

NO. 47351-8-II

COURT OF APPEALS, DIVISION II

STATE OF WASHINGTON,

Respondent,

vs.

SHAWN D. OLLISON,

Appellant.

APPEAL FROM THE SUPERIOR COURT
FOR THURSTON COURT
The Honorable Carol Murphy, Judge
Cause No. 14-1-01309-8

SUPPLEMENTAL BRIEF OF APPELLANT

THOMAS E. DOYLE, WSBA NO. 10634
Attorney for Appellant

P.O. Box 510
Hansville, WA 98340
(360) 626-0148

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2 C. Torcia, Wharton on Criminal Procedure (13th ed. 1990) 2

A. SUPPLEMENTAL ASSIGNMENT OF ERROR

The trial court erred in not taking the robbery charge alleged in count I from the jury for lack of sufficiency of the information.

B. ISSUE PERTAINING TO SUPPLEMENTAL ASSIGNMENT OF ERROR

Whether the information charging robbery in the first degree in counts I is defective in failing to allege that the person from whom or from whose presence the property was taken had an ownership, representative, or possessory interest in the property?

C. SUPPLEMENTAL STATEMENT OF THE CASE

For purposes of this Supplemental Brief, appellant Shawn

D. Ollison incorporates and adopts by reference the statement of the case and arguments presented in his opening brief.

D. SUPPLEMENTAL ARGUMENT

A CONVICTION FOR ROBBERY IN THE FIRST DEGREE PURSUANT TO AN INFORMATION THAT FAILS TO ALLEGE ALL OF THE ESSENTIAL ELEMENTS OF THE OFFENSE MUST BE REVERSED.

The constitutional right of a person to be informed of the nature and cause of the accusation against him or her requires that every material element of the offense be charged with definiteness and certainty. 2 C. Torcia, Wharton on Criminal Procedure Section 238, at 69 (13th ed. 1990). In Washington, the information must include the essential common

law elements, as well as the statutory elements, of the crime charged in order to appraise the accused of the nature of the charge. Sixth Amendment; Const. art. 1, Section 22 (amend. 10); CrR 2.1(b); State v. Kjorsvik, 117 Wn.2d 93, 812 P.2d 86 (1991). Charging documents that fail to set forth the essential elements of a crime are constitutionally defective and require dismissal, regardless of whether the defendant has shown prejudice. State v. Hopper, 118 Wn.2d 151, 155, 822 P.2d 775 (1992). If, as here, the sufficiency of the information is not challenged until after the verdict, the information “will be more liberally construed in favor of validity....” Kjorsvik, 117 Wn.2d at 102. The test for the sufficiency of charging documents challenged for the first time on appeal is as follows:

(1) do the necessary facts appear in any form, or by fair construction can they be found, in the charging document; and, if so, (2) can the defendant show that he or she was nonetheless actually prejudiced by the inartful language which caused a lack of notice?

Kjorsvik, 117 Wn.2d at 105-06.

It is not fatal to an information that the exact words of the statute are not used; it is instead sufficient “to use words conveying the same meaning and import as the statutory language.” State v. Leach, 113 Wn.2d 679, 689, 782 P.2d 552 (1989). The information must, however, “state the acts constituting the offense in ordinary and concise language....” State v. Royse, 66 Wn.2d 552, 557, 403 P.2d 838 (1965). The question “is whether

the words would reasonably appraise an accused of the elements of the crime charged.” Kjorsvik, 117 Wn.2d at 109.

The primary purpose (of a charging document) is to give notice to an accused so a defense can be prepared. (citation omitted). There are two aspects of this notice function involved in a charging document: (1) the description (elements) of the crime charged; and (2) a description of the specific conduct of the defendant which allegedly constituted the crime.

Auburn v. Brooke, 119 Wn.2d 623, 629-30, 836 P.2d 212 (1992).

Ollison was charged with robbery in the first degree in the second amended information, which reads in pertinent part:

COUNT I

In that said defendant, SHAWN DION OLLISON in the State of Washington, on or about August 25, 2014, did unlawfully take personal property from a person or in his or her presence, to-wit, Aleta Miller, against such person’s will, by use or threatened use of immediate force, violence, or fear of injury to such person or their property, or the property of another, with the intent to commit theft of the property, and such force or fear having been used to obtain or retain such property or to prevent or overcome resistance to the taking, and in the commission of or immediate flight therefrom the accused was armed with a deadly weapon or displayed what appeared to be a firearm or other deadly weapon. It is further alleged that during the commission of this offense, the defendant was armed with a deadly weapon.

[CP 207].

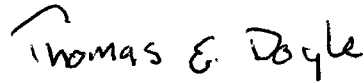
Citing State v. Hall, 54 Wash. 142, 102 P. 888 (1909) and State v. Latham, 35 Wn. App. 862, 670 P.2d 689 (1983) and State v. Tvedt, 153

Wn.2d 705, 107 P.3d 728 (2005), this court recently held that an essential, implied element of robbery includes the non-statutory/common law element that the victim had an ownership, representative, or a possessory interest in the property stolen. State v. Richie, ___ Wn. App. ___ P.3d ___ 2015 WL 9295604 (Dec 22, 2015). By failing to list this element, the second amended information in this case failed to apprise Ollison of the nature of the charge of robbery in the first degree as alleged in count I. And as the information cannot be construed to give notice or to contain in some manner all of the essential elements of the offense of robbery, it is defective, and even the most liberal reading cannot cure it. See State v. Satterthwaite, 186 Wn. App. 359, 362, 344 P.3d 738 (2015). The conviction for robbery in the first degree obtained on this amended information must be reversed. State v. Kitchen, 61 Wn. App. 911, 812 P.2d 888 (1991). Ollison need not show prejudice, since Kjorsvik calls for a review of prejudice only if the “liberal interpretation” upholds the validity of the information. See State v. Kjorsvik, 117 Wn.2d 93 at 105-06.

E. CONCLUSION

For the reasons stated above, Ollison respectfully requests this court to reverse his conviction for robbery in the first degree as charged in count I of the second amended information.

DATED this 12th day of January 2016.



THOMAS E. DOYLE
Attorney for Appellant
WSBA NO. 10634

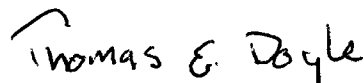
CERTIFICATE

I certify that I served a copy of the above brief on this date as follows:

Carol La Verne
paoappeals@co.thurston.wa.us

Shawn D. Ollison #381630
Coyote Ridge Corrections Center
P.O. Box 769
Connell, WA 99326

DATED this 12th day of January 2016.



THOMAS E. DOYLE
Attorney for Appellant
WSBA NO. 10634

DOYLE LAW OFFICE

January 12, 2016 - 4:40 PM

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