2019. CP 87. Following a

jury trial, Rocha was found guilty on the bail jumping charge, but acquitted on the other charges. CP 187-194, RP 409-410.¹

With regard to the bail jumping charge, the State offered testimony from Deputy Prosecuting Attorney Lindsey Millar. RP 151-152. Ms. Millar testified that Rocha was charged by way of criminal information with residential burglary and violation of a pretrial no contact order. RP 153, Ex. 2-A. Ms. Millar testified regarding the general process utilized in Thurston County Superior Court for calling a docket or calendar. RP 154. In an order on conditions of release, Rocha was notified that if he failed to appear for any scheduled court date, a bench warrant may be issued for any additional criminal charges filed. RP 158, Ex. 3.

Ms. Millar indicated that Rocha was provided notice to appear at an omnibus hearing on March 6, 2019, at 10:30 a.m. in Thurston County Superior Court. RP 158, Ex 3. On March 6, 2019, the omnibus hearing was continued to March 20, 2019, and Rocha was notified to appear on March 20, 2019, at 10:30 a.m. in Thurston County Superior Court. RP 161, Ex 4.

¹ The verbatim report of proceedings for the jury trial that occurred May 28-31, 2019, is reported in four volumes which are sequentially numbered. For ease of reference, those volumes will be collectively referred to as RP. Reports of other proceedings will be referenced by RP (date).

Ms. Millar was present at the hearing on March 20, 2019. RP 166-167. Ms. Millar indicated that Rocha was not present for the omnibus hearing on March 20, 2019. RP 168, Ex. 6. A bench warrant issued and Rocha was arrested and returned to court on April 4, 2019. RP 172-173, Ex. 7, Ex. 8. The clerk's minutes for the March 20, 2019, hearing indicated that the matter was addressed on the record at 11:48 a.m. RP 174-175; Ex. 5.

The defense sought to introduce docket notes from Thurston County District Court indicating that Rocha was present at the counter of the Thurston County District Court at 11:53 AM on March 20, 2019. RP 196-197. The State objected pursuant to ER 401 and ER 403, arguing that the District Court docket notes were not relevant to the elements of the offense and any minimal relevance was outweighed by the risk of confusing or misleading the jury. RP 197-198. Rocha's counsel argued that the information was relevant stating,

Your Honor, this is a situation where the information regarding the District Court matter is both close in time and close in place as to the Court is aware, and as Ms. Millar testified District Court and Superior Court are part of the same courthouse complex, and, again, this is a note regarding information that was entered at 11:53, which is, in fact, just five minutes subsequent to Mr. Rocha's matter being addressed in Superior Court. So it's the defense position that this is

relevant to the question of whether or not Mr. Rocha failed to appear in Superior Court on March 20, 2019.

RP 200. The trial court asked defense counsel, "So are you planning on inviting the jury to confuse the District Court with Superior Court?" RP 201. Defense counsel responded that the evidence would be offered to show that he was at the Courthouse complex and later stated,

Your Honor, I think it goes to the ultimate issue of whether or not he failed to appear. We have heard testimony regarding how Mr. Rocha was instructed to be at court at 10:30. We had testimony that his matter was not, in fact, addressed until 11:48, and I think that leaves open the possibility that Mr. Rocha was there in the meantime.

RP 201.

In response to further questions from the trial court, defense counsel acknowledged that the probative value alleged by the defense was "as to the question of whether or not he failed to appear." RP 202. The trial court exercised its discretion to exclude the District Court information stating that the evidence was "minimally relevant in terms of ER 401," and further stating,

The Court next addresses ER 403 and must balance the relevance of the evidence against any potential prejudice, and the Court has some concerns about the prejudice and the possibility of confusion of the jury by this evidence. I asked several questions with regard to how this evidence could be used and I'm

concerned that, without intending to do so, defense counsel may be indirectly arguing for the jury to speculate that the appearance in District Court means appearance in Superior Court or that his appearance in District Court excused somehow the requirement that he appear in Superior Court prior to going to the District Court, and we have no evidence of that.

RP 206-207.

The trial court concluded, “that the prejudice, the potential for speculation, the potential for confusion, as well as the potential prejudice to the parties outweighs the minimal relevance of the evidence, including the exhibit and the testimony.” RP 207. However, the trial court left open the possibility that additional evidence could make the evidence more probative. RP 207.

Following his conviction, the trial court sentenced Rocha to the low end of the standard range for his offense, 51 months. RP (6/5/19) at 29. This appeal follows.

C. ARGUMENT.

1. The trial court did not abuse its discretion by excluding evidence regarding District Court pursuant to ER 403.

ER 403 states, “Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or

needless presentation of cumulative evidence.” A trial court’s ruling regarding ER 403 is reviewed for abuse of discretion. State v. Taylor, 193 Wn.2d 691, 697, 444 P.3d 1194 (2019). A trial court abuses its discretion when its decision is manifestly unreasonable or is based on untenable grounds. State v. Scherf, 192 Wn.2d 350, 387, 429 P.3d 776 (2018).

As charged, the crime of bail jumping required that Rocha have knowledge of the requirement to appear and failed to appear. CP 87; RCW 9A.76.170(3)(c). RCW 9A.76.170 requires knowledge of the court date, not knowledge of the date every day thereafter. State v. Carver, 122 Wn. App. 300, 306, 93 P.3d 947 (2004) (“I forgot” is not a defense to bail jumping). In Carver, the Court noted that the bail jumping statute had been amended from the 1998 version. Id. at 305. Rocha’s arguments that the District Court information was crucial to his defense because it “countered the state’s allegation that he knowingly failed to appear at Superior Court” is without merit. Brief of Appellant at 11.

