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Court of Appeals
Division III
State of Washington
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IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON DIVISION III

No. 366871

STATE OF WASHINGTON, Respondent

v.

EDWIN ESPEJO, Appellant

APPELLANTS' OPENING BRIEF

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ASSIGNMENT OF ERROR

ASSIGNMENT OF ERROR NO. 1: The trial court erred when it denied the defendant's motion for acquittal.

ASSIGNMENT OF ERROR NO. 2: The trial court erred when it failed to grant the defendant's motion for a new trial.

ISSUES PERTAINING TO ASSIGNMENT OF ERROR

ISSUE NO. 1: Whether substantial evidence supports the jury's finding that Mr. Espejo was guilty of assault in the second degree.

ISSUE NO. 2: Whether the trial court erred when it failed to grant Mr. Espejo's motion for a new trial.

STATEMENT OF THE CASE

On July 31, 2018 the State of Washington charged Edwin Espejo with Assault in the Second Degree. The State believed that Mr. Espejo punched Richard Vasquez in the nose causing Mr. Vasquez's nose to be broken and for Mr. Vasquez to have suffered from a concussion. The crime

the State alleged occurred in the Franklin County Jail on June 10, 2018 where both men were being held by the county for alleged criminal behavior.

On August 16, 2018 a jury of thirteen people was empaneled to hear the case against Mr. Espejo. On the morning of the seventeenth the State presented its evidence against the defendant. First, the State played two different tapes of events which occurred in the Q Pod section of the Franklin County Jail. The video tapes came from two different cameras which had been placed in different parts of Q Pod. The two cameras were the only eyewitnesses to events which occurred in Q Pod between 7:20 p.m. and 8:00 p.m. on June 10, 2018.

The State called Mr. Vasquez to testify. The State did not ask Mr. Vasquez to identify himself in the video tape. The State asked Mr. Vasquez if he had been assaulted in Q Pod. Mr. Vasquez denied being assaulted and stated that Mr. Espejo was his friend. Trial Transcript P. 116 Lines 21-26.

Deputy Marc Garcia of the Franklin County Jail was called to stand. Deputy Garcia was in charge of the jail on June 10, 2018. Trial Transcript P. 155 Lines 6-7. Deputy Garcia was shown the two tapes. Trial Transcript P. 163 Lines 1-20. During his testimony Deputy Garcia claimed that he could identify people in Q Pod by their clothes and/or body type. He testified that he could identify Mr. Espejo by his limp. Trial Transcript P. 180 Lines 1-20. Deputy Garcia identified a variety of inmates entering cell number 10 in Q Pod. He pointed to Mr. Espejo limping in and out of the cell. Trial Transcript P. 180 Lines 1-25.

Deputy Garcia was asked to focus his attention on cell number 10 during the time frame from 7:25 p.m. until 7:30 p.m. In this time frame the deputy pointed to Mr. Espejo limping into the

cell. The deputy did not point out Mr. Valdez in the cell and nobody who looked like Mr. Valdez appeared to enter or leave the cell.

Deputy Garcia was asked to focus his attention on the common area of Q Pod between 7:40 and 7:45 p.m. The cameras during this time frame show a limping man take a mop from a bucket. The limping man appeared to mop the floor; there did not appear to be any blood on the floor. Trial Transcript P. 195 Lines 11-12.

The first time the deputy was able to identify Mr. Vasquez as being in Q Pod is when the camera records Mr. Vasquez as being in Q Pod is when the camera records Mr. Vasquez leaving cell 10 and entering the shower. Trial Transcript P. 196 Lines 1-3. Mr. Vasquez can be seen several times on the tape between 7:45 and 8:00 p.m. Mr. Vasquez does not appear to be bleeding; he does not appear to have a concussion.

On August 20, 2019 Deputy Joshua Dennis of the Franklin County Sheriff's Office was called to the stand. He used a pointer to name a dozen or so inmates who were walking about Q Pod on June 10, 2018. Each of the men had Spanish surnames. Trial Transcript P. 244 Lines 16-25. Deputy Dennis did not point out Mr. Vasquez entering Q Pod, he did, however, point out Mr. Vasquez exiting the cell at 7:45 p.m. Trial Transcripts P. 245-248.

