

FILED
COURT OF APPEALS DIV I
STATE OF WASHINGTON
2013 MAR -8 PM 1:18

In The
Washington State Court of Appeals
Division I

STATE OF WASHINGTON,)	
)	No. 69077-9-I
Plaintiff-Respondent.)	
)	
vs.)	
)	
SHANE SKJOLD,)	
)	
Defendant-Appellant.)	SUPPLEMENTAL BRIEF
)	TO (SAG)

I. Supplemental SAG Issue

(a) Summary of Supplemental Argument

Appellant contends that his 12 and 24 month weapon enhancement sentences are not authorized as the legislature defined a deadly weapon [knife] as having a blade longer than 3-inches, and in this case the knife had a blade of only 2½ inches, thus, statutorily not authorizing a deadly weapon enhancement sentence.

II. Argument

A. APPELLANT'S DEADLY WEAPON ENHANCEMENT'S ARE NOT AUTHORIZED WHERE THE KNIFE WAS 2½ INCHES LONG AND THE LEGISLATURE FOR PURPOSES OF THE ENHANCEMENT STATUTE DEFINED A DEADLY WEAPON [KNIFE] AS HAVING A BLADE LONGER THAN 3-THREE INCHES.

First degree burglary under RCW 9A.52.020 requires the State to prove, among other elements, that the defendant was armed with a deadly weapon or assaulted another person. Second Degree Assault under RCW requires the State to prove, among other elements, that the person assaults another and

thereby recklessly inflicts substantial bodily harm or assaults another with a deadly weapon. Here, Mr. Skjold does not necessarily dispute that there was no knife, instead he argues that the evidence was insufficient to support the "deadly weapon" enhancement on the first degree burglary, or second degree assault. RCW 9.95.040(2).

"Deadly Weapon" means any explosive or loaded or unloaded firearm, and shall include any other weapon, device, instrument, article, or substance, including a "vehicle" as defined in this section, which, under the circumstances in which it is used, attempted to be used, or threatened to be used, is readily capable of causing death or substantial bodily harm. RCW 9A.04.110(6)(emphases added).

This difinitional statute creates two categories of deadly weapons: deadly weapons per se, namely "'any explosive or loaded or unloaded firearm'" and deadly weapons in fact, namely "'any other weapon, device, instrument, article, or substance ... which, under the circumstances it is used, attempted to be used, or threatened to be used, is readily capable of causing death or substantial bodily harm.'" State v. Taylor, 97 Wn.App. 123, 126, 982 P.2d 687 (1999). Here, if appellant's knife is a deadly weapon for purposes of first degree burglary and/or second degree assault, it must fall into the later category.

In construing a statute, courts' must attempt to discern and give effect to legislative intent. Waste Mgmt. of Seattle, Inc. v. Utils. & Transp. Comm'n, 123 Wn.2d 621, 629, 869 P.2d 1034 (2001). Where the language of a statute is unambiguous, courts' discern legislative intent from the statutory text alone and give effect to the plain meaning. Id. Where a statute contains multiple provisions, courts' interpret the statute so as to assign meaning to each provision. State v. Merritt, 91 Wn.App. 969, 973, 961 P.2d 958 (1998).

The language of RCW 9A.04.110(6) is unambiguous. Under the plain meaning of the statute, mere possession is insufficient to render "deadly" a dangerous weapon other than a firearm or explosive. To interpret the statute otherwise would eliminate the distinction between deadly weapons per se (firearms and explosives) and deadly weapons in fact (other weapons). Likewise, it would render meaningless the provision as to the circumstances of use, attempted use, or threatened use.

RCW 9.95.040(2) however, requires more before a deadly weapon enhancement may be imposed. RCW 9.95.040(2) provides:

The words "deadly weapon," as used in this section include, but are not limited to, any instrument known as a blackjack, sling shot, billy, sand club, sandbag, metal knuckles, any dirk, dagger, pistol, revolver, or any other firearm, any knife having a

blade longer than three inches, any razor with an unguarded blade, any metal pipe or bar used or intended to be used as a club, any explosive, and any weapon containing poisonous or injurious gas.

RCW 9A.04.110(6) is substantially different from RCW 9.95.040(2) in the way it treats knives with blades longer than three inches as deadly weapons per se. Had the legislature intended such knives to function as deadly weapons per se for the purposes of differentiating between degrees of offenses, it could have drafted RCW 9A.04.110(6) in a way that mirrored RCW 9.95.040(2).

In addition, because enhancing a sentence under RCW 9.95.040 is fundamentally different from elevating a conviction from second degree burglary (a class B felony) to first degree Burglary (a class A felony), it is not surprising that the standard for finding an individual armed with a deadly weapon under RCW 9.95.040(2) is different from that under RCW 9A.04.110(6).

In this case, it is clear that the knife alleged to have been used was 2½ inches long, (RP 30 June 28, 2012) thus, it does not meet the statutory definition of a deadly weapon under RCW 9.95.040(2) for purposes of enhancement, and appellants deadly weapon enhancement sentence's must be vacated.

III. Conclusion

The Court should vacate appellants' deadly weapon enhancement sentence's.

DATED this 5 day of March, 2013.

Respectfully submitted,



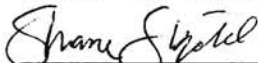
SHANE SKJOLD
Appellant

D e c l a r a t i o n

I, SHANE SKJOLD, declare that, on March 5, 2013, I deposited the foregoing MOTION FOR PERMISSION TO FILE SUPPLEMENT TO (SAG); SUPPLEMENTAL BRIEF TO (SAG), or a copies thereof, in the internal mail system of the Coyote Ridge Corrections Center, and made arrangements for postage, addressed to: KING County Prosecutor, W. 554 Courthouse, 516 3rd Avenue, Seattle, WA 98104

I declare under penalty of perjury under the Laws of the State of Washington that the foregoing is true and correct.

DATED at Connell, Washington on March 5, 2013.



SHANE SKJOLD

Appellant

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