

June 12, 2018

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

STATE OF WASHINGTON,

Respondent,

v.

LILLIAN MARIE SHILLING,

Appellant.

No. 50019-1-II

UNPUBLISHED OPINION

LEE, J. — Lillian Marie Shilling appeals her conviction for bail jumping, arguing that there was insufficient evidence to support her conviction. We hold that Shilling’s claim fails and affirm.

FACTS

A. ORIGINAL CHARGE AND ARRAIGNMENT

In December 2015, Shilling was charged with delivery of a controlled substance as an accomplice. At her arraignment, Shilling was released on bail and ordered to appear at an omnibus hearing set for January 26, 2016. Trial was set for February 16, 2016.

B. HEARINGS AND CONTINUANCES

On February 16, the parties agreed to continue the trial date to March 14. On March 14, the parties agreed to continue the trial date once again to April 11. The trial court stated, “I’m striking today’s trial date. I am setting this for April 11th at 9:00 in the morning.” Verbatim Report of Proceedings (VRP) (Mar. 14, 2016) at 2-3. Shilling acknowledged the new trial date.

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Oral and written notice was given to Shilling about the April 11 trial date. The written notice stated that Shilling had to personally appear in court for trial on April 11 at 9:00 AM.

C. APRIL 11 HEARING AND BAIL JUMPING CHARGE

On April 11, Shilling was represented by standby counsel, who informed the trial court that Shilling did not appear. Standby counsel did not recall seeing Shilling in court on April 11. The court clerk's minutes showed that Shilling did not appear. The trial court polled the courtroom at 12:11 PM, but there was no response. The trial court issued a bench warrant for Shilling's failure to appear. On April 14, the trial court quashed the warrant and set trial for July 5. After more continuances, the trial was set for January 30, 2017.

On the day of trial, the State amended the information to include a charge of bail jumping. The charge was based on Shilling's failure to appear before the court on April 11, 2016.

D. TRIAL AND APPEAL

At trial, the State presented evidence of the events described above. The jury acquitted Shilling on the unlawful delivery of a controlled substance charge but found her guilty on the bail jumping charge. Shilling appeals.

ANALYSIS

Shilling argues that insufficient evidence was presented to prove that she committed the crime of bail jumping by failing to appear. We disagree.

A. LEGAL PRINCIPLES

We review a sufficiency of evidence challenge de novo. *State v. Rich*, 184 Wn.2d 897, 903, 365 P.3d 746 (2016). The State must prove every element of a crime beyond a reasonable

doubt. *Id.* To determine if sufficient evidence supports a conviction, we consider if any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. *Id.*

In a challenge to the sufficiency of the evidence, the evidence is viewed in the light most favorable to the State, and all reasonable inferences are drawn in favor of the State. *State v. Cardenas-Flores*, 189 Wn.2d 243, 265-66, 401 P.3d 19 (2017). Also, in challenging the sufficiency of the evidence, the defendant admits the truth of all the State's evidence. *Id.* at 265. Circumstantial and direct evidence are equally reliable. *Id.* at 266. We 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, 874-75, 83 P.3d 970 (2004).

A person is guilty of bail jumping if the person (1) having been released by court order or admitted to bail, (2) with knowledge of the requirement of a subsequent personal appearance before the court, (3) fails to appear as required. RCW 9A.76.170(1).¹

B. FAILURE TO APPEAR

Here, the evidence showed that on April 11, 2016, Shilling's standby counsel informed the trial court that Shilling did not appear. Standby counsel did not recall seeing Shilling in court on April 11. Also, the court clerk's minutes showed that Shilling did not appear. And the trial court polled the courtroom at 12:11 PM, but there was no response. The trial court then issued a bench warrant based on Shilling's failure to appear. Viewing this evidence in the light most favorable to the State and drawing all reasonable inferences in favor of the State, a rational trier of fact could

¹ Shilling does not challenge that she was released on bail with knowledge of the requirement to personally appear before the court.

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have found that Shilling failed to appear before the court on April 11, 2016, as required. *Cardenas-Flores*, 189 Wn.2d at 265-66, *Rich*, 184 Wn.2d at 903.

Shilling argues that insufficient evidence was presented to prove that she failed to appear in court at the specified time of 9:00 AM and cites to *State v. Coleman*, 155 Wn. App. 951, 231 P.3d 212 (2010), *review denied*, 170 Wn.2d 1016 (2011). However, *Coleman* is not persuasive.

Contrary to Shilling's argument, *Coleman* does not require the State to present evidence that she was not in the court at exactly 9:00 AM. The *Coleman* court concluded that the evidence was insufficient to prove bail jumping in that case because the evidence established only that Coleman was not present in the court at a time earlier than the time he was required to appear. 155 Wn. App. at 964. While the evidence showed that Coleman was required to appear before the court for a hearing set for 9:00 AM, the evidence only showed that he did not appear before the court by 8:30 AM. *Id.* at 963. Thus, there was insufficient evidence to show that Coleman failed to appear at the required time.

In contrast to *Coleman*, the State here presented evidence that Shilling's standby counsel informed the trial court that Shilling did not appear; standby counsel also informed the trial court that she did not recall seeing Shilling in court; the court clerk's minutes showed that Shilling did not appear in court as required; and the courtroom was later polled, but there was no response. Thus, unlike in *Coleman*, the evidence did not merely show that Shilling failed to appear in court before the scheduled time for her trial. Rather, from the evidence presented, a reasonable jury could infer that Shilling did not appear in the trial court as required on April 11, 2016.

Viewing the evidence in the light most favorable to the State and drawing all reasonable inferences in favor of the State, sufficient evidence was presented to show that Shilling failed to

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appear before the trial court as required on April 11, 2016. Therefore, we hold that sufficient evidence was presented to support Shilling's bail jumping conviction.

APPELLATE COSTS

Shilling requests that we not impose appellate costs against her if the State substantially prevails on appeal and requests such costs. The State states that it does not intend to seek appellate costs in this case. Therefore, we do not impose appellate costs.

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.

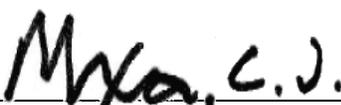


Lee, J.

We concur:



Worswick, J.



Maxa, C.J.