

FILED
August 25, 2014
Court of Appeals
Division III
State of Washington
NO. 32355-2-III

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

STATE OF WASHINGTON,

Respondent,

v.

MARTIN JUAREZ, JR.,

Appellant.

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

The Honorable Evan Sperline, Judge

BRIEF OF APPELLANT

DAVID B. KOCH
Attorney for Appellant

NIELSEN, BROMAN & KOCH, PLLC
1908 E Madison Street
Seattle, WA 98122
(206) 623-2373

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A. ASSIGNMENT OF ERROR

The evidence is insufficient to support appellant's conviction for escape.

Issue Pertaining to Assignment of Error

Appellant was charged and convicted of Escape in the Second Degree, which required proof that he escaped from a "detention facility," a term with a technical legal definition. Where the State failed to prove this required element, must appellant's conviction be dismissed with prejudice?

B. STATEMENT OF THE CASE

The Grant County Prosecutor's Office charged Martin Juarez, Jr., with Escape in the First Degree after he was mistakenly released from the Grant County Jail. CP 1-2, 5-6. Upon realizing the evidence was insufficient to prove that crime (because Juarez was not being held in jail following conviction for a felony), the State amended the charge to Escape in the Second Degree. CP 14-15; 1RP¹ 4-6.

¹ This brief refers to the verbatim report of proceedings as follows: 1RP – February 26, 2014; 2RP – February 27, 2014; 3RP – March 17, 2014.

Evidence at trial revealed that, on the afternoon of November 13, 2010, Corrections Officer Brian Kisler received a radio call from another officer at the Grant County Jail indicating that someone had posted bail for "Martin Juarez Rivera." 1RP 29, 39-40. Using an intercom audible to all 15 to 20 inmates in the second-floor "classification dorm," Kisler made an announcement asking inmate "Juarez to role up his stuff for release." 1RP 29, 32, 41, 52. Kisler was unaware that "Juarez" and "Juarez Rivera" were two different individuals located in the same dorm. 1RP 51.

Within 30 seconds to a minute, Juarez appeared at the door with his jail-issued belongings. 1RP 30, 43. Various security doors were opened, allowing Juarez to walk to the jail's first floor booking area, where he would receive any personal belongings confiscated upon his arrival and then be cleared for release. 1RP 30, 36, 45-49.

Once downstairs, Corrections Officer Oleg Tkachev handed Juarez clothing that Tkachev believed had been confiscated from Juarez upon his arrival at the jail. In fact, however, the clothing had been confiscated from Juarez Rivera. Juarez did not say anything. He put on the clothes and walked to the booking desk, the last stop before release. 1RP 54-62. At that desk, Corrections Officer Greg Knutson asked, "Juarez Rivera?" 1RP 77, 85. When Juarez said

“yes,” Knutson handed him non-clothing personal items confiscated from Juarez Rivera at booking, and Juarez signed a sheet acknowledging receipt of these items. 1RP 75-77. He then walked out of the building. 1RP 90.

The mistake was discovered, about 45 minutes later, when officers noticed that Juarez Rivera’s family was still outside waiting for his release. 1RP 102. Officers found Juarez Rivera still upstairs, lying on the dorm floor with a blanket over his head, and apparently unaware that anyone had been looking for him. 1RP 30-31. Efforts to locate Juarez were not immediately successful. 1RP 94, 103.

A jury found Juarez guilty as charged, the court imposed a standard range 19-month sentence, and Juarez timely filed his Notice of Appeal. CP 25, 67, 81-82; 2RP 37; 3RP 8.

C. ARGUMENT

THE EVIDENCE IS INSUFFICIENT TO SUPPORT JUAREZ’S CONVICTION.

In every criminal prosecution, due process requires that the State prove every fact necessary to constitute the charged crime beyond a reasonable doubt. In re Winship, 397 U.S. 358, 364, 25 L. Ed. 2d 368, 90 S. Ct. 1068 (1970). Where a defendant challenges the sufficiency of the evidence, the proper inquiry is, when viewing

the evidence in the light most favorable to the prosecution, whether there was sufficient evidence for a rational trier of fact to find guilt beyond a reasonable doubt. Jackson v. Virginia, 443 U.S. 307, 319, 61 L. Ed. 2d 560, 99 S. Ct. 2781 (1979); State v. Green, 94 Wn.2d 216, 220-21, 616 P.2d 628 (1980).

