FILED

APR 20, 2012
Court of Appeals
Division III
State of Washington

No. 30464-7-III

COURT OF APPEALS, DIVISION THREE
OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,
Respondent

vs.

JONATHAN R. CRISLER
Appellant

BRIEF OF APPELLANT

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I. INTRODUCTION

The Appellant, Jonathan Crisler, at nineteen years old, was living with his parents in Spokane, Washington. He had no criminal history, but was recently unemployed and addicted to Oxycontin. Between March 17-19, 2011, Crisler and several friends engaged in five separate purse snatchings. For almost all of the incidents, either Crisler or a friend would run up behind a woman, quickly grab or attempt to grab the woman's purse before she had time to react or offer resistance, and then immediately run away to a waiting car. Crisler was charged in Spokane County Superior Court with multiple counts of second degree robbery or attempted second degree robbery, and one count of first degree robbery.

At trial, Crisler did not deny his guilt or involvement in the purse snatchings. The defense's theory of the case was that Crisler's quick snatchings constituted first degree theft rather than the more serious crime of second degree robbery. To support and assist in arguing this theory of the case, Crisler requested a jury instruction, which would have permitted the jury to find in a given incident that, although Crisler snatched or suddenly took a victim's purse, he did not do so with the requisite force to support a finding

of second degree robbery. The trial court refused to give such an instruction. Crisler's proposed jury instruction was a correct statement of the law, was supported by the evidence presented at trial, and would have allowed the defense to more effectively and credibly argue its theory of the case to the jury. Accordingly, the trial court's refusal to give the requested instruction was reversible error, and Crisler's convictions for second degree robbery and attempted second degree robbery on Counts 1, 3, and 5 ought to be reversed and his case remanded for a new trial.

II. ASSIGNMENTS OF ERROR

1. The trial court erred in refusing to give Crisler's requested jury instruction on "snatching" that was taken from State v. Austin, 60 Wn.2d 227, 232-33, 373 P.2d 137 (1962). RP 478.

2. The trial court erred in failing to find that the requested jury instruction on "snatching" was a correct statement of the law. RP 479.

3. The trial court erred in finding that the evidence presented at trial did not factually support giving Crisler's proposed jury instruction on "snatching." RP 478.

III. ISSUE PERTAINING TO ASSIGMENTS OF ERROR

1. Whether the trial court erred in refusing to give Crisler's requested jury instruction on "snatching" when:

(a) The evidence at trial showed that Crisler or an accomplice took purses from the persons of five different women;

(b) During each of these takings, except on Count 2, Crisler approached the women quickly and without their prior knowledge, grabbed or attempted to grab the purse before the woman realized what was happening, and then immediately ran away;

(c) There was evidence at trial that showed, at least as to Counts 1, 3, and 5, the victims did not resist or struggle with Crisler, and were not injured in the encounter;

(d) Crisler's theory of the case was that, although he snatched or suddenly took the purses, he did not do so with force; and

(e) The jury submitted an inquiry as to the definition of "force" during its deliberations.

(Assignments of Error 1, 2, and 3).

IV. STATEMENT OF THE CASE

The Appellant, Jonathan Crisler, was born and raised in Spokane, Washington. RP 388. In the spring of 2011, Crisler was nineteen-years-old, barely a year out of Shadle Park High School,

and living with his parents. RP 389, 390. He had no criminal history. CP 270. Crisler and several friends from school, Jakob VanDyke, Isaac Murphy, and Andre Murray, still hung out together. RP 389-90. They often used Oxycodone or Oxycontin, also referred to as "oxies." RP 392. 394. Crisler believed that he was addicted to the drug; he would experience symptoms of withdrawal, such as feeling achy or not feeling good in his own skin. RP 394-95.

In March 2011, Crisler was unemployed and without any source of income. RP 391. One day, he and Murphy discussed a plan to get access to money and more Oxycontin—taking purses from women. RP 393, 397.

