

No. 50275-5-II

COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION II

STATE OF WASHINGTON

V.

KIMBERLY PARENT

BRIEF OF APPELLANT

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A. Assignments of Error

Assignments of Error

Ms. Parent's right to be free from double jeopardy was violated by her dual convictions for second degree robbery and third degree theft.

Issues Pertaining to Assignments of Error

Should Ms. Parent's third degree theft conviction, who was also convicted of second degree robbery for the same incident, be vacated because it violates her right to be free from double jeopardy?

B. Statement of Facts

Kimberly Parent was charged by Information and convicted by a jury of second degree robbery and third degree theft. CP, 2. At sentencing the Court imposed 12 month plus 1 day for the second degree robbery and 364 days in jail with all 364 days suspended for the third degree theft. CP, 78. The court imposed legal financial obligations of \$500 victim assessment, \$200 filing fee, \$250 jury demand fee and \$100 DNA collection fee. CP, 81. A timely notice of appeal was filed. CP, 87. The court found her indigent and signed an order of indigency. CP, 94.

On December 6, 2015, Tyler Randt-Williams was working as a loss prevention officer at Winco. RP, 23. Around 4:00 he observed the defendant, Ms. Parent, enter the store and pick up a reusable bag. RP, 27. Mr. Randt-Williams followed Ms. Parent's movements by video. RP, 24.

He also contacted the assistant manager, Brett Mason, to assist. Mr. Randt-Williams was wearing plain clothes. RP, 29. Mr. Mason was wearing a dress shirt, store apron, and Winco name tag. RP, 45-46. Mr. Randt-Williams suspected she placed items in the bag that were not paid for. RP, 31.

As Ms. Parent was leaving the store, Mr. Randt-Williams contacted her and said, "Store security. Is there anything you didn't pay for?" RP, 30. Ms. Parent denied any theft and pushed him away. RP, 30. Mr. Randt-Williams tried to pull her into the store and she began to fight with him. During the fight, she bit his forearm. RP, 31. Inside the bag they found Winco items totaling about \$22 worth of merchandise. RP, 48, 63.

At trial, Ms. Parent testified she did not realize she had merchandise in the bag that was not paid for. RP, 90. When the Winco employees approached her, she did not recognize them as employees and believed she was defending herself when they grabbed her. RP, 93.

C. Argument

Double jeopardy may be raised for the first time on appeal. *State v. Ralph*, 175 Wn.App. 814, 308 P.3d 729 (2013). Double jeopardy prohibits multiple convictions for the same offense. The State may bring (and a jury may consider) multiple charges arising from the same criminal

conduct in a single proceeding. *State v Freeman*, 153 Wn 2d 765, 756, 108 P.3d 753 (2005). Courts may not, however, enter multiple convictions for the same offense without offending double jeopardy *Id.* Where a defendant's act supports charges under two criminal statutes, a court weighing a double jeopardy challenge must determine whether, in light of legislative intent, the charged crimes constitute the same offense. *Id.*

Absent clear legislative intent to the contrary, two convictions constitute double jeopardy when the evidence required to support a conviction for one charge is also sufficient to support a conviction for the other charge, even if the more serious charge has additional elements. *Ralph* at 823. In *Ralph*, the Court considered two offenses that appear to have different elements: second degree robbery and second degree taking a motor vehicle without owner's permission (TMVWOP). The facts were, while trying to steal a car, the defendant punched the owner. The court noted that each offense contains an element that the other does not. Robbery requires the use of force while TMVWOP does not and TMVWOP requires the property being stolen be a motor vehicle. Nevertheless, the Court concluded under the facts of that case, the TMVWOP charge was the "functional equivalent of a lesser included

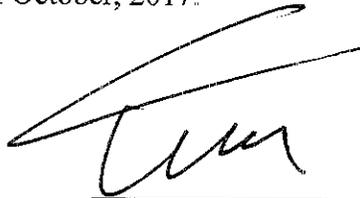
offense” of second degree robbery and violated double jeopardy. *Ralph* at 825.

In Ms. Parent’s case, she was convicted of two offenses, second degree robbery and third degree theft. Ms. Parent’s argument for double jeopardy is even stronger than the argument resolved in *Ralph*. In *Ralph*, the lesser offense was deemed to be the “functional equivalent of a lesser included offense.” In Ms. Parent’s case, third degree theft is an actual lesser included offense of second degree robbery. *State v. Farnsworth*, 184 Wn App. 305, 314, 348 P 3d 759 (2014), *reversed on other grounds*, 185 Wn.2d 768 (2015). Count 2 of the Information must be dismissed.

D. Conclusion

This court should dismiss count 2.

DATED this 4th day of October, 2017.



Thomas E. Weaver, WSBA #22488
Attorney for Defendant/Appellant

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

STATE OF WASHINGTON,) Court of Appeals No.: 50275-5-II
Respondent,)
vs.) DECLARATION OF SERVICE
KIMBERLY PARENT,)
Appellant.)

STATE OF WASHINGTON)
COUNTY OF KITSAP)

I, Alisha Freeman, declare that I am at least 18 years of age and not a party to this action.

On October 4, 2017, I e-filed the original Brief of Appellant in the above-captioned case with the Washington State Court of Appeals, Division Two; and designated a copy of said document to be sent to the Appeals Department of the Cowlitz County Prosecuting Attorney's Office via email to: appeals@co.cowlitz.wa.us through the Court of Appeals transmittal system.

On October 4, 2017, I deposited into the U.S. Mail, first class, postage prepaid, a true and correct copy of the Brief of Appellant to the defendant:

Kimberly Parent
32665 Danny Street
Scappoose, OR 97056

///
///

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

3
4 DATED: October 4, 2017, at Bremerton, Washington.

5 
6 _____
7 Alisha Freeman

THE LAW OFFICE OF THOMAS E. WEAVER

October 04, 2017 - 3:59 PM

Transmittal Information

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