

correct #480719

No. 48071-0-II

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

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STATE OF WASHINGTON,

Respondent,

v.

KELLEN M. LINNELL,

Appellant.

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

The Honorable Erik D. Price, Judge  
Cause No. 11-1-01848-6

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BRIEF OF RESPONDENT

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A. ISSUES PERTAINING TO ASSIGNMENTS OF ERROR.

1. Whether there was sufficient evidence to support Linnell's conviction for bail jumping.
2. Whether there was sufficient evidence to support Linnell's conviction for obstructing a law enforcement officer.

B. STATEMENT OF THE CASE.

The State accepts Linnell's statement of both the substantive and procedural facts.

C. ARGUMENT.

1. There was sufficient evidence to support Linnell's conviction for bail jumping.

The evidence is sufficient to support a conviction for bail jumping if, viewed in the light most favorable to the prosecution, it permits any rational trier of fact to find the essential elements of the crime beyond a reasonable doubt. State v. Salinas, 119 Wn.2d 192, 201, 829 P.2d 1068 (1992).

"[T]he critical inquiry on review of the sufficiency of the evidence to support a criminal conviction must be not simply to determine whether the jury was properly instructed, but to determine whether the record evidence could reasonably support a finding of guilt beyond a reasonable doubt." (Cite omitted.) This inquiry does not require a reviewing court to determine whether *it* believes the evidence at trial established guilt beyond a reasonable doubt. "Instead, the relevant question is whether, 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*. (Cite omitted, emphasis in original.)

State v. Green, 94 Wn.2d 216, 221, 616 P.2d 628 (1980).

“A claim of insufficiency admits the truth of the State's evidence and all inferences that reasonably can be drawn therefrom.” Salinas, *supra*, at 201. Circumstantial evidence and direct evidence are equally reliable. State v. Delmarter, 94 Wn.2d 634, 638, 618 P.2d 99 (1980).

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 850 (1990). This 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 (1992).

In order to prove the charge of bail jumping, the state must show that Linnell knew that his presence was required prior to the hearing for which he failed to appear. State v. Ball, 97 Wn. App. 534, 536-37, 987 P.2d 632 (1999). To show that the defendant knew his presence was required, the prosecution must show that “the person on trial is the person named in the State's exhibits.”

State v. Huber, 129 Wn. App. 499, 504, 119 P.3d 388 (2005). Merely admitting authenticated documents that only name the defendant are not sufficient for a reasonable jury to convict. Id. at 502. Instead, the prosecution must include, “depending on the circumstances...otherwise admissible booking photographs, booking fingerprints, eyewitness identification, or, arguably, distinctive personal information.” Id. at 503.

Linnell cites Huber to support his claim that the evidence is insufficient to support a conviction. In that case, the defendant’s conviction was reversed because the court found that the State had produced “no evidence to show ‘that the person named therein is the same person on trial.’” Id. at 504. At trial, documents were produced naming the defendant. These included a charging document, an order to appear, the clerk’s minutes indicating the defendant’s failure to appear, and a subsequent bench warrant. Id. at 503. However, no eyewitness testimony, or other identifying evidence was produced to link the individual on trial with the original criminal documents because the bail jumping charge was tried separately from the underlying charges. Id.

Here, in contrast, Linnell’s bail jumping charge and underlying obstruction charge were tried together. During trial, the

State produced three state patrol officers who identified Linnell as the individual they had arrested on the Capitol Campus. [RP 64, 187-88, 134-35].

Additionally, here the State produced documents directly linking Linnell to court forms that listed his required appearances. The first certified document produced by the prosecution was titled “Conditions for Release” dated November 29, 2011. [RP 147]. This was followed by the introduction of the charging document, which was labeled “information.” [RP 151]. Both of these had the same assigned case number of 11-1-01848-7. [CR 151]

The prosecution then produced “Agreed Order of Trial Continuance,” dated July 2, 2012 [RP 165]. This was signed by both Linnell and his attorney and contained a stipulation that failing to appear on the date prescribed could result in further charges. Id. The Thurston County Clerk testified that this document bore the same title and case number as the charging and release documents. Id. Subsequently, the prosecution introduced a bench warrant naming Linnell. [RP 172] The bench warrant was ordered during the status conference on November 7, 2012, which listed “failure to appear” as the reason for a warrant. [RP 173].

