

64445-9

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No. 64445-9-1

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION ONE

STATE OF WASHINGTON,

Respondent,

v.

JUSTIN WEST,

Appellant.

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FILED  
COURT OF APPEALS DIV. 1  
KING COUNTY

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

BRIEF OF APPELLANT

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A. INTRODUCTION

The State presented conflicting testimony that established either Justin West was the person responsible for an assault or established he was not present. Because the State's evidence creates this uncertainty, the State did not prove beyond a reasonable doubt that Mr. West was guilty of first degree assault.

B. ASSIGNMENT OF ERROR

The State did not prove each element of first degree assault beyond a reasonable doubt.

C. ISSUE PERTAINING TO ASSIGNMENT OF ERROR

The Due Process Clause of the Fourteenth Amendment to the United States Constitution requires the State prove each element of an offense beyond a reasonable doubt. In addition to the statutory elements of the crime, the State must prove beyond a reasonable doubt a defendant's identity as the person who committed the crime. Where the evidence in the light most favorable to the State establishes that an assault was committed but creates, and leaves unresolved, substantial doubt that Mr. West committed the assault, does Mr. West's conviction of first degree assault deprive him of due process?

D. STATEMENT OF THE CASE

Amanda Ramirez hosted a party for her nephew's birthday. 10/12/09 RP 58. Her friend Beverlyn Stinson was in attendance but had plans to leave early, and had asked Mr. West to pick her up. 10/12/09 RP 59-61. When Ms. Stinson tried to leave, Jose Lepez stopped her on the driveway and repeatedly blocked her path in an effort to prevent her from leaving. 10/12/09 RP 61; 10/13/09 RP 29, 33. Ms. Stinson testified Mr. West saw this and approached the two on the driveway 10/8/09 RP 61-62. According to Ms. Stinson, Mr. West soon returned and was confronted by a group of Mr. Lepez's friends on the driveway. Id. at 62. Ms. Stinson testified that when this threatening crowd confronted Mr. West, he aimed a gun into the air and fired several shots. Id. at 78. One shot struck Josh Castro in the shoulder. 10/13/09 RP 15. Ms. Ramirez also claimed the person who fired the shots was Mr. West. 10/13/09 RP 74.

In response to numerous calls, police responded to the scene at about 11:50 p.m. 10/12/09 RP 21-22. Responding police officers testified it was apparent that several of the witnesses were intoxicated. 10/12/09 RP 36.

Robert Moniz, however, testified that he and Mr. West had spent the day and evening in West Seattle working on Mr. West's car. 10/14/09 RP 34.

To rebut that evidence, the State presented the evidence of Mr. West's brother, Dwayne Thompson, who testified that Mr. West picked him up that evening and driven him home. 10/14/09 RP 153-54. Mr. Thompson testified Mr. West dropped him off at their mother's house at 11:30 p.m. and remained for about 30 minutes. 10/14/09 RP 154-55.

The State charged Mr. West with a single count of first degree assault with a firearm enhancement. CP 7-8. A jury convicted Mr. West as charged. CP 61-62.

E. ARGUMENT

THE STATE DID NOT PROVE BEYOND A  
REASONABLE DOUBT THAT MR. WEST  
COMMITTED A FIRST DEGREE ASSAULT

1. The State was required to prove the elements of the offense beyond a reasonable doubt. In a criminal prosecution, the Fourteenth Amendment Due Process Clause requires the State prove each essential element of the crime charged beyond a reasonable doubt. Apprendi v. New Jersey, 530 U.S. 466, 490, 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). Additionally, the identity of a criminal defendant and his presence at the scene of a crime must be proven beyond a reasonable doubt. State v. Thomson, 70 Wn.App. 200, 211, 852 P.2d 1104 (1993), review denied, 123 Wn.2d 877 (1994). Evidence is sufficient only if, in the light most favorable to the prosecution, a 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). This standard does not allow a reviewing court to selectively rely on that evidence which supports the verdict while ignoring that portion of the State's evidence which establishes a reasonable doubt. Instead, the standard announced in Jackson requires the reviewing court to examine the State's evidence as a whole in its most favorable light, and not merely "the evidence most favorable to the State." See, Id.

2. The State did not prove Mr. West was the individual who assaulted Josh Castro.

A person is guilty of assault in the first degree if he or she, with intent to inflict great bodily harm:

(a) Assaults another with a firearm or any deadly weapon or by any force or means likely to produce great bodily harm or death . . . .

RCW 9A.36.011(1). The critical question in this case is not whether the State proved a first degree assault was committed, but rather whether in its best light the State's evidence proved Mr. West committed the assault. In its best light, the State's evidence in total does not establish beyond a reasonable doubt that Mr. West committed the assault.

The State's case-in-chief consisted primarily of individuals who testified Mr. West was the person who shot at Josh Castro. 10/12/09 RP 78; 10/13/09 RP 13-14, 36. According to the testimony of responding officers, they were dispatched to the incident at 11:50 p.m. 10/12/09 RP 22. Mr. West offered presented several witnesses who testified he was working on a car in West Seattle at the time of the events that gave rise to this case. 10/14/09 RP 10, 34. Specifically, Robert Moniz testified he and Mr. West were working on Mr. West's car that day and continued well into the night. 10/14/09 RP 34. To rebut that evidence, the State presented the evidence of Mr. West's brother, Dwayne Thompson, who testified that Mr. West was not working on a car with Mr. Moniz all evening, but instead had given him a ride home that evening. 10/14/09 RP 153-54. Mr. Thompson testified Mr. West dropped him off at their mother's house at 11:30 p.m. and remained there for

about 30 minutes. 10/14/09 RP 154-55. Thus, according to the State's own witness Mr. West was not present at the shooting.

In the light most favorable to the State, the evidence established Mr. West was not working on his car all evening. However, the State's evidence, in its best light, establishes Mr. West was either at his mother's house or at Amanda Ramirez's. Because it created this inconsistency rather than resolve it, the State's evidence does not establish beyond a reasonable doubt that Mr. West was the person who shot at Josh Castro.

3. The Court must reverse Mr. West's conviction. The absence of proof beyond a reasonable doubt of an element requires dismissal of the conviction and charge. Jackson, 443 U.S. at 319; State v. Green, 94 Wn.2d 216, 221, 616 P.2d 628 (1980). The Fifth Amendment's Double Jeopardy Clause bars retrial of a case, such as this, where the State fails to prove an element. North Carolina v. Pearce, 395 U.S. 711, 717, 89 S.Ct. 2072, 23 L.Ed. 2d 656 (1969), reversed on other grounds, Alabama v. Smith, 490 U.S. 794, 109 S.Ct. 2201, 104 L.Ed.2d 865 (1989). Because the State failed to prove Mr. West was at the scene of the shooting the Court must reverse his conviction and dismiss the charge.

F. CONCLUSION

For the reasons above, this Court must reverse Mr. West's conviction.

Respectfully submitted this 31<sup>st</sup> day of March, 2010.

A handwritten signature in black ink, appearing to read 'Gregory C. Link', written over a horizontal line.

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