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SUMMARY
July 26, 2018

2018COA103

No. 15CA0633 People v. Donald — Crimes — Violation of Bail Bond Conditions; Criminal Law — Mens Rea

Defendant was convicted of two counts of violating bail bond conditions. One count arose from his failure to appear at a court date, and the other count arose from defendant leaving the state of Colorado when a bond condition prohibited him from doing so. Defendant contends that there was insufficient evidence to sustain either conviction because the prosecution failed to prove beyond a reasonable that he knew of the two bond conditions.

A division of the court of appeals concludes that there was sufficient evidence to support the first count but not the second. With respect to the latter count, the only evidence presented to support the mens rea element of that charge was that the bond paperwork contained the condition prohibiting out-of-state travel

and that it is the jail's routine practice to have an inmate sign the bond paperwork before releasing him on bond. Beyond the bond paperwork itself, the prosecution presented no additional evidence to establish that the defendant personally signed the paperwork or was otherwise informed of the bond condition prohibiting out-of-state travel. Nor did the prosecution present any evidence regarding the circumstances surrounding the signing of the bond paperwork nor whether it was the jail's routine practice to provide a released inmate with a copy of the bond paperwork. The division concludes the evidence was insufficient to establish beyond a reasonable doubt that defendant knew of the bond condition that prohibited his out-of-state travel.

Court of Appeals No. 15CA0633
El Paso County District Court No. 14CR1803
Honorable David S. Prince, Judge

The People of the State of Colorado,

Plaintiff-Appellee,

v.

Laron Antonio Donald,

Defendant-Appellant.

JUDGMENT AFFIRMED IN PART
AND VACATED IN PART

Division II
Opinion by JUDGE WELLING
Dailey and Hawthorne, JJ., concur

Announced July 26, 2018

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Douglas K. Wilson, Colorado State Public Defender, Sarah A. Kellogg, Deputy State Public Defender, Denver, Colorado, for Defendant-Appellant

¶ 1 Defendant, Laron Antonio Donald, appeals his convictions for violation of bail bond conditions. Donald contends that the State failed to prove beyond a reasonable doubt that he had the requisite state of mind to commit either offense. First, Donald contends that the prosecution failed to establish beyond a reasonable doubt that he knew of his court date and that he, in turn, knowingly failed to appear. Second, he contends that the prosecution failed to establish beyond a reasonable doubt that he knew of the bond condition that prohibited him from leaving the State of Colorado. We disagree with Donald's first contention but agree with his second. Accordingly, we affirm in part and vacate in part.

I. Background

¶ 2 Donald was arrested and charged with a felony in November 2012. During his court appearance on August 27, 2013, the judge set bond and announced his January 6, 2014, court date. Donald subsequently posted bond and was released from jail. The bond paperwork provided that, as a condition of his release, Donald was prohibited from leaving the State of Colorado without court approval.

¶ 3 Donald failed to appear in court on January 6th. He was arrested in Mississippi five weeks later. The arresting officer testified that when he approached Donald after pulling him over, Donald appeared “very nervous” and was shaking and sweating.

¶ 4 Donald was charged with three counts of violation of bail bond conditions under section 18-8-212(1), C.R.S. 2017. Count one was later dismissed. Count two charged that Donald “knowingly violated a condition of bond by leaving the State of Colorado.” Count three charged that Donald “knowingly failed to appear for trial or other proceedings.” Donald pleaded not guilty and the matter proceeded to trial. Following trial, the jury convicted Donald of counts two and three.

II. Standard of Review and Legal Principles

¶ 5 We review de novo whether the evidence was sufficient to sustain a conviction. *People v. Brown*, 2014 COA 130M, ¶ 38.

¶ 6 When analyzing the sufficiency of the evidence, we determine “whether the relevant evidence, both direct and circumstantial, when viewed as a whole and in the light most favorable to the prosecution, is substantial and sufficient to support a conclusion by a reasonable mind that the defendant is guilty of the charge

beyond a reasonable doubt.” *Clark v. People*, 232 P.3d 1287, 1291 (Colo. 2010) (citation omitted).

¶ 7 Where reasonable minds could differ, the evidence is sufficient to support a conviction. *People v. Carlson*, 72 P.3d 411, 416 (Colo. App. 2003); see *People v. Perez*, 2016 CO 12, ¶ 31 (“The question is not whether it is possible to disagree with the inferences, but rather, whether the inferences are reasonable when the evidence is viewed as a whole in the light most favorable to the prosecution.”). But more than a modicum of evidence is required to prove an element beyond a reasonable doubt, and the jury may not speculate, guess, or rely on conjecture to reach a guilty verdict. *People v. Whitaker*, 32 P.3d 511, 519 (Colo. App. 2000), *aff’d*, 48 P.3d 555 (Colo. 2002).

