

66437-9

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No. 66437-9-I

THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION ONE

STATE OF WASHINGTON,

Respondent,

v.

JAMES STUDEBAKER,

Appellant.

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

BRIEF OF APPELLANT

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COURT OF APPEALS
DIVISION ONE
SEATTLE, WASHINGTON

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A. ASSIGNMENTS OF ERROR

1. In the absence of sufficient evidence to support each element of the offense, James Studebaker's two convictions for bail jumping deprived him of due process.

2. The sentencing court imposed an erroneous term of community custody on Mr. Studebaker.

B. ISSUES PERTAINING TO ASSIGNMENTS OF ERROR

1. To convict an individual of bail jumping the State must prove beyond a reasonable doubt a person was released from jail by court order or admitted to bail with knowledge that he would be required to appear in the future. Where the State did not present evidence that Mr. Studebaker was "released by court order or admitted to bail," did the State prove each element of the offense beyond a reasonable doubt?

2. RCW 9.94A.701(1) requires a trial court impose three years community custody for a defendant convicted of an offense under RCW 9A.44. Although Mr. Studebaker was convicted of an offense under RCW 9A.44 the court imposed a community custody range of 36-48 months. Did the trial court err in imposing an incorrect term of community custody?

C. STATEMENT OF THE CASE

Mr. Studebaker was charged with one count of third degree rape of a child for having sex with his 14 year-old girlfriend. CP 47-49. On the same day the original information was filed the court entered an order releasing Mr. Studebaker on his own recognizance. Supp. CP __, Sub No.2.

Due to difficulties in reaching the Island County Courthouse from his home on Camano Island relying on public transportation, Mr. Studebaker was late for or failed to appear at hearings on March 15, 2010 and June 1, 2010. The State then charged Mr. Studebaker with bail jumping. CP 47-49.¹

A jury convicted Mr. Studebaker of the rape of a child count and two counts of bail jumping. CP 3.

D. ARGUMENT

1. THE STATE DID NOT PROVE EACH ELEMENT OF BAIL JUMPING BEYOND A REASONABLE DOUBT

- a. Due Process requires the State prove each element of an offense beyond a reasonable doubt. A criminal defendant has the right to a jury trial and may only be convicted if

¹ The State also charged Mr. Studebaker with bail jumping due to his failure to appear at a July 12, 2010, hearing, but the jury acquitted Mr. Studebaker of that charge. CP 23, 42.

the government proves every element of the crime beyond a reasonable doubt. Blakely v. Washington, 542 U.S. 296, 300-01, 124 S.Ct. 2531, 159 L.Ed.2d 403 (2004); Apprendi v. New Jersey, 530 U.S. 466, 476-77, 120 S.Ct. 2348, 147 L.Ed.2d 435 (2000); United States v. Gaudin, 515 U.S. 506, 510, 115 S.Ct. 2310, 132 L.Ed.2d 444 (1995); In re Winship, 397 U.S. 358, 364, 90 S.Ct. 1068, 25 L.Ed.2d 368 (1970); State v. Green, 94 Wn.2d 216, 220-21, 616 P.2d 628 (1980). The constitutional rights to due process and a jury trial “indisputably entitle a criminal defendant to ‘a jury determination that he is guilty of every element of the crime beyond a reasonable doubt.’” Apprendi, 530 U.S. at 476-77 (quoting Gaudin, 515 U.S. at 510).

b. The State did not prove each element of bail

jumping. RCW 9A.76.170(1) provides:

Any person having been released by court order or admitted to bail with knowledge of the requirement of a subsequent personal appearance before any court of this state, or of the requirement to report to a correctional facility for service of sentence, and who fails to appear or who fails to surrender for service of sentence as required is guilty of bail jumping.

Thus, the State was required to prove Mr. Studebaker: (1) was held for, charged with . . . a particular crime; (2) was released by court order or admitted to bail with the requirement of a subsequent

personal appearance; and, (3) knowingly failed to appear as required. State v. Pope, 100 Wn.App. 624, 627, 999 P.2d 51 (2000).

(i). The State did not prove Mr. Studebaker was released from jail by court order or admitted to bail. On February 23, 2010, the trial court entered an order releasing Mr. Studebaker from jail on personal recognizance on condition he not leave the state and that he appear at all subsequent court hearings. Supp CP __, Sub No 2. However, the State never presented that document to the jury.

The State did submit as exhibits documents that set hearing dates, and documents indicating Mr. Studebaker had failed to appear for two hearing dates. See, Ex 1-6. Some of those exhibits contain a notation that a warrant will be issued if he failed to appear at the scheduled hearing, and that he may be subject to additional criminal charges. Ex. 1, 3. But not one of these exhibits “released” Mr. Studebaker from jail “or admitted [him] to bail.” Because the State did not prove Mr. Studebaker had “been released by court order or admitted to bail,” its proof that he failed to appear at subsequent hearings does not establish bail jumping.

Mr. Studebaker's convictions are not supported by sufficient evidence.

(ii). The State was required to prove that at the time of his release from jail he was aware he was required to appear on March 15, 2010, and June 1, 2010. Where additional elements are added to the "to convict" instruction, and the State does not object, the additional element becomes the "law of the case" and must be proved beyond a reasonable doubt. State v. Hickman, 135 Wn.2d 97, 99, 954 P.2d 900 (1998).

