

COURT OF APPEALS  
FOR DIVISION TWO  
OF THE STATE OF WASHINGTON

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6 William Harsh, ) Case No. 44085-7-II  
7 Appellant, )  
8 v. )  
9 State of Washington, ) **STATEMENT OF**  
10 Respondent. ) **ADDITIONAL GROUNDS**  
11 ) (Pursuant to:  
12 ) R.A.P. 10.10)  
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I. IDENTITY OF APPELLANT:

Comes now William Harsh, the Appellant, who respectfully submitting to the Division Two of the Washington Court of Appeals this Statement of Additional Grounds as allowed by the Washington Rules of Appellate Procedure (RAP 10.10).

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1 jurisprudence has consistently set forth the requirement  
2 of specific conformance with the familiar formula of  
3 the crime as opposed to a crime.

4 Following the defense counsel's recital of Washington  
5 definition the State's Ms. Kelley proposes a less specific  
6 and more confused recital of Washington decisional  
7 definitions:

8 It is an unanswered question in this state whether  
9 "the crime" means the very specific crime or  
10 whether it means the general category of crime,  
11 ie, theft or theft of a firearm.

12 RP 302 (line 14-17).

13 Defendant Harsh is specifically charge with  
14 accomplice liability to the offense of theft of a firearm.  
15 The language of RCW 9A.08.020 is specific as to the crime  
16 and not a broader, more "general category" that sweeps  
17 up liability through any crime. In State v. Roberts,  
18 that Court laid out that an accomplice is not subject  
19 to strict liability for any crime committed by the  
20 principal, thus instructing jury that a person is legally  
21 accountable when he is "an accomplice of such other person  
22 in the commission of a crime" is improper. State v.  
23 Roberts, 142 Wash.2d 471, 509-13 (2000).

24 Due process in situations similar to this one resides  
25 in specific assignment of liability.



1 as to the jury instruction with:

2 I think with that construction of the accomplice  
3 liability law, that there is facts from which  
4 a reasonable jurors could find that Mr. Harsh  
is guilty as charged of the theft of a firearm  
as an accomplice to Mr. Demmon.

5  
6 RP 316-317 (line 24-3).

7 Following the need for specific, rather than general,  
8 construction of RCW 9A.08.020's liability, Division TWO's  
9 State v. Embry said:

10 Mere presence during and assent to a crime is  
11 insufficient to show accomplice liability. State  
12 v. McDaniel, 155 Wash. App. 829, 863, 230 P.3d  
245, review denied, 169 Wash.2d 1027, 241 P.3d  
413 (2010).

13 State v. Embry, 171 Wash. App. 714, 287 P.3d 648 (Div.  
14 TWO: 10/30/2012).

15 The federal court in Sarausad v. Waddington makes  
16 the same definition:

17 Under the Supreme Court's reading of Washington's  
18 accomplice liability statute and the paralleling  
19 jury instruction, the jury found that Sarausad  
20 knowing facilitated a murder, not some other  
21 crime.

22 Sarausad v. Waddington, 446 Fed. Appx. 19 [No. 10-35226]  
23 (9th Cir. 2011).

24 The crime that Mr. Harsh admittedly aided is a crime  
25 of burglary, not the crime of theft of a firearm.

1 Defendant, as admitted and accepted by the State and  
2 Trial Court both, had set firm and unyielding opposition  
3 to any such theft of a firearm. An opposition that was  
4 agreed to by the other party (Mr. Demmon). Thus a  
5 contract was formed between the parties, which defendant  
6 Harsh clearly relied upon in full knowledge that no  
7 firearms would be taken. This established that the  
8 defendant had no knowledge of a theft of a firearm and  
9 can not be held liable as a knowledgeable aider or  
10 abettor of the crime of accomplice to theft of a firearm.

11 To illustrate the error of the Court and State's  
12 construction a hypothetical example might be to examine  
13 the liability of:

14 Two acquaintances, John and Mike, are leaving  
15 a party. Mike's car won't start. John is driving  
16 his car without insurance and because he has  
17 agreed to not drink Mike accepts an offer to  
18 give him a ride to his home. Mike though, knows  
19 that John has had a drinking problem in the past  
20 resulting in previous DUIs. Because of this  
21 history Mike firmly makes clear that John is  
22 not to drink and drive while Mike is in the car  
23 with him. They stopped for gas and Mike uses  
24 the bathroom. While he is away from the car,  
25 John steals several gulps of vodka from a bottle  
26 he has concealed beneath the driver's seat.  
They are in a wreck with another automobile that  
results in a serious injury.

22 Would Mike be liable? Would his knowledge of John's  
23 past history make Mike liable for the accomplice liability  
24

1 of John's conduct.

