

**FILED**

OCT 31 2012

COURT OF APPEALS  
DIVISION III  
STATE OF WASHINGTON  
By: \_\_\_\_\_

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

NO. 306291

STATE OF WASHINGTON,  
Respondent,

vs.

JUAN CRUZ JUAREZ,  
Appellant.

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APPEAL FROM THE SUPERIOR COURT OF THE STATE OF  
WASHINGTON FOR ADAMS COUNTY  
CAUSE NO. 11-1-00151-2

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**BRIEF OF RESPONDENT**

  
\_\_\_\_\_  
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Attorney for Respondent

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## **I. RESPONSE TO ASSIGNMENTS OF ERROR**

- A. There was sufficient evidence presented at trial to support Appellant's conviction for Possession of an Unlawful Firearm.
- B. The trial judge properly ordered Appellant to pay legal financial obligations.

## **II. STATEMENT OF THE CASE**

Appellant Juan Cruz Juarez was charged with Possession of an Unlawful Firearm for events which occurred on November 25, 2011. CP 1-2. On January 17, 2012, Appellant's case proceeded to jury trial. RP 5.

The State called two witnesses to testify at trial. RP 24, 33. The first, Sergeant Nels Larson, testified that on the date in question, November 25, 2011, he was employed by the City of Othello Police Department. RP 25. He further testified that he was on duty that morning, and received a call for assistance to 2568 West Bench Road. RP 25-26. When asked what the nature of the call was, he stated:

Dep. Frank was working – He was the only deputy that was out in the area at the time. There had been a radio call of a person at a residence . . . that there was not supposed to be anybody at the residence. And the person at the

residence had been seen with a shotgun, and had – the people that had reported this had left, and the person with the shotgun had got in a car and followed them.

RP 25-26.

Sergeant Larson further testified that Appellant was discovered a short time later in a clearing behind the Bench Road address, holding a shotgun in his lap, sitting in a vehicle with a license plate matching the plate number given by the reporting party. RP 26-30.

The second witness called by the State was Deputy Craig Frank. RP 33. Deputy Frank testified that he had been employed by the Adams County Sheriff's Office since March of 2011, that he primarily works "in District 2, which is Othello," that he was on duty in District 2 on the morning of November 25, 2011, and that he responded to a call that morning at 2568 West Bench Road. RP 33-34. He and Sergeant Larson arrived at the Bench Road address approximately ten to fifteen minutes after the call first went out. RP 36. They located Appellant's vehicle nearby, observed that the license plate number matched that given by the reporting party, and observed that Appellant was inside the vehicle, holding a shotgun. RP 35-38. Deputy Frank measured the shotgun and

determined that the length of its barrel was 16.5 inches, which classified it as a short barreled shotgun. RP 42-44, CP 40.

The jury was instructed that in order to convict Appellant of Possession of an Unlawful Firearm,

... each of the following elements of the crime must be proved beyond a reasonable doubt:

(1) That on or about November 25, 2011, the defendant knowingly had a short-barreled shotgun in his possession or control;

(2) The defendant knew of the characteristics making it a short-barreled shotgun; and

(3) That this act occurred in the State of Washington, County of Adams.

...

CP 44.

The jury returned a verdict of guilty. RP 97. On February 9, 2012, Appellant was sentenced to three months of confinement, with credit for time served. RP 102, 105. He had been in custody long enough prior to sentencing that he had completed his sentence and was not required to serve any further time. RP 105. The State also requested the imposition of the standard court costs and fines. RP 103. Appellant requested a waiver of the \$200.00 filing fee, the \$350.00 court-appointed attorney fee, and the

\$500.00 fine, on the basis that he was going to be deported to Mexico, was indigent, and was likely only going to be able to find agricultural employment, and because his mother was ill. RP 104. The trial judge imposed a \$500.00 victim assessment fee, a \$100.00 DNA collection fee, and \$300.00 in court costs, for a total of \$900.00 of LFOs, with monthly payments of \$50.00 commencing on June 1, 2012. RP 105. The trial judge waived the \$350.00 court-appointed attorney fee and the \$500.00 fine. RP 105.

This appeal followed. CP 65.

### III. ARGUMENT

A. **There was sufficient evidence presented at trial to support Appellant's conviction for Possession of an Unlawful Firearm.**

Appellant argues that there was insufficient evidence introduced at trial for the jury to find that Appellant committed the crime at issue in Adams County, State of Washington. However, the State disagrees with this argument, for the reasons set forth below.

