

SUPREME COURT OF WASHINGTON

State of Washington v. Cynthia Crisaundra Boss, and Paul Anthony Pelts, and each of them, 167 Wash. 2d 710

223 P.3d 506 (2009) · No. No. 81897-5 · Decided December 17, 2009

SUMMARY

The Washington Supreme Court affirmed Cynthia Boss's conviction for first degree custodial interference. It held that the lawfulness of the custody order was a legal question for the trial court, that knowledge of the custody order was inherent in the offense's intent requirement, and that the trial court's instruction stating CPS had a lawful right to custody was an improper comment on the evidence but not prejudicial.

CASE DETAILS

COURT	Supreme Court of Washington
WRITING FOR THE COURT	C. Johnson, J.; Alexander, C.J.; Owens, J.; Fairhurst, J.; Madsen, J.; Johnson, J.; Sanders, J.; Stephens, J.; Chambers, J.
JURISDICTION	Washington
DECIDED	December 17, 2009
DOCKET	No. 81897-5
DISPOSITION	affirmed
PROCEDURAL POSTURE	Boss was convicted of first degree custodial interference. The Washington Court of Appeals affirmed. The Washington Supreme Court granted review and affirmed the conviction.
STANDARD OF REVIEW	Alleged errors of law in jury instructions are reviewed de novo. Judicial-comment claims under article IV, section 16 are subject to a presumption of prejudice, which the State must overcome by showing that no prejudice could have resulted.
PRECEDENTIAL VALUE	Published, precedential Washington Supreme Court decision
PARTIES	Cynthia Crisaundra Boss, Paul Anthony Pelts v. State of Washington

TOPICS

- criminal procedure
- jury instructions
- statutory interpretation
- evidence
- constitutional law

PRACTICE AREAS

Criminal law

Criminal procedure

Evidence

Statutory interpretation

Jury instructions

Constitutional law

QUESTIONS PRESENTED

1. Whether the lawfulness of the custody order was an element that the jury had to determine and therefore had to be included in the to-convict instruction for first degree custodial interference.
2. Whether the defendant's knowledge of CPS's right to physical custody was an implied element of first degree custodial interference separate from the statutory intent element.
3. Whether the trial court improperly commented on the evidence by instructing the jury that CPS had a lawful right to physical custody of the child and, if so, whether the error required reversal.

HOLDINGS

1. The lawfulness of the custody order is not an element of first degree custodial interference that must be submitted to the jury. The trial court may determine the order's lawfulness as a matter of law in performing its gate-keeping function, while the jury determines whether the custody order existed and whether the State proved that the other person or entity had a lawful right to physical custody.
2. Knowledge of the custody order is inherent in the statutory intent requirement; it is not a separate implied element that must be added to RCW 9A.40.060 or separately included in the jury instruction.
3. Instruction 9 improperly commented on the evidence by telling the jury that CPS had a lawful right to physical custody, because the jury had to determine whether the State proved that factual element. The error was nevertheless harmless under Washington's judicial-comment standard because the record affirmatively showed that no realistic prejudice could have resulted.

KEY QUOTATIONS

“Whether the order itself was lawful, i.e., whether the court granting the order was authorized to do so, whether the order was adequate on its face, and whether the order complied with the underlying statutes, is a matter of law within the province of the trial court.” (at 511)

“Knowledge of the existence of a custody order is inherent in the intentional element of the offense.” (at 512)

“The State has met its burden to show that Boss was not prejudiced by the comment.” (at 513)

FACTUAL BACKGROUND

CPS obtained a May 11, 2006 custody order granting the Department of Social and Health Services temporary custody of Boss's infant daughter after a juvenile court determined that the child faced a risk of imminent harm. CPS repeatedly attempted to obtain physical custody, but Boss concealed the child's location and told a DSHS employee that she would not make the child available. Boss was served with the custody order and a writ of habeas corpus, yet continued refusing to disclose the child's location; the child was later found in Houston, Texas and returned to Washington.

PROCEDURAL HISTORY

The State charged Boss with first degree custodial interference after she refused to make her daughter available to CPS despite a custody order. The trial court instructed the jury that CPS had a lawful right to physical custody and provided a to-convict instruction that tracked the custodial-interference statute. The Court of Appeals affirmed, and the Washington Supreme Court affirmed on partly different grounds.

DISPOSITION

affirmed

CASES CITED

- State v. Miller, 156 Wash. 2d 23, 123 P.3d 827 (2005)
- State v. Boss, 144 Wash. App. 878, 184 P.3d 1264 (2008)
- State v. Levy, 156 Wash. 2d 709, 132 P.3d 1076 (2006)
- Neder v. United States, 527 U.S. 1, 119 S. Ct. 1827, 144 L. Ed. 2d 35 (1999)
- State v. Jackman, 156 Wash. 2d 736, 132 P.3d 136 (2006)
- State v. Becker, 132 Wash. 2d 54, 935 P.2d 1321 (1997)
- State v. Miller, 156 Wash. 2d 23, 27, 123 P.3d 827 (2005)