¶ 8 The crime of violating bail bond conditions requires proof that

[a] person who is released on bail bond of whatever kind, and either before, during, or after release is accused by complaint, information, indictment, or the filing of a delinquency petition of any felony arising from the conduct for which he was arrested, commits a class 6 felony if he *knowingly* fails to appear for trial or other proceedings in the case in which the bail bond was filed or if he *knowingly* violates the conditions of the bail bond.

§ 18-8-212(1) (emphasis added).

¶ 9 “Knowingly” is defined as follows:

A person acts “knowingly” . . . with respect to conduct or to a circumstance described by a statute defining an offense when he is aware that his conduct is of such a nature or that such circumstance exists. A person acts “knowingly” . . . , with respect to a result of his conduct, when he is aware that his conduct is practically certain to cause the result.

§ 18-1-501(6), C.R.S. 2017.

¶ 10 Thus, the statute requires actual knowledge of the bond condition, not merely constructive knowledge or that the defendant should have known of such condition. *Id.* But knowledge, like any intent element of a crime, may be (and usually is) proved by circumstantial evidence instead of direct evidence. *See People v. Phillips*, 219 P.3d 798, 800 (Colo. App. 2009).

¶ 11 With these concepts in mind, we turn to Donald’s two sufficiency of the evidence claims, addressing count three first.

III. Sufficient Evidence Supports Donald’s Conviction for Failure to Appear

A. Preservation

¶ 12 The People contend that Donald waived his sufficiency of the evidence claim relating to his conviction for failing to appear (i.e.,

count three). At trial, Donald moved for judgment of acquittal as to count two, arguing that the evidence was insufficient to show that he personally signed the bond paperwork or that he was otherwise informed of the bond condition supporting that count. The trial court denied the motion. Defense counsel then indicated that the defense had planned to move for acquittal on count three, and that the motion “was going to be based on the same grounds.” The trial court responded that “[t]hat would get the same ruling.” Defense counsel then said to the court, “We’re not going to move forward with that on Count 3.”

¶ 13 The People contend that defense counsel’s statement effected a waiver of Donald’s insufficiency claim as to count three. Donald argues in response that the limited transcript does not support a waiver, and that, in any event, defense counsel cannot waive Donald’s constitutional due process protections, which include his right not to suffer a conviction absent sufficient evidence to sustain the conviction. But because we conclude that sufficient evidence supports Donald’s conviction on count three, we needn’t resolve this issue. *See People v. Baca*, 2015 COA 153, ¶ 18.

B. Analysis

¶ 14 Donald contends that the prosecution failed to prove beyond a reasonable doubt that he knew of the January 6, 2014, court proceeding at which he failed to appear. He argues that the prosecution failed to present evidence showing that he was paying attention during his court appearance on August 27, 2013, when the trial judge announced his next court date, or evidence showing that he was otherwise aware of that court date. He contends, therefore, that no rational trier of fact could find beyond a reasonable doubt that he knowingly failed to appear on January 6th, as required to commit a violation of section 18-8-212(1). We disagree.

¶ 15 The evidence presented at trial to support Donald's knowledge of the January 6th court date included testimony from the father of the victim in Donald's underlying case, who was present in court when Donald's court date was announced. The father testified that he attended court on August 27, 2013, and witnessed Donald standing at the podium during the proceedings that day. He also testified that he specifically recalled the judge announcing the January 6th court date in Donald's presence. The father's

testimony supports a reasonable inference that Donald knew of the January 6th court date for which he failed to appear. *People v. Caldwell*, 43 P.3d 663, 672 (Colo. App. 2001); *see also People v. Garcia*, 698 P.2d 801, 806 (Colo. 1985) (testimony from witness who observed the defendant in court when the judge announced her court date supported satisfaction of the “knowingly” element of section 18-8-212).

¶ 16 Because we conclude that the father’s testimony was sufficient evidence to permit the jury to reasonably infer that Donald was aware of the January 6th court date, and therefore also that he knowingly failed to appear, we reject Donald’s sufficiency of the evidence claim as to count three. *See Caldwell*, 43 P.3d at 672 (“If the prosecution presents evidence from which the trier of fact may properly infer the elements of the crime, the evidence is sufficient to sustain the conviction.”).

IV. Insufficient Evidence Supports Donald’s Conviction for Violation of a Bond Condition by Leaving Colorado

A. Preservation

¶ 17 We agree with the parties that Donald preserved his sufficiency of the evidence claim relating to his conviction for

violating the bond condition requiring that he remain within the State of Colorado (i.e., count two).

B. Discussion

¶ 18 In stark contrast to the bond condition in count three (i.e., the January 6th court date), there was no evidence that the bond condition prohibiting out-of-state travel was ever discussed or announced in open court. Instead, the bond condition prohibiting out-of-state travel was set forth *only* in the bond paperwork. And the sole potential source of Donald's knowledge of that condition offered at trial was its inclusion in the bond paperwork.

