

64445-9

64445-9

NO. 64445-9-1

COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION I

STATE OF WASHINGTON,

Respondent,

v.

JUSTIN WEST,

Appellant.

2010 MAY 25 PM 1:11
[Handwritten signature]

APPEAL FROM THE SUPERIOR COURT FOR KING COUNTY

THE HONORABLE MARY ROBERTS

BRIEF OF RESPONDENT

DANIEL T. SATTERBERG
King County Prosecuting Attorney

MAFÉ RAJUL
Deputy Prosecuting Attorney
Attorneys for Respondent

King County Prosecuting Attorney
Norm Maleng Regional Justice Center
401 Fourth Avenue North
Kent, Washington 98032-4429

TABLE OF CONTENTS

	Page
A. <u>ISSUE PRESENTED</u>	1
B. <u>STATEMENT OF FACTS</u>	1
C. <u>ARGUMENT</u>	6
D. <u>CONCLUSION</u>	11

TABLE OF AUTHORITIES

Page

Table of Cases

Washington State:

State v. Camarillo, 115 Wn.2d 60,
794 P.2d 85 (1990)..... 7

State v. Delmarter, 94 Wn.2d 634,
618 P.2d 99 (1980)..... 6

State v. Hendrix, 50 Wn. App. 510,
749 P.2d 210 (1988)..... 6

State v. Huston, 71 Wn.2d 226,
428 P.2d 547 (1967)..... 7

State v. Johnson, 12 Wn. App. 40,
527 P.2d 1324 (1974)..... 6, 7

State v. Longuskie, 59 Wn. App. 838,
801 P.2d 1004 (1990)..... 9

State v. Salinas, 119 Wn.2d 192,
829 P.2d 1068 (1992)..... 6

State v. Walton, 64 Wn. App. 410,
824 P.2d 533, review denied,
119 Wn.2d 1011, 833 P.2d 386 (1992)..... 9

A. ISSUE PRESENTED

Identity is a question of fact for a jury to decide. So long as there is sufficient evidence to support this finding, the jury's determination cannot be overturned on appeal. When the State presents testimony of the identity of the person who fired a gun from two witnesses who personally know the defendant and their testimony is corroborated by phone records, has the State presented sufficient evidence that the defendant was the person who committed the crimes charged?

B. STATEMENT OF FACTS

On May 1, 2009, Amanda Ramirez was having a birthday party at her house for her nephew. 2RP 52.¹ Some of the guests were Joshua Castro, Beverlyn Sinson, and José Lépez. 2RP 53. Ms. Ramirez and Ms. Sinson are good friends and neighbors. 1RP 47-48; 2RP 47-48. Ms. Sinson dated the defendant, Justin West, from September through November of 2008. 1RP 51. From the time they broke up to the day of the party she would still see him on occasion. 1RP 50. Ms. Ramirez also knew the defendant as she

¹ The Verbatim Report of the Jury Trial consists of three volumes referred to in this brief as 1RP (October 12, 2009); 2RP (October 13, 2009); and 3RP (October 14, 2009).

had spent time with him and Ms. Sinson, and the defendant would usually meet Ms. Sinson outside the Ramirez's residence. 1RP 51-54; 2RP 49-51.

Ms. Sinson's plan for the evening of May 1, 2009 was to leave Ms. Ramirez's party early and meet up with the defendant. 1RP 59. Ms. Sinson and the defendant had already agreed that he would call her as soon as he arrived at Ms. Ramirez's residence so that Ms. Sinson would come out. 1RP 59. Ms. Sinson had told Ms. Ramirez of her plan to leave and meet the defendant. 1RP 59; 2RP 54.

Before meeting Ms. Sinson, the defendant had to pick up his brother, Dewayne Thompson, at "Chico's" house and at exactly 9:52 P.M. the defendant called Chico to make arrangements with him. 3RP 154. Mr. Thompson believes the defendant picked him up at about 11:30 P.M. 3RP 154. The defendant drove Mr. Thompson to their house, dropped him off, and stayed for about 30 minutes. 3RP 155. The defendant then left the house in his mother's van. 3RP 156. Mr. Thompson, who was not paying attention to the time and who was not looking at a watch, indicated the time was just an estimate. 3RP 163-64.

According to the phone records at exactly 11:41 P.M. the defendant called Ms. Sinson to tell her he was outside of Ms. Ramirez's residence and asked her to come outside as planned. 1RP 70. As she was getting ready to leave José Lépez tried to stop her. 1RP 61. Mr. Lépez and Ms. Sinson began arguing outside of the house. 2RP 29-30. The defendant called Ms. Sinson again at 11:47 P.M. 1RP 69. Mr. Lépez could hear Ms. Sinson on the phone with the defendant. 2RP 29-30.

