

FILED
Court of Appeals
Division II
State of Washington
4/24/2019 8:00 AM

NO. 52345-1-II

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION TWO

STATE OF WASHINGTON

Respondent,

v.

SATNAM SINGH RANDHAWA

Appellant.

ON APPEAL FROM THE SUPERIOR COURT OF THE STATE OF
WASHINGTON FOR PIERCE COUNTY

APPELLANT'S OPENING BRIEF

Robert S. Huff
Attorney for Appellant

LAW OFFICE OF ROBERT S. HUFF
13401 BEL RED ROAD SUITE B5
BELLEVUE, WA 98005
(425) 283-0394

TABLE OF CONTENTS

A. SUMMARY OF ARGUMENT.....1

B. ASSIGNMENTS OF ERROR.....1

C. ISSUES PERTAINING TO ASSIGNMENTS OF ERROR.....1

D. STATEMENT OF THE CASE.....2

E. ARGUMENT.....4

1. A presumption of vindictiveness arose when the State refiled charges against Randhawa just two days after he posted an appellate bond for his release from prison in an unrelated case.....4

2. The trial court erred in not requiring the State to set forth an objective justification at a separate evidentiary hearing for the refiling of charges against Randhawa immediately after he posted an appellate bond in an unrelated case.....5

F. CONCLUSION.....6

TABLE OF AUTHORITIES

Washington Supreme Court Cases

State v. Korum, 157 Wn.2d 614, 141 P.3d 13 (2006).....4

A. SUMMARY OF ARGUMENT

The trial court should have granted Satnam Randhawa's motion to dismiss for prosecutorial vindictiveness. A presumption of vindictiveness arose when the State immediately refiled assault-related charges against Randhawa after Randhawa posted an appellate bond for his release in an unrelated case on which Randhawa was serving a prison sentence.¹

B. ASSIGNMENTS OF ERROR

1. The trial court erred in denying Randhawa's motion to dismiss for prosecutorial vindictiveness.

2. The trial court erred in not requiring the State to set forth an objective justification at a separate evidentiary hearing for the immediate refile of assault-related charges against Randhawa after he posted an appellate bond for his release in an unrelated case on which Randhawa was serving a prison sentence.

C. ISSUES PERTAINING TO ASSIGNMENTS OF ERROR

1. The State had dismissed charges of assault in the second degree and felony violation of a domestic violence protection order against Randhawa on November 20, 2017. Randhawa received a prison sentence in an unrelated case on

¹ The unrelated case referenced in this opening brief is pending with Division II of the Court of Appeals under Case No. 51997-6-II.

February 23, 2018. Randhawa posted a \$500,000 appellate bond for his release in the unrelated case on March 21, 2018. The State then refiled the same assault and violation of a court order charges that it had dismissed months earlier on March 23, 2018. Did the State's refiling of the assault and violation of a court order charges immediately following Randhawa's posting of an appellate bond in an unrelated case create a presumption of prosecutorial vindictiveness?

2. The parties litigated the issue of prosecutorial vindictiveness at oral argument on May 30, 2018. The trial court denied Randhawa's motion to dismiss for prosecutorial vindictiveness. Did the trial court err in not requiring the State to set forth an objective justification at a separate evidentiary hearing for the refiling of charges days after Randhawa posted an appellate bond?

D. STATEMENT OF THE CASE

On February 21, 2017, the State charged Randhawa with one count of assault in the second degree and one count of felony violation of a domestic violence protection order. CP 1-2. On November 20, 2017, the Pierce County Superior Court granted the State's motion to dismiss the assault and violation of a protection order charges without prejudice. CP 5-6. On February 23, 2018, Randhawa received a prison sentence in an unrelated case. On March 21, 2018, Randhawa posted a \$500,000 appellate bond to secure his release from custody

during the pendency of his appeal in the unrelated case. On March 23, 2018, the State refiled the assault charges refiled the same assault and violation of a court order charges that it had dismissed months earlier.

On May 30, 2018, during oral argument, Randhawa argued that the State's refiling of charges just days after he posted an appellate bond for his release in an unrelated case constituted prosecutorial vindictiveness. RP 18-20, 39-43. The trial court made the following comments regarding the timing of the State's refiling of charges against Randhawa:

THE COURT: Mr. Chan draws the Court's attention to the timing, that shortly after Judge Martin granted an appellate bond that was posted of \$600,000, I think, then two days later these new charges were filed. I mean doesn't that smell bad?..... But I do point out, as Mr. Chan notes, the timing is unusual.

RP 21-23.

The trial court still nonetheless denied Randhawa's motion to dismiss for prosecutorial vindictiveness. RP 44.

E. ARGUMENT

1. A presumption of vindictiveness arose when the State refiled charges against Randhawa just two days after he posted an appellate bond for his release from prison in an unrelated case.

