

NO. 35379-6-III

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

STATE OF WASHINGTON,

Respondent,

v.

WINDY SCHATZ,

Appellant.

APPEAL FROM THE SUPERIOR COURT
OF KLICKITAT COUNTY, STATE OF WASHINGTON
Superior Court No. 17-1-00016-0

BRIEF OF RESPONDENT

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A. ISSUE PRESENTED

Whether the trial court erred in adding a 24 months school bus stop enhancement to the Respondent's sentence.

B. STATEMENT OF THE CASE

Respondent was convicted of multiple violations of the Controlled Substances Act. Included in those convictions was a charge that on February 23, 2017 the Respondent was in possession of a controlled substance with intent to deliver. At trial evidence was admitted that the violation occurred within 1000 feet of a school bus stop. Based on this fact the trial court imposed a 24 month sentence enhancement pursuant to RCW 69.50.435.

As evidence of the school bus violation the State had called Clifford Clayton West who is the transportation supervisor for the Goldendale School District. RP at 296. Mr. West testified that he worked at the school district for 13 years and that part of his job responsibilities included establishing school bus routes for the entire Goldendale School District. RP at 296-97. Mr. West testified that in the Goldendale city limits the district provided bus stops for grades K through 6th and that there are regular buses utilizing those stops. RP 297-98. Mr. West also testified that there was a bus stop referred to as the "Klickitat and Putnam stop" and identified the stop on an aerial map of the city. RP at 299. In fact, Mr. West identified by marking an "X" on State's Exhibit 5, the

location of the school bus stop. RP at 300.

The State also called Sgt. Mike Smith of the Goldendale Police Department to testify about the distance to the bus stop. Sgt. Smith testified that he took measurements on March 2, 2017 from the location of the crime scene (where it was found the Respondent possessed a controlled substance with the intent to deliver) site to a location of a school bus stop as understood based on information provided by a representative of the Goldendale School District. RP at 201. In addition, the Court found that the act leading to the conviction was committed within 1,000 feet of a school bus stop. CP 15-19.

C. ARGUMENT

On appeal Respondent raises the argument that the trier of fact, the trial court judge, could not have had sufficient evidence to find, as he did, that the conviction for Possession of a Controlled Substance with Intent to Deliver was committed within 1,000 yards of a school bus stop. On appeal this court must view the evidence in a light most favorable to the State. *State v. Salinas*, 119 Wn.2d 192, 201, 829 P.2d 1068 (1992). "A claim of insufficiency admits the truth of the State's evidence and all inferences that reasonably can be drawn therefrom." *Id.* Circumstantial evidence and direct evidence are equally reliable. *State v. Delmarter*, 94 Wn.2d 634, 638, 618 P.2d 99 (1980).

The trier of fact, in this case the trial court, expressly concluded that the act which led to the conviction for Possession of a Controlled Substance with the Intent to Deliver was committed on February 23, 2017 and was within 1,000 feet of a designated school bus stop. The trial court heard testimony that a police officer measured that distance on March 2, 2017 based on information as to the whereabouts of the school bus stop by the transportation supervisor for the school district in question.

D. CONCLUSION

Sufficient evidence existed for the fact finder to rationally conclude that the act leading to the conviction at issue for Possession of a Controlled Substance was committed within 1,000 of a designated school bus stop. Therefore, we ask that you affirm the underlying conviction and sentence.

Respectfully submitted this 9th day of April, 2018.



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April 09, 2018 - 1:58 PM

Transmittal Information

Filed with Court: Court of Appeals Division III
Appellate Court Case Number: 35379-6
Appellate Court Case Title: State of Washington v. Windy Anne Schatz
Superior Court Case Number: 17-1-00016-9

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