While Mr. Lépez and Ms. Sinson were arguing outside in the front yard, Ms. Sinson saw that the defendant had parked his car down the street from the house and was walking towards Ms. Ramirez's residence. 1RP 61-62. Ms. Sinson recognized the van the defendant was driving to be his mother's van. 1RP 79-80. Ms. Ramirez, who was also outside, saw the defendant walk in their direction. 2RP 60. Ms. Sinson told the defendant to leave at least three times but he would not comply. 1RP 62. After the third time, the defendant walked back to his car and came back with a gun. 1RP 62, 76. When the defendant returned with the gun, other people had come out, including the victim, Joshua Castro. 2RP 70. The defendant pointed the gun at Mr. Castro then fired some shots up in the air, and followed the shooting by aiming at Mr. Castro. 1RP

77-78; 2RP 13-14, 72-75. Mr. Castro felt a burning sensation on his back when one of the bullets struck him. 2RP 13-15.

The defendant took off running, got in his mom's car, and left. 1RP 79-80. Approximately an hour and a half later, at 1:44 A.M., the defendant called Ms. Sinson to ask her if the police had responded and if anyone had been hurt. 1RP 81.

King County Sheriff's deputies responded to the scene between 11:50 P.M. and 11:52 P.M. 1RP 21-22. While at the scene they learned the shooter was the defendant. 1RP 37. The officers ran the defendant's address on their mobile computer in the police car and drove to his house. 1RP 37. The officers contacted the defendant's mother, who indicated the defendant had been at the house a few hours prior and had left in her van. 1RP 38. On May 5, 2009, Ms. Sinson gave a written statement to the police but did not say the defendant was the shooter because she was afraid of retaliation. 1RP 92.

At trial, both Ms. Sinson and Ms. Ramirez positively identified the defendant as the person who came to the Ramirez's residence and shot at Mr. Castro. 1RP 45, 50-51, 91; 2RP 46, 50, 78.

The defense called three alibi witnesses, Brittany Brown, Robert Moniz, and Vuthy Mell. 3RP 8-129. The three defense

witnesses testified that the defendant was at Ms. Brown's residence working all night on his car. 3RP 8-10, 34-37, 90-91. Ms. Brown admitted she could not remember anything about May 1, 2009, and she was only testifying about what the defendant had told her to say. 3RP 15-17. Phone records also indicated that on May 1, 2009, Ms. Brown called the defendant at 11:15 P.M., and on May 2, 2009, at 1:19 A.M. and then at 9:29 A.M., times when he was supposedly at her house with her. 3RP 20-21. Mr. Mell admitted he couldn't recall much and that he didn't remember the evening of May 1, 2009. 3RP 98-100. Finally, Mr. Moniz testified that although there were eight calls and text messages between the defendant and himself throughout the day, they had spent the entire day and night together working on the defendant's car. 3RP 59-60. Specifically, the phone records show two text messages between the defendant and Mr. Moniz on May 1, 2009 at 11:16 P.M. and 11:19 P.M. 3RP 59. Mr. Moniz explained that some of these calls and text messages reflected in the phone records were the result of "pocket-dialing." 3RP 65.

C. ARGUMENT

In a challenge to the sufficiency of the evidence, the court views the evidence in the light most favorable to the State, and determines whether any rational trier of fact could have found the elements of the crime beyond a reasonable doubt. State v. Hendrix, 50 Wn. App. 510, 514, 749 P.2d 210 (1988). The test for determining the sufficiency of the evidence is whether, after viewing the evidence in a light most favorable to the State, a rational trier of fact could have found the essential elements of the crimes charged beyond a reasonable doubt. State v. Salinas, 119 Wn.2d 192, 201, 829 P.2d 1068 (1992). "A claim of insufficiency admits the truth of the State's evidence and all inferences that reasonably can be drawn therefrom." Id. at 201.

In criminal trials the prosecution bears the burden of establishing beyond a reasonable doubt the identity of the accused as the person who committed the offense. State v. Johnson, 12 Wn. App. 40, 44, 527 P.2d 1324, 1327 (1974). Identity involves a question or fact for the jury to decide through either direct or circumstantial evidence. Id. at 44. Circumstantial evidence and direct evidence are equally reliable. State v. Delmarter, 94 Wn.2d 634, 638, 618 P.2d 99 (1980). The evaluation of this evidence is

for the trier of the fact and evidence of identity should not be weighed again on appeal to determine if the State has proven beyond a reasonable doubt that the defendant was the person who committed the offense. State v. Johnson, 12 Wn. App. at 44. The court cannot weigh the testimony presented by the witnesses and hold that the jury had no right to believe and accept the evidence of positive identification. Id. at 46 (citing State v. Huston, 71 Wn.2d 226, 238, 428 P.2d 547, 554 (1967)). The reason for this is because the trier of fact, whether it is the judge or jury, see and hear the witnesses and are in the best position to determine credibility. Id. at 44. Credibility determinations are for the trier of fact and are not subject to review. State v. Camarillo, 115 Wn.2d 60, 71, 794 P.2d 85 (1990).

