

FILED  
Court of Appeals  
Division III  
State of Washington  
12/11/2017 1:27 PM

No. 35289-7-III  
IN THE COURT OF APPEALS  
FOR THE STATE OF WASHINGTON  
DIVISION III

STATE OF WASHINGTON,

Plaintiff/Respondent,

vs.

JAIME M. MASON,

Defendant/Appellant.

---

Appellant's Brief

---

DAVID N. GASCH  
WSBA No. 18270  
P.O. Box 30339  
Spokane, WA 99223-3005  
(509) 443-9149  
Attorney for Appellant

**TABLE OF CONTENTS**

A. ASSIGNMENT OF ERROR.....4

B. ISSUE PERTAINING TO ASSIGNMENTS OF ERROR.....4

C. STATEMENT OF THE CASE.....4

D. ARGUMENT.....5

Mr. Mason’s right to due process under Washington Constitution,  
Article 1, § 3 and United States Constitution, Fourteenth Amendment was  
violated where the State failed to prove the essential elements of the  
charged crime.....5

E. CONCLUSION.....10

**TABLE OF AUTHORITIES**

<b><u>Cases</u></b>	<b><u>Page</u></b>
<i>In re Winship</i> , 397 U.S. 358, 90 S.Ct. 1068, 25 L.Ed.2d 368 (1970)....	5, 6
<i>State v. Baeza</i> , 100 Wn.2d 487, 670 P.2d 646 (1983).....	5, 7
<i>State v. Collins</i> , 2 Wn. App. 757, 470 P.2d 227, 228 (1970).....	6
<i>State v. Green</i> , 94 Wn.2d 216, 616 P.2d 628 (1980).....	6
<i>State v. Huber</i> , 129 Wn.App. 499, 119 P.3d 388 (2005).....	7, 8
<i>State v. Hunter</i> , 29 Wn.App. 218, 627 P.2d 1339 (1981).....	7

*State v. Moore*, 7 Wn. App. 1, 499 P.2d 16 (1972).....6

*State v. Myers*, 133 Wn.2d 26, 941 P.2d 1102 (1997).....7

*State v. Partin*, 88 Wn.2d 899, 567 P.2d 1136 (1977).....7

*State v. Salinas*, 119 Wn.2d 192, 829 P.2d 1068 (1992).....6, 7

*State v. Taplin*, 9 Wn. App. 545, 513 P.2d 549 (1973).....6

*State v. Theroff*, 25 Wn. App. 590, 608 P.2d 1254, aff'd,  
95 Wn.2d 385, 622 P.2d 1240 (1980).....7

*State v. Zamora*, 63 Wn. App. 220, 817 P.2d 880 (1991).....7

**Constitutional Provisions and Statutes**

U.S. Const. amend. XIV.....5

Washington Constitution, Article 1, § 3.....5

RCW 9A.76.110(1).....7

A. ASSIGNMENT OF ERROR

The evidence was insufficient to sustain the conviction for first degree escape.

B. ISSUE PERTAINING TO ASSIGNMENTS OF ERROR

Was Mr. Mason's right to due process under Washington Constitution, Article 1, § 3 and United States Constitution, Fourteenth Amendment violated where the State failed to prove the essential elements of the charged crime?

C. STATEMENT OF THE CASE

Jamie Mason was convicted by a jury of first degree escape. CP 20. The Information alleged that "On or about December 26, 2015, in the State of Washington, while being detained pursuant to a conviction for Second Degree Possession of Stolen Property, a felony, [he] knowingly escaped from custody or from a detention facility." CP 1.

The State presented evidence of a judgment and sentence (J&S) for a person named Jaime Mason convicted of second degree possession of stolen property. RP 126. It also presented evidence through the testimony of Sonya Brooks, a fingerprint technician from the sheriff's office, that the fingerprints on a fingerprint card dated November 6, 2016, for a person

named Jaime Mason, matched those on an identification card dated August 12, 2015, for a person named Jaime Mason. RP 138-39.

The technician never examined Mr. Mason's hands or took his fingerprints herself. RP 141. The Court sustained Mr. Mason's objection to the State asking the technician:

So, based on what you've seen, do you believe that the same person who is sitting here in court is the same person who was convicted of the original offense back in 2015?

