

FILED
MARCH 20, 2015
Court of Appeals
Division III
State of Washington

No. 327868

COURT OF APPEALS
DIVISION III
OF THE STATE OF WASHINGTON

STATE OF WASHINGTON, Respondent

v.

JAVIER SANCHEZ, Appellant

APPEAL FROM THE SUPERIOR COURT
OF BENTON COUNTY

BRIEF OF APPELLANT

Marie J. Trombley, WSBA 41410
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I. ASSIGNMENT OF ERROR

The evidence is insufficient to sustain a conviction for escape in the second degree, as charged.

ISSUES RELATED TO ASSIGNMENTS OF ERROR

Was Mr. Sanchez's constitutional right to due process violated where the State failed to prove beyond a reasonable doubt that he escaped from a detention facility?

II. STATEMENT OF FACTS

Mr. Sanchez entered into a contract with Benton County to serve on a work crew in lieu of jail time for an offense he pleaded guilty to in November 2013. (9/9/14 a.m. session RP 9-10). He completed the proper paperwork on the assigned report date of December 10, 2013. (9/9/14 a.m. session RP 20). The following week, according to Officer Tanska, a Benton County Jail Work Crew officer, Mr. Sanchez made his second check in. (9/9/14 a.m. session RP 25). From that date onward, however, the officer had no record of Mr. Sanchez making his required telephone check-in calls or reporting for work crew assignment. *Id.*

An application for an arrest warrant was made on January 31, 2014. (CP 3). Mr. Sanchez was arrested and the Benton

County Prosecutor charged Mr. Sanchez by information with the escape in the second degree as follows:

COMES NOW, ANDY MILLER, Prosecuting Attorney for Benton County, State of Washington, and by this his Information accuses

JAVIER SANCHEZ

of the crime of ESCAPE IN THE SECOND DEGREE, RCW 9A.76.120(1)(a), committed as follows, to-wit:

COUNT 1

That the said JAVIER SANCHEZ in the County of Benton, State of Washington, during the time intervening between the 10th day of December 2013, and the 8th day of January, 2014, in violation of RCW 9A.76.120(1)(a), did knowingly escape from Benton County Jail, a detention facility, contrary to the form of the Statute in such cases made and provided, and against the peace and dignity of the State of Washington.

(CP 1).

At the jury trial, the Court gave Jury Instruction No. 6:

“A person commits the crime of escape in the second degree when he knowingly escapes from a detention facility.” (CP 49).

The Court also gave Jury Instruction No. 8:

Detention facility means any place used for the confinement of a person arrested for, charged with, or convicted of any offense in any work release, furlough, or other such facility or program. (CP 51).

Convicted by a jury, he makes this timely appeal. (CP 93-94; 9/9/14 p.m. session RP 35).

III. ARGUMENT

Mr. Sanchez's Constitutional Right To Due Process Was Violated Where The State Failed To Prove Beyond A Reasonable Doubt That He Escaped From A Detention Facility.

Sufficiency of the evidence is a question of constitutional magnitude and may be raised for the first time on appeal. *State v. Baeza*, 100 Wn.2d 487, 488, 670 P.2d 646 (1983). Due process rights, guaranteed under the State and Federal constitutions, require the State to prove every element of a crime beyond a reasonable doubt. *In re Winship*, 397 U.S. 358, 364, 90 S.Ct. 1968, 25 L.Ed.2d 368 (1970); U.S. Const. Amend. XIV; Wash. Const. Art.1§3. Evidence is insufficient to support a conviction unless, when viewed in the light most favorable to the State, any rational trier of fact could find the essential elements of the crime beyond a reasonable doubt. *State v. Green*, 94 Wn.2d 216, 220-21, 616 P.2d 628 (1980). Insufficiency of the evidence to prove all elements of a crime beyond a reasonable doubt requires the conviction to be reversed and dismissed. *State v. Teal*, 117 Wn.App. 831, 837, 73 P.3d 402 (2003). Whether a defendant's conduct satisfies

elements of a criminal statute is a question of law that is reviewed de novo. *State v. Drum*, 168 Wn.2d 23, 31, 225 P.3d 237 (2010).

The State charged Mr. Sanchez with second-degree escape, specifically “in violation of RCW 9A.76.120(1)(a), did knowingly escape from Benton County Jail, a *detention facility*” (CP 1) (Emphasis added). Under RCW 9A.76.010(3), a “detention facility” means any *place* used for the confinement of a person who has been arrested for, charged with, or convicted of an offense...or in any work release, furlough, or other such facility or program. Under this statute, both the person detained and the *place* must qualify. *State v. Gomez*, 152 Wn.App. 751, 754, 217 P.3d 391 (2009); *State v. Hendrix*, 109 Wn.App. 508, 513-14, 35 P.3d 1189 (2001). By definition, a detention facility is a *place* used for confinement. *Gomez*, 152 Wn.App. 754; *State v. Peters*, 35 Wn.App. 427, 430-31, 667 P.2d 136 (1983).

Here, Mr. Sanchez was not confined to a detention facility. Rather, he was released from jail and ordered to serve a period of service on a work crew. Mr. Sanchez did not escape from a detention facility.

A person is guilty of escape in the third degree if he escapes from custody. RCW 9A.76.130(1). Under RCW 9A.76.010(2)

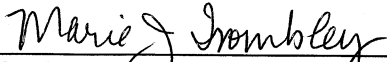
“custody” means restraint pursuant to *any period of service on a work crew*. Under Washington law, escape from custody means an individual has failed to be physically present at the time and place where he is legally obligated to be in custody. *State v. Ammons*, 136 Wn.2d 453, 963 P.2d 812 (1998). Mr. Sanchez is guilty only of escape from custody, third degree escape, not second-degree escape as charged and as the jury was instructed.

The State charged but failed to prove beyond a reasonable doubt that Mr. Sanchez escaped from a detention facility. The evidence does not meet the requirements of due process.

V. CONCLUSION

Based on the foregoing facts and authorities, Mr. Sanchez respectfully asks this Court to reverse and dismiss his conviction.

Respectfully submitted March 19, 2015.


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CERTIFICATE OF SERVICE

I, Marie Trombley, do hereby certify under penalty of perjury under the laws of the State of Washington, that on MARCH 20, 2015, I served by USPS, first class, postage prepaid or served by electronic service by prior agreement between the parties, a true and correct copy of the Brief of Appellant to:

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and

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