State v. Pope, 100 Wn. App. 624, 627, 999 P.2d 51 (2000), relied upon by Rocha, involved a former version of RCW 9A.76.170, which included the language “knowingly fails to appear as required.” That language has not appeared in RCW 9A.76.170

since it was amended in 2001. 2001 WA. HB 1227, Sec. 3. The relevant question for the current version of the statute is whether Rocha received notice of the required appearance. Carver, 122 Wn. App. at 306. Whether he appeared in District Court or not is completely irrelevant to that question.

The remaining argument as to why the proposed information was crucial to Rocha's defense essentially asked the trial court to allow the jury to speculate that Rocha may have been in the Superior Court prior to going over to the District Court. As noted by the trial court, there was no evidence to support such speculation. RP 206-207. Moreover, even if there was some evidence that Rocha entered the Superior Court, he did not appear before the court, as required by RCW 9A.76.170. CrR 3.3(3)(iii) defines appearance and requires that the prosecutor was notified of the presence and the presence was contemporaneously noted on the record under the cause number. Therefore, even the expressly stated purpose of admitting the District Court notes was irrelevant. Even if Rocha had gone into the Superior Court, the evidence was clear that he did not "appear before the court." "The words judge and court are frequently used in statutes as synonymous and convertible terms." King County v. United Pac. Ins. Co., 72 Wn.2d

604, 608, 434 P.2d 554 (1967) (internal quotations omitted). Clearly, the term “appear before the court,” in RCW 9A.76.170 means more than appearing at the courthouse.

The trial court’s conclusion that any minimal relevance from the proposed information was far outweighed by the risk of confusion to the jury and possibility that the evidence would lead to unsupported speculation was supported by the record. It cannot be said that the trial court abused its discretion by excluding the evidence.

2. The exclusion of the District Court notes did not violate Rocha’s Sixth Amendment right to present a defense.

The right of a criminal defendant to present testimony in his or her defense is guaranteed by both the United States and the Washington State Constitutions. US Const. amend. VI; WASH. Const. art. 1 § 22; State v. Hudlow, 99 Wn.2d 1, 14, 659 P.2d 514 (1983). That right is not absolute, a defendant does not have a right to present evidence that is not relevant. State v. Gregory, 158 Wn.2d 759, 786 n. 6, 147 P.3d 1201 (2006), *overruled on other grounds*, State v. W.R., 181 Wn.2d 757, 336 P.3d 1134 (2014).

When a trial court excludes relevant defense evidence, a reviewing court determines as a matter of law whether the

exclusion violated the constitutional right to present a defense. State v. Clark, 187 Wn.2d 641, 648-649, 389 P.3d 462 (2017); State v. Jones, 168 Wn.2d 713, 719, 230 P.3d 576 (2010). The test our Courts employ is as follows: if the excluded evidence is relevant, the burden is on the State to show the evidence is so prejudicial as to disrupt the fairness of the fact finding process at trial. Jones, 168 Wn.2d at 720, *citing*, State v. Darden, 145 Wn.2d 612, 622, 41 P.3d 1189 (2002). The State's interest in excluding prejudicial evidence "must also be balanced against the defendant's need for the information sought," and relevant information "can be withheld only if the State's interest outweighs the defendant's need." Id.

Evidence is relevant if it has "any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." ER 401. As noted in the previous section, the facts necessary for the crime of bail jumping in this case were whether Rocha had notice of the hearing, which he clearly did, and whether he failed to appear before the court. RCW 9A.76.170(1), RP 158, Ex 3. Evidence regarding Rocha's actual whereabouts when he missed the hearing was irrelevant, even if he was in close proximity

to the courthouse. Such evidence would only be relevant if the defense was arguing the affirmative defense that “uncontrollable circumstances prevent the person from appearing.” RCW 9A.76.170. Rocha did not raise such a defense.

The only purpose of the District Court evidence would be to invite the jury to speculate that Rocha somehow fulfilled his obligations to Superior Court by appearing in District Court or improperly conclude that his presence in the proximity of the courthouse somehow fulfilled his obligation to appear before the court. The trial court correctly found that the unfair prejudice caused by the risk that such evidence would lead to improper speculation or confusion outweighed any minimal relevance. RP 206-207. There was no violation of Rocha’s Sixth Amendment right to present a defense.

D. CONCLUSION.

The trial court properly balanced the risk of prejudice to the State from improper speculation and confusion of the jury against the defense request to admit evidence from the District Court. The trial court did not abuse its discretion by excluding the evidence and the exclusion did not violate Rocha’s Sixth Amendment right to

present a defense. For the foregoing reasons, the State respectfully requests that this Court affirm Rocha's conviction and sentence.

Respectfully submitted this 13th day of January, 2020.



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DECLARATION OF SERVICE

I hereby certify that on the date indicated below I electronically filed the foregoing document with the Clerk of the Court of Appeals using the Appellate Courts' Portal utilized by the Washington State Court of Appeals, Division II, for Washington, which will provide service of this document to the attorneys of record.

I certify (or declare) under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct. Olympia, Washington.

Date: January 13, 2020

Signature: 

THURSTON COUNTY PROSECUTING ATTORNEY'S OFFICE

January 13, 2020 - 11:26 AM

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