

FILED
COURT OF APPEALS

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No. 34410-6-II

STATE OF WASHINGTON

BY [Signature]
CITY

COURT OF APPEALS DIVISION II
STATE OF WASHINGTON

STATE OF WASHINGTON
RESPONDENT,

V.

CHARRITA C. NOBLE
APPELLANT,

STATEMENT OF ADDITIONAL GROUNDS

[Signature]
CHARRITA C. NOBLE
Mission Creek Corrections
3420 N.E. Sandhill Rd
Belfair, Wa 98528

SAG
By [Signature]
9/1/06
KIX

ASSIGNMENTS OF ERROR IN CASE

1. DID IN FACT THE TRIAL COURT ERR IN CHARGING CHARRITA NOBLE WITH BOTH BEING A PRINCIPAL AS WELL AS AN ACCOMPLICE IN THESE COUNTS OF POSSESSION OF STOLEN PROPERTY.

TO BE AN ACCOMPLICE THE STATE HAS SPECIFIC LAWS ON THE LIABILITY OF ONE IN A CRIMINAL MATTER. MS. NOBLE DID NOT ACT AS AN ACCOMPLICE IN THESE CRIMES

MERE PRESENCE AT A CRIME SCENE DOES NOT MAKE ONE A PRINCIPAL NOR AN ACCOMPLICE

2. DID THE COURT ERR WHEN TAKING TESTIMONY FROM A DETECTIVE WHEN THERE WAS NOT AN EYE WITNESS THAT COULD IN FACT IDENTIFY CHARRITA NOBLE.

THE TRIAL COURT ERRED WHEN FINDING THAT ALTHOUGH NO PERSONS COULD COME FORTH AND GIVE EYE WITNESS ACCOUNTS THAT MS. NOBLE WAS IN THE STORES WHILE THEIR MERCHANDISE WAS BEING STOLEN STILL EXCEPTED TESTIMONY FROM AN OFFICER NOT ON THE SCENE.

TRIAL COURT SHOULD NOT HAVE ALLOWED TESTIMONY ON A VIDEO TAPE THAT WAS NOT PRODUCED AS EVIDENCE IN THIS CASE.

3. THE COURT ERRED WHEN CONVICTING A DEFENDANT OF A CRIME ALTHOUGH THERE WAS NO DIRECT EYE WITNESS TESTIMONY POINTING MS. NOBLE OUT AS ONE OF THE PERPATRETERS.

ALL FOUR STORES THAT WERE VICTIMS TO THE COUNTS IN QUESTION STATE THAT IN FACT MS. NOBLE WAS NOT PRESENT WHILE THERE MERCHANDISE WAS BEING STOLEN.

4. THE COURT ERRED IN CONVICTING MS. NOBLE OF A CRIME THAT CLEARLY WAS A RUSH TO JUDGMENT, AND CLEARLY THERE WAS NO ACTUAL EVIDENCE AGAINST MS. NOBLE IN THE CASE AT BAR.

STATEMENT OF THE CASE

On December 18, 2004, Charrita Noble was charged with Possession of Stolen Property, as follows:

Noble was charged in the first count with Theft in the second degree by having property which was alleged stolen from Toys R Us of Silverdale, the determined value was more than 250.00 dollars.

Also on the date in question came count 2 which alleged Noble to be in possession of stolen property from Big 5 Sporting Goods, and the total of the stolen property from Big 5 was calculated to be in excess of 1,500.00 making this first degree Possession of Stolen Property

The third count came from JC Penny's with second degree Possession of Stolen Property with a value of over 250.00.

Finally, the fourth count was a second degree Possession of Stolen Property from McBride's Hallmark, which also listed a value of more than 250.00 dollars.

Charrita Noble was convicted and sentenced to prison, where she is serving time for the Possessions of Stolen Property.

There was insufficient evidence to prove the guilt of Ms. Noble and no actual witness that can say she was present, nor at the scene when the property was actually being taken.

Charrita Noble was charged by way of a principal and or an accomplice to the Possession of Stolen Property.

