

COURT OF APPEALS
OF THE STATE OF WASHINGTON
DIVISION One

STATE OF WASHINGTON,)

Respondent,)

No. 73654-0

v.)

James Ellis Thomas,)

STATEMENT OF ADDITIONAL
GROUNDS FOR REVIEW

RAP 10 10

Appellant.)

I, James Thomas, have received and reviewed the opening brief prepared by my attorney. Summarized below are the additional grounds for review that are not addressed in that brief. I understand the Court will review this Statement of Additional Grounds for Review when my appeal is considered on the merits.

Additional Ground 1

Your Honor, I'm writting this review in hopes that you will read the whole transcripts before you make a decision. There is so much involved from beginning to end. I will try to be clear and consice as possible with my limited education. Thank you for your time and consideration.

Additional Ground 2

There was no bodily injury, and it was not proved. Thank you again.

FILED
COURT OF APPEALS DIV 1
STATE OF WASHINGTON
JUN 20 PM 12:08

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STATEMENT OF ADDITIONAL
GROUNDS FOR REVIEW

STATE OF WASHINGTON,
Respondent,
v. JAMES THOMAS
Appellant.

No. 73654-0 (I)
STATEMENT OF ADDITIONAL
GROUNDS FOR REVIEW

FILED
COURT OF APPEALS DIV 1
STATE OF WASHINGTON
2016 JUN 20 PM 12:02

I, JAMES THOMAS, have received and reviewed the opening brief prepared by my attorney. Summarized below are the additional grounds for review that are not addressed in that brief. I understand the Court will review this Statement of Additional Grounds for Review when my appeal is considered on the merits.

Additional Ground 1

THEY DID NOT PROVE THE STATUTORY ELEMENTS OF FIRST DEGREE ROBBERY. A PERSON COMMITS ROBBERY WHEN HE OR SHE UNLAWFULLY TAKES "PERSONAL PROPERTY" FROM THE "PERSON OF ANOTHER" OR IN OR HER PRESENCE AGAINST HIS OR WILL BY THE USE OR THREATENED USE OF IMMEDIATE FORCE, VIOLENCE, OR FEAR OF INJURY TO THAT PERSON OR HIS OR HER PROPERTY OR THE PERSON OR PROPERTY OF ANYONE ---
(SEE ATTACHMENT ONE) →

Additional Ground 2

JUROR NUMBER 7 (SEVEN) BIASED. (VRP 110-111). Q. "DOES ANYBODY THINK THAT IF A POLICE OFFICER TESTIFIES AT A TRIAL THAT THEY'RE AUTOMATICALLY MORE BELIEVABLE?" A. (#JUR.7), "I THINK SO, THEY'RE OFTEN TRAINED TO BE MORE...LOOKING FOR DETAILS THAT WOULD BE RELEVANT. THEY DEAL WITH IT A LOT MORE CASES AND SCENARIOS, HAVE MORE EXPERIENCE". (SEE ATTACHMENT #2) →

If there are any additional grounds, a brief summary is attached to this statement.

Date: 6/15/16

Signature: James Thomas

ATTACHMENT (1) ONE

JAMES THOMAS 73654-0 (1)

STATEMENT OF ADDITIONAL GROUNDS

SUCH FORCE OR FEAR MUST BE USED TO OBTAIN OR RETAIN POSSESSION OF THE PROPERTY, OR TO PREVENT OR OVERCOME RESISTANCE TO THE TAKING; IN EITHER OF WHICH CASES, THE DEGREE OF FORCE IS IMMATERIAL. SUCH TAKING CONSTITUTES ROBBERY WHENEVER IT APPEARS THAT, ALTHOUGH THE TAKING WAS FULLY COMPLETED WITHOUT THE KNOWLEDGE OF THE PERSON FROM WHOM TAKEN, SUCH KNOWLEDGE WAS PREVENTED BY THE USE OF FORCE OR FEAR. (2011 C. 336 § 379).

"PERSON" IS WASHINGTON'S ROBBERY STATUTE, RCW 9A.56.190 MEANS: SOMETHING ON OR ATTACHED TO A PERSON'S BODY OR CLOTHING. STATE V. CHAMROEUM NAM, 136 WN. APP. 698 (2007).

ATTACHMENT (2) TWO:

Q. IN MY SCENARIO, MY QUESTION, JUST BY GETTING APOV THE WITNESS STAND, YOUR AUTOMATICALLY BELIEVING THEM MORE THAN YOU WOULD A CIVILIAN? SOME ONE NOT A POLICE OFFICER?"

"DO YOU AGREE WITH THAT STATEMENT?"