Here, Instruction 11, the "to convict" instruction for the bail jumping charge in Count II, provides:

. . . . That the defendant knew of the requirement to subsequently appear before the court on March 15, 2010, at the time the defendant was released or admitted to bail

CP 40. Instruction 12 pertaining to Count III, provides:

. . . . That the defendant knew of the requirement to subsequently appear before the court on June 1, 2010, at the time the defendant was released or admitted to bail

CP 41.

The "time [Mr. Studebaker] was released or admitted to bail" was February 23, 2010, as that is the date the court entered an Order for Release from Jail. Supp. CP __, Sub No. 2. Of course,

the State did not present that order to the jury. Nor, did the State offer any additional evidence that Mr. Studebaker was subsequently confined and again released from jail or admitted to bail. The February 22, 2010, order does not mention either March 15, 2010, or June 1, 2010, or any other future hearing by date. Supp. CP __, No. 2. The State's exhibits do not contain any other order from February 23, 2010, notifying Mr. Studebaker that he would be required to appear on either March 15, 2010, or June 1, 2010. Thus, the State did not prove Mr. Studebaker knew he was required to appear on either March 15, 2010 or June 1, 2010 "at the time he was released."

c. The Court must dismiss Mr. Studebaker's bail jumping convictions. The absence of proof beyond a reasonable doubt of an element, or an added element, requires dismissal of the conviction and charge. Hickman, 135 Wn.2d at 99 (citing Jackson v. Virginia, 443 U.S. 307, 319, 99 S.Ct. 2781, 61 L.Ed.2d 560 (1979); Green, 94 Wn.2d at 221)). The Fifth Amendment's Double Jeopardy Clause bars retrial of a case, such as this, where the State fails to prove an element of an offense or added element. Hickman, 135 Wn.2d at 99 (citing inter alia, North Carolina v. Pearce, 395 U.S. 711, 717, 89 S.Ct. 2072, 23 L.Ed. 2d 656 (1969),

reversed on other grounds, Alabama v. Smith, 490 U.S. 794, 109 S.Ct. 2201, 104 L.Ed.2d 865 (1989)). Because the State failed to prove Mr. Studebaker had “been released by court order or admitted to bail” the Court must reverse his convictions.

2. THE TRIAL COURT IMPOSED AN IMPROPER TERM OF COMMUNITY CUSTODY.

“A trial court only possesses the power to impose sentences provided by law.” In re the Personal Restraint Petition of Carle, 93 Wn.2d 31, 33, 604 P.2d 1293 (1980). Where a statutory term, phrase or directive is unambiguous, its meaning must be taken from its plain language. State v. Chester, 133 Wn.2d 15, 21, 940 P.2d 1374 (1997) (citing Cherry v. Municipality of Metro. Seattle, 116 Wn.2d 794, 799, 808 P.2d 746 (1991)).

RCW 9.94A.701(1) provides

If an offender is sentenced to the custody of the department for one of the following crimes, the court shall, in addition to the other terms of the sentence, sentence the offender to community custody for three years:

(a) A sex offense not sentenced under RCW 9.94A.507

.....

Pursuant to RCW 9.94A.030(45)(a)(I), Mr. Studebaker’s conviction under RCW 9.44.079 is a sex offense. Thus, the court

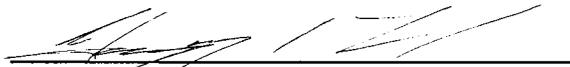
could only impose the specific term of 36 months community custody.

The judgment and sentence, however, imposes a range of a range of community custody of 36 to 48 months. CP 8. The court lacked the authority to impose that term of community custody. This Court must reverse Mr. Studebaker's sentence and direct the court to impose the term of community custody required by RCW 9.94A.701(1).

E. CONCLUSION

For the reasons above this Court must reverse Mr. Studebaker's convictions of bail jumping and reverse his sentence.

Respectfully submitted this 31st day of May 2011.


GREGORY C. LINK – 25228
Washington Appellate Project – 91052
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DIVISION ONE**

STATE OF WASHINGTON,)	
)	
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v.)	NO. 66437-9-I
)	
JAMES STUDEBAKER,)	
)	
Appellant.)	

DECLARATION OF DOCUMENT FILING AND SERVICE

I, MARIA ARRANZA RILEY, STATE THAT ON THE 31ST DAY OF MAY, 2011, I CAUSED THE ORIGINAL **OPENING BRIEF OF APPELLANT** TO BE FILED IN THE **COURT OF APPEALS - DIVISION ONE** AND A TRUE COPY OF THE SAME TO BE SERVED ON THE FOLLOWING IN THE MANNER INDICATED BELOW:

<input checked="" type="checkbox"/> GREGORY BANKS ISLAND COUNTY PROSECUTING ATTORNEY P.O. BOX 5000 COUPEVILLE, WA 98239	(X) () ()	U.S. MAIL HAND DELIVERY _____
<input checked="" type="checkbox"/> JAMES STUDEBAKER 344657 AIRWAY HEIGHTS CORRECTIONS CENTER PO BOX 2049 AIRWAY HEIGHTS, WA 99001-2049	(X) () ()	U.S. MAIL HAND DELIVERY _____

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STATE OF WASHINGTON
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SIGNED IN SEATTLE, WASHINGTON THIS 31ST DAY OF MAY, 2011.

X _____ 

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