

March 2, 2021

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

STATE OF WASHINGTON,

Respondent,

v.

JOSHUA O. KIMBROUGH,

Appellant.

No. 53953-5-II

UNPUBLISHED OPINION

VELJACIC, J. — Joshua O. Kimbrough appeals his convictions for second degree taking a motor vehicle without permission and bail jumping. Kimbrough argues that there is insufficient evidence to support the convictions and the trial court erred by denying his motion for arrest of judgment. We affirm.

FACTS

In April 2019 Kimbrough asked to borrow a vehicle from his father, Wilbert Kimbrough. Kimbrough had driven the vehicle in the past. Wilbert¹ told him no. The vehicle was registered to Kimbrough’s mother, Maria Kimbrough, but Wilbert testified that it was “our vehicle” and described it as “community property, so half and half.” 1 Report of Proceedings (RP) at 148-49. After being told he could not have the vehicle, Kimbrough left.

The following morning, Wilbert noticed the car was stolen. He reported the missing vehicle to police.

¹ Because some individuals involved share the same last name as Kimbrough, we refer to them by their first names for clarity, we intend no disrespect.

Later that day, Kimbrough returned to his parents' residence and stated, "you turned me in," and then left again in the vehicle at "[q]uite a fast speed." 1 RP at 151.

Police later responded to a report of a suspicious vehicle at a gas station. It matched the description and had the same license plate number of the vehicle that Wilbert reported as stolen. City of Tumwater Police Officer James Moran approached the vehicle from behind and activated his vehicle's emergency lights. Kimbrough then "took off at a high rate of speed." 2 RP at 226. Moran followed Kimbrough with other officers joining in the pursuit.

Kimbrough led police on an extensive chase that ended with Kimbrough hitting a curb and running into another vehicle. Kimbrough then exited the vehicle's driver side door and began to run. Officers apprehended him.

The State charged Kimbrough with second degree taking a motor vehicle without permission and attempting to elude a pursuing police vehicle.

At his preliminary hearing, the trial court authorized Kimbrough's release on \$3,500 bail. The release order did not indicate that bail had been posted. But the order notified Kimbrough that if he "fails to appear for any scheduled court date . . . a bench warrant may be issued and additional criminal charges filed." Clerk's Papers (CP) at 5.

At his arraignment, Kimbrough was ordered to appear on June 13, 2019 for a trial confirmation hearing. The clerk's notes from the arraignment hearing state "Release" and that the trial court's "conditions of release remain in effect." CP at 8.

At the trial confirmation hearing, the clerk's notes state, "The Court called the case in open court with no response from [Kimbrough]." CP at 185.² The trial court issued a bench warrant for Kimbrough based on his failure to appear.

The State added an additional charge of bail jumping for Kimbrough's failure to appear at the June 13, 2019 trial confirmation hearing.

During trial, Thurston County Deputy Prosecuting Attorney, James Powers, testified for the State. He testified that when a case is called for trial confirmation the "judge gives notice to everyone in the courtroom as to what the next case is going to be, and the defendant either comes forward or doesn't." 2 RP at 283. Powers stated that if a case is called and the defendant does not respond, "then the court addresses the attorneys as to whether either side has any requests of the court or information about the fact that no one has responded when the case was called as regards to the defendant." 2 RP at 283. Powers also testified that if a defendant is in custody then he or she would appear at a trial confirmation hearing via video.

At the end of the State's case, Kimbrough moved for dismissal on the charges of second degree taking a motor vehicle without permission (count 1) and bail jumping (count 3), arguing that the State failed to present sufficient evidence to support these offenses. Kimbrough argued that the evidence was insufficient on count 1 because Kimbrough's mother did not testify that she did not give Kimbrough permission to drive the vehicle and that the evidence was insufficient on count 3 because there was no showing that Kimbrough was "admitted to bail" for purposes of committing the crime of bail jumping. 3 RP at 324.

² Our record does not include the report of proceedings from this hearing; it only includes the clerk's notes.

The trial court denied Kimbrough's motion to dismiss counts 1 and 3, concluding that it was best to wait until after the jury reached its verdicts before ruling on the sufficiency of the State's evidence. Kimbrough did not present a defense. The jury found Kimbrough guilty as charged.³

Prior to sentencing, Kimbrough filed a motion for arrest of judgment, rearguing that sufficient evidence did not support his taking a motor vehicle without permission and bail jumping convictions. The trial court denied the motion, concluding that sufficient evidence existed to support both convictions. Kimbrough appeals.

ANALYSIS

I. SUFFICIENCY OF THE EVIDENCE

Kimbrough argues that the State failed to produce sufficient evidence to prove that he committed the crimes of taking a motor vehicle without permission and bail jumping. He also argues the trial court erred by denying his motion to arrest judgment after the jury's verdict. We disagree with Kimbrough's arguments.

A. Standard of Review

The test for determining sufficiency of the evidence is whether, after viewing the evidence in the light most favorable to the State, any rational trier of fact could have found guilt beyond a reasonable doubt. *State v. Cardenas-Flores*, 189 Wn.2d 243, 265, 401 P.3d 19 (2017). In a sufficiency of the evidence claim, the defendant admits the truth of the evidence and the court views the evidence and all reasonable inferences drawn from that evidence in the light most favorable to the State. *Id.* at 265-66. "Credibility determinations are made by the trier of fact' and are not subject to review." *Id.* at 266 (quoting *State v. Camarillo*, 115 Wn.2d 60, 71, 794 P.2d

³ Kimbrough does not appeal his attempting to elude a pursuing police vehicle conviction.