A. "I'D SAY THAT'S FAIR"

CRIMINAL DEFENDANTS HAVE A FEDERAL AND STATE CONSTITUTIONAL RIGHT TO A FAIR AND IMPARTIAL JURY. THE ERROR IN SEATING A BIASED JUROR VIOLATES THIS RIGHT. A TRIAL JUDGE HAS AN INDEPENDENT OBLIGATION

ATTACHMENT (2) TWO

STATEMENT OF ADDITIONAL GROUNDS.

CONTINUED.

TO PROTECT THIS RIGHT, REGARDLESS OF INACTION
BY COUNSEL OR THE DEFENDANT.

A CONSTITUTIONAL ERROR IS MANIFEST WHERE THERE IS
PREJUDICE, MEANING A PLAUSIBLE SHOWING BY THE APPELLANT
THAT THE ASSERTED ERROR HAD PRACTICAL AND IDENTIFIABLE
CONSEQUENCES IN THE TRIAL. THE PRESENCE OF A BIASED JUROR
CANNOT BE HARMLESS; THE ERROR REQUIRES A NEW TRIAL WITHOUT
A SHOWING OF PREJUDICE, THUS, IF THE RECORD DEMONSTRATES
THE ACTUAL BIAS OF A JUROR. SEATING THE BIASED JUROR WAS
BY DEFINITION A MANIFEST ERROR.

ACTUAL BIAS IS THE EXISTENCE OF A STATE OF MIND ON THE
PART OF THE JUROR IN REFERENCE TO THE ACTION OR TO EITHER
PARTY WHICH SATISFIES THE COURT THAT THE CHALLENGED PERSON
CANNOT TRY THE ISSUE IMPARTIALLY AND WITHOUT PREJUDICE TO THE
SUBSTANTIAL RIGHTS OF THE PARTY CHALLENGED. ROW 4.44.170(2)
STATE V. LYBY, 187 WN. APP. 183 (4/2015)

STATEMENT OF ADDITIONAL GROUNDS

ADDITIONAL GROUND (3) THREE

BOTH PATTI OWENS AND PATRIC TRATTLES COMMITTED PERJURY WHILE ON THE STAND UNDER OATH ABOUT THE UPC LABELS AND USING THEM TO DETERMINE WHETHER THE MERCHANDISE BELONGED TO FRED MEYER.

PATTI OWENS TESTIFIED (VRP 179) THAT:

"WHAT WE DO IS WE HAVE A REPORT SYSTEM THAT WE TYPE UP ALL OF OUR REPORTS IN. AND IN THAT SYSTEM, WE HAVE THE ABILITY TO JUST SCAN THE UPC, THE BAR CODE OF AN ITEM, AND IT RINGS IN AS IT WOULD RING IN AT THE REGISTER."

Q. AND DID YOU DO THAT IN THIS CASE?

A. I DID.

Q. DID THE GLOVES COME UP ON THAT?

A. YES.

Q. SO WHAT WOULD THAT TELL YOU ABOUT THOSE GLOVES?

A. THAT THEY WERE MERCHANDISE SOLD AT FRED MEYER.

Q. IF THEY WERE FROM A DIFFERENT SOURCE, AND SOMEONE BROUGHT THEM BACK TO FRED MEYER AND YOU WOULD RUN THAT THROUGH THERE, WOULD THAT REGISTER AS ALSO BEING FROM FRED MEYER'S?

A. NO

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PATRIC TRATTLES ALSO TESTIFIED AT (VRP 347) THAT:

Q. THERE WAS SOME TALK ABOUT -- COUNSEL ASKED YOU ABOUT THE EXHIBITS, THE IMAGES OF THE ITEMS TAKEN. WAS A SCAN DONE OF ALL THOSE ITEMS?

A: A SCAN?

Q. WE TALKED ABOUT THE SCAN IN THE --.

A. OH, YES, SCANNED INTO THE DATA BASE.

Q. AND WHAT IS THAT PROCESS?

A. BASICALLY, THEY HAVE UPC'S OR WE FIND THE UPC'S --

Q. WHAT'S A UPC?

A. A UPC IS BASICALLY THE SERIAL NUMBER FOR THE ITEM.

Q. IS THAT ASSOCIATED WITH FRED MEYER'S?

A. YES, IT IS.

Q. AND WITH ALL OF THESE ITEMS IN ALL OF THESE PHOTOGRAPHS THAT YOU LOOKED AT, WERE THESE SCANNED IN THE STORE TO DETERMINE WHETHER OR NOT THEY WERE STORE PROPERTY?

A. YES.

Q. AND WERE THEY STORE PROPERTY?

A. YES.

STATEMENT OF ADDITIONAL GROUNDS.

