

FILED
COURT APPEALS

05/17/02 PM 5:30

NO. 34707-5-II

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

STATE OF WASHINGTON,

Respondent,

v.

RONNIE A.T. PETERSON,

Appellant.

APPEAL FROM THE SUPERIOR COURT
FOR THURSTON COUNTY
CAUSE NO. 05-1-02490-2

HONORABLE CHRIS WICKHAM, Judge

RESPONDENT'S BRIEF

EDWARD G. HOLM
Prosecuting Attorney
in and for Thurston County

JAMES C. POWERS
Deputy Prosecuting Attorney
WSBA #12791

Thurston County Courthouse
2000 Lakeridge Drive, SW
Olympia, WA 98502
Telephone: (206) 786-5540

TABLE OF CONTENTS

	<u>Page</u>
STATEMENT OF THE ISSUE	1
STATEMENT OF THE CASE	1
ARGUMENT	6
1. <u>In the charging language for the crime of malicious mischief in the first degree, applying a liberal construction, the allegation that the property damaged was the property of another can be found by fair construction.</u> . . .	6
2. <u>Considering the evidence in the light most favorable to the State, there was sufficient evidence for the trial court to find it proved that the defendant was armed with a deadly weapon at the time of the commission of the crime of malicious mischief in the first degree</u>	15
3. <u>There was sufficient evidence to support the trial court's findings of fact, and they in turn supported the trial court's conclusion that the defendant had dropped the car stereo in order to overcome Don Westfall's resistance to the taking, so that the defendant ultimately could retain possession of the car stereo as stolen property.</u>	19
CONCLUSION	26

TABLE OF AUTHORITIES

<u>CASES</u>	<u>PAGE</u>
<u>State v. Bacani</u> , 79 Wn. App. 701, 902 P.2d 184 (1995)	10,11
<u>State v. Bencivenga</u> , 137 Wn.2d 703, 974 P.2d 832 (1999)	18
<u>State v. Camarillo</u> , 115 Wn.2d 60, 794 P.2d 850 (1990)	17,23
<u>State v. Delmarter</u> , 94 Wn.2d 634, 618 P.2d 99 (1980)	18
<u>State v. Green</u> , 94 Wn.2d 216, 616 P.2d 628 (1980)	17
<u>State v. Graham</u> , 64 Wn. App. 305, 824 P.2d 502 (1992)	12
<u>State v. Handburgh</u> , 119 Wn.2d 284, 830 P.2d 641 (1992)	21
<u>State v. Johnson</u> , 155 Wn.2d 609, 121 P.3d 91 (2005)	21
<u>State v. Joy</u> , 121 Wn.2d 333, 851 P.2d 654 (1993)	17
<u>State v. Kjorsvik</u> , 117 Wn.2d 93, 812 P.2d 86 (1991)	7,8,14
<u>State v. Moavenzadeh</u> , 135 Wn.2d 359, 956 P.2d 1097 (1998)	8
<u>State v. Morgan</u> , 31 Wash. 226, 71 P. 723 (1903)	9,11,12

<u>CASES</u>	<u>PAGE</u>
<u>State v. Phillips</u> , 98 Wn. App. 936, 991 P.2d 1195 (2000)	13,14
<u>State v. Ralph</u> , 85 Wn. App. 82, 930 P.2d 1235 (1997)	11,12
<u>State v. Salinas</u> , 119 Wn.2d 192, 829 P.2d 1068 (1992)	17
<u>State v. Stevenson</u> , 128 Wn. App. 179, 114 P.3d 699 (2005)	23,24

<u>CONSTITUTIONAL</u>	<u>PAGE</u>
Sixth Amendment, U.S. Constitution . . .	7
Article 1, section 22, Washington Const. . .	7

<u>STATUTES</u>	<u>PAGE</u>
RCW 9.94A.602	16
RCW 9A.04.110(12)	14
RCW 9A.56.190	20

A. STATEMENT OF THE ISSUES

1. In the charging language for the crime of malicious mischief in the first degree, whether the allegation that the defendant damaged the property of another could be found by fair construction.

2. Considering the evidence in the light most favorable to the State, was there sufficient evidence for the trial court to find it proved that the defendant was armed with a deadly weapon at the time he committed malicious mischief in the first degree.