2 Yet, this is exactly the construction applied to  
3 defendant Harsh by both the Court and State. That his  
4 'knowledge' of Mr. Demmon's past 'propensity' for firearm  
5 theft would override Defendant Harsh's lack of  
6 knowledge--stated and contracted opposition! to--any  
7 actual theft of a firearm wherever defendant Harsh was  
8 involved. The State and Court's construction conflicts  
9 with Washington definition that can be stated as 'an  
10 accomplice encourages or aids another person in committing  
11 the crime, ie, theft of a firearm. Defendant Harsh's  
12 actions are anything but in aid of firearm theft. He  
13 in fact acted in opposition to theft of firearms.

14 The Court's analysis fell short of a complete  
15 examination of the accomplice liability statute as applied  
16 to the facts of this case of Mr. Harsh then before it.  
17 The result of the Court's failure denied defendant Harsh's  
18 opportunity to argue a defense against the accomplice  
19 to theft of a firearm in Count 8.

20 There was no discussion of the complete liability  
21 statute. Particularly to RCW 9A.08.020(5)(b)'s language.

22 Just as in the example above, Defendant Harsh  
23  
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1 "otherwise makes a good faith effort to prevent the  
2 commission of the crime". RCW 9A.08.020(5)(b). The  
3 crime being theft of firearms.

4 Admittedly, it seems eerie to call defendant's firmly  
5 stated opposition and secured agreement with Mr. Demmon  
6 a 'good faith effort to prevent the commission of the  
7 crime" of theft of a firearm. But isn't that just what  
8 it was. The Court and State's searching efforts  
9 established defendant Harsh's unwavering aversion to  
10 firearm involvement and both state on the record they  
11 accept his contention. His knowledge of the burglaries  
12 then are that no firearms were stolen and that none would  
13 be stolen. That was the agreement and defendant Harsh  
14 reasonably relied upon that understanding, Mr. Demmon's  
15 past conduct notwithstanding.

16 **III. CONCLUSION:**

17 Defendant Harsh is improperly charged and convicted  
18 of accomplice to theft of a firearm.

19 The Court's construction did not encompass the entire  
20 RCW 9A.08.020's legislative intent and that shortfall  
21 prevented defendant Harsh's opportunity to present a  
22 'good faith' defense.

23 The Court of Appeals should vacate the conviction  
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1 for accomplice theft of a firearm. The conviction's  
2 sentence runs concurrent and it's vacation would not  
3 alter the time that appellant would serve. However,  
4 a felony record of theft of a firearm would have  
5 consequences in terms of any future federal interest  
6 in a felon's involvement with firearms and has other  
7 consequences both social and liability. In light of  
8 defendant's actual aversion to firearms it seems  
9 particularly out of step for the trial court to have  
10 determined that he had 'knowledge' to aid and abet Mr.  
11 Demmon in the crime of theft of a firearm.

12  
13 Respectfully Submitted this <sup>x</sup> 22 day of

14 July, 2013.

15  
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17   
18 William Harsh  
19 Clallam Bay Correction Center  
20 1830 Eagle Crest Way  
21 Clallam Bay, WA 98326

Declaration of Service by Mail  
GR 3.1

I, William Harsh, swear under penalty of perjury under the laws of the State of Washington that I have desposited the below listed documents as prepaid First Class Mail, into the Clallam Bay Correction Center's legal mail system. I further swear that these mailings are addressed to the below listed individuals.

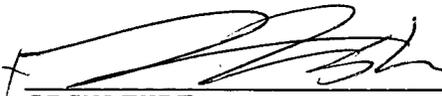
DOCUMENTS:

1. "Statement of Additional Grounds"
2. "Letter to the Clerk of the Court"
3. "Declaration of Service by Mail"

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 DEPUTY

ADDRESSED TO:

1. Lewis M. Schrawyer, Deputy Prosecuting Attorney,  
Clallam County Courthouse  
223 East Fourth Street, Suite 11  
Port Angeles, WA 98362-3015
2. Clerk of the Court  
for Division TWO of the Court of Appeals  
950 Broadway, Suite 300  
Tacoma, WA 98402-4454

 7-22-13  
 SIGNATURE DATE

William Harsh  
 PRINTED NAME

These documents were placed in the Clallam Bay Correction Center's Legal Mail System on the 22 day of July, 2013.

Date: July 18, 2013

TO: Clerk of the Court,  
Court of Appeals for Division TWO,  
950 Broadway, Suite 300  
Tacoma, WA 98402-4454

From: William Harsh,  
pro se Statement of Additional Grounds  
Clallam Bay Correction Center

RE: COA No. 44085-7-ii:  
Statement of Additional Grounds

Dear Court Clerk:

Please find enclosed the below listed documents:

1. Appellant's Statement of Additional Grounds (RAP 10.10);
2. Decalaration of Service by Mail
3. Letter to the Clerk of the Court

Thank you,



X William Harsh  
Clallam Bay Correction Center  
1830 Eagle Crest Way  
Clallam Bay, WA 98326

RECEIVED  
JUL 24 2013

CLERK OF COURT OF APPEALS DIV II  
STATE OF WASHINGTON