The Washington Supreme Court has stated the following:

The test for determining the sufficiency of the evidence is whether, after viewing the evidence in the light most favorable to the state, any rational trier of fact could have found guilt beyond a reasonable doubt. 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. 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. State v. Theroff, 25 Wn.App. 590, 593, 608 P.2d 1254, *aff'd*, 95 Wn.2d 385, 622 P.2d 1240 (1980).

State v. Salinas, 119 Wn.2d 192, 201, 829 P.2d 1068 (1992).

The United States Supreme Court, in Jackson v. Virginia, 443 U.S. 307, 318-319 (1979), explained the test for analyzing the sufficiency of evidence as follows:

...[T]he 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. [citation omitted.] This familiar standard gives full play to the responsibility of the trier of fact fairly to resolve conflicts in the testimony, to weigh the evidence, and to draw reasonable inferences from basic facts to ultimate facts.

Jackson v. Virginia, 443 U.S. 307, 318-319 (1979).

Furthermore, an 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. Thomas, 150 Wn.2d 821, 874-875, 83 P.3d 970 (2004).

Appellant appears to rely heavily on State v. Hickman, 135 Wn.2d 97, 954 P.2d 900 (1998), in support of his argument that the State failed to offer sufficient evidence that the crime at issue occurred in Adams County, Washington. However, Hickman is clearly distinguishable from, and therefore not directly applicable to, the case at hand.

In Hickman, the defendant, James Hickman, had been charged with insurance fraud. Hickman, 135 Wn.2d at 99. Mr. Hickman’s trial was held in Snohomish County. Id. at 100. Trial testimony revealed that, after purchasing a vehicle, Mr. Hickman moved to Hawaii and left the vehicle in Washington with a friend. Id. There was no testimony at trial as to where, specifically, in Washington Mr. Hickman left his vehicle. Id. Witnesses also testified that after moving to Hawaii, Mr. Hickman made a deal with two of his friends from Washington that they would “steal” his vehicle for financial gain. Id. After the fake theft of the vehicle was completed, the friend with whom Mr. Hickman had left the vehicle

reported the vehicle as missing, and then Mr. Hickman called his insurance company, located in King County, Washington, from Hawaii to file a claim on his vehicle. Id. The insurance company paid the claim. Id.

During Mr. Hickman's trial,

. . . the only two references to Snohomish County were made by the Snohomish County Sheriff, who testified that he received a call reporting the car stolen "off Logan Road" without specification as to the Logan Road location, and by the sheriff's deputy who testified he located the stripped car hulk on a rural road in Snohomish County. That was the extent of the evidence regarding Snohomish County.

Id.

The jury in Hickman was instructed that in order to convict Mr. Hickman, each of the following elements would have to be proven beyond a reasonable doubt:

(1) That the defendant, James Hickman, on or about the 1<sup>st</sup> day of July, 1992, to the 31<sup>st</sup> of August, 1992, did knowingly present or cause to be presented a false or fraudulent claim or any proof in support of such a claim, for the payment of a loss under a contract of insurance; and

(2) That the false or fraudulent claim was made in the excess of One

Thousand Five Hundred Dollars  
(\$1,500); and

(3) That the act occurred in Snohomish  
County, Washington.

Id. at 101.

The jury found Mr. Hickman guilty as charged. Id. On appeal, Mr. Hickman argued that the State failed to prove that the crime occurred in Snohomish County, as it was required to do according to the jury instructions. Id. The Supreme Court, in analyzing the issue, stated:

. . . [The] question is whether the State proved the added element of venue. Insurance fraud is defined as to “knowingly present or cause to be presented a false or fraudulent claim . . . .” [citation omitted] Thus, the inquiry is whether the State offered sufficient evidence that Hickman presented or caused to be presented a false insurance claim in Snohomish County. When Hickman allegedly called his insurance company to submit the fraudulent claim, he was in Hawaii while his insurance company was in King County. . . . [The] evidence simply does not demonstrate Hickman knowingly presented or caused to be presented a fraudulent insurance claim in Snohomish County.

Id. at 105-106.

