

Additional Ground #1

10-6-08

This is a brief summary statement in support of my first additional ground complaint regarding miscalculated points within the defendant's appellant's offender's score.

Point of issue... The day of sentencing I received a phone call from trial counsel at the Pierce County jail indicating that the prosecutor was offering a proposition although I had already been convicted of the robbery offense. Counsel indicated that the prosecutor wanted her to tell me if I would admit to two past felonies from Indiana, even though he did not have sufficient, and necessary information he needed to prove whether or not the priors washed, he would not have any objections to me receiving the low end of the sentence.

Obviously, I refused the offer. The prosecutor then requested of the judge to postpone my sentencing date for two weeks so that he could send for my rap sheet from "Indiana". Surprisingly, the judge objected to the two week request, but instead delayed sentencing until three or four days later. I am sure the prosecutor never received any new material information to support his claim of being awarded those two extra points which effected my offender's score, and of course sentence.

Although trial counsel disputed this issue, and included it within the initial appeal packet, it is something that should not be overlooked, and warrants reviewing, and correction through reversal.

Sincerely
Daniel D. Anderson

303031

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON

IN AND FOR THE COUNTY OF PIERCE

STATE OF WASHINGTON,

Plaintiff,)

NO. 07-1-04364-2

vs.)

DANIEL D. ANDERSON,

) MOTION FOR MODIFICATION
) OF SENTENCING
Defendant.)

IDENTITY OF MOVING PARTY

I, Daniel D. Anderson, Comes now before this court as the moving party in the above cause no. under guarantee of the United States Constitution provisional right to both freedoms of speech and press under the first Amendment and under penalty of perjury under the law of the State of Washington certify that I am the moving party, stating the foregoing is true and correct.

Reason For Motion

- 1. The above defendant, Daniel D. Anderson, moves this court to modify his sentence per the following
 - a.) The Court erred by miscalculating the above defendant's offender score with an offender score of 3 points.
 - b.) The Court as the trier of fact had no evidence to support its finding pursuant to evidence rule 201 (ER 201) from the state prosecution to show cause to calculate the defendant's offender score at 3 points because the only evidence the state could provide the court only showed cause to calculate the defendant's offender score to only 1 point.
 - c.) Due to the Court's error miscalculating the defendant's offender score the defendant's right to Due-Process to both State and Federal Constitutions have been violated and has affected the defendant to be unlawfully restrained to serving more time than he should under statute of law pursuant RCW 9A.02.020.

The above said forth reasons are grounds for modification of the defendant's sentence. Furthermore, the court can base the facts by the Court Clerk's records of the Pierce Counties Courthouse and asks the clerk of this court to set a date to be heard.

Dated on this Date of Oct. 2, 2008.

Respectfully Submitted,
Daniel D. Anderson 302037-1

Additional Ground #2

10-6-08

This is a brief summary statement in support of my second additional ground complaint regarding robbery conviction should not be based upon force used to escape after peaceably-taken property was abandoned.

Point of issue... Under Chapter 9A.56 R.C.W., a robbery requires the use or threatened use of force or fear to either obtain or retain property or to overcome resistance to the taking. The use of force or fear to effect an escape after peaceably-taken property is abandoned will not support a robbery conviction under chapter 9A.56 R.C.W.

As I have had time to review the R.C.W. of what constitutes robbery in the 1st degree, and its elements which must be proven, I certainly can not express upon you enough my sincerity of saying that I do not feel as though I met that criteria. The type of force I used, was the type of force described in the Johnson-V- State case in which the peaceably-taken items was clearly abandoned as they lay scattered on the sidewalk pavement outside of the front door entrance.

Although one of the state witnesses testified by indicating that the stores items fell out of my pockets later in the altercation as we all wrestled on the ground, I must challenge that outrageous theory by saying — In fact those items would have still been within my possession as Mr. Michael indicated,

then certainly the contents of the broken bottle of hot sauce, (not to mention the messy spill the eggs would have caused) would have without doubt been all over the clothes we were all wearing, but instead, those very items were located on the sidewalk by the front door entrance as I indicated, and as "officer Long" indicated in his report of noticing groceries items upon his arrival to the scene on the sidewalk, as we were all located in the parking lot which clearly shows that the stores items were long abandoned the moment I exited the store, and the altercation of wrestling occurred afterwards. I never tried to retain or obtain their property.

