

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION III

No. 34516-5-III

**FILED**

***Jan 31, 2017***

Court of Appeals

Division III

State of Washington

STATE OF WASHINGTON,

Plaintiff/Respondent,

vs.

RUBEN DARIO ROJAS, JR.,

Defendant/Appellant

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Respondent's Brief

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A. RESPONSE TO ASSIGNMENTS OF ERROR

- a. The evidence was sufficient to establish a bus stop designated by a school district existed within 1000 feet of the site of the crime of possession with intent to deliver methamphetamine when the school district transportation director testified that looking at an undated map he created using routing software that there was one bus stop within 1000 feet of the location of the drug buy.

B. ISSUES PRESENTED

- a. Can a jury answer a special verdict form “yes” on a school bus enhancement when the transportation director from a school district testifies that a map for the district shows a bus stop within 1000 feet of the location of the drug sale within a neighborhood without testifying how long any of the particular bus stops have been in existence?

C. STATEMENT OF THE CASE

Ruben Dario Rojas, Jr. was charged via Amended Information with one count of Delivery of a Controlled Substance.<sup>1</sup> (CP at 34). The charged count also included an

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<sup>1</sup> The INFORMATION was originally filed on March 11, 2015; it was later amended. (CP at 2).

aggravating circumstance: that the delivery occurred within one thousand feet of a school bus route (CP at 34).

Greg Mueller testified for the state that he had developed an addiction to pain pills in his senior year and continued that addiction into adulthood until in January, 2016 he agreed to work with the Ellensburg Police Department as a confidential informant to purchase controlled substances (RP at 37 – 38, 74 – 75). He testified at the time of trial he had been clean and sober for 59 days (RP at 75). At the time he worked for the police he had an active addiction to heroin. (RP at 75). He was pending possession charges for controlled substances and agreed to work for the police to ask them to consider his case and at the time of trial his cases were still pending (RP at 76). He identified a potential target that interested police, an individual named Zachary Morrell and agreed to attempt to purchase drugs from Mr. Morrell under a contract with the police. (RP at 76). They arranged via text message to purchase some morphine because Mr. Morrell indicated he didn't have any heroin (RP at 78). He was going to pay ten dollars per pill and purchase five pills (RP at 78 – 79). The police searched Mr. Mueller and his car and surveilled the purchase of the drugs

from the outside of the residence where the sale took place (RP at 43, 79 – 80).

He was met at the door to the house by someone named “Danielle” who he knew to be Mr. Morrell’s girlfriend. (RP at 81). He went in the door into a bedroom where Mr. Morrell, the defendant, and Mr. Morrell’s girlfriend were present. (RP at 82). He identified the defendant in court, but indicated he had only met the defendant a few times prior to that meeting (RP at 82, 85). After an exchange about a change in price, the defendant gave Mr. Morrell a bag out of his pocket and Mr. Morrell handed the bag to Mr. Mueller who identified four pills in the bag as morphine pills (RP at 86). Mr. Mueller gave the pills to the police (RP at 88).

Martin McDermot from the Washington State Patrol crime lab testified that drugs she received from the Ellensburg Police Department in this case were tested and contained morphine. (RP at 66, 72).

Benjamin Mount, the transportation director from the Ellensburg School District testified that there was a designated school bus stops within 1000 feet of 707 North Anderson Street in Ellensburg (RP at 99, 100). Mr. Mount testified that a map that was prepared by computer program used by the Ellensburg School

District used showed the bus stop. (RP at 99) The map was admitted as evidence for the jury's consideration (RP at 100; CP at 69). Under cross examination he testified that the map was accurate and carefully prepared. (RP at 101). Neither counsel asked him when the map was printed. A defense objection to foundation prior to admission of the map was overruled by the court.

The jury found the defendant guilty on the charged offense and also answered "yes" on the special verdict form for the sentencing enhancements for delivery within 1000 feet of a school bus stop (RP at 134, CP at 91 – 92). The defendant was sentenced on January 19, 2016 to 12 months on count and ordered the 24 month school bus enhancement to be consecutive for a total of 36 months (CP at 102). The court imposed an additional twelve months of community custody (CP at 103).

#### D. ARGUMENT

- a. The evidence was sufficient to establish a bus stop designated by a school district existed within 1000 feet of the site of the crime of possession with intent to deliver methamphetamine when the school district transportation director testified that he had prepared a map and that the

map showed a school bus stops within 1000 feet of the house where the drugs were sold.

