

FILED
Court of Appeals
Division II
State of Washington
7/22/2020 4:39 PM

No. 53753-2-II

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

STATE OF WASHINGTON,

Respondent,

v.

ALPHONSO CURTIS BROWNLEE,

Appellant.

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

REPLY BRIEF OF APPELLANT

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A. ARGUMENT

The State failed to prove by clear, cogent, and convincing evidence Mr. Brownlee committed a wrongful act with the specific intent of preventing Ms. White’s testimony.

The State apparently concedes many of the out-of-court statements admitted by the trial court were testimonial. Brief of Respondent at 10. The State also failed to address whether the admission of the statements was harmless, thus apparently conceding that issue as well. This Court should accept these concessions.

The State fails to show what wrongful act Mr. Brownlee committed that caused Ms. Eckles and Ms. Smith not to testify. Application of the doctrine “requires a finding that (1) the defendant engaged in wrongdoing; (2) the wrongdoing was intended to render the absent witness unavailable at trial; and (3) the wrongdoing did, in fact, render the witness unavailable at trial.” *State v. Tyler*, 138 Wn.App. 120, 128, 155 P.3d 1002 (2007). The forfeiture by wrongdoing exception is applicable only if the defendant’s wrongful act was designed to prevent the witness from testifying. *Giles v. California*, 554 U.S. 353, 359-60, 128 S. Ct. 2678, 171 L.Ed.2d 488 (2008); *State v. Fallentine*, 149 Wn.App. 614, 620 n. 13, 215 P.3d 945, *review denied*, 166 Wn.2d 1028 (2009).

Further, it is important to note that the State presented no evidence that Mr. Brownlee ever contacted Ms. White and instructed her not to testify. Further, the majority of the phone calls by Mr. Brownlee involved him noting that Ms. Eckles and Ms. White did not have to appear in court, but he did not tell them not to appear.

The State failed to carry its burden of proving by clear, cogent, and convincing evidence Mr. Brownlee committed a wrongful act and the court erred in finding Ms. Eckles's and Ms. White's statements were admissible under the forfeiture by wrongdoing doctrine. This Court should reverse Mr. Brownlee's convictions.

B. CONCLUSION

For the reasons stated in this reply brief as well as the previously filed Brief of Appellant, Mr. Brownlee asks this Court to reverse his convictions and remand for a new trial.

DATED this 22nd of July 2020.

Respectfully submitted,

s/Thomas M. Kummerow

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

| | | |
|----------------------|---|----------------|
| STATE OF WASHINGTON, |) | |
| |) | |
| Respondent, |) | |
| |) | NO. 53753-2-II |
| v. |) | |
| |) | |
| ALPHONSO BROWNLEE, |) | |
| |) | |
| Appellant. |) | |

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