

FILED
Jan 29, 2015

Court of Appeals
Division III
State of Washington

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

STATE OF WASHINGTON,)	
)	NO. 32477-0-III
Respondent,)	
)	MOTION ON THE MERITS
vs.)	
)	
LAREN A. JACKSON,)	
)	
Appellant.)	
_____)	

I. IDENTITY OF MOVING PARTY.

The respondent, State of Washington, asks for the relief designated in Paragraph II.

II. STATEMENT OF RELIEF SOUGHT.

The respondent requests that the Court of Appeals, Division III, grant the respondent's request as set forth in this Motion on the Merits affirming the actions of the Superior Court of the State of Washington in and for the County of Yakima pursuant to RAP 18.14(e)(1) and dismiss this appeal.

III. FACTS RELEVANT TO THE MOTION.

The facts set forth by appellant give this court a general outline of the case. The State shall set forth specific portions of the record as needed. Therefore, pursuant to RAP 10.3(b); the State shall not set forth additional facts section in this motion.

IV. ARGUMENT.

Assignments of Error

1. The court erred by convicting Jackson of failing to register under RCW 91.44.132 without sufficient evidence.
2. The court erred by convicting Appellant of bail jumping without sufficient evidence.
3. The court erred by admitting unauthenticated signature as proof of the required elements.

Response to Assignment of Errors.

1. There was sufficient evidence to support the convictions.
2. The court properly admitted the documents containing the signatures of Appellant. This is a “weight” versus “admissibility” question; the decision of the trial court was within its discretion.

The actions of the trial court were controlled by clearly settled case law, were of a factual nature and were supported by the evidence and/or were a matter of judicial discretion. This case is one for which RAP 18.14 is applicable and this motion fits within the existing guidelines for Motions on the Merit. This Motion on the Merits meets the requirement of the general rule regarding the use and filing of motions of this type. The record in total less than five hundred pages; including clerk’s papers.

RESPONSE TO ALLEGATION ONE

Appellant challenges the sufficiency of the evidence to support the conviction. In reviewing a challenge to the sufficiency of the evidence, this court will view the evidence in a light most favorable to the State to determine whether any rational trier of fact could have found the essential elements of the charged crime beyond a reasonable doubt. State v. Green, 94 Wn.2d 216, 221, 616 P.2d 628 (1980) (quoting Jackson v. Virginia, 443 U.S. 307, 319, 99 S.Ct. 2781, 61 L.Ed.2d 560 (1979)).

Here Jackson is challenging the evidence presented by the State that supports the charges of Failure to Register and Bail Jumping. A defendant claiming insufficiency admits the truth of the State's evidence and all reasonable inferences drawn in favor of the State, with circumstantial evidence and direct evidence considered equally reliable. State v. Salinas, 119 Wn.2d 192, 201, 829 P.2d 1068 (1992)

The elements of a crime can be established by both direct and circumstantial evidence. State v. Brooks, 45 Wn. App. 824, 826, 727 P.2d 988 (1986), one form of evidence is no less valuable than the other. There is sufficient evidence to support the conviction if a rational trier of fact could find each element of the crime proven beyond a reasonable doubt. Circumstantial evidence and direct evidence are equally reliable. State v. Dejarlais, 88 Wash. App. 297, 305, 944 P.2d 1110 (1997), *aff'd*, 136 Wash.2d 939, 969 P.2d 90

(1998). Credibility determinations are for the trier of fact and are not subject to review. State v. Camarillo, 115 Wn.2d 60, 71, 794 P.2d 850 (1990) and State v. Hill, 83 Wn.2d 558, 560, 520 P.2d 618 (1974) states "It is axiomatic in criminal trials that the prosecution bears the burden of establishing beyond a reasonable doubt the identity of the accused as the person who committed the offense."

