

No. 29185-5-III
IN THE COURT OF APPEALS
FOR THE STATE OF WASHINGTON
DIVISION III

STATE OF WASHINGTON,

Plaintiff/Respondent,

vs.

RONALD STEVEN LAW,

Defendant/Appellant.

Appellant's Brief

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A. ASSIGNMENT OF ERROR

The evidence was insufficient to support the convictions for violation of a pretrial protection order.

Issue Pertaining to Assignments of Error

Was Mr. Law's right to due process under Washington Constitution, Article 1, § 3 and United States Constitution, Fourteenth Amendment violated where the State failed to prove the essential elements of the crime of violation of a pretrial protection order?

B. STATEMENT OF THE CASE

Ronald Law was convicted of two counts of violation of a pretrial protection order. CP 29-32. The order was entered March 4, 2010. The protected party was Susie Weymouth. RP 114¹. The basis for the alleged violation was a series of phone calls from the Benton County Jail to Ms. Weymouth's cell phone after Mr. Law had been arrested on other charges, as well as an alleged third party contact at her residence. RP 60-61, 68-69, 79-81, 107.

Lieutenant Guerrero of the Benton County Sheriff's Office Bureau of Corrections testified that all outgoing calls from the jail are recorded and may be tracked by a PIN number that is assigned to an inmate when he

¹ All citations herein are to the transcript of the trial consisting of one volume held June 14-16, 2010.

or she is arrested. The inmate uses the PIN number to make an outgoing call. RP 78. Inmates will typically use another inmate's PIN number to avoid being identified as the caller. RP 79, 82. The number that is being called from the jail can also be traced. RP 79. Between February 26, 2010, and April 8, 2010, Lieutenant Guerrero testified 25 calls were placed from the jail to Ms. Weymouth's cell phone number. RP 80-81. There was no evidence identifying the caller or the PIN number that was used in making these calls. RP 78-84.

Ms. Weymouth testified she did not remember having any contact with Mr. Law after January 26, 2010. RP 59-60. She recalled receiving a few calls from the jail after Mr. Law's arrest but could not identify the caller. She also testified she could not remember anything about the substance of any of the conversations in these phone calls. RP 61-64.

Ms. Weymouth testified that some person came to her house and brought her some letters from the jail that she assumed were from Mr. Law. She did not say when this event occurred. RP 68-69. Mario Torres, a private investigator, spoke with Ms. Weymouth on April 14, 2010. RP 106. Mr. Torres testified that Ms. Weymouth told him that she had received some letters that had been hand delivered by some friends of Mr.

Law at the jail. Mr. Torres did not see the letters and did not say who the letters were from or when they were delivered. RP 107-08.

This appeal followed. CP 38-39.

C. ARGUMENT

Mr. Law's right to due process under Washington Constitution, Article 1, § 3 and United States Constitution, Fourteenth Amendment was violated where the State failed to prove the essential elements of the crime of violation of a pretrial protection order.

As a part of the due process rights guaranteed under both the Washington Constitution, Article 1, § 3 and United States Constitution, Fourteenth Amendment the state must prove every element of a crime charged beyond a reasonable doubt. State v. Baeza, 100 Wn.2d 487, 488, 670 P.2d 646 (1983); In re Winship, 397 U.S. 358, 364, 90 S.Ct. 1068, 1073, 25 L.Ed.2d 368 (1970). As the United States Supreme Court explained in Winship: “[T]he use of the reasonable-doubt standard is indispensable to command the respect and confidence of the community in applications of the criminal law.” In re Winship, 397 U.S. at 364.

Mere possibility, suspicion, speculation, conjecture, or even a scintilla of evidence, is not substantial evidence, and does not meet the minimum requirements of due process. State v. Moore, 7 Wn. App. 1, 499

P.2d 16 (1972). As a result, any conviction not supported by substantial evidence may be attacked for the first time on appeal as a due process violation. Id. “Substantial evidence” in the context of a criminal case, means evidence sufficient to persuade “an unprejudiced thinking mind of the truth of the fact to which the evidence is directed.” State v. Taplin, 9 Wn. App. 545, 513 P.2d 549 (1973) (quoting State v. Collins, 2 Wn. App. 757, 759, 470 P.2d 227, 228 (1970)).

In determining the sufficiency of the evidence, the test is "whether, after viewing the evidence in the light most favorable to the State, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." State v. Salinas, 119 Wn.2d 192, 201, 829 P.2d 1068 (1992) (citing State v. Green, 94 Wn.2d 216, 220-22, 616 P.2d 628 (1980)). "When the sufficiency of the evidence is challenged in a criminal case, all reasonable inferences from the evidence must be drawn in favor of the State and interpreted most strongly against the defendant." Salinas, 119 Wn.2d at 201, 829 P.2d 1068 (citing State v. Partin, 88 Wn.2d 899, 906-07, 567 P.2d 1136 (1977)). "A claim of insufficiency admits the truth of the State's evidence and all inferences that reasonably can be drawn therefrom." Salinas, 119 Wn.2d at 201, 829 P.2d 1068

(citing State v. Theroff, 25 Wn. App. 590, 593, 608 P.2d 1254, *aff'd*, 95 Wn.2d 385, 622 P.2d 1240 (1980)).

While circumstantial evidence is no less reliable than direct evidence, State v. Myers, 133 Wn.2d 26, 38, 941 P.2d 1102 (1997), evidence is insufficient if the inferences drawn from it do not establish the requisite facts beyond a reasonable doubt. Baeza, 100 Wn.2d at 491, 670 P.2d 646. Specific criminal intent may be inferred from circumstances as a matter of logical probability." State v. Zamora, 63 Wn. App. 220, 223, 817 P.2d 880 (1991).

Here, there is insufficient evidence that Mr. Law violated the pretrial protection order by making phone calls, or having a third party make phone calls, to Ms. Weymouth. Lieutenant Guerrero testified 25 calls were placed from the jail to Ms. Weymouth's cell phone number between February 26, 2010, and April 8, 2010. RP 80-81. However, he did not identify the caller or the PIN number that was used. RP 78-84. Ms. Weymouth testified she did not remember having any contact with Mr. Law after January 26, 2010. RP 59-60. She recalled receiving a few calls from the jail after Mr. Law's arrest but could not identify the caller. She also testified she could not remember anything about the substance of any of the conversations in these phone calls. RP 61-64. Therefore, since

there was no evidence of who the calls were from or what PIN number was used, there is insufficient evidence that Mr. Law violated the pretrial protection order by making phone calls, or having a third party make phone calls, to Ms. Weymouth.

Similarly, there is insufficient evidence of any improper third party contact at Ms. Weymouth's residence. Ms. Weymouth testified some person came to her house and brought some letters from the jail that she assumed were from Mr. Law. She did not testify the letters actually were from Mr. Law. She also did not say when this event occurred. RP 68-69. When Mario Torres, a private investigator, spoke with Ms. Weymouth, she told him she had received some letters that had been hand delivered by some friends of Mr. Law. Mr. Torres did not see the letters and apparently Ms. Weymouth did not tell him who the letters were from or when they were delivered. RP 107-08.

Since there was no evidence that the letters were actually from Mr. Law, there is insufficient evidence that Mr. Law violated the pretrial protection order by having a third party deliver letters to Ms. Weymouth. The evidence is also insufficient because there was no evidence that this incident occurred after the protection order had been issued and was in effect.

D. CONCLUSION

For the reasons stated, the convictions should be reversed and the case dismissed.

Respectfully submitted December 16, 2010.



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