Supreme Court No. 91947-0
COA No. 46156-1-II

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,

Respondent,

v.

JOSEPH PAUL OATES,

Petitioner.

PETITION FOR REVIEW

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FILED IN COA ON JULY 9, 2015

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TABLE OF AUTHORITIES

A. IDENTITY OF PETITIONER

Your Petitioner for discretionary review is Joseph Oates, the Defendant and Appellant in this case, asks this Court to review the decision of the Court of Appeals referred to in section B.

B. COURT OF APPEALS DECISION

Oates seeks review of Division Two's order dated June 9, 2015, in *State v. Oates*, No. 46156-1–II. No Motion for Reconsideration has been filed in the Court of Appeals.

C. ISSUE PRESENTED FOR REVIEW

1. Principles of due process require the State present sufficient evidence to prove each of the elements of a criminal offense beyond a reasonable doubt. Should this Court grant review and hold that the State has failed to sustain its burden of proving guilt beyond a reasonable doubt, that the State proved the elements of attempted voyeurism as required by due process? RAP 13.4(b)(3); RAP 13.4(b)(4).

D. STATEMENT OF THE CASE

On September 26, 2014, Oates filed a brief alleging that the trial court had erred in regards to the above-indicated issue. The brief set out facts and law relevant to this petition and are hereby incorporated herein by reference.

1. Proceedings on Appeal

On appeal, Oates challenged the sufficiency of the evidence. Brief of Appellant at 5-9. The Court Commissioner granted the State's motion on the merits. Counsel moved to modify the Commissioner's ruling on May 8, 2015. The Court of Appeals rejected the argument on June 9, 2015. For the reasons set forth below, Oates seeks review.

E. ARGUMENT

It is submitted that the issue raised by this Petition should be addressed by this Court because the decision of the Court of Appeals raises a significant question under the Constitution of the State of Washington and the Constitution of the United States, as set forth in RAP 13.4(b).

1. The prosecution did not present sufficient evidence to prove Oates attempted to commit the crime for the purpose of arousing or gratifying his sexual desire.

Principles of due process require the State to prove all essential elements of the crime charged beyond a reasonable doubt. U.S. Const. amends. 5, 14; Const. art, I, § 3; *Sandstrom v. Montana*, 442 U.S. 510, 99 S.Ct. 2450, 61 L.Ed.2d 39 (1979); *In re Winship*, 397 U.S. 358, 363, 90 S.Ct. 1068, 25 L.Ed.2d 368 (1970); *State v. Baeza*, 100 Wn.2d 487, 490, 670 P.2d 646 (1983).

A challenge to the sufficiency of the evidence admits the truth of the State's evidence and requires it be viewed in the light most favorable to the State. *State v. Salinas*, 119 Wn.2d 192, 201, 829 P.2d 1068 (1992); *State v. Green,* 94 Wn.2d 216, 220-22, 616 P.2d 628 (1980).

All reasonable inferences from the evidence must be drawn in favor of the State and interpreted most strongly against the defendant. *Salinas*, at 201; *State v. Craven*, 67 Wn. App. 921, 928, 841 P.2d 774 (1992). Circumstantial evidence is no less reliable than direct evidence, and criminal intent may be inferred from conduct where "plainly indicated as a matter of logical probability." *State v. Delmarter*, 94 Wn.2d 634, 638, 618 P.2d 99 (1980). A claim of insufficiency admits the truth of the State's evidence and all inferences that reasonably can be drawn therefrom. *Salinas*, at 201; *Craven*, at 928. In cases involving only circumstantial evidence and a series of inferences, the essential proof of guilt cannot be supplied solely by a pyramiding of inferences where the inferences and underlying evidence are not strong enough to permit a rationale trier of fact to find guilty beyond a reasonable doubt. *State v. Bencivenga*, 137 Wn.2d 703, 711, 974 P.2d 832 (1999) (citing *State v. Weaver*, 60 Wn.2d 87, 89, 371 P.2d 1006 (1962)).