Here the Second Amended Information charging Jackson with Failure to Register as a Sex Offender read in part as follows;

On, about, during or between November 1, 2012 and November 27, 2012, in the State of Washington, you had a duty to register under RCW 9A.44.130 for a felony sex offense and knowingly failed to comply with one or more of the requirements of RCW 9A.44.130, to-wit: you moved to a new address within Yakima County, and you failed to provide written notice of your address change to the Yakima County Sheriff within 3 business days of moving and you have been convicted in this state or another state of a felony failure to register as a sex offender on two or more prior occasions, in State of Washington vs Laren L. Jackson, Cause Numbers 02-1-02430-6; 04-1-00156-6; 08-1-00084-8; and 09-1-00061-7. (CP 33)

State v. Peterson, 168 Wn.2d 763, 768, 230 P.3d 588 (Wash. 2010) addressed this statute:

RCW 9A.44.130(1) requires a person convicted of a sex offense to regularly register his whereabouts in a county with that county's sheriff. When an offender vacates or otherwise leaves his or her residence, the statute sets forth various time limits for reregistration, depending on the offender's residential status. For example, an offender who becomes homeless-that is, who lacks a fixed residence-must register within 48 hours of leaving a fixed residence, whereas an offender who moves from one fixed residence to another within a county has 72 hours to register. *Compare* RCW 9A.44.130(6)(a) *with* RCW 9A.44.130(5)(a).

Following a move, the longest grace period available to an offender is 10 days. All deadlines exclude weekends and holidays.

Id.

The purpose of the registration requirement is to aid law enforcement by providing notice of the whereabouts of convicted sex offenders within the law enforcement agency's jurisdiction. LAWS OF 1990, ch. 3, § 401. (Footnote omitted.)

The Peterson court went on to posit the question “What are the elements of failure to register?” It then went on to address that question, “the failure to register statute contemplates *a single act* that amounts to failure to register: the offender moves without alerting the appropriate authority.” Peterson, 168 Wn.2d at 770

The Court went on to address the elements of a crime:

The elements of a crime are commonly defined as " '[t]he constituent parts of a crime-[usually] consisting of the actus reus, mens rea, and causation-that the prosecution must prove to sustain a conviction.' " *State v. Fisher*, 165 Wash.2d 727, 754, 202 P.3d 937 (2009) (quoting BLACK'S LAW DICTIONARY 559 (8th ed.2004)). Although Peterson is correct that a registrant's residential status informs the deadline by which he must register, it is possible to prove that a registrant failed to register within any applicable deadline without having to specify the registrant's particular residential status. That is what happened here. Peterson registered outside of *any deadline* contained in the statute. It was therefore unnecessary to show his particular residential status in order to prove a violation of the statute.

...

The purpose of the sex offender registration statute is to aid law enforcement in keeping communities safe by requiring offenders to divulge their presence in a particular jurisdiction. LAWS OF 1990, ch. 3, § 401. The criminal punishment attendant to failure to register helps effectuate this purpose. Id at 772.

These facts presented by the State met the test set forth in, State v. Bucknell, 144 Wn.App. 524, 183 P.3d 1078 (2008);

In reviewing a sufficiency of the evidence challenge, the test is whether, after viewing the evidence in a light most favorable to the jury's verdict, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. State v. Green, 94 Wn.2d 216, 220-21, 16 P.2d 628 (1980). All reasonable inferences from the evidence must be drawn in favor of the State and interpreted most strongly against the defendant. State v. Salinas, 119 Wn.2d 192, 201, 829 P.2d 1068 (1992). The elements of a crime may be established by either direct or circumstantial evidence, and one type is no more valuable than the other. State v. Thompson, 88 Wn.2d 13, 16, 558 P.2d 202, *appeal dismissed*, 434 U.S. 898 (1977). "Credibility determinations are within the sole province of the jury and are not subject to review." State v. Myers, 133 Wn.2d 26, 38, 941 P.2d 1102 (1997). Assessing discrepancies in trial testimony and the weighing of evidence are also within the sole province of the fact finder. State v. Longuskie, 59 Wn. App. 838, 844, 801 P.2d 1004 (1990). (Emphasis mine.)