3. Considering the evidence in the light most favorable to the State, was there sufficient evidence for the trial court to find it proved beyond a reasonable doubt that the defendant had used a threat of force to overcome resistance to his taking the car stereo, and to retain the stereo as stolen property, and so was guilty of attempted robbery in the first degree.

B. STATEMENT OF THE CASE

On the evening of December 28, 2005, Don Westfall, his son Donnie, and Donnie's friend Ryan Johnson arrived at the Mud Bay Park and Ride lot upon returning from a ski trip. Johnson's car had been left there. Donnie was driving, his father was in the front passenger seat, and Ryan was in the back. It was dark at that time. Trial RP 38-41.

They noticed there were two vehicles in the parking lot, including Ryan's car. The emergency flashers on Ryan's car were blinking. As the Westfall vehicle approached, they observed the defendant exit from the passenger side of Ryan's car. The defendant had Ryan's car stereo in one hand and a knife in the other hand. The defendant proceeded to run off. Trial RP 42, 67, 79, 96.

Don Westfall directed his son to pursue the defendant, and Donnie complied. As the Westfall vehicle reached the defendant, Don Westfall jumped out. Trial RP 42-43. The defendant had tried to jump into some bushes, but they were too thick, and so he jumped back out to confront Westfall. At this point, the defendant still had the stereo in one hand and the knife in the other. The defendant tossed the stereo down and came at Westfall. Trial RP 54, 60, 96. The blade of the knife was out. The defendant warned Westfall he had a knife and that he was going to cut Westfall with it. Trial RP 72, 81, 96, 112; Ex. 14.

Don Westfall tackled the defendant and

wrestled him to the ground, got on top of the defendant and pinned him down. At that time, Westfall became conscious that the defendant had a knife in his hand. Westfall's son got the knife away from the defendant and put it out of the defendant's reach. Trial RP 44-48, 70. At Westfall's direction, a 911 call was made. Trial RP 49, 71.

At that point, the other car which had been in the Park and Ride lot pulled up and stopped. The defendant called out for the driver to leave, and that car took off. 82, 121.

Shortly thereafter, Sheriff's Deputy Ivanovitch arrived, and soon after that, Sheriff's Deputy Holden also responded to this scene. Trial RP 10, 90-91. Upon Ivanovitch's arrival, the defendant was still pinned to the ground by Westfall. Trial RP 10. Ivanovitch observed the car stereo in the vicinity of where the defendant was pinned. Trial RP 11, 13, 18, 32-33. He also observed a knife on the ground. The blade of the knife was exposed. That blade was exactly three

inches in length. Trial RP 11, 25, 30.

The defendant admitted to Ivanovitch that he had another knife, and so Ivanovitch removed a butterfly knife from the defendant's pocket. Trial RP 11-12. A few minutes later, Deputy Holden did a pat-down search of the defendant and located a third knife in the defendant's left rear pocket. Trial RP 91.

The defendant was informed of his Miranda rights and waived them. The defendant then made verbal admissions and provided a tape-recorded confession. Trial RP 93-99; Ex. 14. He admitted he broke into the car at the Park and Ride lot using a window punch, and had stolen the car stereo. He also admitted he still had a knife in one hand and the stereo in the other when he was confronted by one of the victims, and the defendant warned that individual that he would cut him with the knife. Trial RP 96, 99; Ex. 14.

Ivanovitch inspected Johnson's vehicle at the Park and Ride lot. The passenger side window was smashed and the inside of the vehicle had been

ransacked. There was damage to the dashboard where the stereo had been. On the passenger seat was a window punch and flashlight which Johnson stated did not belong to him. Trial RP 13-14. There was around two thousand dollars damage to the vehicle. Trial RP 36.

On December 30, 2005, an Information was filed in Thurston County Superior Court charging the defendant with one count of attempted robbery in the first degree while armed with a deadly weapon and one count of malicious mischief in the first degree while armed with a deadly weapon. CP 4-5. A First Amended Information was filed on April 30, 2006. In Count 1, the defendant was charged with attempted robbery in the first degree while armed with a deadly weapon, or in the alternative, with assault in the second degree while armed with a deadly weapon. In Count 2, the defendant was charged with malicious mischief in the first degree while armed with a deadly weapon. CP 17-18.

The defendant waived a jury trial, and the

charges were tried to the court on April 12, 2006. The defendant was found guilty of both attempted robbery in the first degree and malicious mischief in the first degree. As to both crimes, the court found that the defendant had been armed with a deadly weapon at the time the crimes were committed. Trial RP 144-146. Written Findings of Fact and Conclusions of Law were entered on April 18, 2005. CP 30-34.