March 17, 2011

On March 17, 2011, while Murphy waited in the car, Crisler ran up behind seventy-one-year-old Nina Syropyatova, grabbed her purse, and ran back to the car. RP 134-35. Syropyatova described the experience: "It was from the back. I didn't even hear [...] It was so quick." RP 134. She testified at trial that he may have "snatched it really strongly or maybe I just got so frightened, so scared when someone just tore at it." RP 135.

Later that same day, eighty-one-year-old Alice MacKay drove home from the grocery store and parked in her driveway. RP 150-52. Murphy approached her, asked to use her cell phone, and then grabbed her purse and ran to the car where Crisler was waiting to drive away. RP 153. MacKay testified that Murphy pulled the purse out of her hand—"It was just so fast [...]" RP 154.

March 18, 2011

On March 18, 2011, eighty-one-year-old Genevieve Voss was in the parking lot of Fred Meyer. RP 171. She felt a "swishing" on her side, looked down, and saw Crisler's hand attempting to grab the handles of her purse. RP 173-74. Voss screamed and grabbed her purse. RP 173-74. Voss testified that no struggle occurred for the purse, and Crisler immediately ran away when Voss saw his hand. RP 176.

Later that same day, eighty-seven-year-old Pearl Graham returned home from the grocery store. RP 201, 207. As Graham was removing her groceries from the trunk, Crisler grabbed her purse out of her hand. RP 203. Graham testified that she was either pushed or she fell into the trunk of the car. RP 203.

March 19, 2011

On March 19, 2011, eighty-nine-year-old Mildred Stoesser was returning home from the grocery store. RP 230, 270. She was carrying her purse on her left shoulder, when Crisler grabbed her purse and ran to the car where Murray was waiting to drive away. RP 230. Shortly after this incident, Crisler and Murray were stopped and taken into custody by law enforcement. CP 1-3.

Crisler was charged in Spokane County Superior Court by Second Amended Information with one count for each of the five alleged victims: (1) Nina M. Syropyatova – aggravated second degree robbery, RCW 9.94A.535(3)(b); (2) Alice MacKay – aggravated Second Degree Robbery, RCW 9.94A.535(3)(b); (3) Genevieve Voss – attempted aggravated Second Degree Robbery, RCW 9.94A.535(3)(b); (4) Pearl A. Graham – aggravated First Degree Robbery, RCW 9.94A.535(3)(b); and (5) Mildred M. Stoesser – aggravated Second Degree Robbery, RCW 9.94A. 535(b)(b). CP 29-30.

A jury trial was held November 7-10, 2011. RP 103-591. Crisler, Murphy, and Murray all testified. The defense's theory of the case was the following: "we're basically going to trial over

whether or not these constitutes robberies or first-degree thefts."

RP 58. In opening statements, trial defense counsel told the jury,

> These are not nice things that Mr. Crisler did and we're not asking you to think about that or to consider that other than to look at the evidence and to consider whether or not he committed robberies, as alleged by the State, or as we expect you will be instructed that in the alternative, he committed thefts, thefts of the person rather than robberies. *And we'll ask you to actually find him guilty at the close of the case of the thefts in each instance.*

RP 121 (emphasis added).

In accordance with this theory of the case, defense counsel proposed the following jury instruction:

> If you find from the evidence that the defendant snatched or suddenly took property from the person of _____ and said snatching or sudden taking was accomplished without force or violence or the putting of _____ in fear of injury, you will return a verdict of Not Guilty as to the charge of Robbery in the _____ degree. (State v. Austin, 60 Wn.2d 227, 232-33, 373 P.2d 137 (1962)).

CP 167. The trial court refused to give the proffered instruction.

RP 408. The trial court did instruct on the lesser included offenses of theft in the first degree or attempted theft in the first degree on Counts 1, 2, 3, and 5. CP 183, 187, 192, 196.

Ultimately, the jury returned the following verdicts against Crisler: (1) Syropyatova – guilty of aggravated second degree robbery, CP 212, 214; (2) MacKay – guilty of the lesser included offense of aggravated first degree theft, RP 216, 217; (3) Voss – guilty of attempted aggravated second degree robbery, RP 218, 219; and (5) Stoesser – guilty of aggravated second degree robbery, RP 223, 225. As to Count 4, Graham, the jury was unable to reach a decision and a mistrial was declared. RP 563.