It should also be noted that "Karl E. Calhoun" phone NO. (253) 217-0943 — Ofc. # (253) 267-5411 whom was the initial investigating officer pointed out this very issue to me as he looked over the surveillance video tape of the incident with me. The surveillance tape revealed the items spattering on the ground outside on the sidewalk of the front door entrance. As it was argued at trial by my representing counsel, the minute the stores items left my possession "boom" there goes your robbery out the window. Obviously, the prosecutor argued against it by stating the law states any type of force used whether peacefully taken property is abandoned or not, it's considered robbery.

"I," however think differently because my actions were not those of a robber, but of someone who was scared, fearful, and trying to defend myself from being attacked as I was assaulted, and this case certainly warrants a reversal.

Sincerely
Daniel D. Anderson

This is the cite

121 P.3d 91

View Washington Reports version

Supreme Court of Washington.
STATE of Washington, Respondent,

v.

Richard Stephen JOHNSON, Jr., Petitioner.
No. 76528-6.

Considered Oct. 6, 2005.

Decided Oct. 13, 2005.

Background: Defendant was convicted in a bench trial in the Superior Court, Spokane County, Jerome J. Leveque, J., of first degree robbery. Defendant appealed, and the Court of Appeals affirmed the conviction. Defendant petitioned for review.

Holding: The Supreme Court held that robbery conviction could not be based upon force used to escape after peaceably-taken property was abandoned.

Conviction reversed.

West Headnotes

[1]  KeyCite Notes

342 Robbery

342k6 k. Force. Most Cited Cases

Robbery conviction could not be based upon force used to escape after peaceably-taken property was abandoned; force had to relate to the taking or retention of property, and in defendant's case, he had already abandoned a shopping cart containing stolen merchandise when he punched a security guard outside store in attempt to escape. West's RCWA 9A.56.190.

[2]  KeyCite Notes

342 Robbery

342k1 k. Nature and Elements in General. Most Cited Cases

A person commits robbery by unlawfully taking personal property from another against his or her will by the use or threatened use of force to take or retain the property. West's RCWA 9A.56.190.

*91 Daniel Herbert Bigelow, Attorney at Law, Cathlamet, for Petitioner/Appellant.

Spokane County Prosecutor's Office, Kevin Michael Korsmo, Spokane, for Appellee/Respondent.

En Banc.

PER CURIAM.

[1]  ¶ 1 We consider whether a robbery conviction can be based upon force used to escape after peaceably-taken property has been abandoned. Concluding that the force must be used to obtain or retain property, or to prevent or overcome resistance to the taking, we reverse Richard **Johnson's** first degree **robbery** conviction.

¶ 2 **Johnson** walked into Wal-Mart, loaded a \$179 television-video cassette recorder combo into a shopping cart, removed the security tag, and pushed the cart out the front door. Two security guards observed him, followed him into the parking lot, and confronted him. Johnson abandoned the shopping cart and started to run away, but suddenly turned back. One of the guards *92 grabbed

Johnson's arm. Johnson punched the guard in the nose and ran away. The guards were unable to catch him, but a police officer positioned his car in **Johnson's** path and arrested him.

¶ 3 The State charged **Johnson** with first degree robbery. Following a bench trial, the superior court found **Johnson** guilty as charged. The court entered findings of fact stating that Johnson walked away from the shopping cart and was attempting to escape the guards when he punched one of them in the nose, causing bleeding. In its conclusions of law, the court said that Washington has adopted the transactional view of robbery: "[t]herefore, even though the Defendant did not use force to obtain or retain property, he used force in an attempt to escape and inflicted bodily harm." Clerk's Papers at 73.