The standard of review for sufficiency of the evidence is whether, after viewing the evidence in a light most favorable to the State, 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) (citing Jackson v. Virginia, 443 U.S. 307, 319, 61 L. Ed. 2d 560, 99 S. Ct. 2781 (1979)); accord, e.g., State v. Aver, 109 Wn.2d 303, 310-11, 745 P.2d 479 (1987); State v. Guloy, 104 Wn.2d 412, 417, 705 P.2d 1182 (1985), cert. denied, 475 U.S. 1020 (1986). This is also true for sentencing enhancements: "Before a defendant can be subjected to an enhanced penalty, the State must prove beyond a reasonable doubt every essential element of the allegation which triggers the enhanced penalty." State v. Lua, 62 Wn. App. 34, 42, 813 P.2d 588, review denied, 117 Wn.2d 1025, 820 P.2d 510 (1991); see also State v. Tongate, 93 Wn.2d 751, 754, 613 P.2d 121 (1980). On appeal, the standard of review is whether a rational trier of fact taking the evidence in the light most

favorable to the State could find, *beyond a reasonable doubt*, the facts needed to support the enhancement.

Jackson v. Virginia, 443 U.S. 307, 99 S. Ct. 2781, 61 L. Ed. 2d 560 (1979), State v. Green, 94 Wn.2d 216, 220-21, 616 P.2d 628 (1980).

Here Mr. Mount testified that according to the map printed and admitted at trial there was a school bus stop within 1000 feet of the location where Mr. Mueller purchased methamphetamine from Mr. Rojas. Given this information, even without Mr. Mount indicating the date on which the map was printed, the jury could have found the existence of a school bus stop within 1000 feet of the location. Looking at the evidence in the light most favorable to the state, the evidence is sufficient.

- b. RCW 69.50.435 is satisfied when a school district employee testifies and verifies a map created for the purposes of determining school bus stop designated routes within 100 feet of the location of the crime.

RCW 69.50.435(1) (c)<sup>2</sup> proscribes delivering a controlled substance within 100 feet of a school bus route stop designated by the school district. Further clarification is given in RCW 69.50.435(5) indicating:

In a prosecution under this section, a map produced or reproduced by any ..., school district, ... for the purpose of depicting the location and boundaries of the area on or within one thousand feet of any property used for a ..., school bus route stop, ..., or a true copy of such a map, shall under proper authentication, be admissible and shall constitute prima facie evidence of the location and boundaries of those areas if the governing body of the ..., school district, ... has adopted a resolution or ordinance approving the map as the official location and record of the location and boundaries of the area on or within one thousand feet of the ..., school bus route stop, ... Any map approved under this section or a true copy of the map shall be filed with the clerk of the municipality or county, and shall be maintained as an official record of the municipality or county. This section shall not be construed as precluding the prosecution from introducing or relying upon any other evidence or testimony to establish any element of the offense. This section shall not be construed as precluding the use or admissibility of any map or diagram other than the one which has been approved by the governing body of a ..., school district, ... if the map or diagram is otherwise admissible under court rule.

Here, the map used was a map prepared by the school district and the transportation director was the witness to authenticate, introduce, and testify about the contents of the map; its creation, information, and

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<sup>2</sup> Defense brief contains a typographical error, referring to this statute as 69.60.435, but it is obvious by reference they mean to reference 69.50.435

use. Defense's citation to State v. Pearson, 180 Wn. App. 576, 321 P.3d 1285 (2014), review denied, 181 Wn.2d 1021 (2014) is misplaced. In that case, the distinguishing fact is that no one from the school district testified to authenticate the location of the school bus stops as indicated by the county GIS map. Within the case, only the county GIS director testified and based the information in the map regarding the location of the school bus stops on arguable hearsay evidence from the school district and the defendant lacked his opportunity to cross examine the school district about the locations of the stops.

Here, Mr. Mount testified from the school district. He was available as a witness and he himself using software that is a part of his job created the map in question. Mr. Rojas had an opportunity to fully cross examine Mr. Mount.

#### E. CONCLUSION

For the reasons stated, the judgment should be affirmed.

Respectfully submitted January 31, 2017.

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/s/  
/s/ Jodi M. Hammond  
Attorney for Respondent  
WSBA #043885

PROOF OF SERVICE

I, Jodi M. Hammond, do hereby certify under penalty of perjury that on January 31, 2017, I mailed to the following by U.S. Postal Service first class mail, postage prepaid, or provided e-mail service by prior agreement (as indicated), a true and correct copy of Respondent's Brief:

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APPELLATE COURT OF THE STATE OF WASHINGTON

DIVISION III

State of Washington,	)	
	)	No. 34516-5-III
Respondent.	)	
	)	AFFIDAVIT OF MAILING
RUBEN DARIO ROJAS, JR.,	)	
Appellant.	)	
_____	)	

STATE OF WASHINGTON )  
 ) ss.  
 County of Kittitas )

The undersigned being first duly sworn on oath, deposes and states:

That on the 31<sup>st</sup> day of January, 2017, affiant emailed an electronic copy directed to Court of Appeals and a hard copy in the mail to the Appellant's Attorney.

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containing copies of the following documents:

- (1) Affidavit of Mailing
- (2) Respondent's Brief

*Theresa Burroughs*

SIGNED AND SWORN to (or affirmed) before me on this 31<sup>st</sup> day of January, 2017, by THERESA BURROUGHS.

*Robin Raap*  
 NOTARY PUBLIC in and for the  
 State of Washington.  
 My Appointment Expires: 1/15/21