Following the trial, Crisler resolved Count 4 through a plea agreement with the State. CP 259-267. At sentencing on November 29, 2011, Crisler requested an exceptional sentence below the standard range. CP 232-34. The Court denied the request and sentenced Crisler, on Counts 1 and 5, to 38 months each—the middle of the standard range for second degree robbery—plus five months on the aggravated enhancement, for a total of 43 months—the top of the standard range for second degree robbery. RP 629-630. Crisler was sentenced to serve his time on all counts concurrently for total confinement of 43 months. CP 272.

Crisler now timely appeals his convictions on Counts 1, 3, and 5.

V. ARGUMENT

A. THE TRIAL COURT ERRED IN REFUSING TO GIVE CRISLER'S PROPOSED JURY INSTRUCTION ON "SNATCHING"

Appellate courts review a trial court's refusal to give a requested jury instruction de novo where the refusal is based on a ruling of law, and for abuse of discretion where the refusal is based on factual reasons. State v. Ponce 166 Wn. App. 409, 412, 269 P.3d 408 (2012) (citing to State v. White, 137 Wn. App. 227, 230, 152 P.3d 364 (2007)); State v. Douglas, 128 Wn. App. 555, 561, 116 P.3d 1012 (2005). Jury instructions are sufficient if substantial evidence supports them, they allow the parties to argue their theories of the case, and when read as a whole, they properly inform the jury of the applicable law. State v. Clausing, 147 Wn.2d 620, 626, 56 P.3d 550 (2002). It is reversible error to refuse to give a proposed instruction if the instruction properly states the law and the evidence supports it. State v. Ager, 128 Wn.2d 85, 93, 904 P.2d 715 (1995).

Under Washington statute, to convict a person of first degree theft, the State must prove beyond a reasonable doubt the following elements: (1) the defendant wrongfully took property from the

person of another; (2) the defendant intended to deprive the other person of that property; and (3) this act occurred in the State of Washington. See RCW 9A.56.030(1)(b).

First degree theft is a lesser included offense of second degree robbery, which has similar and additional elements: (1) the defendant unlawfully took personal property from the person of another; (2) the defendant intended to commit theft of property; (3) the taking was against that person's will by the defendant's use or threatened use of immediate force, violence, or fear of injury to that person; (4) that force or fear was used by the defendant to obtain or retain possession of the property or to prevent or overcome resistance to the taking; and (5) that any of these acts occurred in the State of Washington. RCW 9A.56.210. Washington statute also states that "the degree of force is immaterial." RCW 9A.56.190. For this crime, the legislature has established an offense which is dual in nature—a property crime and a crime against a person. State v. Tvedt, 153 Wn.2d 705, 107 P.3d 728 (2005).

a. The proposed jury instruction correctly stated the law

Crisler's proposed jury instruction correctly stated the law on second degree robbery. First, Crisler's proposed jury instruction was identical to the jury instruction proposed in State v. Austin, 60 Wn.2d 227, 373 P.2d, 137 (1962), which was approved by the Washington Supreme Court. The court in Austin held that the following jury instruction was "a correct statement of the law in regard to robbery":

> You are instructed that if you find from the evidence that the defendant snatched or suddenly took property from the person of George Day and said snatching or sudden taking was accomplished without force or violence or the putting said George Day in fear of injury, you will return a verdict of Not Guilty.

Id. at 232. This instruction is identical to that proposed by Crisler. Second, to find that Crisler committed second degree robbery beyond a reasonable doubt, the jury was required to find that Crisler took the property by using or threatening to use immediate force, violence or fear of injury. RCW 9A.56.210. Accordingly, it is a correct statement of the law to instruct the converse—*i.e.,* if the jury does not find that Crisler used or threatened to use force,

violence, or fear of injury, they cannot find that he committed second degree robbery.