WAS IN FACT CHARRITA NOBLES VIOLATED BY THE TRIAL COURT WHEN IT
TOOK THE STATE AND COURT SYSTEM FOURTEEN MONTHS TO TAKE
THE CASE TO TRIAL. " CLEARLY THIS IS AN ERROR SO
MANIFEST THAT THERE CAN BE NO CURE, THE CON-
VICTION SHOULD BE VACATED

The trial court abused its discretion, by granting several continuances past the dates in which violated the speedy trial rights guaranteed by the Fifth, Sixth and Fourteenth Amendments. State v. Warren, 96 Wn. App. 306 is a perfect example of this and the case states in part that abuse of discretion occurs where discretion was exercised on untenable grounds or for untenable reasons, court congestion is not a good cause to continue trial beyond the prescribed time period. The Warren court reversed and dismissed the conviction.

The Appellant, Charrita Noble, had a right to a speedy trial. It is as fundamental as any of the rights secured by the Sixth Amendment to the United States Constitution. The speedy trial guarantee is incorporated into the Fourteenth Amendment and is applicable to state prosecutions.

The Fifth Amendment to the United States Constitution also has application to the right to a speedy trial. A prejudicial prosecutorial delay in bringing an accused to trial may constitute a violation of due process under the Fifth Amendment which guarantees that Charrita Noble should not have been deprived of life, liberty, or property, without due process of law.

Noble's constitutional right as being the accused was to have a speedy trial which is in fact guaranteed also by the Washington

State Constitution Article 1, §22, which provides in pertinent part: **In all criminal proceedings the accused shall have the right to have a speedy public trial...** without unnecessary delay.

The State is primarily responsible for seeing that a defendant is tried in a timely manner, although the trial court is ultimately responsible for enforcing the speedy trial rule. State v. Kindsvogel, (2002) 110 Wn. App. 750, 43 P.3d 73, review granted 147 Wn. 2d 1020, 60 P.3d 92, reversed 149 Wn. 2d 477, 69 P.3d 870.

In bringing a defendant to trial, the prosecution must uphold its duty to provide a speedy trial in good faith and with due diligence.

A claim that an accused has been denied the constitutional right to a speedy trial, therefore, is subject to a balancing test, which must be applied on an ad hoc basis, wherein the conduct of both the prosecution and the defendant are weighed. The factors to consider in determining whether a defendant has been deprived of his constitutional speedy trial right are explained by the U.S. Supreme Court in Barker v. Wingo, 407 U.S. 514, 92 S.Ct. 2182, 33 L.Ed. 2d 101 (1972), (1) the length of the delay; (2) the reason for the delay; (3) the defendant's assertion of his right; and (4) prejudice to the defendant.

The length of delay is principally a triggering factor. Thus, if the delay is not long enough to be "presumptively prejudicial," further inquiry is not needed. While delays of less than six months have generally been held to be reasonable, **delays of over a year have been considered sufficient to invoke the full Barker analysis.** A particularly lengthy delay will rarely be considered sufficient

alone to amount to a denial of a speedy trial. Long periods of time, however, especially when compiled with unexplained or unacceptable reasons for delay, can result in reducing a defendant's burden in showing prejudice, or shifting the burden to the prosecution to show the lack of prejudice.

In the Washington State Court Rules CrR 3.3 it states in pertinent part as follows: CrR 3.3 (a)(1), it shall be the responsibility of the court to ensure a trial in accordance with this rule to each person charged with a crime. CrR 3.3(a)(2), Criminal trials shall take precedence over civil trials. In CrR 3.3 (b)(2), it reads in part as follows: (2) Defendant not Detained in Jail, (i) 90 days after commencement date specified in this rule, or (ii) the time specified in subsection (b)(5).

**WAS IN FACT MS. CHARRITA NOBLE VIOLATED WHEN SHE WAS CHARGED
AS BEING AN ACCOMPLICE IN THIS CASE, MERE PRESENCE CAN
NOT PROVE ACCOMPLICE LIABILITY UNDER THE LAWS FOR
THE STATE OF WASHINGTON AND NOBLE
WAS PREJUDICED**

There was insufficient evidence to convict Charrita Noble as an accomplice, under the Accomplice Liability laws in the State of Washington. The record does reflect that only Noble's presence could be established, and there was absolutely no evidence of any of the elements of Accomplice Liability.

In Re Wilson, 91 Wn. 2d 487, 588 P.2d 1161, the State Supreme Court held **"that mere at the commission of a crime did not make a bystander an accomplice and that presence without the intent to encourage the crime did not constitute encouragement for the purposes of the accomplice statute,** the court reversed the Court of Appeals decision and the judgment."