The facts presented here are as follows;

On November 27, 2012, Chief Stew Graham with the Yakima County Sheriff's Office had as one of his job requirements for "at least a couple years" the responsible for verification of sex offender registration. In that capacity the Chief went to the Red Apple Motel in Yakima to verify that Mr. Jackson was living at this registered address. (RP 95-106) Chief Graham knocked on the door and receiving no answer he looked in the window, the curtains were open, of the registered motel room, number 213, and did not see any personal effects. (RP 99) He testified these were "those are residential room in effect" and the room appeared unoccupied. (*Id.*) He stated that the bed was made, there were no food items in the food preparation area, "[t]here was simply nothing in there that I could see that indicated that someone was in the room or living in the room." (*Id.*) The Chief then went to the management to find

out what he could about the occupancy of the room. (RP 100)
On cross examination the Chief stated "I've done a number of
address verification checks on registered sex offenders at the
Red Apple." (RP 102)

The manager, Mr. Sangha, of the Red Apple motel
testified that Mr. Jackson's room, number 214, was paid for
twice, once for August 5th through September 4th and the
second September 4th through October 4, 2012, and that Mr.
Jackson checked out of that room on October 15, 2012. (RP
164-65, 167-68) Through favorable questioning on cross-
examination Mr. Sangha testified as follows;

Q. Do you have a recollection that Mr. Jackson was not living
at the Red Apple Motel in November of 2012?

A. Yeah. He checked out on September -- October 15th. After
that I never saw him.

Q. Do you have records of that?

A. Yeah. We have record for other people.

Q. Was Mr. Jackson staying with somebody else who was
paying
then at the Red Apple Motel?

A. I don't know.

Q. So he wasn't paying anymore, correct?

A. No. (RP 168)

Ms. Gabbard testified that she is a records custodian with
the Yakima County Sheriff's Office, testifying in that capacity
she stated that the Sheriff's office records indicated Laren
Jackson had last registered an address of 416 N. 1st Street in
Yakima, Washington, Room 213 (the address of the Red Apple
Motel). (RP 115) Ms. Gabbard testified extensively
regarding the process and procedure used when working with
individuals who are registering as a sex offender and the types
of encounters that would occur, first registration, change of
address and that sort of action. She testified that Jackson's
registration form was signed on August 6, 2012. Ms. Gabbard
was not present when this document was filled out and was
therefore unable to personally verify the identity or signature of
the person registering. (*See id.*; Exhibit 16) This registration
form was admitted over defendant's objection that, without
authentication of the signature and proof that the defendant was

the same person identified on the form, the document was not relevant. (RP 116-24, 127-29; Exhibit 16)

Appellant claims that the State did not prove the “knowledge element(s)” of this crime. In line with this argument Appellant asserts that because Ms. Gabbard did not personally observe that the defendant was the person that filled out the form that there is no proof that he was that persona and therefore he had notice that he must register. By this he is implying that some third party who looked identical to Jackson and carried his personal identification went to the Sheriff’s office and filled this form out. This argument presumes that there was nothing else in the record but the signatures which were not “authenticated.” The very fact, as set forth below, that Jackson stipulated to the had a duty to register guts that argument. The circumstantial evidence presented was that Laren Jackson registered with the Sheriff’s Office to live at the Red Apple motel in a specific room, that when an officer went to that room there was no one living there a fact that was confirmed by the motel manager. This evidence is unrefuted. Also unrefuted are the facts that when the Chief went to that room on a day when Jackson was legally required to live at that address there was no on living there. This was confirmed by the motel manager, Mr. Sangha. In fact

It also ignores completely ignores the fact that by his own admission he has been convicted of this very offense on two previous occasions. (RP 180, Ex 1) And that he stipulated that he in fact knew that he had a duty to register.

THE COURT: No. 1 will be so admitted.

Comes now the State of Washington by and through the undersigned deputy prosecuting attorney for Yakima County and the defendant by and through the undersigned attorney and agree that the following facts are true and should be admitted as evidence for the jury's consideration:

1. Between November 1, 2012, and November 27, 2012, Laren Jackson had a duty to be registered as a sex offender based on a previous felony sex offense conviction.
2. Laren Jackson has been convicted on two prior occasions for felony fail to register as a sex offender. (RP 180)

The argument regarding the signature is misapplied. In this instance it was not some person up on the stand reviewing a signature from a bank signature card to another document. The signatures in question were on a document signed in open court, a document that there was no question of authenticity or admissibility, the same being applicable to the form clearly signed by Jackson at the Sheriff's office when he registered as he obviously had done before, proven to the jury by defendant's stipulation to a prior conviction for a sex offense and even more telling conviction on two prior occasions for this very crime, failure to report.

