

FILED
Sep 16, 2015
Court of Appeals
Division III
State of Washington

No.
COA No. 32214-9-III

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

92269-1

STATE OF WASHINGTON

Respondent,

v.

DANIEL SOTO,

Petitioner.

FILED
SEP 22 2015

CLERK OF THE SUPREME COURT
STATE OF WASHINGTON *CR*

ON APPEAL FROM THE SUPERIOR COURT OF
THE STATE OF WASHINGTON FOR FRANKLIN COUNTY

The Honorable Carrie L. Runge

PETITION FOR REVIEW

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A. IDENTITY OF PETITIONER

Daniel Soto asks this Court to accept review of the Court of Appeals decision terminating review designated in part B of this petition.

B. COURT OF APPEALS DECISION

Pursuant to RAP 13.4(b), petitioner seeks review of the unpublished Court of Appeals decision in *State v. Daniel Soto*, No. 32214-9-III (September 3, 2015). A copy of the decision is in the Appendix.

C. ISSUE PRESENTED FOR REVIEW

Due process requires the State prove each essential element of the charged offense beyond a reasonable doubt. One element of the offense of a felony violation of a no contact order is that the defendant had twice previously been convicted of a violation of a no contact order. A copy of a Judgment and Sentence in the defendant's name alone is not sufficient proof beyond a reasonable doubt of this element. Here, the State presented two Judgments and Sentence containing the name "Daniel Soto," with the same birthdate as the appellant but no corroborating evidence to establish the appellant and the person named were the same individual. Is a significant question of law under the

United States and Washington Constitutions involved where the State failed to carry its burden of proof thus convicting Mr. Soto on evidence less than proof beyond a reasonable doubt?

D. STATEMENT OF THE CASE

On April 5, 2013, Pasco Police Officer Fox stopped a car for speeding. RP 8-10. The driver of the car, Fabiola Ayala, identified herself with a driver's license. RP 10. Officer Fox's check of Ms. Ayala's license status revealed the presence of a no contact order in which she was the protected person. RP 10. The person from whom she was protected was a "Daniel Soto." RP 11.

Officer Fox contacted the passenger in the car who orally identified himself as Daniel Soto. RP 11. Officer Fox determined Mr. Soto's birthdate matched that of the person named in the no-contact order. RP 11. Officer Fox arrested Mr. Soto.

Mr. Soto was charged with a felony violation of a no-contact order for violating the no-contact order while having suffered two previous convictions for violating no-contact orders. CP 38-39. Mr. Soto waived his right to a jury trial and the matter proceeded as a bench trial. CP 37.

At trial, the State introduced certified copies of two Judgments and Sentence. CP 44-47. The documents contained the name of Daniel Soto and contained the same date of birth as Mr. Soto. Based upon these exhibits, the trial court concluded Mr. Soto had two previous convictions for violating no contact orders. CP 35-36. The court found Mr. Soto guilty as charged. CP 35-36.

The Court of Appeals rejected Mr. Soto's challenge to the State's proof that he had suffered two prior convictions for violating no contact order finding that sufficient corroboration had been presented. Decision at 5.

E. ARGUMENT ON WHY REVIEW SHOULD BE GRANTED

The State's proof was insufficient and mandates reversal and dismissal.

The State is required to prove each element of the crime charged beyond a reasonable doubt. U.S. Const. amend XIV; *Apprendi v. New Jersey*, 530 U.S. 466, 471, 120 S.Ct. 2348, 147 L.Ed.2d 435 (2000); *In re Winship*, 397 U.S. 358, 364, 90 S.Ct. 1068, 25 L.Ed.2d 368 (1970).

The standard the reviewing court uses in analyzing a claim of insufficiency of the evidence is "[w]hether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a

reasonable doubt.” *Jackson v. Virginia*, 443 U.S. 307, 319, 99 S.Ct. 2781, 61 L.Ed.2d 560 (1979). A challenge to the sufficiency of evidence admits the truth of the State's evidence and all reasonable inferences that can be drawn therefrom. *State v. Salinas*, 119 Wn.2d 192, 201, 829 P.2d 1068 (1992).

Here, the State was required to prove Mr. Soto had two previous convictions for violations of no contact orders. There are three essential elements of the crime of violation of a no contact order: (1) willful contact with another, (2) the prohibition of contact by a valid no contact order, and (3) the defendant's knowledge of the no-contact order. RCW 26.50.110; *State v. Washington*, 135 Wn.App. 42, 49, 143 P.3d 606 (2006). Violation of a no contact order under chapter 10.99 RCW becomes a felony if the offender has at least two previous convictions for violating the provisions of an order issued under chapter 26.50, 7.90, 9.94A, 9A.46, 10.99, 26.09, 26.10, 26.26, or 74.34 RCW. RCW 26.50.110(5). The State bears the burden of establishing the “identity of the accused as the person who committed the offense.” *State v. Hill*, 83 Wn.2d 558, 560, 520 P.2d 618 (1974).