RP 140. The basis for the objection was there was no connection between the technician's testimony and Mr. Mason. RP 140.

This appeal followed. CP 36.

#### D. ARGUMENT

Mr. Mason's right to due process under Washington Constitution, Article 1, § 3 and United States Constitution, Fourteenth Amendment was violated where the State failed to prove the essential elements of the charged crime.

As a part of the due process rights guaranteed under both the Washington Constitution, Article 1, § 3 and United States Constitution, Fourteenth Amendment the state must prove every element of a crime charged beyond a reasonable doubt. *State v. Baeza*, 100 Wn.2d 487, 488, 670 P.2d 646 (1983); *In re Winship*, 397 U.S. 358, 364, 90 S.Ct. 1068,

1073, 25 L.Ed.2d 368 (1970). As the United States Supreme Court explained in *Winship*: “[T]he use of the reasonable-doubt standard is indispensable to command the respect and confidence of the community in applications of the criminal law.” *In re Winship*, 397 U.S. at 364.

Mere possibility, suspicion, speculation, conjecture, or even a scintilla of evidence, is not substantial evidence, and does not meet the minimum requirements of due process. *State v. Moore*, 7 Wn. App. 1, 499 P.2d 16 (1972). As a result, any conviction not supported by substantial evidence may be attacked for the first time on appeal as a due process violation. *Id.* “Substantial evidence” in the context of a criminal case, means evidence sufficient to persuade “an unprejudiced thinking mind of the truth of the fact to which the evidence is directed.” *State v. Taplin*, 9 Wn. App. 545, 513 P.2d 549 (1973) (quoting *State v. Collins*, 2 Wn. App. 757, 759, 470 P.2d 227, 228 (1970)).

In determining the sufficiency of the evidence, the test is “whether, after viewing the evidence in the light most favorable to the State, any rational trier of fact could have found guilt beyond a reasonable doubt.” *State v. Salinas*, 119 Wn.2d 192, 201, 829 P.2d 1068 (1992) (citing *State v. Green*, 94 Wn.2d 216, 220-22, 616 P.2d 628 (1980)). “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." *Salinas*, 119 Wn.2d at 201, 829 P.2d 1068 (citing *State v. Partin*, 88 Wn.2d 899, 906-07, 567 P.2d 1136 (1977)). "A claim of insufficiency admits the truth of the State's evidence and all inferences that reasonably can be drawn therefrom." *Salinas*, 119 Wn.2d at 201, 829 P.2d 1068 (citing *State v. Theroff*, 25 Wn. App. 590, 593, 608 P.2d 1254, aff'd, 95 Wn.2d 385, 622 P.2d 1240 (1980)).

While circumstantial evidence is no less reliable than direct evidence, *State v. Myers*, 133 Wn.2d 26, 38, 941 P.2d 1102 (1997), evidence is insufficient if the inferences drawn from it do not establish the requisite facts beyond a reasonable doubt. *Baeza*, 100 Wn.2d at 491, 670 P.2d 646. Specific criminal intent may be inferred from circumstances as a matter of logical probability." *State v. Zamora*, 63 Wn. App. 220, 223, 817 P.2d 880 (1991).

RCW 9A.76.110(1) provides in pertinent part: "A person is guilty of escape in the first degree if he or she knowingly escapes from custody or a detention facility while being detained pursuant to a conviction of a felony." Since a prior felony conviction is an element of the crime for first degree escape, the State must show independent evidence of the identity of

an individual named in a former judgment and sentence. *State v. Hunter*, 29 Wn.App. 218, 221, 627 P.2d 1339 (1981). A copy of the former judgment and sentence alone is not enough:

Where a former judgment is an element of the substantive crime being charged, identity of names alone is not sufficient proof of the identity of a person to warrant the court in submitting to the jury a prior judgment of conviction. It must be shown by independent evidence that the person whose former conviction is proved is the defendant in the present action.

*Id.* The State's burden includes demonstrating that the person on trial is the same person who committed the prior offense. *See State v. Huber*, 129 Wn.App. 499, 502–03, 119 P.3d 388 (2005).

