

COA # 71644-1-1

In the COURT OF APPEALS of the State of Washington
Division one

State of Washington,
Respondent,

v.

Charles S. Longshore,

Appellant.

On Appeal from the Superior Court
of Mason County
The Honorable Amber Finlay

FILED
COURT OF APPEALS DIV 1
STATE OF WASHINGTON
2014 MAY -5 AM 9:10

Appellant's Supplemental Statement of
Additional Grounds

Charles S. Longshore
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I. Assignments of Error

- 1.) The Trial Court Erred by Entering a conviction for Felony Harassment because Mr. Longshore's threat "Needs to be a true threat"
- 2.) The Trial Court Erred by Entering a conviction for Felony Harassment because the State failed to prove the so called victim was "placed" in reasonable fear that Mr. Longshore's threat would be carried out.
- 3.) The Trial Court Erred by Entering a conviction for "Possession of a controlled substance" because the State failed to prove dominion and control of the "pipe" and for the vehicle.

II. Issues Pertaining to Assignments of Error

- 1.) whether due process requires the state to prove Mr. Longshore's threat to kill was a "true threat".
- 2.) whether due process requires the state to prove the so called victim was "placed" in reasonable fear that the threat would "actually" be carried out.
- 3.) whether the evidence is insufficient to support the charge of Felony Harassment.
- 4.) whether the evidence is insufficient to support the possession charge.
- 4.1 whether Felony Harassment charge should be dismissed and Mr. Longshore RE: sentenced to Misdemeanor Harassment

Harassment Argument

- 1) In State v. Kibby, 131 Wash. App. 1034 (Wash. App. Div. 2/13/06) this court held "to convict an individual of felony harassment based upon a threat to kill, the state must prove that the victim was placed in reasonable fear that the threat would actually be carried out"
- a) Here in Mr. Longshore's case, the same issue is here as was there. No evidence was offered at trial that the so-called victims were actually placed in reasonable fear that the threat would actually be carried out. Yes, each alleged victim testified to some effect of a belief the threat would be carried out. But no evidence was offered that the victims were placed in reasonable fear to begin with.
- b) This court in Kibby, stated "Because the state produced no evidence that Danielle Goodwin was placed in reasonable fear that Freddie Kibby's threat to kill her would actually be carried out." Reversed Kibby's conviction and remand for dismissal of the felony harassment charge and re-sentenced to the lesser offense of misdemeanor harassment.
- c) If this court finds sufficient evidence to support a harassment charge. It comes all the more clear that the lesser offense of misdemeanor harassment would be the more appropriate action. Let us not forget, Mr. Longshore had no gun, no gun was seen, no gun was found. So Mr. Longshore had no ability to place the victims in reasonable fear. Because once the truck was moved and the aggressors backed off Longshore he immediately left without any further altercation, and Mr. Longshore's threat was not made until after the victims refused to leave him and his companions alone.

d) As well, its been established a threat to kill needs to be a "True threat" this would mean that Mr. Longshore would not only have made a knowingly threat to kill "with he did not" but as well of had the means to carry out that threat in some fashion, either "Right then in there" or in the immediate future to "place" the victims in reasonable fear that Mr. Longshores threat would be carried out. With Again, Mr. Longshore couldnt due be- cause he lacked any sort of weapon to carry the threat out.

e) So in order for Mr. Longshore, to be convicted of Felony harassment the state would of had to prove Mr. Longshore "placed" the victims in reasonable fear that the threat would "actually" be carried out,

State v. Kibby, 131 Wash. App. 1034 (Wash. App. Div 1 2/13/06),
State v. C.G., 150 Wash. 2d 604, 80 P.3d 594 (Wash. 12/11/03),
State v. Miller, 98 Wash. App. 1003 (Wash. App. Div 1 4/19/1999),
State v. King, 153 Wash. App. 1021 (Wash. App. Div 1 11/30/09) State v.
James Atkinson, No 39485-S-II (Wash. App. Div 2 1/11/11)

Possession Argument

2) In State v. Marcus Anthony Chaminard, 282 P.3d 117 (Wash. App. Div 2 8/8/12) Division 2, The court held the state failed to prove Dominion and control over a firearm. Found, As well in State v. George, 146 Wash. App. at 923, 193 P.3d 693, were insufficient Evidence was found to support the charge and remand to the Trial court to dismiss with prejudice.

(a) As well its been long settled "mere proximity" is insufficient to show dominion and control State v. Murphy, 98 Wash. App. 42, 46, 988 P.2d 1018 (1999) review denied, 140 Wash. 2d 1018, 5 P.3d 10 (2000). And Knowledge of the object, without more, is insufficient to show dominion and control State v. Hystad, 36 Wash. App. 42, 49, 67 P.2d 793 (1933).