Angela Carpenter, a registered nurse at Lourdes Hospital, testified that Mr. Vasquez was brought in for treatment at approximately 9:00 p.m. She noticed he was bleeding and in pain. Trial Transcript P 125 Lines 1-25; P. 126 Lines 1-25.

Caleb Engler, a registered nurse at Lourdes, testified that he was assigned to evaluate and treat Mr. Vasquez. RN Engler testifies that there was blood on Mr. Vasquez's face and torso, and that there was a cut above his right eye. Trial Transcript P. 131- Lines 7-14. RN Engler said he

heard Mr. Vasquez say that he had been beaten up. Trial Transcript P. 132 Lines 15-18. RN Engler referred Mr. Vasquez to emergency room physician, Scott Lamb.

Dr. Lamb testified that Mr. Vasquez was bleeding from the mouth, from a cut over the eye and over the nose. Trial Transcript P 139 Lines 4-7. Dr. Lamb noticed that Mr. Vasquez was suffering from significant pain in his ribs, but his ribs appeared to be bruised not broken. Trial Transcript P. 145 Lines 22-25. Dr. Lamb testified that he believed Mr. Vasquez suffered from a broken nose, cuts to the mouth and eye, as well as a concussion. Trial Transcript P. 147, Lines 9-18.

On the morning of August 20, 2018, the case against Mr. Espejo was concluded. The jury of thirteen was reduced by lottery to twelve. The jury was sent to deliberate. A short time later the jury indicated they wanted to review the video tapes. The tapes were reviewed, and the jury returned to its room to deliberate. At 4:03 p.m. the Court informed the parties that the jury had a question. The inquiry read as follows:

“Juror Number 13 seems incoherent about the case. She says she’s a ward of the state and keeps going on about seeds and germination. She talks about Kool-Aid red. She keeps going on about the Manhattan conspiracy.” Trial Transcript P. 336 Lines 12-18.

Court was adjourned for the day.

On August 21, 2018, the Court decided to interview the jury. Juror 13 stated that she did reference Kool-Aid because the mop was pink. Juror 13 said she referred to the Manhattan project because there was so much production in a massive size and it requires a great deal of clean up. Trial Transcript P. 364 Lines 6-10. Juror 13 testified that she was capable of

performing her duties as a juror and could discuss the matter fully with her fellow jurors. Trial transcript P. 364 Lines 16-20.

Juror No. 1 was called to testify. This juror testified that Juror 13 could not comprehend what was going on. she could not connect the videos and picture to what was actually going on. The sum and substance of the other jurors' comments were that Juror 13 did not seem to be all there mentally. Trial Transcript P. 367-388.

The Court decided to excuse Juror 13. Trial Transcript P. 393 Lines 14-18. The alternate was called in to replace Juror 13; the jury returned a guilty verdict within thirty minutes.

ARGUMENT

The evidence presented at trial was insufficient to sustain a verdict against Mr. Espejo for Assault in the Second Degree. No evidence was presented which would lead a reasonable person to believe that Mr. Espejo touched the defendant in an offensive way; here, the defendant asserts he was never assaulted by Mr. Espejo. Trial Transcript P. 116 Lines 21-24; P. 121 Lines 9-15. As a result, the Assault in the Second-Degree charge against Mr. Espejo must be dismissed.

A criminal defendant is entitled to trial by a fair and impartial jury. U.S. Const., amend VI, XIV; *Duncan v. La.*, 391 U.S. 145, 177 (1968). Included in the right to a fair and impartial jury is the promise that a "hold out juror will not be excused for failing to deliberate or follow the law where there is some evidence that the juror simply disagrees with the other jurors about the merits of the case. *State v. Elmore*, 121 Wash. App. 747, 746 (2004). A new trial is

necessary when a criminal defendant can show there is a reasonable possibility that a juror was removed from the case because of her views on the case. Id at 756. Here, it is clear that 12 jurors turned against one juror because that one juror refused to change her mind and find Mr. Espejo guilty.

CONCLUSION

The charge against Mr. Espejo is not supported by substantial evidence, as a result the case should be dismissed. If the case against Mr. Espejo is not dismissed, he is entitled by the constitutions of the State of Washington and the United States to a new trial.

Date: December 2, 2019

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