As explained above, the essential elements of the offense of failure to register as a sex offender are the knowing failure to comply with the registration requirements set forth in the statute. The jury was presented with more than sufficient evidence to prove count 1, Failure to Register as a Sex Offender.

BAIL JUMPING - SUFFICIENCY OF THE EVIDENCE.

Once again Appellant appears to ignore the totality of the information presented to the jury. It is noteworthy that in the trial court, after conclusion of the

trial, the only count that was challenged was the third count, Bail jumping, which arose after the second time that Appellant failed to appear and his bail was increased. (RP 240-42, Supp. VRP 2-8) After briefing and argument that court granted the motion to dismiss count 3. The information charging count two – Bail Jump read as follows:

On or about May 16, 2013, in the State of Washington, having been held for, charged with, or convicted of a class B or class C felony, Fail to Register as a Sex Offender in State of Washington vs Laren Allen Jackson, 13-1-00085-2, and having been released by court order or admitted to bail with knowledge of the requirement of a subsequent personal appearance before Yakima County Superior Court, a court of the State of Washington, you failed to appear as required. (CP 34)

This case is primarily based on the exhibits that were entered and are in the record before this court. Those documents are unrefuted and are the product of the Superior Court for Yakima County. They were generated in the course of business for that court. The State presented testimony from a deputy prosecuting attorney to inform the jury of the process and procedure that is used in that court system. That these documents are generated for each case specifically and would contain the signatures of the attorneys and the defendant. The jury was able to observe those documents and was free to give them the weight they believed was justified. Here there was a stipulation that the person before the court, one Laren Jackson, a very distinctive name had two prior convictions for Failure to Register as a Sex Offender, this case being his third as well as an admission to an underlying conviction that

allowed for the registration conviction, the Failure to Register as a Sex Offender charge being the count upon which the Bail Jumping charge arose. All circumstantial evidence that this was in fact the same “Laren Jackson” who had failed to appear.

State v. Wade, 138 Wn.2d 460, 979 P.2d 850, 852 (Wash. 1999)

A trial court's admission of evidence is reviewed for an abuse of discretion. *State v. Lane*, 125 Wn.2d 825, 831, 889 P.2d 929 (1995). A court abuses its discretion when its decision is manifestly unreasonable or based on untenable grounds. *State ex rel. Carroll v. Junker*, 79 Wn.2d 12, 482 P.2d 775 (1971). A trial court's judgment is presumed to be correct and should be sustained absent an affirmative showing of error. *Smith v. Shannon*, 100 Wn.2d 26, 35, 666 P.2d 351 (1993); *Mattice v. Dunden*, 193 Wn. 447, 450, 75 P.2d 1014 (1938).

This case is distinguishable from State v. Huber, 129 Wn.App. 499, 502-03, 119 P.3d 388 (2005). It is very important for this court to remember that, unlike here, the bail jump charge in Huber was tried separately from the charge that Huber failed to appear at. In this case the documents were not generic court documents, they were documents generated during the process of setting defendant's case. The documents that he was required to sign, documents that were specifically generated in order to place a defendant on notice that they have to come back to court. While the jury is charged to determine guilt based on the evidence presented for each count they are not required to leave their common sense at the door of the court. In this case the underlying charge that was set forth the matter that Appellant did not appear was the very charge he was also being tried for.

Here Laren Jackson agreed to the stipulation that Laren Jackson had two prior convictions for the exact same crime, that he had a duty to register because of a prior conviction for a sex offense. Once again circumstantial evidence that combined with the documents that were admitted were more than sufficient to allow identification of this “Laren Jackson” as being the person who failed to appear.

The Washington case that comparable to this case is State v. Hill, 83 Wn.2d 558, 520 P.2d 618 (1974). There the court stated:

It is axiomatic in criminal trials the prosecution bears the burden of establishing beyond a reasonable doubt the identity of the accused as the person who committed the offense. . . . Identity involves a question of fact for the jury and any relevant fact, either direct or circumstantial, which would convince or tend to convince a person of ordinary judgment, in carrying on his everyday affairs, of the identity of a person should be received and evaluated.