The evidence given by the prosecution was sufficient for a reasonable jury to convict Linnell on the charge of bail jumping. Here, in contrast to Huber, the prosecution produced a document alerting Linnell to the consequences of failing to appear at the status conference. This document was signed by Linnell, showing that he saw the document, and the document number and title matched others relating to the case. Additionally, several witnesses for the prosecution testified and positively identified Linnell as the individual they had arrested. From this evidence, a jury could find that the Linnell on trial was the same individual that was arrested on the capitol campus, named in resulting court documents, and signed the Agreed Order of Trial Continuance. Given this finding, a jury could then determine that Linnell had knowledge of his required appearance at the November 7th status conference, the one for which Linnell failed to appear.

2. There was sufficient evidence to support Linnell's conviction for obstructing a law enforcement officer

In order to establish that the defendant obstructed a law enforcement officer, it must be shown that the defendant willfully hindered, delayed, or obstructed Arras while Arras was acting in his official capacity as a law enforcement officer. RCW 9A.76.020(1).

Willfully means to purposefully act with knowledge that that action will hinder, delay, or obstruct the law enforcement officer's official duties. State v. Ware, 111 Wn. App. 738, 743, 46 P.3d 280 (2002).

The evidence provided by the prosecution shows that Linnell acted willfully and that his actions hindered, delayed, and obstructed Arras, thus meeting the State's burden. Arras testified that, as Dehart was arresting another suspect, Linnell jumped onto Dehart's back. [RP 111]. Arras then went to assist Dehart, pulling Linnell off of Dehart. [RP 112]. As Arras pulled Linnell off Dehart and to the side, Linnell began flailing his arms, struggling, and yelling in a "loud" and "animated" manner. [RP 113]. Arras then brought Linnell to the ground, with Arras ending up on Linnell's back. Id. Linnell continued to struggle, even after Arras said words to the effect of "Relax. Stop. Stop. Stop. Stop." [RP 114]. The continuing struggle caused Arras to slip, and his elbow hit the ground. Id. Linnell then began knocking items off of Arras belt, including Arras's Blackberry. [RP 115]. Arras later recovered his Blackberry, which he had to "put...back together," as well as other items, from the surrounding area. [RP 119]. Arras again ordered Linnell to "stop that." [RP 115] However, Linnell continued to struggle and Arras testified that "...I felt his hand – I felt my gun

move.” Id. At that point, Arras yelled “Stop” several times. [RP 116]. When Linnell continued to yell loudly, Arras applied a “carotid restraint” to Linnell’s neck. Id. Only after this action did Linnell stop resisting. [RP 118].

This evidence is sufficient for a reasonable jury to find that Linnell’s actions toward Arras were willful and that Linnell hindered, delayed, and obstructed Arras’s efforts to arrest him. Though the struggle only lasted a few seconds, Arras still was able instruct Linnell to surrender several times. Linnell ignored these instruction, continuing to struggle, even escalating the situation by reaching for Arras’s gun belt. Linnell only stopped his struggle when he felt Arras’s hands on his neck. Given that Linnell ignored repeated requests to stop resisting, continued to struggle until he could no longer breathe, and reached for Arras’s gun belt, the evidence is sufficient for a jury to find that Linnell willfully hindered, delayed, and obstructed Arras attempt to arrest him. No one could fail to understand that this conduct hindered the officer in performing his duties.

#### D. CONCLUSION.

The evidence presented at trial was more than sufficient to allow a reasonable trier of fact to find, beyond a reasonable doubt,

that Linnell failed to make a required appearance in court with the knowledge that he was required to do so. The evidence presented at trial was also more than sufficient to allow a reasonable trier of fact to find, beyond a reasonable doubt, that Linnell willfully hindered, delayed, or obstructed Arras when he resisted Arras's arrest. The State respectfully asks this court to affirm Linnell's conviction.

Respectfully submitted this 30<sup>th</sup> day of June, 2016.



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Carol La Verne, WSBA# 19229  
Attorney for Respondent

CERTIFICATE OF SERVICE

I certify that I served a copy of the State's Brief of Respondent on the date below as follows:

*Electronically filed at Division II*

TO: DAVID C. PONZOHA, CLERK  
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--AND TO--

THOMAS E. DOYLE  
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I certify under penalty of perjury under laws of the State of Washington that the foregoing is true and correct.

Dated this 30 day of June, 2016, at Olympia, Washington.

  
\_\_\_\_\_  
Caroline M. Jones

# THURSTON COUNTY PROSECUTOR

**June 30, 2016 - 9:56 AM**

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