850 (1990)). Circumstantial and direct evidence are equally reliable. *Cardenas-Flores*, 189 Wn.2d at 266.

B. Second Degree Taking a Motor Vehicle Without Permission

Kimbrough contends that Maria was the sole owner of the vehicle and there was no evidence that she did not give him permission to drive the vehicle; therefore, sufficient evidence does not support his second degree taking a motor vehicle without permission conviction. We disagree.

A defendant commits second degree taking a motor vehicle without permission “if he or she, without the permission of the owner or person entitled to possession, intentionally takes or drives away any automobile or motor vehicle . . . that is the property of another.” RCW 9A.56.075(1). The jury was instructed likewise in Kimbrough’s case.

Here, Kimbrough asked to take the vehicle and his father said no. The next day the vehicle was missing. Kimbrough returned to his parents’ home with the vehicle and stated that he was aware that “you turned me in,” and then left again in the vehicle at “[q]uite a fast speed.” 1 RP at 151. While the vehicle was registered in Maria’s name, Wilbert testified that it was “our vehicle” and described it as “community property, so half and half.” 1 RP at 148-49.

Viewing this evidence in the light most favorable to the State, a reasonable juror could find that Kimbrough took the vehicle without the permission of the owner or person entitled to possession contrary to RCW 9A.56.075(1). Accordingly, sufficient evidence supports Kimbrough’s second degree taking a motor vehicle without permission conviction.

C. Bail Jumping

Kimbrough contends that the State failed to prove he was “released” when he failed to appear at his June 13, 2019 trial confirmation hearing because there is no showing he was “admitted to bail.” Br. of Appellant at 12-13. We disagree.

Kimbrough committed his offense in April 2019. At that time, former RCW 9A.76.170(1) (1983) stated, “Any person having been released by court order or admitted to bail with knowledge of the requirement of a subsequent personal appearance before any court of this state . . . and who knowingly fails to appear . . . is guilty of bail jumping.” Kimbrough asks this court to interpret the term “admitted to bail” in former RCW 9A.76.170(1) to require a showing that Kimbrough actually posted bail. But we need not engage in statutory interpretation when the issue can be decided based on application of the facts to the plain language of the statute. *State v. Marjama*, 14 Wn. App. 2d 803, 806, 473 P.3d 1246 (2020). Former RCW 9A.76.170(1) requires the release to be “by court order *or* admitted to bail.” (Emphasis added). The jury was instructed likewise in Kimbrough’s case.

At Kimbrough’s preliminary hearing, the trial court entered a release order, setting bail at \$3,500. The order notified Kimbrough that if he “fails to appear for any scheduled court date . . . a bench warrant may be issued and additional criminal charges filed.” CP at 5. At his arraignment, Kimbrough was ordered to appear on June 13, 2019 for a trial confirmation hearing. The clerk’s notes state “Release” and the trial court’s “conditions of release remain in effect.” CP at 8.

Powers testified that when a case is called for trial confirmation, the “judge gives notice to everyone in the courtroom as to what the next case is going to be, and the defendant either comes forward or doesn’t.” 2 RP at 283. If a defendant is in custody, they would appear via video. Powers indicated that if a case is called and the defendant does not respond, “then the court addresses the attorneys as to whether either side has any requests of the court or information about the fact that no one has responded when the case was called as regards to the defendant.” 2 RP at 283. The clerk’s notes for the June 13, 2019 trial confirmation hearing, state, “The Court called the case in open court with no response from [Kimbrough].” CP at 185. The trial court issued a bench warrant for Kimbrough based on his failure to appear.

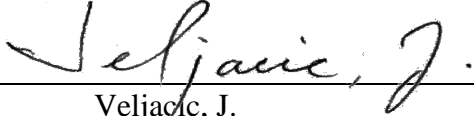
Viewing the evidence in the light most favorable to the State, a reasonable juror could find that the trial court released Kimbrough by court order or he was admitted to bail, the court notified him that he must appear at the June 13, 2019 trial confirmation hearing, and he failed to appear. Accordingly, sufficient evidence supports Kimbrough’s conviction.

D. Denial of Motion for Arrest of Judgment

Kimbrough assigns error to the trial court’s denial of his motion for arrest of judgment but fails to provide argument for this assignment of error in the analysis section of his brief. Generally, such assignment of error would be waived. RAP 10.3(a)(6) Nevertheless, we note that based on our conclusion that sufficient evidence supports Kimbrough’s taking a motor vehicle without permission and bail jumping convictions, the trial court did not err in denying his motion for arrest of judgment

We affirm.

A majority of the panel having determined that this opinion will not be printed in the Washington Appellate Reports, but will be filed for public record in accordance with RCW 2.06.040, it is so ordered.

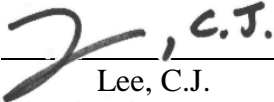


Veljacic, J.

We concur:



Worswick, J.



Lee, C.J.