Where a prior conviction is an element of a crime, the State must prove its existence beyond a reasonable doubt; an identity of

names alone is insufficient to meet this burden. *State v. Harkness*, 1 Wn.2d 530, 533, 96 P.2d 460 (1939); *State v. Hunter*, 29 Wn.App. 218, 221, 627 P.2d 1339 (1981); *State v. Brezillac*, 19 Wn.App. 11, 13, 573 P.2d 1343 (1978). If the State presents only a document bearing an identical name, the State fails to produce sufficient evidence to support a criminal conviction beyond a reasonable doubt. *Hunter*, 29 Wn.App. at 221.

Thus, there must be some independent corroborative evidence that shows that the person whose former conviction is proved is the defendant in the present action. *Hunter*, 29 Wn.App. at 221. The State can meet this burden in a variety of specific ways. Depending on the circumstances, these may include otherwise-admissible booking photographs, booking fingerprints, eyewitness identification, or, arguably, distinctive personal information. *State v. Huber*, 129 Wn.App. 499, 502-03, 119 P.3d 388 (2005).

The State provided only documents that contained a name and date of birth but failed to provide any additional corroborating evidence of identity, such as a booking photo of Mr. Soto or an analysis of his fingerprints to establish the “Daniel Soto” listed in the Judgments and Sentence was the same Daniel Soto charged in this matter.

The Court of Appeals agreed with the trial court's conclusion. Decision at 5. The Court was convinced by the fact all of the documents contained a signature which looked identical. Decision at 5. This makes no sense since if this was *not* the same "Daniel Soto" as appellant, the signatures would necessary look the same but not have been made by appellant. This fact proved nothing.

The Court was also persuaded by the fact the birthdates were the same on the judgment and sentence forms as Mr. Soto's birthday. Decision at 5. But once again, without a photograph, fingerprint analysis, or some other independent corroborating evidence, this cannot evidence be sufficient to support Mr. Soto's conviction.

This Court should grant review to determine the quantum of proof necessary to constitute the "independent corroborative evidence" necessary to prove the element of identity in a violation of a no contact case. This Court should also find that the amount of evidence presented here did not satisfy the necessary quantum of evidence and should reverse Mr. Soto's conviction.

F. CONCLUSION

For the reasons stated, Mr. Soto asks this Court to grant review and reverse his felony conviction for a violation of a no contact order.

DATED this 16th day of September 2015.

Respectfully submitted,

s/Thomas M. Kummerow

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APPENDIX

FILED
SEPTEMBER 3, 2015
In the Office of the Clerk of Court
WA State Court of Appeals, Division III

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

STATE OF WASHINGTON,)	
)	No. 32214-9-III
Respondent,)	
)	
v.)	
)	
DANIEL SOTO,)	UNPUBLISHED OPINION
)	
Appellant.)	

KORSMO, J. — Daniel Soto contests the sufficiency of the evidence identifying him as the person who twice previously violated a no contact order. We affirm.

FACTS

Mr. Soto was charged in the Franklin County Superior Court with one count of felony violation of a no contact order entered by the Pasco Municipal Court. It precluded Mr. Soto from having physical contact with, or being in proximity to, Ms. Fabiola Ayala.¹

¹ Originally, the order had prohibited Mr. Soto from having any contact with Ms. Ayala. However, in response to a request to lift the order, the municipal court instead modified the order to permit communication between the two by text, telephone, or email. Ex. 4.

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The charge was filed after a Pasco Police Department officer stopped a car for speeding in the late evening of April 5, 2013. The driver was Ms. Ayala; she had a male passenger. Discovering that Ms. Ayala was a person protected by a no contact order, the officer obtained the identification of her passenger, Mr. Soto. His name, physical description, and birthdate matched that of the Daniel Soto who was subject to the no contact order.

Mr. Soto waived jury trial and his case proceeded to trial before the Honorable Carrie Runge. The municipal court's probation officer and a clerk of that court identified the no contact order and identified Mr. Soto as the man who was subject to the order. Two judgment and sentence forms were entered without objection establishing that Daniel Soto had previously violated a no contact order on nine occasions.

Defense counsel argued that Mr. Soto thought the order had been modified to allow his contact with Ms. Ayala and that the prior convictions did not establish that they involved the same Daniel Soto subject to the Pasco court's order. The trial judge rejected the arguments and concluded that Mr. Soto had once again violated the no contact order.

Findings of fact were entered in support of the bench verdict and a standard range sentence imposed. Mr. Soto then timely appealed to this court.

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ANALYSIS

The sole issue presented in this appeal is one argued by trial counsel—did the evidence support the determination that Mr. Soto had twice previously been convicted of violating a no contact order? The evidence does support the bench verdict.

Well settled standards govern appellate challenges to the sufficiency of the evidence to support a conviction. We review such challenges to see if there was evidence from which the trier of fact could find each element of the offense proven beyond a reasonable doubt. *Jackson v. Virginia*, 443 U.S. 307, 319, 99 S. Ct. 2781, 61 L. Ed. 2d 560 (1979); *State v. Green*, 94 Wn.2d 216, 221-222, 616 P.2d 628 (1980). The reviewing court will consider the evidence in a light most favorable to the prosecution. *Jackson*, 443 U.S. at 319; *Green*, 94 Wn.2d at 221-222. Reviewing courts also must defer to the trier of fact “on issues of conflicting testimony, credibility of witnesses, and the persuasiveness of the evidence.” *State v. Thomas*, 150 Wn.2d 821, 874-875, 83 P.3d 970 (2004).