¶ 19 Donald contends that the prosecution failed to prove beyond a reasonable doubt that he knew of the bond condition that prohibited him from leaving the State of Colorado. Specifically, Donald argues that the prosecution failed to present any evidence showing that he had personally signed the bond paperwork or that he was otherwise aware of the bond condition that prohibited out-of-state travel. Donald contends that, therefore, no rational trier of fact could find beyond a reasonable doubt that he possessed the requisite mental state — knowingly — to have violated section 18-8-212(1). Although we disagree with Donald's contention that there

was insufficient evidence to support an inference by the jury that he signed the bond paperwork, we nevertheless conclude that the evidence was insufficient to establish Donald's knowledge of the specific bond condition therein beyond a reasonable doubt.

¶ 20 First, let's look at the evidence supporting the mens rea element of count two. The evidence in this regard came exclusively from a single witness: Lissa Thompson, an employee of the bail bond agency that wrote and posted Donald's bond. Ms. Thompson testified that although she did not personally witness Donald sign the paperwork and could not verify that it was his signature on the paperwork, an inmate would not be released from jail without signing the bond paperwork unless an accident had occurred.

Specifically, Ms. Thompson testified, in pertinent part, as follows:

Q. Ma'am, is there any way for someone to be released from jail without that paperwork?

A. Without signing that paperwork?

Q. Right.

A. Only an accident from the court – from the jail, and then usually they would bring them back in and have them sign.

Q. All right.

A. Very, very seldom.

¶ 21 Beyond the bond paperwork itself, the prosecution presented no additional evidence to establish that Donald personally signed the paperwork or was otherwise informed of the bail bond condition. Nor did the prosecution present any evidence regarding the circumstances surrounding the signing of the bond paperwork or whether it was the jail’s routine practice to provide a released inmate with a copy of the bond paperwork.

¶ 22 We conclude that the bondsperson’s testimony is insufficient by itself to establish beyond a reasonable doubt that Donald knew of the bond condition that prohibited his out-of-state travel. As a threshold matter, we conclude that the bondsperson’s testimony supports an inference that Donald signed the bond paperwork. This is so because she testified that the jail’s regular practice was to require a prisoner to sign the bond paperwork before he or she is released from jail. And it is a permissible inference to draw from such evidence that the release of Donald conformed with that general practice. *See* CRE 406 (Evidence of an organization’s routine practice is “relevant to prove that the conduct of the . . . organization on a particular occasion was in conformity with the . . . routine practice.”). But the act of signing the bond

paperwork does not establish actual knowledge of the bond conditions set forth therein. Rather, for a juror to conclude that signing the bond paperwork resulted in Donald knowing of the bond condition, additional inferences are required. It is the necessity of this inference stacking without any additional evidence to support it that renders the evidence insufficient to support Donald's conviction of count two.

¶ 23 “Presumption and inferences may be drawn *only from facts established*,” *Tate v. People*, 125 Colo. 527, 541, 247 P.2d 665, 672 (1952), and the facts established here were that (1) the bond condition prohibiting out-of-state travel was set forth in the bond paperwork and (2) it is the jail's routine practice to have a prisoner sign the bond paperwork before being released. To infer that Donald had actual knowledge, a juror must further infer — for example — that he was afforded (and took) the opportunity to read the bond paperwork with sufficient care to learn of the bond condition, or that he was given a copy of the paperwork to review at a later time and did so. But there was no evidence at all (routine practice or otherwise) regarding the circumstances surrounding the signing of the bond paperwork (either by Donald specifically or by

released inmates generally). Nor was there any evidence (again, routine practice or otherwise) that a released inmate is given a copy of the bond paperwork that he or she signs. Neither of these inferences, therefore, may be drawn directly from the facts established.¹ See *People v. Gonzales*, 666 P.2d 123, 128 (Colo. 1983) (“[I]t is essential . . . that there be a logical and convincing connection between the facts established and the conclusion inferred.” (quoting *United States v. Bycer*, 593 F.2d 549, 550 (3d Cir. 1979))).

¶ 24 Any inference of actual knowledge of the bond condition therefore necessarily rests upon another inference — i.e., the inference that Donald signed the bond paperwork, consistent with the jail’s routine practice. And “presumption may not rest on presumption or inference on inference.” *Tate*, 125 Colo. at 541, 247 P.2d at 672. Indeed, the prohibition against drawing an inference upon another inference “is doubly applicable in criminal cases.” *Id.* We conclude that insufficient evidence supports Donald’s conviction

¹ The bondsperson testified only that a signature is generally required before a prisoner is released on bond. She did not testify that the prisoner receives a copy of the paperwork or is provided the opportunity to read its contents before signing.

of count two because an inference that rests upon another inference is insufficient to establish beyond a reasonable doubt that Donald knew of the bond condition. *See People v. Ayala*, 770 P.2d 1265, 1268 (Colo. 1989) (a conviction for theft by receiving was not supported by sufficient evidence because to infer that defendant knowingly received stolen goods “would necessitate drawing an inference upon an inference”).

