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FEBRUARY 24, 2017
Court of Appeals
Division III
State of Washington

NO. 34437-1

COURT OF APPEALS, DIVISION III
OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,

Respondent,

v.

GABRIEL A. SANDOVAL,

Appellant.

Appeal from Yakima County Superior Court
Honorable David A. Eloffson
No. 15-1-00435-8

APPELLANT'S BRIEF

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I. INTRODUCTION

Appellant Gabriel Arredondo Sandoval was convicted of robbery for forcefully taking the victim's vehicle, unlawful possession of a firearm, and possession of short-barreled shotgun arising from the use of that weapon during the robbery. The evidence consisted almost entirely of two witnesses to the event, the victim and his friend, who were dropping Sandoval off at home after, as the friend had admitted, they had been smoking methamphetamine that night.

No rational trier of fact could have found sufficient evidence to support a finding that "force" was used during the theft of the vehicle or its keys to constitute Robbery. The testimony indicated that a shotgun was pulled out only after the keys to the vehicle had already been taken, and furthermore that after the ensuing (and improbable) twenty-minute struggle, Sandoval did not use or threaten force to take the vehicle before abandoning it just one block north of the altercation.

In addition, there was insufficient evidence to support Sandoval's possession of the firearm because the testimony gave no rational explanation as to how it suddenly appeared in the subject vehicle without anyone noticing. To the contrary, the testimony could only support an absurd conclusion that it spontaneously materialized *ex nihilo*. Therefore, Sandoval did not bring the firearm to the altercation and any contact he may have had with it during the fight, for which the DNA test was entirely inconclusive, could only have been lawful defense.

II. ASSIGNMENTS OF ERROR

1. The trial court erred when it found sufficient evidence to support the jury's finding that Appellant committed First Degree Robbery.

2. The trial court erred when it found sufficient evidence to support the jury's finding that Appellant possessed a firearm, which resulted in convictions for First Degree Unlawful Possession of a Firearm and Possession of a Short-Barreled Shotgun.

III. ISSUES PERTAINING TO ASSIGNMENTS OF ERROR

Whether a rational trier of fact could have found beyond a reasonable doubt that Appellant committed the necessary elements of First Degree Robbery when the testimony did not indicate that the keys to the subject vehicle or the vehicle itself were taken "by force."

Whether a rational trier of fact could have found beyond a reasonable doubt that Appellant possessed a firearm when fingerprint/DNA analysis of the firearm was inconclusive and the testimony did not provide any rational explanation or evidence as to how the firearm suddenly appeared in the subject vehicle.

IV. STATEMENT OF CASE

Appellant, Gabriel Arredondo Sandoval, was found guilty by jury in Yakima County Superior Court and sentenced on December 14, 2015, for three criminal counts, including: Robbery in the First Degree (RCW 9A.56.190, RCW 9A.56.200(1)(a), RCW 9.94A.533(4), RCW 9.94A.825), Unlawful Possession of a Firearm in the First Degree (RCW 9.41.040(1)(a), and Possession of Short-Barreled Shotgun (RCW 9.41.190(1). CP 32-40.

The evidence presented alleged that on the night of March 21, 2015, the victim, Ryan Miller, and his friend, Adan Maravilla, were dropping off Sandoval after a trip to the casino. The State alleged that after Miller refused to help Sandoval jump start a vehicle for Sandoval's girlfriend, Sandoval suddenly struck Miller, the two fought for twenty minutes over a shotgun somehow drawn by Sandoval, and Sandoval eventually stole and abandoned Miller's vehicle a block north of the altercation.

At trial, there were only two witnesses of the actual events which constituted the crimes – the victim, Ryan Miller, and his friend, Adan Maravilla. RP 534, 342. Maravilla testified first. RP 342. His testimony began with an admission that he and the victim Miller were both smoking methamphetamine at the beginning of that night. RP 346. Neither the State nor defense counsel appear to have pressed the witnesses on this alarming evidence.

Maravilla proceeded to call Sandoval by the wrong name six times throughout his testimony. RP 327, 328, 330, 332, 333, 334.

Maravilla testified that the events began when Miller, who was driving, picked him up and took him, Sandoval, and Sandoval's sister to a local casino. RP 331. Sandoval's sister went into the casino, but Sandoval stayed in the car with Maravilla and Miller because neither had any money. RP 332. The three agreed to take Sandoval back home. *Id.*

Maravilla testified yet again that the they were still smoking methamphetamine as they pulled into Sandoval's driveway to drop him off.

Id. It is unclear from the testimony whether just Miller and Maravilla were smoking or if Sandoval had joined in; neither counsel inquired.

