

FILED
AUG 29, 2014
Court of Appeals
Division III
State of Washington

NO. 31907-5-III

COURT OF APPEALS, DIVISION III
OF THE STATE OF WASHINGTON

THE STATE OF WASHINGTON, Respondent

v.

RICHARD CHARLES HARRIS, Appellant

APPEAL FROM THE SUPERIOR COURT
FOR BENTON COUNTY

NO. 11-1-00119-2

BRIEF OF RESPONDENT

ANDY MILLER
Prosecuting Attorney
for Benton County

Anita I. Petra, Deputy
Prosecuting Attorney
Bar No. 32535
OFC ID NO. 91004

7122 West Okanogan Place
Bldg. A
Kennewick WA 99336
(509) 735-3591

TABLE OF CONTENTS

TABLE OF AUTHORITIES.....ii

I. ISSUE..... 1

1. Whether the Judgment and Sentence properly imposes special costs in the amount of \$2,748.26...... 1

II. STATEMENT OF FACTS 1

III. ARGUMENT 3

IV. CONCLUSION..... 4

TABLE OF AUTHORITIES

WASHINGTON CASES

State v. Moten, 95 Wn. App. 927, 976 P.2d 1286 (1999)..... 4

I. ISSUE PRESENTED

- 1. Whether the Judgment and Sentence properly imposes special costs in the amount of \$2,748.26.**

II. STATEMENT OF FACTS

In September of 2000, Ms. Kristina Middleton entered into a romantic relationship with Mr. Richard Harris, the defendant. (RP 05/23/2013 at 1059). Ms. Middleton had three children from a prior relationship, D.M., M.C., and M.L.C. (RP 05/23/2013 at 1056). At some point, Mr. Harris began sexually abusing M.L.C. (RP 05/24/2013 at 1165-80). The defendant orally, vaginally, and anally raped M.L.C. repeatedly, over a period of years. (RP 05/24/2013 at 1165-80). M.L.C. was in kindergarten when the rape began. (RP 05/24/2013 at 1165). The vast majority of these rapes occurred in Granger, Washington, which is in Yakima County. (RP 05/24/2013 at 1165). They were observed by multiple of the other minor children in the home. (RP 05/20/2013 at 276-78). The only thing that stopped the rape was M.L.C.'s removal from the home. (RP 05/24/2013 at 1175). After being returned to her mother, M.L.C. was raped again by the defendant. (RP 05/24/2013 at 1178). At the time, Ms. Middleton was living in Richland, Washington. (RP 05/24/2013 at 1175). After this rape, M.L.C. told her mother about what

the defendant had done to her. (RP 05/23/2013 at 1071). Ms. Middleton took M.L.C. to the Sexual Assault Response Center, who instructed Ms. Middleton to contact the Granger Police Department. (RP 05/23/2013 at 1072).

An investigation was conducted and the defendant was charged with one count of Rape of a Child in the First Degree on February 4, 2011. (CP 1). This charge was based upon the events that occurred in Richland, Washington. (CP 1). The rapes that occurred in Granger, Washington, were the province of the Yakima County Prosecuting Attorney's Office, and one of the defendant's previous attorneys, Salvador Mendoza, indicated if charges regarding those matters were filed, he would ask for a change of venue. (RP 05/07/2013 at 206). As a result, only the rape that occurred in Richland, Washington, was charged, though the previous acts in Granger did come in as evidence of the defendant's lustful disposition toward M.L.C. (RP 05/20/2013 at 356). A First Amended Information was filed on April 16, 2013, adding aggravating factors, as well as one count of Child Molestation in the First Degree. (CP 306-07). The additional charge of Child Molestation in the First Degree was dismissed; however, the aggravators were allowed to stand. (RP 05/07/2013 at 232). The defendant went to trial and was found guilty of Rape of a Child in the First Degree. (CP 682). The jury also found two aggravating factors. (CP

683-84). Based upon the aggravating factors, the defendant was sentenced to a minimum term of 15 years imprisonment with a maximum of life, as determined by the Indeterminate Sentencing Review Board. (CP 723-35; RP 08/06/2013 at 1468). Based upon the fact that the defendant would be 68 years old on the earliest possible release date, the court found that it was unlikely that the defendant would ever be able to pay back the court-imposed costs. (RP 08/06/2013 at 1470). The court stated “Costs, I cannot assess either because I cannot make that finding that he would ever have the ability to pay that.” (RP 08/06/2013 at 1470). However, the order to pay costs in the attached cost bill was not crossed out. (CP 726). There is an attached cost bill. (CP 739).

III. ARGUMENT

1. The State concedes that costs should not have been assessed.

While the State does not agree with the defendant’s reasoning for striking the order for costs, it concurs that the remedy that the defendant requests is necessary, though based on entirely different reasoning. The trial court judge verbally found that the defendant would not be able to pay costs, and indicated that he would not impose costs. (RP 08/06/2013 at 1470). The fact that the Felony DNA Collection Fee is crossed off indicates that the court intended to render that intention part of the Felony

Judgment and Sentence. (CP 726). In light of those facts, it appears the inclusion of the cost bill was a scrivener's error. The proper remedy for such an error is a limited remand for the express purpose of correcting that error. *E.g. State v. Moten*, 95 Wn. App. 927, 934-35, 976 P.2d 1286 (1999).

IV. CONCLUSION

The State requests that the court remand for the limited purpose of striking the cost bill, allowing the error to be corrected. In all other respects, the trial court's rulings and verdict should be allowed to stand.

RESPECTFULLY SUBMITTED this 29th day of August, 2014.

ANDY MILLER

Prosecutor



Anita I. Petra, Deputy

Prosecuting Attorney

Bar No. 32535

OFC ID NO. 91004

CERTIFICATE OF SERVICE

I certify under penalty of perjury under the laws of the State of Washington that on this day I served, in the manner indicated below, a true and correct copy of the foregoing document as follows:

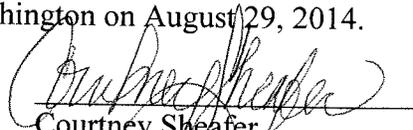
Dennis W. Morgan
Attorney at Law
PO Box 1019
Republic WA 99166-1019

E-mail service by agreement
was made to the following
parties:
nodblspk@rcabletv.com

Richard Charles Harris
#259399
Washington State Penitentiary
1313 N. 13th Ave.
Walla Walla WA 99362

U.S. Regular Mail, Postage
Prepaid

Signed at Kennewick, Washington on August 29, 2014.



Courtney Sheaffer
Legal Assistant