The issue of identity in Johnson involved a victim who identified the person who had robbed him 23 days after the robbery had occurred when the victim had only spent 25 minutes with his assailant, had faced him for not more than 5 minutes and the lighting was poor at the time of the robbery. State v. Johnson, 12 Wn. App. at 42. In holding that the victim's identification of the defendant as his assailant was sufficient to sustain that the defendant was the perpetrator of the robbery, the court noted that

the trier of the fact had to decide if the victim could see the assailant under the prevailing conditions and whether the stress of the situation blurred the victim's ability to identify the assailant. Id. at 44.

Similarly in this case, the trier of fact had to decide if Ms. Sinson and Ms. Ramirez, two witnesses who knew the defendant from prior experience, were able to see and identify the defendant as the shooter. Additionally, the jury had to assess Ms. Sinson's credibility as she explained that she had failed to identify the defendant four days after the shooting out of fear for retaliation. In addition, the testimony of Ms. Sinson was corroborated by the defendant's phone records as they showed the defendant calling Ms. Sinson at 11:41 P.M., nine minutes before the shooting, telling her to come outside. The phone records also showed another call from the defendant to Ms. Sinson at 11:47 P.M., which corroborated Ms. Sinson's and Mr. Lépez's testimony that the defendant called again while Ms. Sinson was arguing with Mr. Lépez.

The defendant argues the State did not prove beyond a reasonable doubt the defendant's identity because the evidence established that the defendant was either at his mother's house or

at Ms. Ramirez's house, making the evidence inconsistent. Defendant's Brief at 6. The appellate court must defer to the trier of fact on issues of conflicting testimony, credibility of witnesses, and the persuasiveness of the evidence. State v. Walton, 64 Wn. App. 410, 415-16, 824 P.2d 533, review denied, 119 Wn.2d 1011, 833 P.2d 386 (1992); State v. Longuskie, 59 Wn. App. 838, 801 P.2d 1004 (1990) (holding evidence was sufficient to support conviction for third degree child molestation, notwithstanding inconsistency in testimony regarding place and time of sexual contact.).

The defendant's argument is based on the fact that Mr. Thompson testified as to the approximate time when the defendant picked him up and then left the house, which was close in time as to when the shooting happened. However, other than Mr. Thompson not being able to give an exact time as to when the defendant left the house, his testimony corroborated the State's witnesses and undeniably contradicted the defendant's alibi. The evidence presented in this case identifying the defendant as the shooter was overwhelming. Unlike situations where identity is an issue because the witnesses have never met the suspect, in this case the jury considered the unequivocal identification of two

witnesses who personally knew the defendant (Ms. Sinson who had been in a relationship with the defendant and had known him for at least eight months, and Ms. Ramirez who had met the defendant and had spent time with him and Ms. Sinson); the phone records corroborating Ms. Sinson's testimony and contradicting the alibi witnesses' account that the defendant had been working on his car all night at Ms. Brown's house; evidence from the officers that the defendant was driving his mother's van, which corroborated Ms. Sinson's and Mr. Thompson's testimony; and Mr. Thompson's testimony of the defendant's whereabouts throughout the day, which contradicted the alibi witnesses.

Viewing the evidence in a light most favorable to the State, there was sufficient evidence presented to the trier of fact to establish the defendant's identity. The jury found the State proved beyond a reasonable doubt that the defendant was the person who shot Mr. Castro on May 1, 2009. The jury was presented with the testimony of various witnesses, including the defendant's alibi witnesses, and phone records which corroborated the State's witnesses and contradicted the defendant's. The Court cannot reevaluate the testimony presented and determine the credibility of the witnesses.

D. CONCLUSION

For the foregoing reasons, the State asks this Court to affirm West's convictions for Assault in the First Degree and Unlawful Possession of a Firearm in the First Degree.

DATED this 24th day of May, 2010.

Respectfully submitted,

DANIEL T. SATTERBERG
King County Prosecuting Attorney

By: 

MAFÉ RAJUL, WSBA #37877
Deputy Prosecuting Attorney
Attorneys for Respondent
Office WSBA #91002