A Judgment and Sentence was also entered on April 18, 2005. Standard range sentences were imposed, 27 months for Count 1 and 2 months for Count 2, to run concurrently. A deadly weapon enhancement of 12 months was imposed for Count 1, and an enhancement of 6 months was imposed for Count 2, both enhancements to run consecutive to the 27-month penalty and consecutive to each other. Thus, the total period of confinement imposed was 45 months. CP 35-43.

C. ARGUMENT

1. In the charging language for the crime of malicious mischief in the first degree, applying a liberal construction, the allegation that the property damaged was the property of

another can be found by fair construction.

The defendant contends that the First Amended Information failed to set forth all the essential elements of the charge of first-degree malicious mischief. This claim has been raised for the first time on appeal.

Under the Sixth Amendment to the United States Constitution and Article 1, section 22 of the Washington State Constitution, a charging document must set forth all of the essential elements of the alleged crime so that a criminal defendant can be apprised of the nature of the charge and can prepare an adequate defense. State v. Kjorsvik, 117 Wn.2d 93, 97, 812 P.2d 86 (1991). When the sufficiency of the charging document is raised for the first time on appeal, the court will engage in a liberal construction of the document in order to determine its validity. Under that liberal analysis, the appellate court examines: (1) whether the essential elements of the alleged crime appear in any form in the charging document, or whether they can be found by

fair construction; and if so, (2) whether the defendant can show that he was nonetheless actually prejudiced by the inartful language used in the document. Kjorsvik, 117 Wn.2d at 105-106. In the present case, the defendant has not alleged any prejudice, and so only the first prong of the above-stated test is pertinent here.

It is not necessary to use the exact words of a statute in a charging document. It is sufficient if words conveying the same meaning are used. A court should be guided by common sense and practicality in construing the language. Even missing elements may be implied if the language supports such a result. State v. Moavenzadeh, 135 Wn.2d 359, 262, 956 P.2d 1097 (1998).

In charging malicious mischief in the first degree while armed with a deadly weapon, Count Two of the First Amended Information read as follows:

In that the defendant, RONNIE ADAM TYLER PETERSON, in the State of Washington, on or about the 28th day of December, 2005, did knowingly and maliciously cause physical damage in excess of \$1,500 while armed with a deadly weapon; That at the time of the commission of said crime, the defendant was armed with a deadly weapon as proscribed by

RCW 9.94A.602.

CP 18. The defendant was charged pursuant to RCW 9A.48.070(1)(a). That statutory provision is as follows:

A person is guilty of malicious mischief in the first degree if he knowingly and maliciously:

(a) Causes physical damage to the property of another in an amount exceeding one thousand five hundred dollars.

The defendant notes that the charging language failed to include the phrase "to the property of another" after the words "physical damage", and therefore was constitutionally insufficient. However, the State contends that, applying the liberal construction rule for charging documents challenged for the first time on appeal, the term "maliciously" conveyed adequate notice that the damage was alleged to have been done to the property of another.

In State v. Morgan, 31 Wash. 226, 71 P. 723 (1903), the Information charged robbery but did not contain an allegation as to the ownership of the property taken from the victim. The

sufficiency of this Information was challenged by the defendant before trial, but that challenge was denied. On appeal, applying a very strict standard, the court found that the phrase "did unlawfully and feloniously . . . take, steal, and carry away" was not sufficient to constitute an allegation as to the ownership of the property taken. Morgan, 31 Wash. at 228.

In State v. Bacani, 79 Wn. App. 701, 902 P.2d 184 (1995), the Information charged attempted first-degree robbery and included the phrase "did unlawfully attempt to take personal property . . . with intent to steal", but did not allege that someone other than the defendant had an ownership or possessory interest in the property taken. It was found by the appellate court that the defendant had objected to the sufficiency of the Information prior to the verdict, and so a strict construction of the charging document had to be used to determine if all the elements of the alleged crime were included. The court found that logically the allegation the defendant attempted

to steal the property conveyed that the property belonged to another. However, the court felt constrained by Morgan, supra, to hold that under a strict construction the charging language was insufficient. Bacani, 79 Wn. App. at 704-705. In a concurring opinion, one judge wrote:

The reasoning supporting the 1903 decision in State v. Morgan, 31 Wash. 226, 71 P.723 (1903) is as dead as the judges who authored it.