Due process prohibits prosecutorial vindictiveness. *State v. Korum*, 157 Wn.2d 614, 627, 141 P.3d 13 (2006). A prosecutor's charging decision is vindictive if the prosecutor made the decision to punish a defendant for invoking a legally protected right. *Id.* A presumption of vindictiveness arises when a defendant can prove that the circumstances support a reasonable likelihood of vindictiveness. *Id.* After a defendant has established a presumption of vindictiveness, the burden then shifts to the prosecutor to set forth an objective justification for the charging decision. *Id.*

Circumstances that support a reasonable likelihood of vindictiveness are clear given the State's decision to refile charges against Randhawa just two days after he posted an appellate bond for his release in an unrelated case. The trial court correctly wondered whether the circumstances behind the refiling of charges against Randhawa "smell bad" and properly characterized the timing of the refiling of charges against Randhawa as "unusual." An outside observer could easily conclude that the State refiled charges against Randhawa because he managed to post an appellate bond in an unrelated case to secure his freedom during the

pendency of his appeal in the unrelated case. The underlying purpose for the refiling of charges was to deprive Randhawa of his liberty.

2. The trial court erred in not requiring the State to set forth an objective justification at a separate evidentiary hearing for the refiling of charges against Randhawa immediately after he posted an appellate bond in an unrelated case.

Randhawa clearly established a presumption of vindictiveness, which should have then shifted the burden to the State to provide the Court with an objective justification for the refiling of charges. At oral argument on May 30, 2018, the trial court questioned the State regarding the timing of the refiling of charges against Randhawa, but did not schedule a separate evidentiary hearing that would have required the State to provide its reasoning for refiling charges just two days after Randhawa posted an appellate bond in an unrelated case.

/

/

/

/

/

/

/

/

F. CONCLUSION

The Court of Appeals should reverse the denial of Randhawa's motion to dismiss for prosecutorial vindictiveness and the matter should be remanded to the trial court for proceedings consistent with the reversal.

DATED this 24rd day of April, 2019.

Respectfully submitted,

s/ Robert S. Huff
Robert Huff, WSBA #20507
Law Office of Robert S. Huff
13401 Bel Red Road Suite B5
Bellevue, WA 98005
T: (425) 283-0394
F: (425) 283-0353
BOB@HUFFLAW.NET

**IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION TWO**

STATE OF WASHINGTON,)	
)	
Respondent,)	No. 52345-1-II
)	
v.)	
)	
SATNAM SINGH RANDHAWA,)	
)	
Appellant.)	
)	

DECLARATION OF DOCUMENT FILING AND SERVICE

I, ROBERT S. HUFF, STATE THAT ON THE 24th DAY OF APRIL, 2019, I CAUSED THE ORIGINAL **OPENING BRIEF OF APPELLANT** TO BE FILED IN THE **COURT OF APPEALS - DIVISION TWO** AND A TRUE COPY OF THE SAME TO BE SERVED ON THE FOLLOWING IN THE MANNER INDICATED BELOW:

[x] MICHELLE HYER	()	U.S. MAIL
[PCpatcecf@co.pierce.wa.us]	()	HAND DELIVERY
PIERCE COUNTY PROSECUTOR	(X)	E-SERVICE VIA
930 TACOMA AVE S RM 946		COA PORTAL
TACOMA, WA 98402-2171		

[x] SATNAM SINGH RANDHAWA	(X)	U.S. MAIL
DOC #404780	()	HAND DELIVERY
WASHINGTON STATE PENITENTIARY	()	E-SERVICE VIA
1313 NORTH 13TH AVENUE		COA PORTAL
WALLA WALLA, WA 99362		

SIGNED IN BELLEVUE, WASHINGTON THIS 24TH DAY OF APRIL, 2019.

X 

LAW OFFICE OF ROBERT S. HUFF

April 23, 2019 - 8:01 PM

Transmittal Information

Filed with Court: Court of Appeals Division II
Appellate Court Case Number: 52345-1
Appellate Court Case Title: State of Washington, Respondent v. Satnam S. Randhawa, Appellant
Superior Court Case Number: 17-1-00759-7

The following documents have been uploaded:

- 523451_Briefs_20190423195824D2016663_8181.pdf
This File Contains:
Briefs - Appellants
The Original File Name was randhawa.satnam.opening brief2.pdf

A copy of the uploaded files will be sent to:

- mlhyer@hotmail.com

Comments:

Sender Name: Robert Huff - Email: bob@hufflaw.net
Address:
13401 BEL RED RD STE B5
BELLEVUE, WA, 98005-2322
Phone: 425-283-0394

Note: The Filing Id is 20190423195824D2016663