

No. 30369-1-III

IN THE COURT OF APPEALS
OF THE STATE OF WASHINGTON

FILED
June 8, 2012
Court of Appeals
Division III
State of Washington

STATE OF WASHINGTON,
Plaintiff/Respondent,

v.

ENRIQUE RETANA GONZALEZ,
Defendant/Appellant.

BRIEF OF RESPONDENT

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I. STATEMENT OF THE CASE

The State adopts the appellant's statement of the case in this matter, with the addition of the references to the DUI report, CP 40, Exhibit 1, cited herein.

II. ISSUES AND ARGUMENT

A. WAS THERE SUFFICIENT EVIDENCE TO ESTABLISH THE ESSENTIAL ELEMENTS OF THE CRIME OF SECOND DEGREE BURGLARY?

After a review of State v. Engel, 166 Wn.2d 572 (2009), the State concedes that the facts in this case fail to establish the element of a "building" under the second degree burglary statute. Engle, supra, held that a partially fenced yard was not a building within the meaning of the statute.

Here, the facts indicate that the defendant, Enrique Retana Gonzalez, entered an area that was fenced or enclosed only on three sides. The area the defendant entered was an open area with a rather high bank which would not allow vehicle entry based

upon the topography, but would allow a person to walk into the area. This would not constitute a burglary under the statute.

B. WAS THERE SUFFICIENT EVIDENCE TO SHOW THE ELEMENTS OF THE CRIME OF DRIVING WHILE UNDER THE INFLUENCE?

In this case, police reports were submitted to provide a factual basis for the court's determination. (CP 40, Exhibit 1, Police Reports). On page 4 of Exhibit 1, in the DUI arrest report (DUI Interview), the defendant indicated in response to question 26 that he had been drinking alcoholic beverages. In response to question 26A, he indicated he had had 2 beers. In response to question 12, he indicated he had been driving the vehicle. In response to question 30 "Do you believe your ability to drive was affected by your alcohol and/or drug usage?" the defendant answered yes.

The officer also made the observation that the defendant had only fair coordination, had bloodshot eyes, and had a strong odor of intoxicants on his breath. In response to question 8 at the bottom of page 4 of Exhibit 1, the officer expressed his opinion that there was an obvious impairment.

Officer Risdon also observed erratic driving. (RP 25, CrR 3.6 Hearing, In. 4-8, 22-25; RP 26, In. 1-3; RP 27, In. 8-22). These facts are sufficient to show a basis for the charge of driving while under the influence when combined with Officer Risdon's observations that he smelled alcohol when he contacted the defendant. (RP 30, In. 14-21).

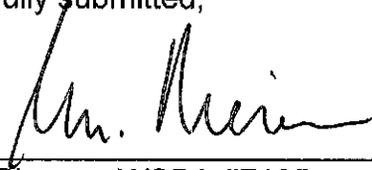
As noted by the defense, a claim of insufficiency of the evidence admits the truth of the State's evidence and all inferences that reasonably can be drawn therefrom. State v. Salinas, 119 Wn.2d 192 (1992). The evidence must be viewed in the light most favorable to the State, and if any rational trier of fact could have found the essential elements beyond a reasonable doubt, the evidence is sufficient. Salinas, supra.

III. CONCLUSION

Based on the foregoing reference to the facts in evidence in this case, the State asks that the court sustain the conviction for driving while under the influence.

DATED this 7th day of June, 2012.

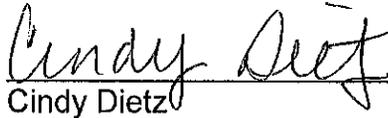
Respectfully submitted,



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Signed at Wenatchee, Washington, this 8th day of June, 2012.



Cindy Dietz
Legal Administrative Supervisor
Chelan County Prosecuting Attorney's Office