

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

STATE OF WASHINGTON

Respondent

v.

WILLIAM NICOL

Appellant

APPELLANT'S OPENING BRIEF

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ASSIGNMENT OF ERROR

1. The court erred in finding the appellant guilty of bail jump because the evidence presented by the prosecutor was insufficient to support the charge.

ISSUES PERTAINING TO THE ASSIGNMENT OF ERROR

Does the evidence presented to the trial court and properly admitted suffice to find the defendant guilty of the alleged offense even though no one told the appellant that his appearance was required after 4:30 pm?

STATEMENT OF THE CASE

The appellant was charged with two counts of child rape and one count of child molestation. *Trial Transcript P. 6*. The appellant was released on bail. *Id.* The case was brought before a jury for trial on October 17, 2016. The appellant was present in court until court ended at 4:09 p.m. *Trial Transcript p. 18*. The trial continued on October 18, 2016; the appellant was present until 3:20 pm. *Id.* The trial continued on October 19th and the appellant was present until 4:33 pm. *Trial Transcript p. 22*. October 20th, 2016; the appellant was present until 3:2 pm. *Trail Transcript p. 23*. On October 21st, 2016 the appellant was present at 9:00 am in court. *Trial Transcript p 24*. Jury instructions were read; final arguments were made and the jury was sent to deliberate. At 4:15 pm the jury had a question for the court. The defendant was present when the question was read. *Trial Transcript p. 25*. At 4:40 pm the jury made it known that it had reached a verdict. *Trial Transcript p. 26*. The jury trial was presided over by the Honorable Jacqueline Shea Brown. Judge Brown returned to the bench. She asked Mr. Nicol's attorney, James Egan, where he Mr. Nicol was; Mr.

Egan said he did not know. *Id.* The jury was brought in; a verdict was read even though the appellant was not present. The jury found the appellant guilty. *Id.*

The State filed additional charges for bail jump Mr. Nicol elected to have the bail jumping charge tried without a jury to the bench. The bench trial was heard by the Honorable Jacqueline Shea Brown.

At the bench trial the State had the obligation to prove beyond a reasonable doubt that Mr. Nicol failed to appear in court on October 21, 2016. The State showed that the appellant was in court on October 21 from 9:00 am until 4:15 pm. *Trial Transcript p. 25* The State showed that the defendant could not be found at 4:40 pm. *Trial Transcript p. 26* The State acknowledged that court began each day at or about 9:00 a.m. and ended every day before or around 4:30 p.m. On October 21, 2016 the prosecutor, the appellant and his lawyer were told that court would end sometime between 4:00 and 4:30. *Trial Transcript p. 57, p 72-75.*

The court found the appellant guilty of bail jump.

ARGUMENT

The Due Process Clause protects the accused against conviction except upon proof beyond a reasonable doubt of every fact necessary to constitute the crime with which he has been charged. *In re Winship*, 397 U.S. 358, 364 (1971). Here, the State presented evidence that Mr. Nicol went to court each day as instructed by the court. Here, the State presented no evidence which would lead a person to believe that Mr. Nicol had failed to appear on court on October 21, 2016. Here, the State argues that Mr. Nicol bail jumped because he was not in court at a time when the court did not normally conduct business. Mr. Nicol was told by the court that court would end sometime between 4:00 pm and 4:30 pm. There was no evidence presented which would lead a reasonable person to believe that Mr. Nicol had been instructed to be in court past 4:30. The evidence presented by the prosecution was insufficient to support a verdict.

CONCLUSION

The Court of Appeals should dismiss the charge against the appellant,
William Nicol.

February 24, 2020

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