Oates was charged with the crime of attempted voyeurism. Clerk's Papers (CP) 16. Where the State charges a defendant with a crime requiring a finding of sexual gratification, the State must prove both the defendant's "purpose" and "sexual gratification." *State v. Halstien,* 122 Wn.2d 109, 119-20, 857 P.2d 270 (1993). "Purpose" refers to the defendant's mental state. *Id.* at 120. While an inference of sexual gratification can often be made, the State must show some extrinsic evidence more than mere touching, or as in this case, the mere viewing of another. *State v. Powell,* 62 Wn.App. 914, 917, 816 P.2d 86 (1991), *rev. denied,* 118 Wn.2d 1013 (1992). In *Powell,* Division Three of this Court established that when attempting to create an inference of sexual gratification, the State must show some extrinsic evidence more than mere touching, or as in this case, the mere viewing. *Id.* at 917. In addition, the additional extrinsic evidence must be sexual in nature; it cannot be additional innocuous conduct. *Id.* at 917-18.

In this instance, the State failed to prove that Oates had taken a substantial step toward viewing S.J.V. as alleged. Instead, in a light most favorable to the State, the prosecution merely established that: (1) he walked along the fence separating the two houses, and (2) looked briefly in S.J.V.'s window as he went past.

Under these circumstances, the State failed to show that Oates succeeded in seeing S.J.V. in her bedroom or even made a substantial step toward committing the crime, and if he did see her, the State failed to show that she was in a state of undress; there was no testimony that he saw S.J.V. while she was naked or dressing.

Moreover, assuming *arguendo* that Mr. Oates *had* seen S.J.V., there is no testimony that looking into the window was anything more than a casual or cursory manner of very short duration. Therefore, any view of S.J.V. would have been for no more than a brief moment. Such viewing is too brief under the voyeurism statute. RCW 9A.44.115(1)(d).

Finally, again assuming a brief viewing occurred, such could not have been for the "purpose of arousing or gratifying the sexual desire of any person" (RCW 9A.44.115(2)) because Oates was fully clothed and was doing nothing of a sexual manner. He was simply walking by the fence, there was no mention of his hands being near his genitals or that he otherwise appeared to be sexually aroused. the evidence was insufficient to establish that Oates took a substantial step toward viewing S.J.V., and that even if he had attempted to view S.J.V. there was no showing that it was for the purpose of sexual gratification (RCW 9A.44.115(2)).

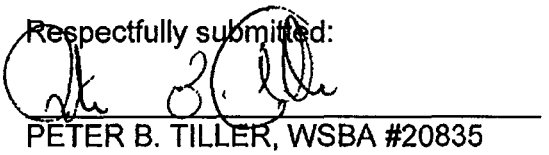
The Court of Appeals' affirmance of Oates' conviction was based on a cursory assessment of the facts and merits review by this Court.

F. CONCLUSION

This court should accept review for the reasons indicated in Part E and reverse and dismiss Oates' conviction consistent with the arguments presented herein.

DATED this 9th day of July, 2015.

Respectfully submitted:



PETER B. TILLER, WSBA #20835
Of Attorneys for Petitioner

CERTIFICATE OF SERVICE

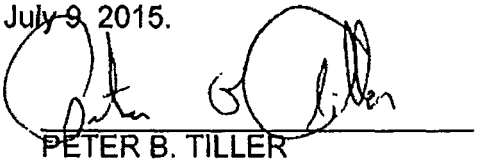
The undersigned certifies that on July 9, 2015, that this Petition for Review was sent by JIS link to (1) David Ponzoha, Clerk of the Court of Appeals, Division II, and was sent by first class mail, postage pre-paid to the following:

Ms. Anne Cruser
Deputy Prosecuting Attorney
Clark County Prosecutor's Office
prosecutor@clark.wa.gov

Mr. David Ponzoha
Clerk of the Court
Court of Appeals
950 Broadway, Ste.300
Tacoma, WA 98402-4454

Mr. Joseph P. Oates
325 NW 22nd Ave.
Camas, WA 98607-1029

This statement is certified to be true and correct under penalty of perjury of the laws of the State of Washington. Signed at Centralia, Washington on July 9, 2015.



PETER B. TILLER

ATTACHMENT A

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

STATE OF WASHINGTON, Respondent, v. JOSEPH PAUL OATES, Appellant.	No. 46156-1-II ORDER DENYING MOTION TO MODIFY

APPELLANT filed a motion to modify a Commissioner's ruling dated April 8, 2015, in the above-entitled matter. Following consideration, the court denies the motion. Accordingly, it is

SO ORDERED.

DATED this 9th day of June, 2015.

