

No. 65456-0-1

THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION ONE

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COURT OF APPEALS
DIVISION ONE

STATE OF WASHINGTON,

Respondent,

v.

JASON KILLINGSWORTH,

Appellant.

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

The Honorable Thomas Wynne
The Honorable Joseph Wilson

REPLY BRIEF

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A. REPLY ARGUMENT

1. THE EVIDENCE WAS INSUFFICIENT TO PROVE THAT MR. KILLINGSWORTH KNEW THE PROPERTY HE PAWNED WAS STOLEN.

Conviction in this case required proof beyond a reasonable doubt that Jason Killingsworth knew the property he pawned was stolen property. RCW 9A.82.050; RCW 9A.82.010; State v. Hermann, 138 Wn. App. 596, 604, 158 P.3d 96 (2007).

The State in its Response Brief points to facts in the record demonstrating that the vehicle in which the stolen items were present, was wrongly used by some unknown actor. Notably, however, the jury acquitted Mr. Killingsworth on the charge of theft of a motor vehicle, and could not agree on the charge of taking a motor vehicle, despite the State's repeated claims in closing argument that the defendant was the person who stole the vehicle -- and therefore that he must have known the items that were in it when it was taken were stolen. 5/11/2010RP at 168-69, 170-74. Mr. Killingsworth relies on his arguments in his Appellant's Opening Brief that the State failed to prove first degree trafficking in stolen property, because it failed to prove knowledge.

More importantly, even if this Court were to conclude that the evidence of knowledge was legally "sufficient," it certainly appears

beyond cavil that any such evidence was not overwhelming, or even strong. The thin state of the evidence is wholly inadequate to affirm the defendant's conviction in the face of the instructional error - failing to require proof of a "knowledge" element.

2. THE JURY INSTRUCTIONS RELIEVED THE STATE OF ITS BURDEN TO PROVE THAT MR. KILLINGSWORTH KNEW THE PROPERTY HE PAWNED WAS STOLEN.

Jury instructions must make the law clear to a jury of laypersons. The Respondent's Brief contends that requirement of knowledge that the property was stolen can be deduced from the language of another instruction, 15 (defining trafficking as to "sell, transfer, distribute, dispense, or otherwise dispose of stolen property to another person"), and from the definition of trafficking in the first degree in instruction 8. See CP 52 (Instruction 15); RCW 9A.88.010(19); CP 45 (Instruction 8) ("A person is guilty of trafficking in stolen property in the first degree if he or she knowingly trafficks in stolen property").

But the Respondent fails to explain how a lawyer's ability to decipher the legal requirements for conviction is at all dispositive of the question whether a lay jury could easily understand that a knowledge requirement applies. Nor does the Respondent explain how requiring this very process of deduction is not a violation of the

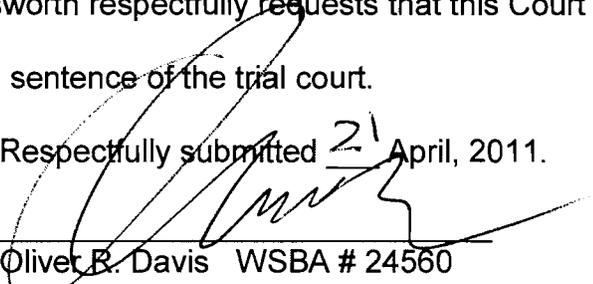
rule that all of the elements of the crime must be correctly included in the “to-convict” instruction. Jurors are not to be required to search through other instructions, in order to deduce what the elements of the charge might be. State v. Emmanuel, 42 Wn.2d 799, 819, 259 P.2d 845 (1953). A defendant cannot be said to have had a fair trial “if the jury might assume [from the instructions] that an essential element need not be proved.” State v. Smith, 131 Wn.2d 258, 263, 930 P.2d 917 (1997) (citing State v. Johnson, 100 Wn.2d 607, 623, 674 P.2d 145 (1983)).

Reversal is required. The instructional error in this case was not “trivial, or formal, or merely academic,” particularly given the paucity of proof on this crucial missing element of the crime. State v. Golladay, 78 Wn.2d 121, 139, 470 P.2d 191 (1970).

B. CONCLUSION

Based on the foregoing, and on his Appellant’s Opening Brief, Jason Killingsworth respectfully requests that this Court reverse the judgment and sentence of the trial court.

Respectfully submitted ²¹ April, 2011.


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