The Supreme Court further held in Wilson, " In State v. J.R. Distribs., Inc., 82 Wn. 2d 584, 593, 512 P.2d 1049 (1973), after some previous discussion of abetting, this court goes on to state:

One does not aid and abet unless, in some way, he associates himself with the undertaking, participates in it as in something he desires to bring about, and seeks by his action to make it succeed. State v. Gladstone, 78 Wn. 2d 306, 474 P.2d 274, 42 ALR 3rd 1061 (1970); Nye & Nissen v. United States, 336 U.S. 613, 619, 93 L.Ed. 919, 69 S.Ct. 766 (1949).

Mere knowledge or physical presence at the scene of a crime neither constitutes a crime nor will it support a charge of aiding and abetting a crime. State v. Gladstone, supra, State v. Dalton, 65 Was. 663, 118 P. 829 (1911).

...Even though a bystander's presence alone may in fact encourage the principal actor in his criminal or delinquent conduct, that does not in itself make the bystander a participant in the guilt. It is not the circumstance of "encouragement" in itself that is determinative, rather it is encouragement plus the intent of the bystander to encourage that constitutes abetting. The court held that something more than presence alone plus knowledge of on going activity must be shown to establish the intent requisite to finding Wilson to be an accomplice in the instance. "Reversed In Re Wilson, at 491-92.

In the case of State v. Amezola, 49 Wn. App. 78, 741 P.2d 1024 (1987), we find the same standard. Here, the Court of Appeals held, "that there was insufficient evidence that the defendant was guilty as an accomplice, the court also reversed this judgment." In their discussion on accomplice liability, the court further stated, "While instructions are given, they should be precise, because the jury would have the need to know that the physical presence and assent are not sufficient to establish accomplice liability."

Defense counsel objected for the record, and specifically said, "Mere presence is not enough to convict one as

an accomplice." RP 199, Lines 15-25; RP 200, Lines 1-25; RP 201, Lines 1-19. It is believed that the Court abused its discretion in denying the Motion to dismiss on these particular grounds. The record stands for itself. RP 202, Lines 16-17.

Additionally, there was insufficient evidence to identify Ms. Noble in the incident, both police officers that were called on to testify for the State stated "they would not know who Ms. Noble was without having a picture in front of them. They also was unable to pinpoint for the jury and Court exactly where Noble was at the scene. RP 47, Lines 14-19; RP 48, Lines 12-25, RP 49, Lines 1-2. The police also was unable to identify Ms. Noble and where she was in the vehicle. RP 46, Lines 21-23. One of the police reports identified all individuals as being black (African American). One of the persons in the case was Hispanic. The witness had stated that there was one person who walked out with another, who was significantly smaller than the others. This particular person was also one of the defendants that was convicted, but defense counsel declined to have them testify, despite her willingness to do so.

No one from the incidents could place Noble at the scene. The witness from the Hallmark Store said that she never saw anything, and that all she knew was that the property the police showed her was from the store. RP 161, Lines 17-24.

The witness from Big 5 said that he never saw anyone shoplift anything and did not know that a crime had been committed until the police called him, and the video tape from the store was entirely insufficient to make an identification. **RP 102, Lines 5-12.**

The witness from J.C. Penny's stated that she could not identify Noble, and that she specifically knew that she was not a part of the group, that she was watching at the time of the incident. **RP 120 ; Lines 5-7; RP 120, Lines 23-25; RP 122, Lines 4-19; RP 127, Lines 21-22.**

It is a matter of record, also that every witness was only able to identify Noble because the prosecutor showed each of them booking photos, along with each of the respective written statements before they testified. Under these circumstances, who else would they walk into the courtroom and identify? **RP 90, Lines 22-25; RP 91, Lines 1-12; RP 35, Lines 19-21; RP 37 , Lines 4-5; RP 48, Lines 12-25; RP 49, Lines 1-2.**

In this particular case the trial court used the same faulty accomplice liability instructions as that in State v. Roberts, 142 Wn. 2d 471, 14 P.3d 717, and State v. Cronin, 142 Wn. 2d 568, 14 P.3d 752. This court knows this issue well and set the standard that must be followed, so Noble will not over burden it with analysis or argument here.