¶ 4 Johnson appealed, arguing the evidence was insufficient to support his conviction because he did not use force to obtain or retain property, but rather used force while attempting to escape after abandoning the property. The Court of Appeals affirmed his conviction, concluding robbery includes the use of force while attempting to escape or resist apprehension following a theft. We disagree with the Court of Appeals attempt to broaden the transactional view of robbery beyond the statutory elements of the crime.



[2] ¶ 5 A person commits robbery by unlawfully taking personal property from another against his will by the use or threatened use of force to take or retain the property. "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." RCW 9A.56.190 (emphasis added). And a person commits first degree robbery if during the commission of a robbery, or in flight therefrom, the person inflicts bodily injury. RCW 9A.56.200(1)(a)(iii).

¶ 6 This court in State v. Handburgh, 119 Wash.2d 284, 830 P.2d 641 (1992), rejected the common law view of robbery that the force used during a robbery must be contemporaneous with the taking and found the modern transactional view properly reflected Washington's robbery statute. In Handburgh, the defendant took a girl's bicycle while she was in a recreation center. When the girl saw the defendant riding her bicycle, she demanded he return it and a fistfight ensued. This court affirmed the defendant's robbery conviction, holding that the plain language of the robbery statute says the taking can take place outside the presence of the victim, and the necessary force to constitute robbery can be found in the forceful retention of stolen property that was peaceably taken. The transactional view of robbery as defined in Washington's robbery statute requires that the force be used to either obtain or retain property or to overcome resistance to the taking.

¶ 7 The trial court's unchallenged findings of fact state that Johnson was trying to escape when he punched the security guard in the nose. And the trial court concluded that even though Johnson did not use force to obtain or retain the property, he was guilty of the crime because the transactional view of robbery includes force used during an escape. But as noted above, the force must relate to the taking or retention of the property, either as force used directly in the taking or retention or as force used to prevent or overcome resistance "to the taking." Johnson was not attempting to retain the property when he punched the guard but was attempting to escape after abandoning it.

¶ 8 We reverse **Johnson's robbery** conviction.

Wash., 2005.

State v. **Johnson**

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STATEMENT OF ADDITIONAL
GROUNDS FOR REVIEW

STATE OF WASHINGTON
BY _____
DEPUTY

STATE OF WASHINGTON

Respondent,

No. 37325-4-II

v.

STATEMENT OF ADDITIONAL
GROUNDS FOR REVIEW

DANIEL D. ANDERSON
(your name)

Appellant

I, DANIEL D. ANDERSON, 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 3.

Pursuant to "Title 10 R.C.W. Criminal Procedure"
10.73.040 Bail pending appeal. I am requesting a
review over reason as to why I was denied an appeal bond
within the Superior Court. I am seeking consideration on
review on that issue, and requesting to be set on bail
pending appeal.

SEE Attached...

Additional Ground 4.

Although I may lack knowledge of how Washington
orchestrates all of its laws. Regarding to the Self-defense.
I want it to be noted that the judge did allow trial counsel
to use self-defense on my behalf. I want that to be also
known since it was not mentioned anywhere within my brief.

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

Date: 10-6-08

Signature: Daniel D. Anderson

Additional Ground # 3

10-6-08

This is a brief summary statement in support of my third additional ground complaint regarding "Bail pending appeal" pursuant to Title 10 R.C.W. - Criminal Procedure - 10.73.040.

Point of issue... In the late month of March, 2008 I was contacted by trial counsel while at "Shelton" indicating that she had a scheduled court date set for April 4, 2008 for me to return to Pierce County in regards to my request for an Appeal bond. Seemingly that motion was denied. However, In contrast to R.C.W Title 10: Criminal Procedure 10.73.040 It states — In all criminal actions, except capital cases in which the proof of guilt is clear or the presumption great, upon an appeal being taken from a judgment of conviction, the court in which the judgment was rendered, or a judge thereof, must, by an order entered in the Journal or filed with the Clerk, fix and determine the amount of bail to be required of the appellant;

In question, I am seeking information as to why this does not apply to me or is it something that could be considered within the additional ground reviewing process of my appeal.

Sincerely
Daniel D. Anderson 302037