¶ 25 We are not abrogating the general rule that a person is presumed to know and understand the contents of a document that he or she signs. *See Bell v. Land Title Guarantee Co.*, 2018 COA 70, ¶ 14 (collecting civil cases in support of the proposition that “one who signs or accepts a written contract, in the absence of fraud, is conclusively presumed to know its contents and to assent to them”). That “principle is applied to preserve the integrity and sanctity of written documents.” *Id.* at ¶ 15. Like in *Bell*, however, declining to extend that concept here does not undermine the integrity and sanctity of a written document. To be sure, if this were simply a proceeding to revoke Donald’s bond for violation of the condition prohibiting out-of-state travel, the presumed-to-know principle could be invoked to establish the terms of Donald’s bond. But the

issue here is not simply whether Donald violated the terms of his bond by leaving Colorado, but whether in doing so he committed a separate felony. The latter requires proof of actual knowledge of the condition allegedly violated. All that the evidence adduced at trial establishes is that the jail generally requires a releasing inmate to sign the bond paperwork before he or she will be released. Without more, such evidence is insufficient to prove actual knowledge beyond a reasonable doubt.

¶ 26 Simply put, the scant evidence presented at trial cannot bear the weight of proof of knowledge beyond a reasonable doubt. To be sure, if there had been testimony from a witness (such as a jail deputy) that it was the jail's regular practice to provide a released prisoner a copy of the bond paperwork or even that the jail generally afforded a releasing inmate ample opportunity to review the documents before signing, we would have a very different case. But for a juror to conclude that one of those intervening steps was proved based on the record in this case requires speculation. See *People v. Urso*, 129 Colo. 292, 297, 269 P.2d 709, 711 (1954) (“[V]erdicts in criminal cases should not be composed of guessing, speculation, or conjecture.”). Even if we assume that the jury was

persuaded that Donald signed the bond paperwork, it was left to guess and speculate regarding the circumstances surrounding his signing that document in order to conclude that he acquired the requisite knowledge of the specific bond condition to support a conviction.

¶ 27 The People contend that Donald’s demeanor during the traffic stop in Mississippi is additional evidence that he knew of the bond condition prohibiting out-of-state travel. We are not persuaded. The arresting officer testified that Donald was “very nervous” when approached during the traffic stop. But there is no indication, beyond mere speculation, that Donald’s nervous demeanor related to his awareness that he was in violation of the prohibition on out-of-state travel — and not, instead, to his failure to appear in court, or to something else entirely. *Cf. People v. Goessl*, 186 Colo. 208, 211, 526 P.2d 664, 665 (1974) (“It is normal for law-abiding persons, as well as persons guilty of criminal activity, to be nervous when stopped by a policeman for a traffic offense.”) Indeed, the People’s reliance on Donald’s nervous demeanor as evidence to support the knowledge element of both counts two and three demonstrates the lack of a connection between his nervousness and

any particularized knowledge. Simply put, evidence of Donald's nervousness is not additional evidence of knowledge of this particular bond condition and, thus, even taken together with the bondsperson's testimony, is insufficient to support a reasonable inference that Donald "knowingly" violated the bond condition prohibiting his out-of-state travel.

¶ 28 In summary, the bondsperson's testimony in conjunction with the bond paperwork is the only evidence that comes close to establishing the mens rea element of count two, but this evidence alone cannot bear the weight of proof of actual knowledge beyond a reasonable doubt. *Cf. Marsh v. People*, 2017 CO 10M, ¶ 35 (where alternative, exculpatory explanations cannot be ruled out, one piece of circumstantial evidence alone is insufficient to prove knowledge beyond a reasonable doubt); *People v. Boulden*, 2016 COA 109, ¶¶ 15-17 (evidence of a notice sent by United States mail to the defendant was insufficient by itself to prove beyond a reasonable doubt that defendant knew of the content of the notice). We, therefore, conclude that Donald's conviction on count two is not supported by sufficient evidence. Accordingly, it must be vacated.

V. Conclusion

¶ 29 The judgment and sentence are affirmed in part and vacated in part. The judgment and sentence for a violation of section 18-8-212(1) relating to Donald's failure to appear in court on January 6, 2014, are affirmed. But the judgment and sentence for a violation of section 18-8-212(1) relating to Donald's unauthorized travel outside the State of Colorado are vacated.

JUDGE DAILEY and JUDGE HAWTHORNE concur.