The standard is certainly set, and is violated in the case before the court today. Therefore, the court would have to base a fair concise decision on the standards in this particular case.

**THERE WAS INSUFFICIENT EVIDENCE TO CONVICT THIS APPEALANT
CHARRITA NOBLE OF POSSESSION OF STOLEN PROPERTY**

There was insufficient evidence to support actual or constructive possession or dominion and control for the purposes of finding Charrita Noble guilty of possession of stolen property.

In State v. cantabrana, 83 Wn. App. 204, 921 P.2d 572, the Court of Appeals held, " that the jury should have been instructed that the defendant's dominion and control of the premises where the controlled substances were found raises a rebuttable inference of dominion and control over those substances, the court **reverses** the judgement." State v. Callahan, supra,. The Court of Appeals held," that there was insufficient evidence of the defendant's actual or constructive possession of the cocain, the court **reverses** the judgement and dismisses the prosecution."

Again, Charrita Noble would like to reiterate for the Court that there was also insufficient evidence to support the charge or conviction for Theft in the second degree. The only evidence shown was that Noble was present, and as stated for the record by defense counsel, that "mere presence is not enough to convict one as an accomplice." In re Wilson, 91 Wn. 2d 487, 588 P.2d 1161, the State Supreme Court held, "that mere presence at the commission of a crime did not make a bystander an accomplice and that presence without the intent to encourage the crime did not constitute encouragement for purposes of the accomplice statute, the court **reverses** the Court of Appeals and the judgement." So, as the Court can see, this also applies to the sufficiency of evidence in regards to the Theft charge.

All of the store employees who testified stated that they could not identify Charrita Noble, with the exception of one, who said Noble was **definitely not part of the group, she followed**. **RP 122, Lines 4-5,7-19, RP 127, Lines 12-15.**

Appellant also believes it may be improperly prejudicial to allow the State to claim that they had a videotape that implicated Noble, but could not produce the tape. They were allowed to put a officer on the stand to testify in the manner of third party hearsay or worse, as to what was on the tape to the jury, but there was no opportunity to rebut this by actually viewing the tape ourselves, or proving its existence, or admitting the tape itself into evidence. **RP 108, Lines 11-18, RP 109, Lines 22-25, RP 110, Lines 1-10** the jury was therefore considering evidence not admitted as part of the record, or extrinsic evidence.

In a similar case, the State Supreme Court considered whether the extrinsic evidence received by the jury prejudiced the defendant. They stated "We conclude that the introduction of these documents into the sanctity of the jury room did prejudice Pete and that the trial court, therefore, abused its discretion in not granting a new trial.

Lastly, even though the State downplays the trial court error by not pointing out that the evidence was deemed admissible during Pete's CrR 3.5 hearing, the fact remains that the documents were not offered or admitted at trial. The jury's receipt of this extrinsic evidence after the close of its evidence presented a "no win" situation for Pete because he was not able to object to or explain the extrinsic evidence. Furthermore, his counsel was unable to cross-examine either the transport officer or the officer who took Pete's statement. The fact that the bailiff instructed the jurors to not consider the extrinsic evidence does not, in our view, mitigate the harmfulness of the error. Even if the trial court had given the instruction, which would be the appropriate practice, the same can be said." This was the Court's opinion in State V. Pete, 152 Wn. 2d 546, 98 P.3d 803,

where two documents that were not admitted into evidence had been inadvertently sent to the jury room. One was a police report that had alleged statements made by Pete during transport to the police station. The other was Pete's written and signed statement. In spite of the brief amount time the documents were in the jury room, and that they were instructed to disregard them, and that the statements were exculpatory, The Supreme Court still held that, " This type of " evidence is improper because it is not subject to objection, cross-examination, explanation or rebuttal." Id. State V. Pete, at 553

This is very simular to the case at bar, where officēr Smith was allowed to testify, but the testimony was in regards to a video tape that prosecutor claimed was allegedly " eaten " by a VCR, and could nt be produced to rebut the allegation that there was incriminating evidence on it. **RP 109, Lines 22-25, RP 110, Lines 1-14**, This was definatēly prejudicial to the defense, since there was no other evidence or testimony placing Charrita Noble at the scene, actually committing a crime. This was a violation of Noble's sixth amendment rights, and it allowed opermissible inference to be drawn and considered by the jury, denying Noble a fair trial. Therefore, the Court must follow case law, accordingly.