Juarez was tried and convicted of Escape in the Second Degree:

- (1) A person is guilty of escape in the second degree if:
 - (a) He or she knowingly escapes from a detention facility;

RCW 9A.76.120(1); CP 14, 21. "Detention facility" is defined by statute:

"Detention facility" means any place used for the confinement of a person (a) arrested for, charged with or convicted of an offense, or (b) charged with being or adjudicated to be a juvenile offender as defined in RCW 13.40.020 as now existing or hereafter amended, or (c) held for extradition or as a material witness, or (d) otherwise confined pursuant to an order of a court . . . , or (e) in any work release, furlough, or other such facility or program.

RCW 9A.76.010(3).

At Juarez's trial, the State relied on subparts (a) and (d). Jury instruction 5 provides, "Detention facility means any place used for the confinement of a person arrested for, charged with, or convicted

of an offense, or otherwise confined pursuant to an order of the court.” CP 22. The State failed to prove this essential element of the crime.

In State v. Hendrix, 109 Wn. App. 508, 512-513, 35 P.3d 1189 (2001), review denied, 146 Wn.2d 1018, 51 P.3d 88 (2002), this Court recognized that the statutory definition of “detention facility” contains both a place and person component. As to place, a detention facility includes “any place used for the confinement of a person charged.” State v. Gomez, 152 Wn. App. 751, 754, 217 P.3d 391 (2009) (citing State v. Peters, 35 Wn. App. 427, 430-431, 667 P.2d 136 (1983)). As to person, the individual must be confined for one of the five reasons listed in RCW 9A.76.010(3)(a)-(e). Hendrix, 109 Wn. App. at 512-513.

In Juarez’s case, the State proved the place component. Describing the Grant County Jail generally, Officer Knutson said, “[a]nyone getting arrested on any charges or warrant will go there.” 1RP 63. But the State failed to prove the person component because it presented no evidence establishing that Juarez was confined for a specific qualifying reason, i.e., “arrested for, charged with, or convicted of an offense, or otherwise confined pursuant to an order of the court.” CP 22.

Officer Kisler confirmed that “[p]eople in the jail are usually charged with crimes,” but provided no information specific to Juarez. 1RP 33. Officer Knutson testified Juarez had been arrested on November 11, 2010 and that arrestees are told why they have been arrested, including if they have warrants. But, like Kisler, he never explained why Juarez had been arrested. 1RP 64, 71. At one point during trial, when it appeared the prosecutor was on the cusp of having Knutson reveal the reason for Juarez’s arrest and detention, defense counsel objected and the prosecutor immediately moved to another subject. 1RP 64-65. And while the Grant County Prosecutor’s “Motion and Certification for Arrest and Detention” indicates Juarez was arrested and confined on multiple arrest warrants, that document was not part of the evidence at trial. See CP 5-6.

Where, as here, the State has failed to prove an element of the charged offense, the remedy is dismissal of the conviction with prejudice. See State v. Hickman, 135 Wn.2d 97, 103, 954 P.2d 900 (1998). In Hendrix, after concluding the State had failed to prove the person component of “detention facility,” the Court vacated Hendrix’s conviction for Escape in the Second Degree and remanded for conviction on the lesser included offense of Escape

in the Third Degree.² Hendrix, 109 Wn. App. at 515. Subsequent precedent, however, establishes this is not a proper remedy where, as here, jurors were never instructed on the lesser offense. See In re Heidari, 174 Wn.2d 288, 291-294, 274 P.3d 366 (2012).

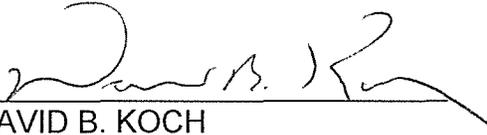
D. CONCLUSION

This Court should reverse Juarez's conviction with prejudice.

DATED this 25th day of August, 2014.

Respectfully submitted,

NIELSEN, BROMAN & KOCH, PLLC



DAVID B. KOCH
WSBA No. 23789
Office ID No. 91051

Attorneys for Appellant

² Escape in the Third Degree does not require a detention facility. "A person is guilty of escape in the third degree if he or she escapes from custody." RCW 9A.76.130(1).