The case at hand is readily distinguishable from Hickman. Here, the trial testimony showed that one of the two witnesses called was an Othello Police Department employee, and the other was an Adams County Sheriff's Office employee who was assigned to the Othello area. Both of these law enforcement officers were on duty and working in the Othello area when the report of the incident was called in. Sergeant Larson testified that Deputy Frank was near the scene at the time of the initial call, and in fact both officers arrived on the scene within ten to fifteen minutes. Both the timeline and all geographic references clearly indicate that the incident at issue occurred in Adams County.

This can be contrasted with the Hickman case, wherein there was insufficient evidence to show that Mr. Hickman presented a false insurance claim in Snohomish County when, while in Hawaii, he presented the false insurance claim to his insurance company in King County. In Hickman, there was no evidence whatsoever that any part of the crime had occurred in Snohomish County; in fact, all the evidence was to the contrary. However, the evidence in the case at hand all tended to show that Appellant was in Adams County, Washington while possessing an unlawful firearm. Thus, viewing the evidence in the light most favorable to

the State, a rational trier of fact could certainly have found that the State proved beyond a reasonable doubt that the crime occurred in Adams County, Washington. Therefore, the State respectfully submits that Appellant's conviction in this matter was supported by substantial evidence and should be affirmed.

**B. The trial judge properly ordered Appellant to pay legal financial obligations.**

Appellant argues that the implied finding that Appellant has the ability to pay legal financial obligations ("LFOs") should be stricken based on RCW 10.01.160(3), which states that a court "shall not order a defendant to pay costs unless the defendant is or will be able to pay them. In determining the amount and method of payment of costs, the court shall take account of the financial resources of the defendant and the nature of the burden that payment of costs will impose." RCW 10.01.160(3). The State submits that the trial judge in this case properly ordered Appellant to pay LFOs.

In State v. Bertrand, a case cited by Appellant in support of his argument, Ms. Bertrand was found guilty of delivery of a controlled substance and was ordered by the trial court to pay \$4,304.00 in LFOs, the first payment being due 60 days from the date of the judgment and sentence. State v. Bertrand, 165

Wn.App. 393, 398 (2011). Ms. Bertrand was also sentenced to approximately three years of confinement. Id. Ms. Bertrand appealed the imposition of LFOs, arguing that the record did not support the trial court's finding that she had the ability to pay LFOs. Id. at 403-404. The court agreed with Ms. Bertrand, stating:

Although *Baldwin* [63 Wn.App 303, 818 P.2d 1116, 837 P.2d 646 (1991)] does not require formal findings of fact about a defendant's present or future ability to pay LFOs, the record must be sufficient for us to review whether 'the trial court judge took into account the financial resources of the defendant and the nature of the burden' imposed by LFOs under the clearly erroneous standard. *Baldwin*, 63 Wn.App. at 312. The record here does not show that the trial court took into account Bertrand's financial resources and the nature of the burden of imposing LFOs on her. In fact, the record before us on appeal contains no evidence to support the trial court's finding number 2.5 that Bertrand has the present or future ability to pay LFOs.

Bertrand, 165 Wn.App. at 404.

Here, the trial court did take into account Appellant's financial resources and the nature of the burden imposed by the LFOs. Among the facts presented to the court were that Appellant was facing an imminent deportation to Mexico and had an employment background in agriculture. Furthermore, Appellant

was not required to serve any additional time in custody, and had over three and a half months to make his first \$50 payment toward his \$900.00 of LFOs (an amount significantly lower than what Appellant would have owed had the trial court not waived the fine and a significant portion of the costs.) In contrast, the defendant in Bertrand had been ordered to pay over \$4300.00 in LFOs and was ordered to begin making payments within two months even though she was sentenced to approximately three years in prison, and the Bertrand record did not show that the trial court considered Bertrand's financial resources and the nature of the burden of imposing LFOs on her. Bertrand, 165 Wn.App. at 404.

Although Appellant would likely not make a large amount of money while working at an agricultural job in Mexico, the facts presented at the sentencing hearing in February of 2012 indicated that Appellant, while indigent, should still be able to start making the relatively small monthly payments of \$50.00 by June of 2012. Therefore, because the trial judge considered Appellant's ability to pay LFOs, and because the record indicates that the Appellant would likely have the ability to pay the \$900 in LFOs, the State submits that the LFOs were properly imposed in Appellant's case.

#### IV. CONCLUSION

For the foregoing reasons, the State respectfully requests that this Court affirm Appellant's conviction and find that the LFOs were properly imposed.

DATED this 26<sup>th</sup> day of OCTOBER, 2012.

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