Maravilla testified that Sandoval then, without saying anything, reached over and took the keys from the ignition as Miller sat in the driver seat. RP 333. Maravilla testified that Sandoval struck Miller in the head with a shotgun as Miller left the car. RP 334. No explanation was made as to where this shotgun came from or how it had gone unnoticed by all the parties when Sandoval was initially picked up; Maravilla testified that he was “shocked” when the gun appeared. RP 342. It is also noteworthy that Maravilla twice refers to the “shotgun” as a “pistol.” RP 355, 365.

Maravilla testified that Miller and Sandoval began wrestling over the gun. RP 336. Maravilla testified that he left the scene to anonymously call the police to help Miller, and then hid so the police would not contact him. RP 337. The 911 call was then played, in which Maravilla reported the altercation, but refused to answer several of the dispatcher’s questions. RP 338.

The victim, Ryan Miller, testified later in the trial about the same events, much of it inconsistent with Maravilla. Miller stated that as he pulled into Sandoval’s driveway, Sandoval asked him to jumpstart his vehicle, a request which Miller denied. RP 554.

With regards to the taking of the keys, Miller first testified: “And that’s when he reached over and kind of handed me my phone and at the same time yanked my keys out the ignition while my car was still running.” RP 555. Miller later testified: “As he yanked the keys out of the ignition,

he opened the door, pulled out a -- looked like a 2-inch sawed-off shotgun...” RP 556. As will be argued *infra*, it is physically impossible that all four of these physical actions: 1) handing the phone; 2) pulling the key; 3) opening the door, and 4) pulling out a shotgun, could have occurred simultaneously to constitute “force” for purposes of Robbery. The only rational interpretation of this testimony was that the gun was pulled out after the keys had already been taken. Therefore, there was no robbery of the keys.

Miller testified that Sandoval then threatened Maravilla that he was “going to shoot” him, and proceeded to have a back-and-forth with Miller telling him he had “f-----d up.” *Id.* Maravilla did not mention any of this nor that Sandoval had directly threatened his life.

Miller testified that after then being struck, the two began fighting over the gun, hitting each other, and rolling on the ground as Miller repeatedly yelled for help “for 20 minutes.” RP 564. Miller eventually got the gun, at which point Sandoval pulled out a shank and started swinging at him. RP 566. Miller testified that Sandoval then got into Miller’s vehicle and began driving, as Miller continued to yell at the top of his lungs. RP 571. Miller testified the fight lasted 20 minutes. RP 575. Some distance from his vehicle, Miller then observed Sandoval getting in and driving it away. *Id.* The vehicle was later found just one block north. RP 515.

Apparently contradicting Maravilla’s testimony that the parties were smoking meth, Miller stated that he himself only smoked marijuana. RP 680.

Officers testified that they eventually responded to the 911 call and made contact with Miller, sending him to medical care. RP 186. Miller's vehicle was recovered just one block north of the incident. RP 515. As will be argued *infra.*, no testimony was presented that this taking of the car at the end of the fight was itself "by force" to constitute a robbery rather than theft. Indeed, the fact that the vehicle was found only a block away does not constitute evidence that it was intentionally "taken" by force.

Law enforcement began searching for Sandoval, later discovering him lying in the fetal position in the back of a vehicle after an anonymous report. RP 252.

The shotgun was sent off for fingerprinting/DNA analysis, and the testimony from experts at trial indicated the results were "inconclusive"- that both individuals (Miller or Sandoval) could be neither included nor excluded. RP 443. No blood was found on the weapon or in the car. RP 516. Sandoval's DNA was found to be present on a screwdriver recovered from the scene. RP 517. This evidence does not support a finding that Sandoval "possessed" the firearm.

V. LAW

"Robbery" is defined in RCW 9A.56.190:

A person commits robbery when he or she unlawfully takes personal property from the person of another or in his or her presence against his or her will by the use or threatened use of immediate force, violence, or fear of injury to that person or his or her property or the person or property of anyone. Such force or fear must be used to obtain or retain possession of the property, or to prevent or overcome resistance to the taking; in either of which cases the degree of force is immaterial. Such taking constitutes robbery whenever it appears that, although the taking was fully completed

without the knowledge of the person from whom taken, such knowledge was prevented by the use of force or fear.

Robbery in the first degree is defined in RCW 9A.56.200:

(1) A person is guilty of robbery in the first degree if:

(a) In the commission of a robbery or of immediate flight therefrom, he or she:

(i) Is armed with a deadly weapon; or

(ii) Displays what appears to be a firearm or other deadly weapon; or

(iii) Inflicts bodily injury;[...]

“Possession” of a firearm for purposes of the defendant’s other two convictions is defined in RCW 9.41.040:

(1)(a) A person, whether an adult or juvenile, is guilty of the crime of unlawful possession of a firearm in the first degree, if the person owns, has in his or her possession, or has in his or her control any firearm after having previously been convicted or found not guilty by reason of insanity in this state or elsewhere of any serious offense as defined in this chapter [...]