Bacani, 79 Wn. App. at 706.

In State v. Ralph, 85 Wn. App. 82, 930 P.2d 1235 (1997), Ralph was charged with theft of a firearm, which included the element that the firearm was the property of another. However, the Information did not expressly allege that element, but alleged that Ralph "did steal" firearms. Ralph, 85 Wn. App. at 83-84. Ralph objected to the sufficiency of the Information after both sides had rested, but the objection was denied. On appeal, the court held that this objection was before the verdict and so the strict construction standard applied in evaluating a challenge to the sufficiency of the Information. Ralph, 85 Wn.

App. at 84-85.

The appellate court in Ralph acknowledged that the phrase "steal" did logically convey that the firearms were the property of another. However, again relying on Morgan, supra, the court found that under a strict construction, the Information was insufficient. Ralph, 85 Wn. App. at 85-86.

However, there has been a different result in a number of cases where the court has applied a liberal construction in evaluating whether the element of "property of another" was alleged in the charging document. In State v. Graham, 64 Wn. App. 305, 824 P.2d 502 (1992), two defendants were charged with robbery. Each Information failed to allege that the property taken was property of another. However, it was alleged that the property had been unlawfully taken. Graham, 64 Wn. App. at 306-307.

The sufficiency of each charging document was challenged for the first time on appeal, and so a liberal construction was applied to this issue.

The appellate court found that the phrase "did unlawfully take" sufficiently conveyed that ownership of the property was in some person other than the defendant. The court also found that the allegation the property was taken from the person of the victim conveyed a possessory right of the victim superior to that of the defendant, and so was also sufficient for a charge of robbery. Graham, 64 Wn. App. at 308-309.

In State v. Phillips, 98 Wn. App. 936, 991 P.2d 1195 (2000), Phillips was charged with first-degree robbery. The Information failed to allege that the property taken was the property of another, but did allege that Phillips "did unlawfully and feloniously take personal property with intent to steal". Under the facts of Phillips, the appellate court determined that a liberal construction applied to a challenge to the sufficiency of this charging document. Phillips, 98 Wn. App. at 938-939 and 941-942. The court then noted that the term "steal" meant to feloniously take the property of another.

Therefore, the Information in Phillips was held to have fairly informed Phillips that the property taken had belonged to someone other than the defendant. Phillips, 98 Wn. App. at 944.

As noted above, the issue in a liberal construction such as is applicable in the present case is whether the alleged missing element appears in any form or can be found by fair construction. Kjorsvik, 117 Wn.2d at 105-106. The term "maliciously" is defined in RCW 9A.04.110:

"Malice" and "maliciously" shall import an evil intent, wish, or design to vex, annoy, or injure another person. Malice may be inferred from an act done in willful disregard for the rights of another, or an act wrongfully done without just cause or excuse, or an act or omission of duty betraying a willful disregard of social duty.

RCW 9A.04.110(12) (emphasis added). Thus, inherent in the concept of malicious physical damage is the purpose of annoying or injuring another person, and is indicated by willfully disregarding either the rights of another or a social duty.

Just as the phrase "did unlawfully and feloniously take personal property with the intent

to steal" fairly informs a defendant of the allegation that the property belonged to another, so also the phrase "did knowingly and maliciously cause physical damage" also fairly conveys that the property damaged belonged to another. Therefore, by fair construction all of the essential elements can be found in Count 2 of the First Amended Information in this case.

2. Considering the evidence in the light most favorable to the State, there was sufficient evidence for the trial court to find it proved that the defendant was armed with a deadly weapon at the time of the commission of the crime of malicious mischief in the first degree.

The trial court found that the State had proved the defendant was armed with a deadly weapon at the time of the commission of both Counts 1 and 2. CP 33-34. On appeal, the defendant contends there was insufficient evidence for the trial court's conclusion as to Count 2, malicious mischief in the first degree.

For purposes of a special allegation that a defendant was armed with a deadly weapon at the time of the commission of a crime, the term "deadly weapon" includes a "knife having a blade

longer than three inches" or an "implement or instrument which has the capacity to inflict death and from the manner in which it was used, is likely to produce or may easily and readily produce death". RCW 9.94A.602. The blade of the knife which the defendant had in his hand when committing both crimes was exactly three inches in length, and so was not necessarily a deadly weapon. However, the trial court found the knife had the capacity to inflict death, and from the manner in which it was used, was likely to produce or may easily produce death. Conclusion of Law No. 8 in CP 34.