Id. at 560. The court concluded that testimony that "Jimmy Hill" and "the defendant" was the responsible party was sufficient to prove identity even in the absence of in-court identification. Id.

This error was invited by Appellant. Invited error prohibits a party from "setting up error in the trial court and then complaining of it on appeal." State v. Young, 63 Wn. App. 324, 330, 818 P.2d 1375 (1991). While discussing the need to admit a photograph of the appellant this is what was stated by trial counsel:

MR. SWAN: I don't know how that's relevant. It's a booking photo, number one. I don't know how that helps the jury to know my that client was booked in March of 2013 initially. Again, it suggests why was he booked versus -- you know, are we going to get into the fact that everybody gets booked whether they're called to come in on a warrant

or a summons? I don't know why. Then we have to talk about why the state made a choice to do a warrant versus a summons.

I don't know how this adds to anything. I'm not aware -- the defense, isn't so far as I know, I don't plan to argue that we have the wrong man, that the person seated before the court today is not the same Laren Jackson who has the underlying offense or is not the person who was called in to answer to Count 1. Again, if that became an issue that was going to be brought, an argument, if the defense somehow opened the door on that, I could see how this would be relevant rebuttal evidence. That's an issue that I don't see is ever going to come up. I don't think it's properly presented in the state's case in chief. RP 19-20

Once again, in reviewing a challenge to the sufficiency of the evidence, this court will view the evidence in the light most favorable to the State and determine whether any rational trier of fact could have found the essential elements of the crime charged beyond a reasonable doubt. State v. Drum, 168 Wn.2d 23, 34-35, 225 P.3d 237 (2010). An appellant challenging the sufficiency of evidence necessarily admits the truth of the State's evidence and all reasonable inferences that can be drawn from that evidence. Drum, 168 Wn.2d at 35, 225 P.3d 237. Circumstantial and direct evidence are equally reliable in determining sufficiency of the evidence. State v. Delmarter, 94 Wn.2d 634, 638, 618 P.2d 99 (1980). This court will defer to the trier of fact on issues of "conflicting testimony, credibility of witnesses, and persuasiveness of the evidence." State v. Thomas, 150 Wn.2d 821, 874-75, 83 P.3d 970, abrogated in part on other grounds by Crawford v. Washington, 541 U.S. 36, 124 S.Ct. 1354, 158 L.Ed.2d 177 (2004).

Instruction 13 correctly sets forth the elements of bail jumping as follows:

To convict the defendant of the crime of bail jumping, in Count 2, each of the following elements of the crime must be proved beyond a reasonable doubt:

- (1) That on or about May 16, 2013, the defendant failed to appear before a court;
- (2) That the defendant was being held for or charged with the crime of Failure to Register as a Sex Offender;
- (3) That the defendant had been released by court order or admitted to bail with knowledge of the requirement of a subsequent personal appearance before that court; and
- (4) That any of these acts occurred in the State of Washington.

If you find from the evidence that each of these elements has been proved beyond a reasonable doubt, then it will be your duty to return a verdict of guilty.

On the other hand, if, after weighing all of the evidence, you have a reasonable doubt as to any one of these elements, then it will be your duty to return a verdict of not guilty.

CP at 86. See RCW 9A.76.170

Under this instruction and the corresponding statute, the State had to prove beyond a reasonable doubt that Jackson knew or was aware that he was required to appear at the scheduled May 16, 2013 conference hearing. RCW 9A.76.170(1); State v. Ball, 97 Wn.App. 534, 536, 987 P.2d 632 (1999); State v. Bryant, 89 Wn.App. 857, 870, 950 P.2d 1004 (1998). The State presented, among other evidence, testimony that one “Laren Jackson” had appeared at the Sheriff’s Office and registered at the Red Apple Motel, that Laren Jackson had paid for that room and then checked out. That this same Laren Jackson appeared with his attorney at a subsequent arraignment were Laren Jackson signed and order, dated April 4, 2013, that set the Omnibus Hearing for May 16, 2013 (Exhibit 4) this order placed defendant on notice that he must appear for that hearing. This order was signed by Jackson and his attorney, the

same attorney representing Jackson in this trial. Once again this order imposed an obligation on Jackson to appear at future hearings. The order threatened prosecution for failure to appear. Jackson's signature on this agreed order is circumstantial evidence of his knowledge of the requirement that he appear in court on those specific dates.