In a challenge to the sufficiency of the evidence, an appeals court must examine the record to determine whether any rational finder of fact could have found that the State proved each element beyond a reasonable doubt. *State v. Green*, 94 Wn.2d 216, 221, 616 P.2d 628 (1980). When a defendant challenges the sufficiency of the evidence, he or she admits the truth of all of the State’s evidence. *State v. Homan*, 181 Wn.2d 102, 106, 330 P.3d 182 (2014). In such cases, appellate courts view the evidence in the light most favorable to the State, drawing reasonable inferences in the State’s favor. *Id.* In a criminal case, the State bears the burden of proving all the elements of an offense beyond a reasonable doubt. *In re Winship*,

397 U.S. 358, 364, 90 S.Ct. 1068, 25 L.Ed.2d 368 (1970); U.S. CONST. amend. XIV; WASH. Const. art. I, § 3.

Circumstantial evidence and direct evidence are equally reliable. *State v. Delmarter*, 94 Wn.2d 634, 638, 618 P.2d 99 (1980). 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). An appellate court must defer to the trier of fact on issues of conflicting testimony, credibility of witnesses, and the persuasiveness of the evidence. *State v. Cord*, 103 Wn.2d 361, 367, 693 P.2d 81 (1985).

VI. ARGUMENT

Here, the evidence at trial, consisting entirely of the testimony of the victim and his friend, does not constitute sufficient evidence to support a finding of the essential element of (1) ‘force’ for robbery and (2) for possession of a firearm. Even if total deference is given to the credibility of the witnesses and the testimony is viewed in the most favorable light to the State, there is no evidence that force was used to take either the keys at the start of the fight or the vehicle at the end of the fight. Furthermore, no rational trier of fact could have found that Appellant possessed a firearm when no rational interpretation of the evidence can explain how the defendant had the gun in the first place.

A. Robbery of the Vehicle or its Keys

The statute is clear, in order to constitute “robbery,” a defendant must take property from a victim “...against his or her will by the use or threatened use of immediate force, violence, or fear of injury...” RCW

9A.56.190. Here, neither the keys to the vehicle nor the vehicle itself could have been taken “by force.”

First, Maravilla testified that the keys were taken “without saying anything.” RP 333. This is not force. Second, the victim himself testified that the keys were taken simultaneous to “handing a phone” or “opening the door.” RP 555. At page 556 of the record, the victim testifies that the “pulling out of a shotgun” was the last act in these series. It is physically impossible that the gun could have been pulled out simultaneous to a person pulling keys, opening a door, and handing back a telephone. Therefore, at the moment the keys were taken, it is physically impossible that the gun could have been displayed simultaneously, thus constituting threatened “force.” While it could be argued that there was theft of the keys, it is not rational to argue that it was a forceful robbery.

Furthermore, the evidence is similarly lacking to show force was used to take the vehicle at the end of the fight. None of the testimony indicated that the twenty-minute fight, which would have been a significant physical feat even for a trained fighter, was part of Sandoval’s attempt to “take” Miller’s vehicle. In fact, Miller testified specifically Sandoval’s voiced during the fight that it was his intent to kill him. RP 557. No testimony was submitted that Sandoval specifically “used” or “threatened” force to specifically take the vehicle as required by statute. The fact that the vehicle was found only a block away further supports that there was no forceful taking of the vehicle – if that is what Sandoval was doing, he would have fled much further away. Again, it could be argued that Sandoval stole

the vehicle, but the evidence is insufficient to support a finding of forceful robbery.

B. Possession

It would never be rational for any trier of fact to find that a defendant possessed an entity if the only interpretation of the evidence was that the entity spontaneously materialized *ex nihilo*. Yet that is the only explanation for the sudden appearance of the shotgun in this case.

Miller and Maravilla, both apparently using methamphetamine (RP 346), pulled up that night and picked up Sandoval in his driveway. They drove all the way to the casino, dropped off Sandoval's sister, and returned to Sandoval's driveway. No explanation or testimony whatsoever was given to explain how such a large firearm could have been 'snuck' into Miller's car without any of three individuals noticing, or how Sandoval could have somehow just 'pulled it out' while sitting in the confined space of an automobile passenger seat. DNA evidence was inconclusive on the firearm. The only rational explanation then is that the firearm was originally in Miller's possession, somehow around the front passenger seat, and that Sandoval, if he did come into contact with the firearm during a fight, was lawfully using it for defense. The DNA and inexplicable testimony therefore constitute insufficient evidence to support a finding of possession for the firearm.

VII. CONCLUSION

The Robbery conviction should be dismissed and this case should be remanded for re-sentencing and the possession of a firearm and possession of short-barreled shotgun charges dismissed.

Respectfully submitted this 24th day of February, 2017.

/s/ Edward Penoyar _____

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Certificate of Service

On the date below I personally caused the foregoing document to be e-filed with the Clerk of the Court of Appeals as follows:

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

Dated February 24, 2017, South Bend, Washington.

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