PANEL: Jj. Bjorgen, Melnick, Sutton

FOR THE COURT:

Bjorgen, A.C.J.
ACTING CHIEF JUDGE

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Peter B. Tiller

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

THE STATE OF WASHINGTON,

Respondent,

v.

JOSEPH PAUL OATES,

Appellant.

No. 46156-1-II

RULING AFFIRMING
JUDGMENT AND SENTENCE

Joseph Oates appeals from his conviction for attempted voyeurism, arguing that the State failed to present sufficient evidence that he took a substantial step toward the commission of the crime of voyeurism with the requisite intent to arouse or satisfy his sexual desire. This court considered his appeal as a motion on the merits under RAP 18.14. Concluding that the State presented sufficient evidence, this court affirms Oates's judgment and sentence.

"The test for determining the sufficiency of the evidence is whether, after viewing the evidence in the light most favorable to the State, any rational trier of fact could have found guilt beyond a reasonable doubt." *State v. Salinas*, 119 Wn.2d 192, 201, 829 P.2d 1068 (1992). "A claim of insufficiency admits the truth of the State's evidence and all inferences that reasonably can be drawn therefrom." *Salinas*, 119 Wn.2d at 201. "Credibility determinations are for the trier of fact and cannot be reviewed on appeal." *State v. Camarillo*, 115 Wn.2d 60, 71, 794 P.2d 850 (1990).

In order for a jury to find a defendant guilty of attempted voyeurism, the State must prove beyond a reasonable doubt that the defendant took a substantial step toward the commission of the crime of voyeurism. RCW 9A.28.020(1). And a person commits the crime of voyeurism when he or she.

> [F] or the purpose of arousing or gratifying the sexual desire of any person, he or she knowingly views . . .: (a) Another person without that person's knowledge and consent while the person being viewed . . . is in a place where he or she would have a reasonable expectation of privacy.

RCW 9A.44.115(2)(a).

Taken in the light most favorable to the State, the evidence established the following. At 6 A.M. on November 23, 2013, Johannes Voogt arose and wakened his twelve-year-old daughter. There were two windows in daughter's bedroom, but only one had a curtain. The daughter turned on the bedroom lights and began dressing for school. Voogt went outside to warm up his truck. After starting his truck, he went around to the side of the house to smoke a cigarette. While there, he heard rustling in the leaves and saw his next-door neighbor, Oates, coming out of the back corner of his property, with a hood pulled over his head, sneaking along the fence between the properties. Voogt confronted Oates, who said he was there to smoke a cigarette and check the fence. From the back corner of the property, one could see into Voogt's daughter's bedroom. Later that morning, Oates told his roommate, Robert Green, that "I f*cked up bad. [The daughter's] light was on. [Voogt] caught me." Report of Proceedings (RP) Mar. 10, 2014 at 121. Green testified that Oakes usually went into his car to smoke. And Oates told the investigating officer that Voogt had found him looking at the daughter's bedroom while he was smoking.

While Oates testified that he glanced at the light in the daughter's bedroom and did not look into her bedroom, a rational trier of fact apparently found that the State's witnesses were more credible than was Oakes, a finding that this court does not review. *State v. Myers*, 133 Wn.2d 26, 38, 941 P.2d 1102 (1997). The State's evidence is sufficient for a rational trier of fact that Oakes took a substantial step toward viewing the daughter, without her consent, in a place where she had a reasonable expectation of privacy. And the totality of the evidence is sufficient for a rational trier of fact that he took that substantial step with the intent of arousing or gratifying his sexual desire. *See State v. Caliguri*, 99 Wn.2d 501, 506, 664 P.2d 466 (1983). The State presented sufficient evidence.

Because Oates's appeal is clearly controlled by settled law, it is clearly without merit under RAP 18.14(e)(1). Accordingly, it is hereby

ORDERED that the motion on the merits to affirm is granted and Oates's judgment and sentence are affirmed. He is hereby notified that failure to move to modify this ruling terminates appellate review. *State v. Rolax*, 104 Wn.2d 129, 135-36, 702 P.2d 1185 (1985).

DATED this 8th day of April, 2015.

Eric B Schmidt

Eric B. Schmidt
Court Commissioner

cc: Peter B. Tiller
Anne Cruzer
Hon. Robert Lewis
Joseph P. Oates

TILLER LAW OFFICE

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Transmittal Letter

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Comments:

No Comments were entered.

Sender Name: Shirleen K Long - Email: slong@tillerlaw.com

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