The defendant on appeal does not challenge the trial court's conclusion that the defendant was armed with a deadly weapon at the time of the commission of what was found to be the crime of attempted first-degree robbery. Thus, the defendant apparently does not contest the trial court's conclusion that the knife in the defendant's hand at the time both crimes were committed was an implement or instrument which had

the capacity to inflict death. Rather, it appears the defendant's contention is that the manner in which the knife was used during the commission of first-degree malicious mischief was such that it was not likely to produce death nor might it easily and readily produce death.

The evidence is sufficient to support a deadly weapon allegation if, viewed in the light most favorable to the State, it is enough to permit a rational trier of fact to find the essential elements of the allegation beyond a reasonable doubt. State v. Joy, 121 Wn.2d 333, 338, 851 P.2d 654 (1993); State v. Green, 94 Wn.2d 216, 221, 616 P.2d 628 (1980). A claim of insufficiency requires that all reasonable inferences from the evidence be drawn in favor of the State and interpreted most strongly against the defendant. State v. Salinas, 119 Wn.2d 192, 201, 829 P.2d 1068 (1992). Credibility determinations are for the trier of fact and are not subject to review. State v. Camarillo, 115 Wn.2d 60, 71, 794 P.2d 850 (1990). It is also the

function of the fact finder, and not the appellate court, to discount theories which are determined to be unreasonable in the light of the evidence. State v. Bencivenga, 137 Wn.2d 703, 709, 974 P.2d 832 (1999). Circumstantial evidence is accorded equal weight with direct evidence. State v. Delmarter, 94 Wn.2d 634, 638, 618 P.2d 99 (1980).

While committing the crime of first-degree malicious mischief, the defendant had the knife out in his hand, with the blade exposed. That is the manner in which it was used. While used in that manner, it was readily available for offensive use.

While a confrontation with another did not occur during the commission of first-degree malicious mischief, since this knife had the capacity to inflict death, in a confrontation it might easily and readily have been used to produce death. When Westfall approached the defendant in his flight from this crime, the defendant threatened to cut Westfall with the knife. However, Westfall overpowered the defendant and

prevented the defendant from wielding the knife. Thus, taking the evidence in the light most favorable to the State, it would be reasonable to presume that had a confrontation occurred during the commission of malicious mischief, the manner of the defendant's use of the knife, making it readily available for offensive use, could easily and readily have produced death.

The fact that a confrontation did not occur during the commission of the malicious mischief was fortuitous. However, absent that fortuitous circumstance, the manner of the defendant's use of the knife might have easily and readily produced death. Therefore, given that manner of use, a rational trier of fact could reasonably find it proved that the defendant was armed with a deadly weapon during the commission of first-degree malicious mischief.

3. There was substantial evidence to support the trial court's findings of fact, and they in turn supported the trial court's conclusion that the defendant had dropped the car stereo in order to overcome Don Westfall's resistance to the taking, so that the defendant ultimately could retain possession of the car stereo as stolen property.

In Count 1, the defendant was convicted of attempted first-degree robbery while armed with a deadly weapon. It was alleged that, with the intent to commit the crime of robbery, the defendant took a substantial step toward the commission of robbery while armed with a deadly weapon. The crime of robbery is defined as follows:

A person commits robbery when he unlawfully takes personal property from the person of another or in his presence against his will by the use or threatened use of immediate force, violence, or fear of injury to that person or his property or the person or property of anyone. 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.

RCW 9A.56.190.

Under Washington's transactional view of the crime of robbery, if property is peaceably taken, but then the offender uses a threat of force during flight immediately after the taking to

retain possession of the property or to prevent or overcome resistance to the taking, the offender thereby commits the crime of robbery. State v. Handburgh, 119 Wn.2d 284, 291-293, 830 P.2d 641 (1992). On the other hand, if property is peaceably taken, then during flight immediately after the taking the offender abandons the stolen property but uses a threat of force to effectuate his escape, that threat of force will not turn the taking into a robbery. State v. Johnson, 155 Wn.2d 609, 610-611, 121 P.3d 91 (2005). As can be seen, the critical factor is whether, at the time a threat of force is used, the defendant has abandoned the stolen property or is still attempting to accomplish a successful theft of the property.