(b) Here the state may not meet its burden of proof that Mr. Longshore had dominion and control. And his conviction was based off of mere proximity to the pipe.

(c) The evidence presented by the state, only showed a pipe was found in between the driver seat and driver door, next to women's jewelry spread towards the back seat and that the pipe was found in a sock that belonged to a woman, hiding it from plain view.

(d) It was not in Longshore's possession, no evidence was presented that Mr. Longshore even used the substance found. Let alone the substance was only located by scientific testing after scraping residue that was left in a used pipe. As this court can imagine how can any one be convicted of a crime with evidence this miniscule. It would make the entire possession of controlled substance law unconstitutional. Because the pipe found also could be used to smoke other legal drugs such as tobacco or marijuana or even used to burn incense. But the only way a person can detect if there's a controlled substance's residue is by scientific testing.

(e) Mr. Longshore argues, that the state failed to show dominion and control over the car as well the substance. No evidence was offered of ownership of the vehicle to belong to Longshore. So hypothetically, if Longshore borrowed a friend's car that did not belong to him, that was full of the owner's belongings, how then can he be in dominion and control over a vehicle that is not his to control. Same issue goes to the substance that was covered by a woman's sock. He could not see or had control of. This violates the very core of due process. Where "insufficient evidence violated due process, and is thus dismissable if the defendant can show that the evidence at trial was insufficient to support charges" Jackson, 443 U.S. at 316

1.) Mr. Longshore received Ineffective Assistance of Counsel when defence counsel failed to assert self defence, but went on to argue the Lawful Authority of the Threat.

(a) Under the Sixth Amendment and Article I, Section 22 of the U.S. and State Constitutions, A defendant has the right to effective assistance of counsel in criminal proceedings. *Strickland v. Washington*, 466 U.S. 668, 684-86 (1984)

(b) The courts evaluate the facts of each case in pursuit of answering one question: did the defence counsel's deficient performance deny the defendant a fair trial. *Strickland v. Washington*, 466 U.S. at 696.

(c) Mr. Longshore received ineffective assistance of counsel, because (1) his trial attorney's performance was objectively unreasonable and (2) he was prejudiced by the deficiency. *Id.* at 697.

2.) Defence counsel was objectively unreasonable because he failed to assert the defence of self defence and lawful use of force. But went on to argue how Longshore was blocked in, and held against his will.

(a) Courts presume the defense counsel rendered constitutionally adequate performance. *State v. McFarland*, 127 Wn.2d, 322, 335, 899 P.2d 1251 (1995). However it can be rebutted by proving his attorney's representation was unreasonable under prevailing professional norms and that the challenged action was not sound strategy. *Kimmelman v. Morrison*, 477 U.S. 365, 394 (1986) (citing *Strickland*, 466 U.S. at 688-89)

- (b) To prove Simple "with out Lawful Authority" is a Element of Felony Harassment. Due Process requires that the State prove that Element beyond a reasonable doubt. RCW 9A.46.020
- (c) The Legislature constructed this statute in this way, at least in part, because it wished to avoid criminalizing Expressions of speech that's defended as non-criminal.
- (d) The records show, Mr. Longshore was intentionally blocked in the parking lot by Justin Elston's truck and that Mr. Longshore was confronted first by Mr. Elston and the Aldridges, when he was attempting to leave the Apartment complex. Mr. Longshore did nothing to provoke the conflict quite the opposite Mr. Elston and the Aldridges provoked the threat.
- (e) Are Legislature has specifically made self defence and its related defenses "Lawful". Moreover, not only has the legislature included "without lawful authority" in the text of the harassment statute, it also announced that a person who acts "with lawful authority" cannot be punished for that crime. RCW 9A.46.020(1)(a)
- (f) Were for, Counsel was objectively unreasonable when refusing to assert the only defenses that could of allowed the defense not only to argue its theory of the case but the lawfulness of Mr. Longshore's threats.
- (g) Mr. Elston and the Aldridges, could have easily been charged with unlawful imprisonment, RCW 9A.40.040.
- (h) They blocked Mr. Longshore and his female companions in the parking lot, they refused to allow them to leave and Mr. Longshore as the only male went to fend for himself and the female companions.

