

No. 62976-0-1

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION ONE

STATE OF WASHINGTON,

Respondent,

v.

DENNIS WAYNE JACKSON,

Appellant.

ON APPEAL FROM THE SUPERIOR COURT OF THE
STATE OF WASHINGTON FOR KING COUNTY

The Honorable Christopher Washington

REPLY BRIEF OF APPELLANT

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ELAINE L. WINTERS
Attorney for Appellant

WASHINGTON APPELLATE PROJECT
1511 Third Avenue, Suite 701
Seattle, Washington 98101
(206) 587-2711

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A. ARGUMENT IN REPLY

THE STATE DID NOT PROVE BEYOND A REASONABLE DOUBT THAT JACKSON COMMITTED ROBBERY IN THE FIRST DEGREE BECAUSE THERE WAS NO EVIDENCE OF BODILY INJURY

Dennis Jackson was convicted of first degree robbery when a security guard tried to stop him after he shoplifted a drill from a Home Depot store. On appeal Jackson argues the State did not prove beyond a reasonable doubt that he inflicted bodily injury, an essential element of first degree robbery as charged. The State responds that the jury properly found bodily injury because the alleged victim, asset protection specialist Tyler Emond, said his face was red and tender for a day or two. This Court should dismiss the first degree robbery conviction because Jackson did not inflict bodily injury.

Robbery is the taking personal property from another person by the use or threatened use of force. RCW 9A.56.190; CP 24. Robbery may be elevated to first degree based upon an additional element, in this case the infliction of bodily injury. RCW 9A.56.200(1); CP 6, 25-27. Bodily injury is “physical pain or injury or an impairment of physical condition.” RCW 9A.04.110(4)(a).

Emond was a security guard at the Home Depot store, and he tried to physically prevent Jackson from leaving the area by standing in front of Jackson, placing his hands on Jackson's shoulder and stomach, and then grabbing Jackson's right arm and shoulder in an attempt to put Jackson in an arm lock. 2RP 76-77. Emond claimed that as he tried to stop Jackson, Jackson hit him with a grazing blow on the face, whereas Jackson testified he swung at Emond but missed. 2RP 77-78; 3RP 243-44, 246. Emond and another store employee grabbed Jackson's jacket, destroying it, but Jackson was eventually able to get away. 2RP 80; 3RP 171, 179, 186.

Emond's face was not bruised or cut and no bones were broken. Emond did not seek medical attention. 2RP 100. The State's proof that Jackson inflicted bodily harm rests only on Emond's claim that his face was "red and a little bit swollen" and "was tender for a day or two." 2RP 100. The photographs taken of Emond's face, however, do not support his claim. Ex. 2. Even Emond's testimony that Jackson hit him is not supported by the Home Depot store surveillance camera footage introduced by the State. Ex. 3.

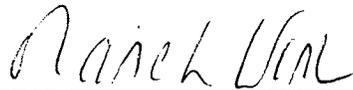
Some force is required for any robbery. The State fails to explain how the purported injury to Emond differs from the force required for second degree robbery. Instead, the State argues it was not required to prove Jackson intended to inflict bodily harm, citing State v. Decker, 127 Wn.App. 427, 111 P.3d 286 (2005), rev. denied, 156 Wn.2d 1012 (2006). This argument misses the issue.

Emond tried to physically stop Jackson from leaving the area outside the Home Depot and claims he was hit when Jackson struggled from his grasp. This evidence supports the force necessary for second degree robbery. Emond was not injured and the State did not prove beyond a reasonable doubt that Jackson inflicted bodily injury, as essential element of the crime of robbery in the first degree.

B. CONCLUSION

Dennis Jackson asks this Court to reverse his conviction for first degree robbery.

Respectfully submitted this 6th day of August 2010.



Elaine L. Winters – WSBA # 7780
Washington Appellate Project
Attorneys for Appellant

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DIVISION ONE**

STATE OF WASHINGTON,)	
)	
Respondent,)	
)	NO. 62976-0-I
v.)	
)	
DENNIS JACKSON,)	
)	
Appellant.)	

DECLARATION OF DOCUMENT FILING AND SERVICE

I, MARIA ARRANZA RILEY, STATE THAT ON THE 6TH DAY OF AUGUST, 2010, I CAUSED THE ORIGINAL **REPLY BRIEF OF APPELLANT** TO BE FILED IN THE **COURT OF APPEALS - DIVISION ONE** AND A TRUE COPY OF THE SAME TO BE SERVED ON THE FOLLOWING IN THE MANNER INDICATED BELOW:

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Washington Appellate Project
701 Melbourne Tower
1511 Third Avenue
Seattle, WA 98101
Phone (206) 587-2711
Fax (206) 587-2710