In *Huber*, the State produced documents in the name of Wayne Huber, but no evidence to show “that the person named therein is the same person on trial.” *Huber*, 129 Wn.App. at 501–03. “To sustain this burden when criminal liability depends on the accused's being the person to whom a document pertains ...the State must do more than authenticate and admit the document; it also must show beyond a reasonable doubt ‘that the person named therein is the same person on trial.’ Because ‘in many instances [people] bear identical names,’ the State cannot do this by showing ‘identity of names alone.’ Rather, it must show, ‘by evidence independent of the record,’ that the person named therein is the defendant

in the present action. *Huber*, 129 Wn.App. at 502 (internal citations and footnotes omitted).

Here, the State presented evidence of a judgment and sentence for a person named Jaime Mason convicted of second degree possession of stolen property. RP 126. It also presented evidence through the testimony of Sonya Brooks that the fingerprints on a fingerprint card dated November 6, 2016, for a person named Jaime Mason, matched those on an identification card dated August 12, 2015, for a person named Jaime Mason. RP 138-39. However, the State failed to prove that the person named in the judgment and sentence was the same person on trial. The State also failed to prove the fingerprints on the fingerprint card matched those of the person on trial.

The technician never examined Mr. Mason's hands or took his fingerprints herself. RP 141. The Court sustained Mr. Mason's objection to the State asking the technician:

So, based on what you've seen, do you believe that the same person who is sitting here in court is the same person who was convicted of the original offense back in 2015?

RP 140. The basis for the objection was there was no connection between the technician's testimony and Mr. Mason. RP 140. The State did not present any other evidence to make that connection. RP 159-84.

Therefore, since there was insufficient evidence Mr. Mason was the same Jaime Mason previously convicted of second degree possession of stolen property, the State failed to prove that essential element of first degree escape.

E. CONCLUSION

For the reasons stated, the conviction should be reversed. Pursuant to RAP 15.2(f), Appellant's indigent status should continue throughout this appeal and he should not be assessed appellate costs if the State were to substantially prevail. See CP 34-35. Appellate counsel anticipates filing a report as to Appellant's continued indigency no later than 60 days following the filing of this brief.

Respectfully submitted December 11, 2017,

---

s/David N. Gasch  
Attorney for Appellant  
WSBA #18270

PROOF OF SERVICE (RAP 18.5(b))

I, David N. Gasch, do hereby certify under penalty of perjury that on December 11, 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 the brief of appellant:

Jaime M. Mason  
#786095  
1830 Eagle Crest Way  
Clallam Bay WA 98326-0723

**E-mail:** [tamara.hanlon@co.yakima.wa.us](mailto:tamara.hanlon@co.yakima.wa.us)  
Tamara A. Hanlon, Senior Deputy  
Yakima County Prosecutor's Office

---

s/David N. Gasch, WSBA #18270  
Gasch Law Office  
P.O. Box 30339  
Spokane, WA 99223-3005  
(509) 443-9149  
FAX: None  
[gaschlaw@msn.com](mailto:gaschlaw@msn.com)

**GASCH LAW OFFICE**

**December 11, 2017 - 1:27 PM**

**Transmittal Information**

**Filed with Court:** Court of Appeals Division III  
**Appellate Court Case Number:** 35289-7  
**Appellate Court Case Title:** State of Washington v. Jamie Michael Mason  
**Superior Court Case Number:** 16-1-01967-1

**The following documents have been uploaded:**

- 352897\_Briefs\_20171211132628D3069426\_0843.pdf  
This File Contains:  
Briefs - Appellants  
*The Original File Name was Mason Jaime Brief 12-11-17.pdf*

**A copy of the uploaded files will be sent to:**

- joseph.brusic@co.yakima.wa.us
- tamara.hanlon@co.yakima.wa.us

**Comments:**

---

Sender Name: Susan Gasch - Email: gaschlaw@msn.com

**Filing on Behalf of:** David N. Gasch - Email: gaschlaw@msn.com (Alternate Email: )

Address:  
PO BOX 30339  
SPOKANE, WA, 99223-3005  
Phone: 509-443-9149

**Note: The Filing Id is 20171211132628D3069426**