- (F) Mr. Longshore, may not be convicted of Harassment if he can show that the threats to use force to defend himself or others from a unlawful imprisonment. Because doing so is "Lawful use of force". RCW. 9A.16.020
- (J) Unlawful imprisonment is a crime against a person, see RCW. 9A.41.01, if a defendant reasonably believes that he has been unlawfully imprisoned, he may use reasonable force if it is necessary to combat the unlawful imprisonment. RCW 9A.16.020.
- (K) In fact, unlawful imprisonment is a felony, in some cases he can even use lethal force to prevent a crime against his person. Like wise, he acts with lawful authority when he uses force in defence of another person, so long as he believes that the third person is an innocent party and that the aggressor has placed that person in danger. State v. Bernardy, 25 Wn.App. 146, 605 P.2d 791 (1980), RCW 9A.16.020.
- (L) Here Mr. Longshore, along with two female companions was placed under restraint. Hypothetically, Mr. Longshore could be believed he was about to be harmed because of the unsubstantiated claims by Elston and the Aldridges and that his female companions might as well be harmed for the unsubstantiated actions. Compelling him to "threaten force" by "threatening to kill" to save himself along with the complete innocent woman who was with Mr. Longshore. In order to prevent anyone including his female companions from being harmed.
- (M) The state may argue Longshore's threat is not lawful because he did not actually use force as required in a self defence case. That argument would lack merit. Both the language of the assault and Harassment statute and policy concerns of self-defence would require the court to give a defence of property instruction on request. Under such a reasoning, the court would allow Mr. Longshore to shoot some one "non deadly force", but it would not allow him merely to threaten force causing no injury whatsoever. State v. Arth, 121 Wn.App. 205, 87 P.3d 1206 (2004).

- (N) The reasoning this court made in *Arth* applies equally here. The "harm" is far less, Mr. Longshore's alleged threat in this case is a even better example of the holding in *Arth* because unlike *Arth*, who caused actual damage to property, Mr. Longshore caused no damage to person or property.
- (0) There for a reasonable defence Attorney would have asserted a claim of self defence or Lawful force. Rendering Mr. Longshore's defence counsel objectively unreasonable because he failed to assert such a defence.
- (3) ~~Pre~~ Prejudice: With^{out} an instruction of Lawful use of force under the self defence statutes. The Jury could NOT acquitt him NIF it believed his threat to kill was reasonable to free himself and his female companion's from the unlawful imprisonment and "possibility of imminent harm".
- (a) The remaining question is prejudice. It requires a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different. *Strickland*, 466 U.S. at 694. In other words counsel's deficiencies must have adversely affected the defendant's right to a fair trial to a extent that "undermines confidence in the outcome". *Brett*, 126 Wn.2d at 199, 892 P.2d. 29.
- (b) In this case if the court does find sufficient evidence that ~~Mr.~~ Longshore's Felony harassment charge was proved by the state. It becomes all the more clear, because without asserting the defence, Mr. Longshore was denied his ability to argue his theory of the case and providing the Jury with the legal basis that if it believed Mr. Longshore's threat to kill was reasonable under the circumstances, the Jury would have been instructed with the means to be able to acquitt him.

(B) The only instruction provided were the Trial Court attempted to define "lawful authority" is were it stated "authorized by law".

(d) This definition was not helpful for the Jury. And with out defence counsel's deficient performance the Jury would of been instructed on RCW 9A.16.020(3), and asked to determine whether Longshore's threat was reasonable to prevent an on going or impending offence against himself and his companions.

(E) Instead, the Jury was left to guess as to the circumstances under which harassment would be lawful.

(f) Without the specific definition, such a guess would only increase the likelihood of a wrongful conviction, as there are at least six different ways for force to be lawful RCW 9A.16.020


(g) The Jury instructions provided #14, did not afford the Jury the opportunity to adjudge whether it believed Longshore's actions were justified. As a result of this error, Longshore was denied his right to a fair trial. The error was not harmless, as well was not sound strategy on defence counsel's part.

(H) If the Jury had been presented with an accurate statement of the law, it cannot be said that they would have deemed Longshore's actions to be unlawful beyond a reasonable doubt.

Conclusion

- 1) Because the state failed to prove that the victims was "placed" in reasonable fear that the threat would "actually" be carried out.
 - (a) and that Mr. Longshore's threat constituted a "True threat".
 - (b) Mr. Longshore, asks that this court dismiss the Felony Harassment charge.
 - (c) or in the alternative, if sufficient evidence tends to show any harassment it be misdemeanor harassment.
- 2) Because the state failed to show dominion and control, Mr. Longshore asks that this court dismiss the possession of controlled substance charge against him.
- 3) IF sufficient evidence tends to show any form of harassment, Mr. Longshore's counsel was ineffective for failing to assert the proper defense. Requiring reversal.

Respectfully submitted by


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This 30th day of April 2014.

Certificate of Service

On April 30th 2014, I mailed the Attached motion to file supplemental statement of Additional grounds, as well as the statement of additional grounds. TO the respected court below. Thru Prison Legal Mail Channels on April 30th 2014.

The COURT OF Appeals
of the
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Dated this 30th day of April 2014



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