The specific argument made here is one that is recurring in our criminal law. Where a prior conviction is an element of a crime, the State must prove its existence beyond a reasonable doubt; an identity of names alone is insufficient to meet this burden. *State v. Harkness*, 1 Wn.2d 530, 543, 96 P.2d 460 (1939); *State v. Hunter*, 29 Wn. App. 218, 221, 627 P.2d 1339 (1981); *State v. Brezillac*, 19 Wn. App. 11, 13, 573 P.2d 1343 (1978). Thus, there must be some independent corroborative evidence that shows that the

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person whose former conviction is proved is the defendant in the present action. *Hunter*, 29 Wn. App. at 221. Once the State has done this, it has established a prima facie case and the burden shifts to the defendant to cast doubt upon the identity of the individual in the documents. *Id.* at 222.²

The leading Washington criminal case on identification is *State v. Hill*, 83 Wn.2d 558, 520 P.2d 618 (1974). There the court stated:

It is axiomatic in criminal trials that the prosecution bears the burden of establishing beyond a reasonable doubt the identity of the accused as the person who committed the offense. . . . Identity involves a question of fact for the jury and any relevant fact, either direct or circumstantial, which would convince or tend to convince a person of ordinary judgment, in carrying on his everyday affairs, of the identity of a person should be received and evaluated.

Id. at 560. The court concluded that testimony that “Jimmy Hill” and “the defendant” was the responsible party was sufficient to prove identity even in the absence of in-court identification. *Id.*

Mr. Soto relies in part on the decision in *State v. Huber*, 129 Wn. App. 499, 119 P.3d 388 (2005). There the prosecution failed to establish that the Mr. Huber who was present at the jury trial for bail jumping was the same Mr. Huber who had failed to appear in court at an earlier hearing. *Id.* at 500-501. Noting that many people have the

² While not a basis for our decision, we do note that there was no conflicting evidence suggesting that there were multiple people named Daniel Soto subject to no contact orders in the greater Pasco area.

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same name, the court concluded that the evidentiary flaw in the case was the failure to connect the paperwork from the first case with the defendant in the current bail jumping case. *Id.* at 502-503.

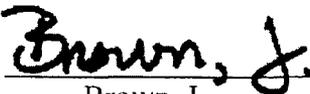
There was more than similarity in names here. The Daniel Soto listed in the protection order has the same birthday—January 14, 1977—as the Daniel Soto in both judgment and sentence forms. *See* Exs. 2, 3, 5. The signature “Daniel Soto” on each of the three forms looks identical. These facts corroborate the identification of Daniel Soto on the prior convictions with the Daniel Soto currently in the courtroom subject to the Pasco Municipal Court no contact order.

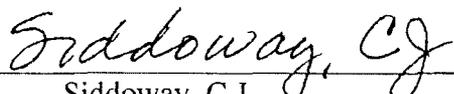
The evidence supported the bench verdict. The conviction is affirmed.

A majority of the panel has determined this opinion will not be printed in the Washington Appellate Reports, but it will be filed for public record pursuant to RCW 2.06.040.


Korsmo, J.

WE CONCUR:


Brown, J.


Siddoway, C.J.

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,)
)
RESPONDENT,)
)
v.) NO. 32214-9-III
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DANIEL SOTO,)
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PETITIONER.)

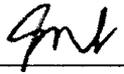
DECLARATION OF DOCUMENT FILING AND SERVICE

I, MARIA ANA ARRANZA RILEY, STATE THAT ON THE 16TH DAY OF SEPTEMBER, 2015, I CAUSED THE ORIGINAL **PETITION FOR REVIEW TO THE SUPREME COURT** TO BE FILED IN THE **COURT OF APPEALS – DIVISION THREE** AND A TRUE COPY OF THE SAME TO BE SERVED ON THE FOLLOWING IN THE MANNER INDICATED BELOW:

- | | | | |
|-------------------------------------|---|-------------------------------------|------------------------------------|
| <input checked="" type="checkbox"/> | SHAWN SANT, PA
BRIAN HULTGRENN, DPA
[appeals@co.franklin.wa.us]
FRANKLIN COUNTY PROSECUTOR'S OFFICE
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PASCO, WA 99301 | <input type="checkbox"/> | U.S. MAIL |
| | | <input type="checkbox"/> | HAND DELIVERY |
| | | <input checked="" type="checkbox"/> | AGREED E-SERVICE
VIA COA PORTAL |
| <input checked="" type="checkbox"/> | DANIEL SOTO
124 ELM AVE
PASCO, WA 99301 | <input checked="" type="checkbox"/> | U.S. MAIL |
| | | <input type="checkbox"/> | HAND DELIVERY |
| | | <input type="checkbox"/> | _____ |

SIGNED IN SEATTLE, WASHINGTON THIS 16TH DAY OF SEPTEMBER, 2015.

X _____



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