**MISIDENTIFICATION IN THIS CASE SHOULD AUTOMATICALLY REVERSE THE
CONVICTION OF CHARRITA NOBLE, AS THERE IS NO REAL
TESTIMONY THAT SHE WAS THE PERPATRATER
OF ANY CRIME IN THIS CASE.**

The witness may not identify the defendant as the perpatrater of the crime at trial unless the prosecution can establish that the identification was based on an independent source.

A finding of independent source requires the identifying eye witness to recollect the particular events of the crime and observation of the perpatrater during its commission. The witness or victim must have retained such an accurate image of the defendant without relying on the tainted pre-trial identification procedure. See State v. Abernathy, 21 Wn. App. 635, 644 P.2d 691 (1982); State v. Griggs, 33 Wn. App. 496, 656 P.2d 529 (1982); Manson v. Braithwaite, 432 U.S. 98, 97 S.Ct. 2243, 53 L.Ed. 2d 140 (1977); State v. Borrel, 28 Wn. App. 606, 625 P.2d 726 (1981).

None of the State's Witnesses could identify Charrita Noble at the store's crime scenes and therefore the cases and counts against Ms. Noble should be vacated, for insufficient evidence.

**IN THIS CASE CHARRITA NOBLE WAS ALSO SENTENCED WRONGLY
FOR THE CONVICTIONS AND COUNTS THAT SHE
WAS SENTENCED FOR**

Charrita Noble respectfully ask the Honorable Court to review the sentencing errors in her case. At the time of sentencing, the court all of the points, for a score of 7.

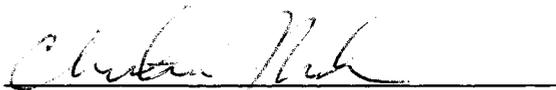
State v. Bolar, 129 Wn. 2d 361, 917 P.2d 125, and State v. McGraw, 127 Wn. 2d 281, 898 P.2d 838, both agree, that the Court should have counted prior convictions that have been served concurrently as one point for sentencing purposes. The Court is quite aware of both of these cases, so Noble would not elaborate this point needlessly. Noble would only ask the Court review this case for error, as there was no documentation available to me regarding whether these juvenile terms were served concurrently or not.

Further, there may be other errors. It would be expected that the Court would view these errors and see to meet the ends of justice this conviction must be vacated and Charrita Noble set free.

CONCLUSION

In conclusion Ms. Noble will admit her lack of knowledge, however, what has been learned by this experience is great. However small a case may be, **it is no less important to uphold the rights and standards that must apply to everyone.** Therefore, with this in mind, this case must be vacated upon review and bring justice in the favor of the appellant Charrita Noble.

Signed this 22 day of August 2006 in Belfair, Washington. Mason County.



Charrita Noble 807808 Pro Se
Mission Creek Corr. Center
3420 N.E. Sandhill Rd.
Belfair, Washington 98528

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STATE OF WASHINGTON

BY _____
DEPUTY

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION

STATE OF WASHINGTON,
Respondent,

v.

NO. 34410-6-II

DECLARATION OF MAILING

Charvita Nette Appellant.

I, Charvita Nette, on oath declare as follows:

That I am a citizen of the United States of America and in the State of Washington, living and residing in Pierce County, and am over the age of twenty-one years,

I placed in the U.S. Mail on April 30th, 2006, the following documents: STATEMENT OF ADDITIONAL CREDITS, with proper postage prepaid to the following:

Court of Appeals Division at
450 Broadway Suite 300
Tacoma, WA 98402-3445

I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

Signed at ^{Bellview} ~~Olig Harbor~~, Washington

This 22 day of April, 2006

Charvita Nette

COURT OF APPEALS
DIVISION TWO
OF THE STATE OF WASHINGTON

FILED
COURT OF APPEALS

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STATE OF WASHINGTON

BY _____
DEPUTY

STATE OF WASHINGTON)
)
Respondent,)
)
v.)
)
CHARRITA C. NOBLE,)
)
Appellant.)

No. 34410-6-II

STATEMENT OF ADDITIONAL
GROUNDS FOR REVIEW

I, Charita Noble, 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

Please see Attached statement

Additional Ground 2

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

Date: 7/22/06

Signature: Charita Noble