Relying on State v. Huber, 129 Wn.App. 499, 502, 119 P.3d 388 (2005), Appellant argues that there was nothing more than an "identity of names" to establish that he was the person named in agreed order. It is true that "identity of names alone" does not provide sufficient evidence to uphold a conviction that depends on a link between the identity of an individual named in documents and the identity of the defendant at trial, because different persons may bear the same names. Huber, 129 Wn.App. at 502, 119 P.3d 388. The State must present some corroborating evidence, such as " booking photographs, booking fingerprints, eyewitness identification, or, ... distinctive personal information." Huber, 129 Wn.App. at 503, 119 P.3d 388 (footnotes omitted).

Jackson had previously been identified in this trial as the person who had been convicted of the crimes stipulated to by the parties. The very crimes that were the basis and literally named in the information for which he now claims he was not identified for, the subject of the other charged count— which offense was the reason Jackson had been arrested and subsequently released on bail under the terms of the

agreed order. Viewing the evidence in the light most favorable to the State, Jackson's challenge must fail.

The appellant does not allege that the alleged reliance on the signatures found in the admitted documents was erroneous or that it was such that it tainted the decision of the jury except that if the court were to excise that information there would not be sufficient facts left before the jury for it to find Appellant guilty of the charges alleged. As set forth above there was more than sufficient factual evidence admitted to support the charges. The jury is allowed to do as they will with the evidence that was admitted. The trial court judge made a discretionary ruling regarding the admission of these exhibits; Appellant has not demonstrated that decision was an abuse of that discretion. A court abuses its discretion when its decision is manifestly unreasonable or based on untenable grounds. State ex rel. Carroll v. Junker, 79 Wn.2d 12, 482 P.2d 775 (1971).

State v. McGuff, 104 Wash. 501, 504-06, 177 P. 316 (1918) is clearly distinguishable. In McGuff there was no authentic signature presented. The State is uncertain how the unchallenged signature of the defendant made in a court of law before a sitting judge could be considered anything but "authentic" The other signature was similarly generated. In McGuff the second signature was from an unverified check, clearly that is not the case with the signatures that were on the documents submitted to the jury. See for example; State v. Fernandez, 28 Wn.App. 944, 954, 628 P.2d 818 (Wn.App. Div. 1 1980); State v. Kennedy, 19 Wn.2d 152, 142

P.2d 247 (Wash. 1943) There is nothing before this court to indicate that jury used the signatures in coming to their decisions, State v. Ng, 110 Wn.2d 32, 43, 750 P.2d 632 (1988) “The individual or collective thought processes leading to a verdict "inhere in the verdict" and cannot be used to impeach a jury verdict. State v. Crowell, 92 Wn.2d 143, 594 P.2d 905 (1979); State v. McKenzie, 56 Wn.2d 897, 355 P.2d 834 (1960); Gardner v. Malone, 60 Wn.2d 836, 376 P.2d 651 (1962).”

V. CONCLUSION

For the reasons set forth above this court should deny this appeal. The actions of the trial court should be upheld, the State’s Motion on the Merits should be granted, and this appeal should be dismissed.

Respectfully submitted this 29th day of January 2015,

s/ David B. Trefry
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DECLARATION OF SERVICE

I, David B. Trefry state that on January 29, 2015, emailed a copy, by agreement of the parties, of the Motion on the Merits to Kristina Nichols at wa.appeals@gmail.com deposited in the United States mail on this date to;

Laren A. Jackson, DOC #778574
2321 West Dayton Airport Road
PO Box 900
Shelton, WA 98584

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

DATED this 29th day of January, 2015 at Spokane, Washington,

s/David B. Trefry
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YAKIMA COUNTY PROSECUTOR

January 29, 2015 - 8:45 AM

Transmittal Letter

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Court of Appeals Case Number: 32477-0
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