Conclusion

BECAUSE A PERSON COMMITS ROBBERY ONLY WHEN HE OR SHE UNLAWFULLY TAKES PERSONAL PROPERTY FROM A PERSON OR ANOTHER OR IN HIS OR HER PRESENCE AGAINST HIS OR HER WILL BY THE USE OF FORCE, VIOLENCE OR FEAR OF INJURY TO THE PERSON OR HIS OR HER PROPERTY OR THE PERSON OR PROPERTY OF ANYONE.

WASHINGTON RCW 9A.56.190 DEFINES THE WORD "PERSON" SOMETHING ON OR ATTACHED TO A "PERSONS" BODY OR CLOTHING.

IT WOULD BE IMPOSSIBLE FOR MR THOMAS TO HAVE COMMITTED ROBBERY AGAINST THE STORE OF FRED MEYER.

THEFT IN THE 3RD (THIRD) DEGREE, RCW 9A.56.050,

(1) A PERSON IS GUILTY OF THEFT IN THE THIRD DEGREE IF HE OR SHE COMMITS THEFT OF PROPERTY OR SERVICES WHICH (a) DOES NOT EXCEED \$750.00 (SEVEN HUNDRED FIFTY DOLLARS) IN VALUE; OR,

(b) INCLUDES TEN OR MORE MERCHANDISE PALLETS, OR TEN OR MORE BEVERAGE CRATES OR A COMBINATION OF TEN OR MORE PALLETS AND BEVERAGE CRATES.

(2) THEFT IN THE THIRD DEGREE IS A GROSS MISDEMEANOR
(2009 C43189)

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UNDER THESE RCW'S, MR THOMAS DID COMMIT THEFT IN THE THIRD DEGREE BECAUSE HE DID TAKE MERCHANDISE THAT BELONGED TO FRED MEYER WITHOUT PERMISSION OR PAYMENT. AT NO TIME DID MR THOMAS USE FORCE TO OBTAIN OR RETAIN THE MERCHANDISE THAT HE TOOK - ALSO, MR THOMAS DID NOT TAKE ANY PERSONAL PROPERTY FROM ANY PERSON.

IT IS VERY CLEAR FROM THE VERBATIM REPORT OF PROCEEDINGS THAT JUROR # 7 (SEVEN) STATED THAT HE DID NOT BELIEVE HE COULD BE IMPARTIAL IN THIS CASE BECAUSE HE SAID HE WOULD GIVE MORE WEIGHT TO THE TESTIMONY OF THE POLICE OFFICERS.

PATTI OWENS AND PATRIC TRATTLES BOTH TESTIFIED UNDER OATH THAT THEY COULD DETERMINE THE ITEMS IN MR THOMAS'S BACKPACK BELONGED TO FRED MEYER BY SCANNING THE UPC LABEL, THEY ALSO TESTIFIED THAT THOSE UPC LABELS WERE ASSOCIATED WITH FRED MEYER CORPORATION.

THIS CANNOT BE ANY FURTHER FROM THE TRUTH.

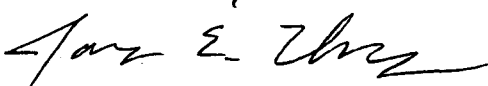
UPC LABELS ARE REGISTERED TO THE MANUFACTURER THAT THEY ARE ATTACHED TO. THE UPC LABEL GIVES NO MORE INFORMATION THAN MANUFACTURER AND THE NAME OF THE PRODUCT.

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THE REST OF THE INFORMATION, SUCH AS PRICE IS
LOCATED ON FRED MEYER MAIN COMPUTER, IT IS PLACED
THERE BY FRED MEYER STAFF UPON THEM RECEIVING DELIVERY.
THEREFORE THERE IS ABSOLUTELY NO WAY OF TELLING WHETHER
AN INDIVIDUAL ITEM CAME FROM ANY PARTICULAR
STORE.

FOR THE ABOVE REASONS, MR THOMAS'S CONVICTION SHOULD BE
REVERSED AND REMANDED BACK TO THE SUPERIOR COURT
FOR A HEARING ON WHETHER OR NOT MR THOMAS IS GUILTY
OF THEFT IN THE THIRD DEGREE. MR THOMAS SHOULD BE
GIVEN FULL CREDIT FOR TIME SERVED IN THIS CASE SO
FAIR.

IN THE ALTERNATIVE, MR THOMAS'S CONVICTION SHOULD BE
OVERTURNED AND DISMISSED WITH PREJUDICE.

RESPECTFULLY SUBMITTED

JAMES THOMAS-