Finally, it is not logically inconsistent to argue that a person could snatch or suddenly take property from another without using force. The "weight of authority supports the view that there is not sufficient force to constitute robbery when a thief snatches property from the owner's grasp so suddenly that the owner cannot offer any resistance to the taking." W. LAFAVE & A. SCOTT, CRIMINAL LAW § 8.11(d) at 781 (2nd ed.1986). In other words, no force is used to remove an item from someone's grasp if they are too surprised by the rapid action to offer resistance or react. To give an example on one end of the spectrum, if a pickpocket steals something from an unsuspecting person's pocket, he commits theft in the first degree, not robbery. State v. Netling, 46 Wn. App. 461, 465, 731 P.2d 11 (1987). On the other end of the spectrum, if a women's hand is extended, merely supporting the weight of her purse without actually grasping it, and a defendant quickly takes the purse from her hand before she can struggle or offer resistance, the defendant has not used force to wrest it from the woman.

b. The proposed jury instruction was supported by the evidence presented at trial

The evidence presented at trial supported giving the proposed jury instruction, because the jury could have found that, although Crisler snatched or suddenly took the purses, he did not use force in doing so.

The testimony presented by the victims in Counts 1 and 5 established that they did not offer resistance or in any way struggle with Crisler. The victim in Count 1, Syropyatova, testified that when Crisler took her purse he may have "snatched it really strongly" or may have "just tore at it." RP 135. She did not hear him coming, was completely surprised by the taking, and offered no resistance whatsoever. RP 134. She did not fall or receive any injuries. The victim in Count 5, Stoesser, did not testify at trial, as she died from unrelated causes prior to trial. CP 198. There was testimony, however, that Stoesser was carrying her purse on her left shoulder and Crisler took her purse. RP 230. There was no testimony at trial indicating that Stoesser was injured by the incident or that she resisted or struggled with Crisler for the purse. RP 426. Accordingly, there was evidence supporting the proposed jury

instruction that would have explained to the jury that it was permitted to find that, although Crisler snatched or suddenly took purses from Syropyatova and Stoesser, he did not use force in the takings.

Additionally, the jury was clearly confused as to what exactly constituted "force." During its deliberations, the jury submitted the following inquiry: "Is there a definition of the term "force" as it pertains to the crime of second degree robbery?" CP 211. Crisler's proposed jury instruction would have helped clarify the term "force" for the jury in relation to a snatching or sudden taking—*i.e.*, it would have explained to the jury that it could find that such actions do not necessarily constitute or include the use of force.

c. The proposed jury instruction would have allowed the defense to better argue its theory of the case

The defense's theory of the case was not to deny guilt, but to admit culpability only to first degree theft. The crux of the defense's theory of the case was that Crisler snatched and suddenly took property without using force. Crisler's proposed jury instruction would have allowed him to more effectively and credibly argue this theory of the case to the jury; the jury would have been instructed

that such takings do not necessarily include force. Without the instruction, the jury was left to speculate as to the definition of "force" and its scope. Consequently, defense counsel's closing statements to the jury regarding the use of force were not given the support and sanction of law that a jury instruction would have provided. The trial court's refusal to provide the jury instruction, which properly stated the law and was supported by the evidence, thereby hindered the defense's presentation of its theory of the case.

VI. CONCLUSION

Errors at the trial court level require that Crisler's convictions on Counts 1, 3, and 5 be reversed. The defense's theory of the case was not to deny guilt, but to admit guilt as to first degree theft as opposed to the more serious crime of second degree robbery. To support and aid in arguing this theory of the case, Crisler proposed a jury instruction on "snatching" identical to one that was previously deemed a correct statement of the law on robbery in State v. Austin, 60 Wn.2d 227, 232-33, 373 P.2d 137 (1962). Not only was the jury instruction a correct statement of the law, but also it was supported by the evidence presented at trial. The trial court

erred in refusing to give this instruction, and it was reversible error to do so.

Crisler therefore respectfully requests that this Court reverse his convictions as to Counts 1, 3, and 5 and remand his case to the trial court for a new trial.

Respectfully submitted this 20th day of April, 2012.

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CERTIFICATE OF MAILING

I certify that on April 20, 2012, I mailed a true and correct copy of the foregoing Brief of Appellant by depositing the same in the United States mail, postage prepaid, addressed as follows:

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