In the present case, the defendant argued that he had abandoned the car stereo from Ryan Johnson's car when he threatened Westfall. However, the trial court did not find the defendant's claim in that regard to be credible. Rather, the court concluded that the defendant

dropped the stereo merely to better confront Westfall so that he could ultimately retain the stereo and overcome Westfall's resistance to the taking. Conclusion of Law Nos. 3 and 4 in CP 30-34.

On appeal, the defendant claims that there was insufficient evidence to support the trial court's conclusion that the defendant had not abandoned the property at the time the defendant confronted Westfall and threatened him with the knife. The legal standards governing a sufficiency of the evidence challenge have been detailed in the previous section of this Brief, and that description of the applicable standards is incorporated herein by reference. The State contends that, considering the evidence in the light most favorable to the State, there was sufficient evidence for the trial court to find it proved beyond a reasonable doubt that the defendant used a threat of force against Westfall to retain possession of the car stereo and to overcome Westfall's resistance to his theft of

that item.

First of all, the trial court did not find the defendant's trial testimony credible. That testimony was not consistent with aspects of the admissions the defendant made to police during the investigation of this case. Moreover, the defendant admitted during cross-examination that he had lied at times. However, the court did find the testimony of Westfall senior, Westfall junior, and Ryan Johnson to be credible. Finding of Fact No. 13 in CP 30-34. As noted previously, credibility determinations are for the trier of fact to make, and will not be reviewed on appeal. Camarillo, 115 Wn.2d at 71.

After a bench trial, an appellate court determines whether substantial evidence supports the trial court's findings of fact and, in turn, whether the findings support the conclusions of law. Substantial evidence is evidence sufficient to persuade a fair-minded, rational person of the finding's truth. State v. Stevenson, 128 Wn. App. 179, 193, 114 P.3d 699 (2005). Unchallenged

findings of fact are considered verities on appeal. Stevenson, 128 Wn. App. at 193.

The trial court found that the defendant took off running from Johnson's car with the car stereo in his hand. The court further found that when the defendant came at Westfall, the defendant no longer had the stereo in his hand. However, the court found, the stereo was located in the vicinity of where this altercation between Westfall and the defendant took place. Finding of Fact No. 8 in CP 30-34. The above findings have not been challenged on appeal.

The court further found that at the point the defendant turned on Westfall and threatened to cut him with the knife, the defendant was still carrying the stereo in one hand, and was holding the knife in the other hand. In addition, the court found that the defendant then dropped the stereo so that he could confront Westfall with the knife. Finding of Fact No. 11 in CP 30-34.

These findings have been challenged on appeal. However, there is substantial evidence to

support them. In the defendant's tape-recorded interview with Deputy Holden, the defendant made the following responses concerning his confrontation with Westfall:

Q. And, and again, what did you say, I forgot?

A. I'll cut you, don't fucking touch me or I'll cut you.

Q. Do you remember, did you have the stereo in your right hand or your left hand?

A. I had the knife in my right hand, the stereo in my left hand.

Ex. 14 (p. 4, lines 1-4). This admission and the location of the stereo confirm that the defendant let go of the stereo just before his altercation with Westfall. Obviously, the defendant could not effectively wrestle with Westfall while the stereo was in his hand. Therefore, the court could reasonably conclude that the defendant let go of the stereo in order to effectively overcome Westfall's resistance to the taking, so that the defendant could then retain the stolen property. Any claim by the defendant to the contrary at the trial was not credible. Conclusion of Law Nos. 3

and 4 in CP 30-34.

Thus, there was substantial evidence to support the trial court's findings of fact, and these findings in turn supported the court's conclusions of law. The evidence provided proof for all the elements of attempted robbery in the first degree.

D. CONCLUSION

Based on the above, the State respectfully requests that this court affirm the defendant's convictions for attempted robbery in the first degree while armed with a deadly weapon and for malicious mischief in the first degree while armed with a deadly weapon.

DATED this 31st day of October, 2006.

Respectfully submitted,



JAMES C. POWERS/WSBA #12791
DEPUTY PROSECUTING ATTORNEY

Thomas E. Doyle,
Attorney at Law
P.O. Box 510
Tacoma, WA 98340-0510

I certify (or declare) under penalty of perjury
under the laws of the State of Washington that the
foregoing is true and correct to the best of my
knowledge.

DATED this 1st day of November, 2006 at Olympia,
WA.



James C. Powers/WSBA #12791
Senior Deputy Prosecuting Attorney